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2 **DEVELOPMENT AGREEMENT AND AGREEMENT TO LEASE**  
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5 This **DEVELOPMENT AGREEMENT AND AGREEMENT TO LEASE** ("Agreement") is  
6 made as of the **29** day of **August, 2019** (the "Effective Date"), by and between the City  
7 of Portsmouth, a New Hampshire municipal corporation, with a principal place of business  
8 at c/o Nancy Colbert Puff, 1 Junkins Avenue, Portsmouth, New Hampshire (referred to as  
9 "the City") and SoBow Square, LLC, a Delaware limited liability company, with a principal  
10 place of business at 200 Commerce Way, Suite 300, Portsmouth, NH 03801, its  
11 successors and assigns (referred to as "Developer"), and referred to collectively as the  
12 "Parties".  
13  
14

15 **PRELIMINARY STATEMENTS**  
16

17 This Agreement relates to the possible redevelopment of certain real estate known as the  
18 "McIntyre Property" located at 80 Daniel Street, Portsmouth, New Hampshire (the  
19 "Property").  
20

21 Reference is made to the following facts.  
22

- 23 **I.** The Property is presently owned by the United States of America. The City has  
24 been invited to submit an "Application for Obtaining Real Property for Historic  
25 Monument Purposes" (the "Application") to the National Park Service to acquire  
26 the Property from the General Services Administration ("GSA") under the  
27 Federal Historic Surplus Property Program. Under the Historic Surplus  
28 Property Program, the Property would be conveyed to the City for no cash  
29 consideration but with a deed restriction or preservation covenant requiring that  
30 the Property be preserved and used as a Historic Monument.  
31
- 32 **II.** In August of 2017, the City issued a Request for Proposals (the "RFP") seeking  
33 a private real estate developer to enter into a public private partnership with the  
34 City whereby the City would acquire the Property from the GSA under the  
35 Historic Surplus Property Program and then lease the Property to a private  
36 developer pursuant to a long-term ground lease. Under the ground lease, the  
37 developer shall be obligated to redevelop, reuse and operate the Property as  
38 a Historic Monument as generally described and detailed in the RFP.  
39
- 40 **III.** On or about November 6, 2017, in response to the RFP, several real estate  
41 developers, including Developer, submitted proposals to ground lease and  
42 redevelop the Property. In its response to the RFP, Developer proposed to  
43 redevelop the Property as a mixed-use project with office, retail, and residential  
44 uses and related parking, amenities, infrastructure and public spaces  
45 (collectively, the "Project").  
46

**IV.** On January 16, 2018, the Portsmouth City Council voted to select Developer as its potential development partner and authorized City Staff to negotiate and enter into a nonbinding memorandum of agreement with Developer with respect to the Project to allow time for public input and comment on the proposed Project, to allow Developer time to conduct additional due diligence, and to allow the City and Developer time to work together on the National Park Service Application, and to negotiate the terms of a development agreement.

V. On May 16, 2018, the Parties entered into a nonbinding memorandum of agreement with respect to the Project entitled “McIntyre Project Negotiating Principles”. This Agreement supersedes and replaces that Memorandum of Agreement in all respects.

**VI.** The Parties to this Development Agreement are willing to continue to work together and proceed with the Project upon the terms and conditions of this Agreement.

## DEFINITIONS

“Agreement” shall mean this Development Agreement, including all Exhibits hereto, as the same may from time to time be amended, modified, or supplemented in accordance with the terms hereof.

“City” shall mean the City of Portsmouth, New Hampshire.

“Developer” shall mean SoBow Square, LLC.

“Development Permits and Approvals” shall mean all final, unappealed and unappealable federal, state, and local permits and approvals required for the Project (including, without limitation, any approvals or authorizations required from the New Hampshire Historic Preservation Office).

“Project” shall mean the redevelopment, re-use, operation and management of the Property as described in this Agreement to be undertaken by Developer in accordance with the terms of this Agreement.

“Application” shall mean the “Application for Obtaining Real Property for Historic Monument Purposes” to be submitted by Developer and the City to the National Park Service in connection with the proposed acquisition and redevelopment of the Property in accordance with the terms and provisions of this Agreement.

“Ground Lease” shall mean the long-term ground lease of the Property between the City as landlord and Developer as tenant, pursuant to which Developer shall construct, manage and operate the Project in accordance with the terms of this Agreement. The terms of the Ground Lease shall be negotiated during the Application Period.

1  
2 “Guarantors” shall mean, collectively and as applicable, the Completion Guarantor and  
3 the Limited Guarantor (each as defined below), and substitutes therefor approved by the  
4 City in its reasonable discretion or as set forth in the Ground Lease. Without limiting the  
5 City’s reasonable approval right set forth below, the “Completion Guarantor” shall be the  
6 completion guarantor required by Developer’s construction lender and the “Limited  
7 Guarantor” shall be the party required by Developer’s first mortgage lender from time to  
8 time to provide any non-recourse carve-out guaranty and/or environmental indemnity;  
9 provided, however, that if Developer’s lender is not an institutional lender, then such  
10 guarantor(s) shall be subject to the City’s prior approval, such approval not to be  
11 unreasonably withheld, conditioned or delayed, as more particularly set forth in the  
12 Ground Lease. The Completion Guarantor and the Limited Guarantor may be different  
13 parties.  
14

15  
16 NOW, THEREFORE, the Parties hereby agree as follows:  
17

## 18 **1. DESCRIPTION OF PROJECT / BACKGROUND** 19

20 **This Development Agreement is related to the acquisition and redevelopment of**  
21 **the Property under the Federal Historic Monument Program and sets forth the**  
22 **City’s and the Developer’s respective rights, responsibilities and duties with**  
23 **respect to such proposed redevelopment.**  
24

25 1.1. The Parties are entering into this development agreement: (i) to work  
26 cooperatively to prepare and submit a joint Application to the National Park  
27 Service for acquisition of the Property by the City and the redevelopment,  
28 operation and management of the Property by the Developer under the terms  
29 of a long-term Ground Lease (ii) to allow time for additional public input and  
30 comment on the Project, (iii) to allow time for the Developer to conduct  
31 additional due diligence with respect to the Property and the feasibility of the  
32 Project; (iv) to finalize details about the Project, and (iv) to negotiate the terms  
33 of a long-term ground lease (the “Ground Lease”) between the City as  
34 landlord and Developer as tenant pursuant to which the Property will be  
35 redeveloped, operated and managed by Developer, at Developer’s sole cost  
36 and expense, in accordance with the Historic Surplus Property Program, the  
37 Application, the terms and conditions of the this Development Agreement,  
38 and the terms and conditions of the Ground Lease.  
39

40 1.2. The Developer’s preliminary proposal for the redevelopment of the Property  
41 has undergone a City-managed public input process to provide residents and  
42 other stakeholders the opportunity to review and comment on the Developer’s  
43 proposal and on how the Property should be redeveloped and reused.  
44 Developer’s proposal for the Project was refined and modified as part of the  
45 public input process and as the result of additional City review. Preliminary

plans for the Project will be finalized by Developer and the City prior to submitting the Application to the National Park Service.

- 1.3. It is also anticipated by both Parties that the City will acquire the Property subject to a restrictive covenant, as well as all applicable requirements of the Historic Surplus Property Program and the Secretary of the Interior "Standards for Rehabilitation" and the New Hampshire Historic Preservation Office, that will contain specific requirements for how the Property will be preserved, maintained and protected in the future (collectively, the "Preservation Restrictions"). The Developer will, under the Ground Lease, assume full responsibility for complying with such requirements as well as the Preservation Restrictions and the approved Application. In no event shall the existing Building be demolished (except to the extent of renovations and modifications contemplated by the Application and permitted by the Preservation Restrictions).

## 2. **DEVELOPER'S RESPONSIBILITIES, AGREEMENTS, COVENANTS AND CONTINGENCIES**

### 2.1. **Developer's Responsibilities and Covenants.**

- 2.1.1. **Development/Project.** Developer's Project shall be generally similar to size, mass, and configuration as the Conceptual Site Plan and building elevations included within Exhibit A of this Agreement. However, the Parties expressly recognize that the conceptual site plan and building elevations included within Exhibit A are subject to change as the state and local permitting process and the design and regulatory processes move forward. All plans approved through the federal, state and local permitting processes shall be incorporated into this document and binding by reference.

The materials comprising the exterior of Developer's Project shall be appropriate for downtown urban architecture, complementary to downtown Portsmouth's historic character.

Upon acquisition of the Property by the City and the full execution of the Ground Lease, Developer shall proceed with the redevelopment of the Property in accordance with the final, approved plans therefore and substantially in accordance with the Development Schedule (as it may be updated by the Developer and the City from time to time) at Developer's sole cost and expense. Preliminary concept plans for the Project are included as Exhibit A of this Agreement. A preliminary Project budget, which shall be updated by the parties prior to filing the Application and shall be further updated prior the entering the Ground Lease and as set forth in the Ground Lease, is attached hereto as Exhibit B (the 'Project Budget'). A preliminary

1 Development Schedule, which shall be updated by the parties prior  
2 to filing the Application and shall be further updated prior the entering  
3 the Ground Lease and as set forth in the Ground Lease, is attached  
4 hereto as Exhibit C (the "Development Schedule").  
5

6 The Property shall be leased by the Developer "as is" with the City  
7 making no warranties either express or implied as to the condition  
8 of the Property.  
9

10 2.1.2. **Infrastructure Improvements.** Developer shall be solely  
11 responsible for the cost of designing, permitting, and constructing  
12 any and all improvements to utilities, roadways, sidewalks and other  
13 public and private infrastructure and public amenities necessary or  
14 desirable for Developer's Project. The parties do not anticipate  
15 material off-site infrastructure improvements to be required for the  
16 Project, except for the infrastructure improvements contemplated in  
17 the Project Budget and shown within Exhibit A attached hereto (the  
18 "Infrastructure Improvements"). To the extent any off-site  
19 infrastructure improvements other than the Infrastructure  
20 Improvements are identified during the Permitting and Approval  
21 process as necessary to mitigate the Project-related impacts, the  
22 parties shall cooperate in good faith to limit the scope and expense  
23 of such improvements such that the scope of the required  
24 improvements is not more than necessary to fully mitigate Project-  
25 related impacts.  
26

27 2.1.3. **Intentionally Omitted.**  
28

29 2.1.4. **Project Costs and Expenses.** Developer shall be responsible for all  
30 costs and expenses associated with this Agreement and the Project  
31 including, without limitation, costs of its due diligence, costs of  
32 participating in the public input and review process, all costs related  
33 to the preparation and submission of the Application, and all design,  
34 permitting and construction costs associated with the Project.  
35 Developer and the City may agree in their discretion that Developer  
36 shall pay or reimburse the City for certain costs incurred by the City.  
37 Developer shall have no obligation to pay or reimburse any expenses  
38 incurred by the City in connection with the Project or this Agreement,  
39 except to the extent of any specified expenses that the Developer  
40 and the City have agreed in writing that Developer shall be  
41 responsible for paying or reimbursing.  
42

43 2.1.5. **Environmental.** Developer shall be responsible for the cost of any  
44 environmental remediation required for the Project, shall expressly  
45 release the City from any and all such responsibility and shall  
46 indemnify, defend and hold harmless the City from and all lost, cost,

1 expense, claims and damages associated with environmental  
2 conditions at the Property. The Parties acknowledge that the  
3 Property contains asbestos and the City will assume no responsibility  
4 for, or any liability or responsibility with respect thereto. Developer  
5 shall assume all responsibility for compliance with all applicable laws  
6 relating to asbestos and asbestos removal and disposal. In  
7 connection with its due diligence, Developer agrees to perform  
8 commercially reasonable environmental due diligence. All  
9 environmental due diligence shall comply with the EPA's All  
10 Appropriate Inquiry Rule and ASTM E1527-13 Standard. The City  
11 shall receive from Developer the results of all environmental due  
12 diligence (with reliance rights) which are obtained by Developer with  
13 respect to the Property.  
14

15 2.1.6. **National Park Service Application.** Developer shall cooperate with  
16 the City in preparing the National Park Service "Application to Obtain  
17 Real Property for Historical Monument Purposes." It is expected that  
18 such Application will be submitted to the National Park Service on or  
19 about July 2019, but no later than September 30, 2019 (the period  
20 ending on such later date, as it may be extended by mutual  
21 agreement of the parties, is hereby referred to as the "Application  
22 Period"). Subject to further refinement as provided in this Agreement  
23 and comments received from the National Park Service, it is  
24 expected that the Application will be generally consistent with the  
25 City's August 22, 2017 RFP and the Developer's November 6, 2017  
26 Response thereto. The parties also expect to submit the proposed  
27 form of Ground Lease as part of the Application. The Ground Lease  
28 must be approved by the National Park Service. The Application  
29 shall, at a minimum, include a detailed description of the Project, and  
30 a "Program of Preservation and Utilization" which includes a  
31 preservation plan, a use plan and a financial plan all as required  
32 under the Federal Historic Surplus Property Program. If the  
33 Application is initially rejected by the Park Service for technical  
34 reasons or correctible issues then the City agrees that it will work  
35 with the Developer to submit a corrected application. If the parties,  
36 after good faith negotiations, fail to reach agreement on a mutually  
37 acceptable form of Application during the Application Period then  
38 either party may terminate this agreement in which event the Deposit  
39 (and all interest earned thereon) shall be promptly returned to the  
40 Developer and neither party shall have any further rights or  
41 obligations hereunder except those expressly stated to survive.  
42

43 If the City submits the Application, the Developer shall  
44 automatically and immediately become fully responsible for all  
45 requirements, obligations, duties, and commitments related to the  
46 Application and the acceptance and approval of the Application

1 including, without limitation, all “constructive possession”  
2 responsibilities (if any) described in the general terms and conditions  
3 of the Application even if constructive possession were to occur prior  
4 to satisfaction of the conditions precedent to Developer’s obligation  
5 to consummate the Closing and to execute the Ground Lease (the  
6 “Closing Contingencies”). The parties shall work cooperatively to  
7 ensure that neither possession nor constructive possession of the  
8 Property occurs until satisfaction of the Closing Contingencies and  
9 the execution of the Ground Lease. In the event that the General  
10 Services Administration (GSA) sends a notice requesting or  
11 demanding that the City take possession of the Property within fifteen  
12 (15) days before all Closing Contingencies have been fully satisfied,  
13 then the City will accept the deed to the Property and the City and  
14 the Developer will execute the Ground Lease with an Addendum to  
15 be negotiated reasonably by the City and the Developer, which  
16 Addendum will cover the interim period between execution of the  
17 Ground Lease and the date on which all Closing Contingencies have  
18 been satisfied. During that interim period: (i) the Developer will be  
19 responsible for all obligations owed to the National Park Service  
20 pursuant to the Application or the Deed and for securing, maintaining  
21 and insuring the Property, (ii) subject to the terms of the Ground  
22 Lease, the Developer will be allowed to enter leases, including,  
23 without limitation, any space in the existing building on the Property  
24 in compliance with any required environmental remediation and/or  
25 asbestos removal, and to operate or lease the parking areas on the  
26 Property, all in accordance with all applicable laws, regulations, and  
27 building and health and life safety codes, (iii) except as may be  
28 required by the National Park Service, no improvements to the  
29 Property shall be made other than improvements to the existing  
30 building and other appropriate repairs and maintenance,  
31 environmental remediation and/or asbestos removal, and (iv) the  
32 Developer will be required to pay real estate taxes on the Property,  
33 but not base rent. Once all Closing Contingencies have been  
34 satisfied, the Addendum will terminate and the Ground Lease will  
35 commence within a 75 year term, etc. If the interim period lasts for  
36 more than 12 months then (i) Developer shall provide an accounting  
37 of operating expenses, taxes, insurance expenses, debt service  
38 payments, other expenses and income and (ii) twenty five percent  
39 (25%) of Developer’s actual income in excess of such expenses  
40 incurred (but in no event more than \$49,650 annually) will be paid by  
41 Developer to the City.

42  
43 2.1.7. **Federal Historic Surplus Property Program.** In connection with  
44 its proposed redevelopment of the Property, Developer shall comply,  
45 at its sole cost and expense, with all terms, conditions and  
46 requirements of the Federal Historic Surplus Property program

1 including, without limitation the Preservation Restrictions, the deed  
2 of the Property to the City, and all commitments made in the  
3 Application. All of the foregoing should be included in the Ground  
4 Lease. The Property shall be rehabilitated and the Property  
5 continuously maintained, repaired and administered by Developer in  
6 accordance with the Ground Lease, the Preservation Restrictions,  
7 and to the extent applicable The Secretary of the Interior's  
8 "Standards for Rehabilitation", as amended from time to time.  
9

10 2.1.8. **Ground Lease.** During the Application Period, the Developer shall  
11 negotiate in good faith with the City the terms and conditions of the  
12 Ground Lease. The basic terms of the Ground Lease are set forth in  
13 Exhibit F attached hereto. The Ground Lease will contain the  
14 following terms and provisions as well as others: (i) the scope of the  
15 Developer's initial construction and rehabilitation obligations; (ii)  
16 Developer's responsibility for all environmental matters at the  
17 Property including a release and indemnity to the City with respect  
18 thereto; (iii) final construction schedule; (iv) Developer financing  
19 rights and obligations; (v) form of security and guarantees for  
20 completion of Developer's construction work; (vi) the approved plan  
21 for Developer's operation and maintenance of the Property; (vii)  
22 events of default and remedies; (viii) definition of the Developer's  
23 "reasonable profit" under applicable federal law; (ix) the term of the  
24 Ground Lease; (x) base rent and other required payments; (xi) real  
25 estate taxes; (xii) maintenance and operation requirements; (xiii)  
26 insurance requirements; (xiv) events of default and remedies; (xv)  
27 use restrictions and covenants (in no event shall the Property be  
28 used as a hotel); (xvi) end of term rights and responsibilities; (xvii)  
29 transfer rights and limitations; (xviii) restrictions on changes to the  
30 Project; and (xix) the express assumption by Developer of all  
31 obligations under the Federal Historic Monument Program with  
32 respect to the Property including the rehabilitation, operation,  
33 management and maintenance of the Property. If the Parties are  
34 unable to reach agreement on the Ground Lease prior to end of the  
35 Application Period, then either party may terminate this Agreement,  
36 in which event the Deposit (and all interest earned thereon) shall be  
37 promptly returned to the Developer and neither party shall have any  
38 further rights or obligations hereunder except those expressly stated  
39 to survive. The Ground Lease shall contain the agreed-upon  
40 methodology for calculating the various components of all income to  
41 be paid to the City together with examples of such calculations.  
42

43 2.1.9. **Preliminary Design and Cost Analysis of Project.** Developer has,  
44 as of the date of this Agreement, completed a preliminary analysis of  
45 the financial feasibility of the construction of the Project and has  
46 determined that the Project is financially feasible.

1  
2 2.1.10. **Budget.** Developer has, as of the date of this Agreement, prepared  
3 preliminary estimates of the cost to design, construct and implement  
4 the Project as set forth in the Project Budget attached as Exhibit B.  
5 The parties shall agree on a final Project Budget which shall be  
6 submitted with the Application and incorporated into the Ground  
7 Lease.  
8

9 2.1.11. **Financing.** Developer shall diligently seek and obtain all financing  
10 (debt and equity) in sufficient amounts and at such prices, rates, and  
11 terms and from sources adequate to complete the Project in  
12 accordance with this Agreement. As soon as reasonably practical  
13 following the completion of permitting, design, construction plans and  
14 construction pricing for the Project and in all events no later than sixty  
15 (60) days prior to the anticipated date of Closing, Developer shall  
16 provide the City with commitments for such financing for review and  
17 approval by the City, not to be unreasonably withheld, conditioned or  
18 delayed. The City's review and approval of such proposed financing  
19 shall primarily focus on verifying that (i) the proposed financing  
20 contains sufficient amounts of debt and equity to fund the total costs  
21 of development and construction of the Project as set forth in the  
22 Project Budget, and (ii) any equity investors are Eligible Investors (as  
23 defined below). Prior to the submission of the Application to the  
24 National Park Service, the Developer shall provide the City with  
25 written expressions of interest from at least one prospective lender  
26 and at least one prospective equity investor as evidence of their  
27 interest in providing debt and equity to fund the development of the  
28 Project subject to the City's review and approval, not to be  
29 unreasonably withheld, conditioned or delayed.  
30

31 2.1.12. **Development Schedule and Construction of Project.** A  
32 preliminary Development Schedule is attached hereto as Exhibit C.  
33 The Developer shall diligently prosecute to completion the design  
34 and construction of the Project in accordance with the Development  
35 Schedule and shall substantially complete such construction within  
36 thirty (30) months after the execution of the Ground Lease, but  
37 subject to excusable delays (force majeure) and such other terms  
38 and conditions as may be more particularly set forth in the Ground  
39 Lease. The parties shall agree on a final Development Schedule prior  
40 to execution of the Ground Lease and such the Development  
41 Schedule shall be incorporated into the Ground Lease.  
42

43 2.1.13. **Performance and Completion Bonds; Security.** Prior to  
44 commencing construction of the Project, Developer shall furnish the  
45 City with payment and performance bonds assuring completion of  
46 the Project from a recognized surety company having an AM Best

1 rating of A or as otherwise required under the Ground Lease, or such  
2 other form of subcontractor insurance or security, as may be  
3 acceptable to the City in its sole but reasonable determination, and  
4 as shall be more particularly set forth in the Ground Lease.  
5

6 2.1.14. **Guaranties.** Prior to commencing construction of the Project,  
7 Developer shall furnish the City with a completion guaranty of the  
8 Project from the Completion Guarantor for a period expiring upon the  
9 issuance by the City of the final certificate of occupancy for the full  
10 Project buildout (the "Completion Guaranty") and a guaranty from the  
11 Limited Guarantor of the Ground Lease, limited to (1) all Preservation  
12 Restrictions, Historic Surplus Property Program Requirements, and  
13 all other such historic and preservation terms and conditions for the  
14 benefit of the National Park Service in the approved Application (but  
15 not other terms and conditions as between Developer and the City),  
16 and (2) any environmental indemnities and obligations contained  
17 therein (the "Limited Guaranty"). These guaranties shall be provided  
18 by the Guarantors upon terms and conditions to be set forth in the  
19 Ground Lease.  
20

21 2.1.15. **Reasonable Profit.** Developer understands, recognizes and  
22 agrees that the Application will not be approved by the National Park  
23 Service unless it expressly provides that all income received by the  
24 Developer in excess of costs of repair, rehabilitation, restoration,  
25 maintenance, and a specified reasonable profit or payment that may  
26 accrue to a lessor, sublessor, or developer in connection with the  
27 management, operation, or development of the Property for revenue  
28 producing activities, must be used only for public historic  
29 preservation, park, or recreational purposes. Specific details of the  
30 financial plan, Developer's reasonable profit, and how any "excess"  
31 funds will be spent will be negotiated and agreed to by Developer  
32 and the City prior to submitting the Application. Such terms and  
33 conditions will be incorporated into the Ground Lease. If the National  
34 Park Service does not approve the proposal for the calculation of  
35 Developer's reasonable profit as set forth in the Application,  
36 Developer shall have right to terminate this Agreement, in which  
37 event the Deposit (and all interest earned thereon) shall be promptly  
38 refunded and the parties shall have no further rights or  
39 responsibilities hereunder except those expressly stated to survive  
40

41 2.1.16. **Public Review and Input.** Developer understands that the Project  
42 will be subject to public review and comment as the state and local  
43 permitting process and the design and regulatory processes move  
44 forward. If, after receiving additional public input and comments from  
45 regulatory authorities and agencies, Developer proposes making  
46 material changes to the Project and the City does not approve such

1 proposed changes (which approval by the City shall not be  
2 unreasonably withheld, conditioned or delayed), then unless  
3 Developer withdraws such proposed changes, either party may  
4 terminate this Agreement and the Developer shall receive a refund  
5 of its Deposit, (and all interest earned thereon) and the Parties shall  
6 have no further rights or obligations hereunder except those  
7 expressly stated to survive.  
8

9 2.1.17. **Restrictions on Use.** The allowed uses of the Project shall be  
10 specified in the Ground Lease but shall be consistent with the intent  
11 of the RFP and Developer's response thereto. Hotel shall not be an  
12 allowed use. All uses and associated with rehabilitation of the  
13 Property must also comply with Secretary of the Interior's Standards  
14 for Rehabilitation and any specific provisions in the Preservation  
15 Restrictions and/or the deed to the City of the Property.  
16

17 2.1.18. **Permits and Approvals.** Developer agrees to use good faith,  
18 diligent efforts to apply for and obtain all required Development  
19 Permits and Approvals at its sole cost and expense. Prior to applying  
20 for any Development Permits and Approvals, Developer shall  
21 provide the City with copies of proposed draft plans and applications  
22 for the City's review, comment and approval (such approval not to be  
23 unreasonably withheld, conditioned or delayed), and, in the case of  
24 applications, the City's execution as a co-applicant to the extent  
25 required, or if the City so elects. A preliminary list of anticipated  
26 Permits and Approvals is attached hereto as Exhibit D. The City  
27 agrees to review all such draft plans and applications with  
28 reasonable promptness. Developer agrees that the first meeting in  
29 connection with seeking Permits and Approvals for the Project shall  
30 be with the Portsmouth Historic District Commission. The Parties  
31 recognize that as of the date of this Agreement, the first meeting with  
32 the Portsmouth Historic District Commission has already occurred  
33 but that review process remains to be completed.  
34

35 2.1.19. **Project Name.** The City shall have the right to review and comment  
36 on, but not approve, the Project name, which Developer shall  
37 determine following consultation with the City.  
38

39 2.1.20. **Public Spaces and Amenities.** Developer shall cooperate with the  
40 City to implement public and City sponsored arts, functions, concerts,  
41 events and other community and cultural programming, within the  
42 public realm spaces and amenities which are part of the Project.  
43 Specific details shall be included in the Ground Lease.  
44

45 2.1.21. **Project Changes.** After Closing and prior to completion of  
46 construction of the Project, Developer shall make no material

changes to the exterior design of or allowed uses within Project without the prior written approval of the City and, if and to the extent necessary, the GSA and/or the National Park Service, as shall be more particularly set forth in the Ground Lease. The Ground Lease shall specify what changes may be made to the Project by the Developer following completion of construction.

2.1.22. **Transfers.** After delivery of the deed and prior to the completion of the construction of the Project, no legal or beneficial interest (which term shall be deemed to include successors in interest of such interest) shall be transferred except in accordance with the requirements and limitations to be set forth in the Ground Lease. Notwithstanding the foregoing, the Developer shall have the right to mortgage its leasehold interest in the Ground Lease to secure the payment of any loan obtained by the Developer to finance the development, construction, and operation of the Project. The Ground Lease shall contain customary provisions with respect to the rights of any such mortgage lenders and such lenders' obligations with respect to the Project in the event of a foreclosure of their mortgage. Following completion of construction of the Project, the restriction on transfers shall be relaxed as more particularly described in the Ground Lease. Prior to Closing, Developer may admit one or more additional investors, provided that (i) The Kane Company and Redgate Holdings, LLC continue to control Developer (subject to customary major decision rights in favor of such investors), and (ii) such investors are Eligible Investors. The term "Eligible Investors" shall mean investors that are either (a) institutional investors, or (b) investors who have not in the prior ten (10) years been involved in litigation with the City, defaulted under any agreements with the City, or failed to pay any taxes to the City when due.

2.1.23. **Real Estate Taxes.** During the term of the Ground Lease, Developer shall pay real estate taxes for the Property (including all structures and improvements added by the Developer) to the extent required under applicable law (including RSA Chapter 72:23, I (b)), as if the Developer were the owner of fee simple title to the Property.

2.2. **Developer's Contingencies.** Developer's obligation to execute the Ground Lease and undertake the Project shall be subject to the following contingencies, the failure to satisfy any one of which shall give Developer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which Developer shall have no further obligation to the City.

2.2.1. **Due Diligence.**

1                   **Due Diligence Period.** Developer has completed any and all  
2 assessments, tests, studies, surveys, and research, at its sole cost  
3 and expense, as Developer deemed necessary or appropriate,  
4 including, but not limited to, environmental site assessments  
5 (including soil and groundwater testing and sub-surface  
6 explorations), real estate title reviews, boundary surveys, building  
7 and property inspections, flood zone reviews and certifications,  
8 reviews of all applicable governmental regulations and ordinances,  
9 economic and financial feasibility studies, market studies,  
10 engineering studies, geotechnical studies, parking and traffic  
11 studies, as well as reviews to determine the adequacy and  
12 availability of public and private utilities serving the Property.  
13 Notwithstanding the foregoing, Developer has not been afforded an  
14 opportunity to inspect the portion of the Property occupied by the  
15 Federal Bureau of Investigation (the "FBI Space"). At Closing, the  
16 Property shall be in substantially the same condition that it is in now,  
17 excepting reasonable wear and tear and other damage or  
18 deterioration that would not materially increase the Project Budget or  
19 substantially delay the Development Schedule, and free from tenants  
20 and occupants (the "Delivery Condition"). Developer shall have the  
21 opportunity to visually inspect the entirety of the Property (including  
22 the FBI Space) prior to Closing to confirm that the Property is in the  
23 Delivery Condition. If either (i) the Property is not in the Delivery  
24 Condition at Closing, or (ii) Developer's inspection reveals that the  
25 scope of asbestos remediation within the FBI Space is materially  
26 greater than other portions of the building inspected by Developer  
27 and the cost to abate such asbestos or other unanticipated  
28 conditions within the FBI Space is materially greater than  
29 contemplated in the Project Budget, Developer shall have right to  
30 terminate this Agreement, in which event the Deposit (and all interest  
31 earned thereon) shall be promptly refunded and the parties shall  
32 have no further rights or responsibilities hereunder except those  
33 expressly stated to survive. In such event, the City shall receive from  
34 Developer any and all third party due diligence materials (with  
35 reliance rights) which are undertaken by Developer with respect to  
36 the Property or the Project, in electronic format (AutoCADD, if  
37 applicable) or other format requested by the City.

38  
39                   **Title Due Diligence – Special Provisions.** Developer performed a  
40 title examination of the Property, and is reasonably satisfied that title  
41 to the Property is good, marketable and insurable, and not otherwise  
42 subject to any Liens, encumbrances, covenants or other restrictions  
43 which would prevent Developer from using the Property for  
44 Developer's Project ("Title Defects"). At the Closing, good and clear,  
45 record and marketable leasehold title to the Property shall be  
46 conveyed to Developer subject only to the deed granted by the GSA,

1 the Preservation Restrictions, the Ground Lease, and such  
2 encumbrances, covenants or other restrictions that existed of record  
3 prior to [*insert effective date of Developer's title insurance*  
4 *commitment prior to execution*], 2019 ("Permitted Encumbrances").  
5 It shall be a condition to Closing that Developer be able to obtain a  
6 customary leasehold title insurance policy with appropriate coverage  
7 insuring leasehold title to the Property in Developer, subject only to  
8 the Permitted Encumbrances and with the standard exceptions  
9 (including the exceptions for mechanic's liens and parties in  
10 possession) deleted (the "Title Insurance Policy"). In the event that  
11 the City is unable or otherwise unwilling to provide good, marketable  
12 and insurable title, or Developer is unable to obtain the Title  
13 Insurance Policy, then Developer, at its sole option, may proceed  
14 with any of the following options:

- 15
- 16 i. Afford the City additional time to cure said title defects;
- 17
- 18 ii. Terminate this Agreement and receive a full refund of its  
19 Deposit (and all interest earned thereon); or,
- 20
- 21 iii. The Parties may renegotiate the Ground Rent to  
22 appropriately account for the condition of title to the  
23 Property, and then proceed to Closing.
- 24

25 **Environmental Due Diligence – Special Provisions.**

26 Developer conducted such studies and investigations as it  
27 deemed necessary with respect to the environmental condition of  
28 the Property and any environmental contamination or hazardous  
29 material related thereto. In connection therewith, Developer  
30 obtained for the following environment reports, studies and  
31 assessments with respect to the Property (the "Environmental  
32 Reports"): Phase I Environmental Site Assessment – Sanborn  
33 Head; Geotechnical Due Diligence Summary Memorandum –  
34 Sanborn Head; Hazardous Buildings Materials Survey – AXIOM  
35 Partners; Property Condition Assessment – Simpson Gumpertz  
36 & Heger, Inc.; and Land Survey – Tighe & Bond. All  
37 environmental due diligence shall comply with the EPA's All  
38 Appropriate Inquiry Rule and ASTM E1527-13 Standard.

39

40 Developer performed these tasks at its own risk and at its own  
41 expense. Developer accepts full responsibility for the use of the  
42 Property during its inspections and due diligence, and  
43 acknowledges that such access is subject to the indemnity  
44 provisions of Section 1.5.

45

1 If prior to Closing Developer discovers environmental  
2 contamination or hazardous materials on or impacting the  
3 Property or the development thereof that were not identified in the  
4 Environmental Reports (whether such matters be pre-existing  
5 conditions or caused by a new spill), and the remediation of such  
6 environmental contamination or hazardous materials would  
7 materially increase the Project Budget, substantially delay the  
8 Development Schedule or materially limit the permitted uses of  
9 the Property, Developer shall have the following options, as  
10 follows:

- 11
- 12 i. Terminate this Agreement and receive a full refund of its  
13 Deposit (and all interest earned thereon); or,
- 14
- 15 ii. Accept the Property in its “as is condition” and proceed to  
16 Closing, subject to other contingencies as set forth within  
17 this Agreement. If Developer proceeds to Closing,  
18 Developer shall accept full responsibility for the Property in  
19 its “as is, where is” environmental condition with respect to  
20 the potential presence of hazardous waste or other buried  
21 materials regardless whether such waste or other materials  
22 were identified by said due diligence, tests, studies, or  
23 investigations.

24

25 2.2.2. **Development Approvals and Permits.** This Agreement is  
26 contingent upon Developer, at its sole cost and expense, obtaining  
27 any and all required Development Permits and Approvals from  
28 applicable governmental agencies (including without limitation the  
29 full building permit necessary for construction of the Project), upon  
30 such terms and conditions as are satisfactory to Developer in its  
31 reasonable discretion, for the Project. A preliminary list of anticipated  
32 permits and approvals is attached hereto as Exhibit D.

33

34 Developer agrees to use good faith, diligent efforts to apply for and  
35 obtain all required development permits and approvals. Prior to  
36 applying for any development permits and approvals, Developer  
37 shall provide the City with copies of proposed draft plans and  
38 applications for the City’s review and approval (such approval not to  
39 be unreasonably withheld, conditioned or delayed) pursuant to  
40 Section 2.1.18, and, in the case of applications, the City’s execution  
41 as a co-applicant to the extent required or if the City so elects.

42

43 The City shall cooperate in the prosecution of such Development  
44 Permits and Approvals, including the execution of any and all letters,  
45 consents and permit applications, the attendance by City Staff at all  
46 hearings, and the submission of oral and written testimony in support

1 of Developer's Project to the applicable land use boards or agencies,  
2 to permit Developer to seek and obtain all development permits and  
3 approvals. All Development Permits and Approvals, including any  
4 conditions affecting the same, must be satisfactory to Developer and  
5 the City in their reasonable discretion (provided that the City shall not  
6 object to any such approvals that do not materially differ from the  
7 RFP or the Application). Developer shall diligently endeavor to  
8 receive such development permits and approvals within the time  
9 frames established by the Development Schedule set forth in Exhibit  
10 C of this Agreement. In the event that Developer, despite good faith  
11 efforts, has not received all required Development Permits and  
12 Approvals by the Outside Closing Date (as defined below),  
13 Developer may extend the Outside Closing Date by up to six (6)  
14 months, provided that Developer continues to actively prosecute  
15 such Development Permits and Approvals.

16  
17 Developer shall provide the City with regular status updates about  
18 information concerning the prosecution of Development Permits and  
19 Approvals.

20  
21 The following terms and conditions shall govern Developer's Deposit  
22 in relation to securing permits and approvals for Developer's Project:

23  
24 a) In the event the City denies any of Developer's applications  
25 for permits and approvals, then Developer may terminate this  
26 Agreement and shall receive a full refund of the Deposit, including  
27 interest earnings, following which this Agreement shall be null and  
28 void, and of no further force or effect.

29  
30 b) In the event any other governmental entity, other than the City  
31 of Portsmouth, denies any of Developer's applications for permits  
32 and approvals, then Developer may terminate this Agreement and  
33 shall receive a full refund of the Deposit, including all interest  
34 earnings, following which this Agreement shall be null and void, and  
35 of no further force or effect.

36  
37 c) In the event an aggrieved individual appeals any permits or  
38 approvals issued for Developer's Project, and the aggrieved  
39 individual's appeal prevails, then Developer may terminate this  
40 Agreement and shall receive a full refund of the Deposit, including all  
41 interest earnings, following which this Agreement shall be null and  
42 void, and of no further force or effect.

43  
44 d) In the event an aggrieved individual appeals any permits or  
45 approvals issued for Developer's Project and Developer elects not to  
46 contest or defend such appeal, then Developer may terminate this

1 Agreement and shall receive a full refund of the Deposit, including all  
2 interest earnings, following which this Agreement shall be null and  
3 void, and of no further force or effect.  
4

5 e) During the period after the National Park Service approves the  
6 Application, but prior to satisfying the Closing Contingencies, to  
7 expedite progress on development of the Project, if Developer  
8 requests that the Closing be advanced prior to satisfaction of the  
9 Closing Contingencies, then the City shall take steps to acquire the  
10 Property and if the City does in fact acquire the Property, then the  
11 City and the Developer will execute the Ground Lease with an  
12 Addendum which will cover the interim period between execution of  
13 the Ground Lease and the date all Closing Contingencies have been  
14 satisfied. During that interim period: (i) the Developer will be  
15 responsible for all obligations owed to the National Park Service  
16 pursuant to the Application or the Deed and for securing, maintaining  
17 and insuring the Property, (ii) subject to the terms of the Ground  
18 Lease, the Developer will be allowed to enter leases, including,  
19 without limitation, any space in the existing building on the Property  
20 in compliance with any required environmental remediation and/or  
21 asbestos removal, and to operate or lease the parking areas on the  
22 Property, all in accordance with all applicable laws, regulations, and  
23 building and health and life safety codes, (iii) except as may be  
24 required by the National Park Service, no improvements to the  
25 Property shall be made other than improvements to the existing  
26 building and other appropriate repairs and maintenance,  
27 environmental remediation and/or asbestos removal, and (iv) the  
28 Developer will be required to pay real estate taxes on the Property,  
29 but not base rent. Once all Closing Contingencies have been  
30 satisfied, the Addendum will terminate and the Ground Lease will  
31 commence within a 75 year term, etc. If the interim period lasts for  
32 more than 12 months then (i) Developer shall provide an accounting  
33 of operating expenses, taxes, insurance expenses, debt service  
34 payments, other expenses and income and (ii) twenty five percent  
35 (25%) of Developer's actual income in excess of such expenses  
36 incurred (but in no event more than \$49,650 annually) will be paid by  
37 Developer to the City.  
38

39 f) In the event Developer fails to apply for permits and approvals  
40 following the foregoing review and comment process with the City,  
41 or otherwise fails to diligently pursue such permits and approvals,  
42 and does not cure such failure within thirty (30) days of Developer's  
43 receipt of notice from the City of default under this paragraph, then  
44 the City may terminate this Agreement and Developer shall forfeit its  
45 Deposit, including interest earnings, following which this Agreement  
46 shall be null and void, and of no further force or effect.

1  
2 2.2.3. **Financing.** This Agreement is specifically contingent upon  
3 Developer obtaining financing (debt and equity) in sufficient amounts  
4 and from sources that are satisfactory to Developer and the City to  
5 fund the total costs of development and construction of the Project  
6 (the “Approved Financing”). The City’s review and approval of such  
7 proposed financing shall primarily focus on verifying that (i) the  
8 proposed financing contains sufficient amounts of debt and equity to  
9 fund the total costs of development and construction of the Project  
10 as set forth in the Project Budget, and (ii) any equity investors are  
11 Eligible Investors. Prior to the submission of the Application to the  
12 National Park Service, the Developer shall provide the City with  
13 written expressions of interest from at least one prospective lender  
14 and at least one prospective equity investor as evidence of their  
15 interest in providing debt and equity to fund the development of the  
16 Project subject to the City’s review and approval, not to be  
17 unreasonably withheld, conditioned or delayed. If Developer is not  
18 able to obtain the Approved Financing on or before the Outside  
19 Closing Date, then either party may elect to terminate this  
20 Agreement, in which case Developer shall forfeit its Deposit,  
21 including interest earnings.  
22

23 2.2.4. **Approval of Application by National Park Service.** This  
24 Agreement is specifically contingent upon approval of the Application  
25 by the National Park Service, such approval not to contain any  
26 unanticipated material conditions, limitations, obligations or  
27 restrictions (including the terms of the required Preservation  
28 Restrictions) not set forth in the Application that would materially  
29 increase the Development Budget, substantially delay the Project  
30 Schedule, substantially increase the cost to operate the Project, or  
31 materially limit the uses allowed on the Property and the revenue  
32 producing activities contemplated by Developer. If the Application is  
33 not approved, or if the approval or the Preservation Restrictions  
34 contain such material conditions, limitations, obligations or  
35 restrictions not set forth in the Application, then Developer may  
36 terminate this Agreement and shall receive a full refund of the  
37 Deposit, including all interest earnings, following which this  
38 Agreement shall be null and void, and of no further force or effect  
39

40 2.2.5. **City’s Responsibilities.** This Agreement is specifically contingent  
41 upon the City completing its responsibilities as set forth within  
42 Section 3.1 and otherwise pursuant to this Agreement. If the City fails  
43 to fulfill any of its material responsibilities or otherwise is in material  
44 breach of this Agreement after notice and opportunity to cure as  
45 provided herein, then the City shall be in default under this

Agreement and Developer shall have the remedies set forth in Section 7.2 hereof.

### 3. **CITY'S RESPONSIBILITIES, AGREEMENTS, COVENANTS AND CONTINGENCIES**

#### 3.1. **City's Responsibilities.**

3.1.1. **Public Input.** The City has coordinated a process for additional public review and input on the Project. The Developer and the City shall give due consideration to all such public input when preparing the Application. Notwithstanding the foregoing, such understanding shall not limit each party's right to review and approve the final form and contents of the Application.

3.1.2. **City Council Approval.** Developer recognizes that this Agreement, the Application and the form of Ground Lease, is subject to review and approval by the City Council.

3.1.3. **National Park Service Application.** The City shall cooperate with the Developer in preparing the National Park Service "Application to Obtain Real Property for Historical Monument Purposes" to be submitted by the City to the NPS and as further described in Section 2.1.6.

3.1.4. **Acquisition of Property from GSA.** The City shall use good faith diligent efforts, in consultation and cooperation with Developer, to acquire the Property from the GSA in accordance with the terms and conditions of the Application and/or such other terms and conditions as may be acceptable to the City.

3.1.5. **Ground Lease.** During the Application Period, the City shall negotiate in good faith with the Developer the terms and conditions of the Ground Lease. The Ground Lease will contain the terms and conditions described in Section 2.1.8 and Exhibit F, as well as other applicable terms and provisions. If the Parties are unable to reach agreement on the Ground Lease prior to end of the Application Period, then either party may terminate this Agreement in which event the Deposit shall be promptly refunded and the parties shall have no further rights or responsibilities hereunder except those expressly stated to survive.

3.2. **City's Contingencies.** In addition to the contingencies set forth in Section 3.1 of this Agreement, the City's obligation to execute the Ground Lease of the Property shall be subject to the following additional contingencies, the

1 failure to satisfy any one of which shall give the City any of the options set  
2 forth below and, in addition, the right to withdraw from this Agreement after  
3 which the City shall have no further obligation to Developer.  
4

5 3.2.1. **Developer's Financing.** This Agreement is specifically contingent  
6 upon Developer obtaining the Approved Financing, as more  
7 particularly set forth in Section 2.2.3 above.  
8

9 3.2.2. **Developer's Development Permits and Approvals.** This  
10 Agreement is specifically contingent upon Developer, at its sole cost  
11 and expense, obtaining any and all required Development Approvals  
12 and Permits (but with cooperation from the City as provided herein)  
13 from applicable governmental agencies (including without limitation  
14 the full building permit for the Project). Developer's application for  
15 Development Approvals and Permits shall be subject to the City's  
16 review and, if applicable, approval pursuant to Section 2.1.18 hereof.  
17 If Developer delivers notice to the City that Developer is unable to  
18 secure said approvals and permits prior to the Closing, the City may  
19 elect to terminate this Agreement, in which event Developer's  
20 Deposit shall be handled as set forth within Section 2.2.2 of this  
21 Agreement.  
22

23 3.2.3. **Infrastructure Improvements.** This Agreement is specifically  
24 contingent upon Developer being solely responsible for any and all  
25 infrastructure improvements that might be required for Developer's  
26 Project, as more particularly set forth in and limited by Section 2.1.2  
27 above.  
28

29 3.2.4 **No Adverse Change.** This Agreement is specifically contingent on  
30 there being no material adverse change between now and the time  
31 for Closing in the Developer or its ability to construct and manage the  
32 Project that is not reasonably addressed by Developer within thirty  
33 (30) days of receipt of written notice from the City of change (or such  
34 longer period as may be reasonable under the circumstances).  
35

36 3.2.5. **Developer's Responsibilities.** This Agreement is specifically  
37 contingent upon Developer completing its responsibilities as set forth  
38 within Section 2.1 and otherwise pursuant to this Agreement. If  
39 Developer fails to fulfill any of its responsibilities or otherwise is in  
40 breach of this Agreement after notice and opportunity to cure as  
41 provided herein, then Developer shall be in default under this  
42 Agreement and the City shall have the remedies set forth in Section  
43 7.1 hereof.  
44

#### 45 **4. DESCRIPTION OF PROPERTY AND GROUND LEASE TRANSACTION**

46

1       4.1.    **Deposit.** Upon execution of this Agreement, Developer shall provide a  
2       deposit in the amount of Four Hundred Thousand Dollars (\$400,000.00). The  
3       deposit shall be held by Hinckley Allen as Escrow Agent, in an interest-  
4       bearing account in accordance with Section 8.19. If either party elects to  
5       terminate this Agreement in accordance with its terms, the Deposit shall be  
6       handled as provided herein. In the event Developer elects to proceed to  
7       Closing, the Deposit, together with interest earnings, shall be applied as set  
8       forth in the Ground Lease. If Developer terminates this Agreement (other than  
9       pursuant to a default by the City) or defaults under this Agreement, then  
10      Developer shall in all instances assign to the City (i) any and all third party  
11      due diligence materials (with reliance rights) which are undertaken by  
12      Developer with respect to the Property or the Project, in electronic format or  
13      other format requested by the City, (ii) Developer's rights under the  
14      Development Permits and Approvals, and (iii) Developer's rights to any and  
15      all plans and specifications prepared for the Project.

16  
17     4.2.    **Access to Property.** The City, to the fullest extent practical, shall assist  
18     Developer, its employees, representatives, consultants, and agents in  
19     obtaining access to enter the Property during the term of this Agreement for  
20     the purpose of completing due diligence and for all other purposes necessary  
21     to carry out the terms of this Agreement. The Developer understands and  
22     recognizes that the City does not own the Property and that access will need  
23     to be coordinated with the GSA. Notwithstanding the foregoing, the Developer  
24     shall be afforded an opportunity prior to Closing to visually inspect the entirety  
25     of the Property (including the FBI Space) after all tenants and occupants have  
26     vacated.

27  
28     Developer shall defend, indemnify and hold harmless the City and its officials,  
29     agents and employees (collectively, the "*Indemnified Parties*"), from and  
30     against all loss, damage, expense, liability and other claims, including court  
31     costs and reasonable attorneys' fees (collectively, "*Liabilities*") resulting from  
32     any third party action relating to this paragraph regarding Developer's  
33     inspection of the Property and from injury to or death of persons, and damage  
34     to or loss of property to the extent caused by or arising out of the negligent  
35     acts or omissions of, or the willful misconduct of, Developer (or its contractors,  
36     agents or employees) in connection with this paragraph; provided, however,  
37     that nothing herein shall require Developer to indemnify the Indemnified  
38     Parties for any Liabilities to the extent caused by or arising out of the negligent  
39     acts or omissions of, or the willful misconduct of the City. Additionally, to the  
40     fullest extent permitted by law, no official, employee, agent, direct or indirect  
41     owner, member, manager, officer, beneficiary or representative of the City or  
42     Developer shall be individually or personally liable for any obligation or liability  
43     of Developer under this paragraph. This paragraph shall survive any  
44     termination of this Agreement. During Developer's inspection of the Property,  
45     Developer shall have in force, general liability insurance, naming the City as  
46     an additional insured, by written endorsement without a waiver of

subrogation, with respect to commercial general liability, as it pertains to this paragraph, in an amount not less than the amount of \$2 million in the aggregate and \$1 million per incident or occurrence. Developer shall also require that any and all contractors who it retains for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this paragraph, and who access the Property, to obtain a certificate of insurance in the amount of \$1 million in the aggregate, \$1 million per occurrence naming the City as an additional insured by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this paragraph.

- 4.3. **Closing.** For purposes of this Development Agreement, the “Closing” shall mean the execution and delivery by both Parties of the Ground Lease. Closing may occur at any time once the foregoing conditions and contingencies have been achieved and all occupants have completely vacated the Property. The parties have established February 25, 2020 as the target date for the Closing, as set forth within the Development Schedule included as Exhibit C within this Agreement. However, in no event shall the Closing occur later than the date that is twelve (12) months after the date Developer has obtained the Development Permits and Approvals (the “Outside Closing Date”). Notwithstanding the preceding sentence, the Closing shall be extended in the event of certain delays as set forth within Section 2.2.2 and Section 5.2 of this Agreement, or in the event it takes additional time to acquire the Property from the GSA free of all occupants.

The Parties agree that all Closing documents, including the Ground Lease and other Closing documents, shall not become effective unless and until they are executed and delivered by the parties, which shall not occur until all of Developer’s and the City’s respective responsibilities and contingencies within Articles 2 and 3, respectively, and elsewhere in this Agreement have been achieved, satisfied, or otherwise waived in writing.

In the event that any Closing conditions or contingencies have not been satisfied on or before the Outside Closing Date, then, except as may otherwise be provided in this Agreement, either party may terminate this Agreement, in which event the Deposit and all interest earned thereon shall be forthwith returned to Developer, this Agreement shall be null and void and the Parties shall have no further rights or obligations herein.

- 4.4. **Title and Deed Restrictions.** The City shall lease the Property to Developer pursuant to the Ground Lease. In addition to the terms and conditions set forth within this Agreement, the Ground Lease shall provide Developer with good, marketable and insurable leasehold title to the Property as referenced in Section 2.2 of this Agreement subject to the Preservation Restrictions and provisions in the deed of the Property to the City.

1       4.5.    **City's Affidavits and Certificates.** To the extent applicable and if requested  
2       to do so by Developer, the City, at the Closing, shall deliver such affidavits (in  
3       customary form) as may be required by Developer or Developer's title  
4       insurance company with respect to: (1) Parties in possession of the Property,  
5       (2) rights of third Parties and title claims in or to the Property, (3) mechanic's  
6       and materialmen's liens affecting the Property, (4) authority of the City, and  
7       all signatories for the City, to enter the Ground Lease and otherwise  
8       consummate this transaction, and (5) such other matters as are customarily  
9       required by the grantor of the real property interest being insured. All such  
10      requested affidavits and certificates shall be provided to the City at least five  
11      (5) business days in advance of the closing.  
12

13      4.6.    **Ground Lease.** The Ground Lease shall be negotiated and finalized by the  
14      Parties during the Application Period. The Parties shall enter into a long-term  
15      ground lease of the Property at Closing. The basic terms of the Ground Lease  
16      are set forth in Exhibit F attached hereto. The Ground Lease shall contain  
17      without limitation, the following terms and provisions: (i) the scope of the  
18      Developer's initial construction and rehab obligations; (ii) environmental; (iii)  
19      construction schedule; (iv) Developer financing rights and obligations; (v)  
20      form of security and guarantees for completion of Developer's construction  
21      work; (vi) the approved plan for Developer's rehabilitation, restoration,  
22      maintenance and operation of the Property; (vii) events of default and  
23      remedies; (viii) definition of the Developer's "reasonable profit" under  
24      applicable federal law; etc.; (ix) term; (x) base rent; (xi) additional rent; (xii)  
25      maintenance and operation requirements; (xiii) insurance requirements; (xiv)  
26      events of default and remedies; (xv) use restrictions and covenants; (xvi) end  
27      of term rights and responsibilities; (xvii) transfer restrictions; (xviii) assumption  
28      by tenant of all obligations under the Federal Historic Monument Program  
29      with respect to the Property including the rehabilitation, operation,  
30      management and maintenance of the Property. The Ground Lease shall  
31      contain the agreed-upon methodology for calculating the various components  
32      of all income to be paid to the City together with examples of such  
33      calculations. If the Parties in the Ground Lease are unable to reach  
34      agreement, then either party may terminate this Agreement, in which event  
35      the Deposit shall be promptly refunded to Developer and the Parties shall  
36      have no further rights or obligations hereunder except those expressly stated  
37      to survive.  
38

39      Upon acquisition of the Property from the GSA, the City shall ground lease  
40      the Property to Developer subject of the terms and conditions of the Ground  
41      Lease. The Ground Lease must be approved by the National Park Service  
42      under the Historic Surplus Property Program. Neither the City nor Developer  
43      shall be obligated to execute the Ground Lease until such time as all Closing  
44      conditions and contingencies have been satisfied and Developer informs the  
45      City in writing that Developer has:  
46

- Completed all due diligence for Developer's Project and determined that the results of such diligence are favorable for development of Developer's Project;
- Secured all Development Permits and Approvals for Developer's Project;
- Secured the Approved Financing; and
- Secured estimates from qualified Construction Managers or General Contractors for Developer's Project which are within Developer's budget for Developer's Project.

During the term of the Ground Lease, Developer will be responsible for all financial aspects of renovating the Property, including such repairs and other work as necessary to effect restoration thereof in accordance with the Secretary of the Interior's Standards, this Agreement, and the Ground Lease, and shall be responsible for any other repairs, maintenance or improvements.

During the term of the Ground Lease, and except as provided in the Ground Lease, Developer shall be responsible for all aspects of operation of the Property, including, without limitation, leasing, marketing, maintenance, utilities and upkeep.

The Preservation Restrictions and the Deed to the City will contain a requirement that, if the Property is used for income-producing activities, certain auditing and reporting requirements apply with respect to the activity. The Parties acknowledge that these auditing and reporting requirements are binding on the City, and that Developer, its successors and assigns, will likewise be bound under the Ground Lease. Developer shall fulfill these auditing and reporting requirements, as required by all applicable laws and regulations. Where applicable laws and regulations require the City to fulfill said auditing and reporting requirements, Developer agrees to assist the City in so doing. Developer agrees to make its financial books and records available for inspection by the City from time to time as may be necessary to ensure compliance with the financial aspects of the Preservation Restrictions, as shall be more specifically set forth in the Ground Lease.

4.7. **Delivery of Property.** The City shall deliver possession of the Property to Developer at the commencement of the Ground Lease in its "as is, where is" condition, in accordance with the terms of this Agreement.

4.8. **Real Estate Broker's Fees & Commissions.** The City represents to Developer, and Developer represents to the City, that it has not engaged a

broker, and no commission or other such fee is due to any party, in connection with the Closing of this transaction.

4.9. **City's Disclosures.** The City makes no warranties or representations regarding environmental contamination or sub-surface environmental or geotechnical conditions at the Property. The Developer agrees that leasehold title to the Property will be conveyed in "as is" condition.

4.10. **Casualty.** In the event that the Property, prior to Closing, is damaged by fire, flood, collapse, or other casualty, Developer may, within thirty days after receiving written notice of the occurrence of such damage or casualty, elect to terminate this Agreement, in which event all other obligations of the Parties hereunder shall cease, the Developer's Deposit shall be returned to Developer in full, including interest earnings therewith, and the Parties shall have no further rights or obligations hereunder except those expressly stated to survive.

## 5. **DEVELOPMENT SCHEDULE**

5.1. **General.** Attached to this Agreement is a Development Schedule (Exhibit C) showing the anticipated date and sequence of various elements of the Project to be completed by Developer and the City. The Parties acknowledge that the Development Schedule is a complex schedule requiring the coordinated efforts of multiple Parties and dependent in many instances on the actions or approvals of third Parties, and accordingly is expected to evolve during the parties' pursuit of the Project. The parties shall update the Development Schedule from time to time, each acting reasonably and in good faith. 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 in Exhibit C. The Parties agree that time is of the essence in performance of their respective obligations under this Agreement. Developer and the City acknowledge that the completion of the Development Schedule is dependent on events to be determined following the approval of this Agreement by the City Council. The City Council hereby gives the Deputy City Manager the sole authority to negotiate the final elements, terms, conditions, milestones, and timeframes for Exhibit C.

5.2. **Force Majeure / Excusable Delays.** For purposes of this Agreement, Force Majeure Delays shall mean occurrences whereby Developer shall not be considered in breach of or default in its obligations under this Agreement in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not limited to, acts of God, or of the public enemy, acts of the other party, fires, floods, or other casualties, epidemics, quarantine restrictions, litigation, delays stemming from unusually severe weather, or delays in obtaining any Development Permits and Approvals; it being the purpose and intent of this

1 provision that in the event of the occurrence of any such enforced delay, the  
2 time for commencement of construction and for performance of the  
3 obligations thereunder by Developer shall be extended for the period of the  
4 enforced delay, provided, that Developer, within thirty (30) days after the  
5 beginning of any such enforced delay, has notified the City in writing stating  
6 the cause or causes thereof and requesting an extension for the period of the  
7 enforced delay.  
8  
9

## 10 **6. REPRESENTATIONS AND WARRANTIES**

11  
12 6.1. **Representations and Warranties of the City.** The City hereby represents  
13 and warrants to the best of its knowledge and belief that:  
14

15 6.1.1. The execution and delivery of this Agreement and the performance  
16 of the City's obligations hereunder have been duly authorized by  
17 such municipal action as necessary, and this Agreement constitutes  
18 the legal, valid and binding agreement of the City, enforceable  
19 against the City in accordance with its terms subject only to the  
20 conditions set out in this Agreement.  
21

22 6.1.2. Subject to the conditions set out in this Agreement, neither the  
23 execution or delivery by the City of this Agreement, the performance  
24 by the City of its obligations in connection with the transactions  
25 contemplated hereby, nor the fulfillment by the City of the terms or  
26 conditions hereof conflicts with, violates or results in a breach of any  
27 constitution, law or governmental regulation applicable to the City, or  
28 conflicts with, violates or results in a breach of any term or condition  
29 of any judgment or decree, or any agreement or instrument, to which  
30 the City is a party or by which the City or any of its properties or  
31 assets are bound, or constitutes a default thereunder.  
32

33 6.1.3. There is no action, suit or proceeding, at law or in equity, or official  
34 investigation before or by any court or Governmental Authority,  
35 pending or threatened against the City, or to the City's knowledge  
36 with respect to the Property, wherein an unfavorable decision, ruling  
37 or finding would materially adversely affect the performance by the  
38 City of its obligations hereunder or the performance by the City of its  
39 obligations under the transactions contemplated hereby, or which, in  
40 any way, questions or may adversely materially affect the validity or  
41 enforceability of this Agreement, or any other agreement or  
42 instrument entered into by the City in connection with the  
43 transactions contemplated hereby.  
44

45 6.2. **Representations and Warranties of Developer.** Developer hereby  
46 represents and warrants to the best of its knowledge and belief that:

6.2.1. Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by Developer, constitute valid, legal and binding obligations of Developer enforceable against Developer in accordance with the respective terms thereof.

6.2.2. Neither the execution or delivery by Developer of this Agreement, the performance by Developer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by Developer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to Developer, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which Developer is a party or by which Developer or any of its properties or assets are bound, or constitutes a default there under.

6.2.3. [Intentionally Omitted].

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 threatened against Developer, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Developer of its obligations hereunder or the performance by Developer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Developer in connection with the transactions contemplated hereby.

## 7. **DEFAULT AND REMEDIES**

### 7.1. **Default by Developer.**

7.1.1. **Default by Developer before Closing.** If Developer shall fail to fulfill its obligations hereunder prior to the Closing and such failure continues for thirty (30) days after written notice from City (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Developer is diligently pursuing said cure), then the City's remedy shall be limited to its rights and remedies as set forth within the specific Article, Section, or Sub-Section of this Agreement for which default has occurred. However, if no rights or remedies are expressly defined within

1 the specific Article, Section, or Sub-Section in which the default occurred,  
2 then the City shall have the right to terminate this Agreement and retain  
3 Developer's Deposit including interest earnings related thereto which shall be  
4 City's sole and exclusive remedy at law or in equity. In all instances involving  
5 a default by the Developer, the Developer shall assign to the City (i) any and  
6 all third party due diligence materials (with reliance rights) which are  
7 undertaken by Developer with respect to the Property or the Project, in  
8 electronic format (AutoCADD if applicable) or other format requested by the  
9 City, (ii) Developer's rights under the Development Permits and Approvals,  
10 and (iii) Developer's rights to any and all plans and specifications prepared  
11 for the Project. The parties agree that the damages that will be suffered by  
12 the City from a default by Developer hereunder will be difficult or impossible  
13 to ascertain and that the Deposit together with receipt by the City of the above  
14 described due diligence materials, permits and approvals and plans and  
15 specifications is a reasonable estimate of the amount of such damages and  
16 shall constitute the full, agreed and liquidated damages of the City for such  
17 default.

18  
19 7.1.2. **Default by Developer after Closing.** If Developer shall fail to fulfill  
20 its obligations hereunder after the Closing, then the City's remedies  
21 shall be as set forth in the Ground Lease.

22  
23 7.2. **Default by City.** If the City shall fail to fulfill its obligations hereunder, and  
24 such failure continues for thirty (30) days after written notice from Developer  
25 (or such additional time as may be reasonable required if such failure cannot  
26 be cured within said thirty (30) day period provided that City is diligently  
27 pursuing said cure) then Developer's remedy shall be limited to its rights and  
28 remedies as set forth within the specific Article, Section, or Sub-Section of  
29 this Agreement for which default has occurred. However, if no rights or  
30 remedies are expressly defined within the specific Article, Section, or Sub-  
31 Section in which default occurred, then Developer shall have the right option  
32 to (a) waive the default and proceed to Closing; or (b) give notice that it is  
33 terminating this Agreement, in which event the Deposit and any interest shall  
34 be immediately refunded to Developer, upon which neither party shall have  
35 any further rights against the other under this Agreement; and/or (c) pursue  
36 any and all rights it may have at law and in equity to address any such breach.  
37 The remedies stated herein shall be cumulative.

## 38 39 8. **GENERAL PROVISIONS**

40  
41 8.1. **Cooperation.** Developer and the City agree to cooperate with each other,  
42 and to act reasonably and in good faith, in order to achieve the purposes of  
43 this Agreement and, in connection therewith, to take such further actions and  
44 to execute such further documents as may reasonably be requested by the  
45 City, Developer, or their representatives, agents, consultants and any  
46 prospective or actual lenders, investors or tenants.

- 1  
2 8.2. **Entire Agreement; Amendments.** This Agreement embodies the entire  
3 agreement and understanding between the Parties hereto relating to the  
4 subject matter herein and supersedes all prior agreements and  
5 understandings between the Parties (including without limitation the RFP and  
6 the McIntyre Project Negotiating Principles). This Agreement may not be  
7 changed, modified, waived, discharged or terminated orally, but only by an  
8 instrument in writing signed by each of the Parties hereto or by the party  
9 against which enforcement is sought. Any change, modification or  
10 amendment, which requires the consent or approval of a Governmental  
11 Authority, shall be effective only upon receipt of such approval.  
12
- 13 8.3. **Binding Effect; Successors and Assignors.** The terms and provisions of  
14 this Agreement and the respective rights and obligations of the Parties  
15 hereunder shall be binding upon, and inure to the benefit of, their respective  
16 heirs, successors, assigns, and nominees. The Developer shall not have the  
17 right to assign this Agreement without the prior written consent of the City  
18 which may be withheld in the City's sole discretion.  
19
- 20 8.4. **Headings.** The headings to the sections and subsections of this Agreement  
21 have been inserted for convenience of reference only and shall not modify,  
22 define, limit or expand the express provisions of this Agreement.  
23
- 24 8.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated  
25 by reference and expressly made a part hereof.  
26
- 27 8.6. **Governing Law.** This Agreement shall in all respects be governed by, and  
28 construed and enforced in accordance with, the laws of the State of New  
29 Hampshire.  
30
- 31 8.7. **Enforceability and Severability.** Any provision of this Agreement that is  
32 determined to be illegal or unenforceable by a court of competent jurisdiction,  
33 shall be ineffective to the extent of such prohibition or unenforceability without  
34 invalidating the remaining provisions hereof.  
35
- 36 8.8. **Consent to Jurisdiction and Venue.** Developer and City submit to the  
37 jurisdiction of the courts of the State of New Hampshire and the courts from  
38 which an appeal from such trial venue may be taken or other relief may be  
39 sought for purposes of any action or proceeding arising out of this Agreement  
40 or any related agreement. All legal actions taken by the Parties shall be  
41 commenced in Rockingham County New Hampshire Superior Court. Both  
42 Parties hereby waive their right to a jury trial.  
43
- 44 8.9. **Independent Parties.** Developer and City are independent Parties under  
45 this Agreement, and nothing in this Agreement shall be deemed or construed  
46 for any purpose to establish between any of them or among them a

relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent Parties.

- 8.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement, but not the Closing. Upon entering the Ground Lease at Closing, this Agreement shall be superseded in all respects by the Ground Lease and thereafter this Agreement shall have no further force or effect and the Parties shall have no further rights or obligations hereunder.
- 8.11. **Waivers.** Failure on the part of any party to complain of any action or non-action on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver of any such party's rights hereunder. No waiver at any time of any provision hereof by any party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 8.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 8.13. **Preservation of Rights.** Nothing herein or in any related agreement shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.
- 8.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 8.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 8.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the legally required review process or powers of any city or other governmental board, committee, commission, or department, or excuse the Parties from the requirement to apply for and receive all necessary

1 permits and approvals from all applicable governmental boards, committees,  
2 commissions or departments.

3  
4 8.17. **Warranties and Representations.** Developer and City each acknowledge  
5 that they have not been influenced to enter into this transaction or relied upon  
6 any warranties or representations not specifically set forth or incorporated into  
7 this Agreement.

8  
9 8.18. **Saving Clause.** In the event that any of the terms or provisions of this  
10 Agreement are declared invalid or unenforceable by any court of competent  
11 jurisdiction or any Federal or State Government Agency having jurisdiction  
12 over the subject matter of this Agreement, the remaining terms and provisions  
13 that are not effected thereby shall remain in full force and effect.

14  
15 8.19. **Escrow.**

16  
17 a. The Deposit shall be held by Hinckley Allen as Escrow Agent in a  
18 federally insured, interest-bearing money market account and shall be duly accounted for  
19 at the Closing. In the event that City or Developer sends notice to Escrow Agent certifying  
20 to Escrow Agent that it is entitled to receive the Deposit pursuant to the terms of this  
21 Agreement (other than at the Closing), Escrow Agent shall forward a copy of such  
22 certification to the other party. If Escrow Agent does not receive an objection from such  
23 party to such certification within fifteen (15) days after the date of such notice, Escrow  
24 Agent may disburse all such amounts to the certifying party. If Escrow Agent receives an  
25 objection or receives conflicting demands, Escrow Agent shall have the right to do either  
26 of the following: (i) interplead the funds into a court of competent jurisdiction in  
27 Rockingham County, New Hampshire (the cost of doing so to be deducted from the funds  
28 but shared equally between the parties) and the parties shall thereafter be free to pursue  
29 their rights at law or in equity with respect to the disbursement of the funds and the Escrow  
30 Agent shall be fully released and discharged from its duties and obligations under this  
31 Agreement; or (ii) resign and transfer the funds to a replacement escrow agent reasonably  
32 satisfactory to City and Developer. Upon the transfer of funds to such replacement  
33 escrow agent, the Escrow Agent shall thereupon be fully released and discharged from  
34 all obligations to further perform any and all duties or obligations imposed upon it by this  
35 Agreement.

36  
37 b. The Escrow Agent shall incur no liability hereunder whatsoever  
38 except in the event of its willful misconduct or negligence. The other parties hereto, jointly  
39 and severally, agree to defend and indemnify the Escrow Agent against all reasonable  
40 costs, obligations and liabilities suffered by it for which it may be claimed to be liable  
41 hereunder, except for that occasioned by its willful misconduct or negligence. The  
42 indemnity provided in the preceding sentence shall survive any termination of this  
43 Agreement. The fees of the Escrow Agent and costs incurred by it in performing its duties  
44 hereunder shall be shared equally by the parties, except that Developer shall not be liable  
45 for any costs or expenses of the Escrow Agent incurred in connection with its  
46 representation of City.

1  
2 c. The Developer acknowledges and understands that the Escrow  
3 Agent is City's attorney in this transaction. In the event of any dispute between the City  
4 or the Developer arising out of this Agreement, the Developer agrees that the Escrow  
5 Agent may represent the City in connection with that dispute provided that Escrow Agent  
6 also proceeds in accordance with (i) or (ii) of Paragraph (a), above. The Developer  
7 agrees that in the event of any such dispute and provided that the Escrow Agent proceeds  
8 in accordance with (i) or (ii) of Paragraph (a) above, it will not object to the Escrow Agent's  
9 representation of the City in such dispute because of any potential or actual conflict of  
10 interest arising due to the Escrow Agent's role as Escrow Agent under the terms of this  
11 Agreement.  
12

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

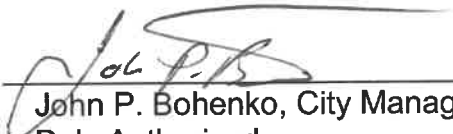
## **LIST OF EXHIBITS**

- Exhibit A     Preliminary Conceptual Building Elevations and Site Plans for Project [Add names of plans, engineer and date?]**
- Exhibit B     Project Budget**
- Exhibit C     Development Schedule**
- Exhibit D     List of Anticipated Permits and Approvals**
- Exhibit E     Basic Terms of Ground Lease**

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

Executed as a sealed instrument this 7<sup>th</sup> day of October, 2019.

**CITY OF PORTSMOUTH**

By:  Date: 10-7-19  
John P. Bohenko, City Manager  
Duly Authorized

**STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM**

In Portsmouth, NH, on the 7<sup>th</sup> day of October, 2019, before me, personally appeared **John P. Bohenko**, City Manager of the City of Portsmouth, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.



Justice of the Peace/Notary Public

**VALERIE A. FRENCH**  
Notary Public - New Hampshire  
My Commission Expires February 11, 2020

DEVELOPER

SOBOW SQUARE, LLC

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

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

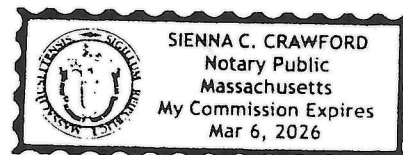
By:  Date: October 7, 2019

Ralph Cox  
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF SUFFOLK

In Boston, on the \_\_\_\_\_ day of October, 2019, before me, personally appeared **Ralph Cox** of Sobow Square, LLC, known to me or proved to be the persons named in and who executed the foregoing instrument, and being first duly sworn, such persons acknowledged that they executed said instrument for the purposes therein contained as their free and voluntary act and deed.

  
Justice of the Peace/Notary Public



DEVELOPER

SOBOW SQUARE, LLC

By: [Signature] Date: 10/7/19

Duly Authorized

By: [Signature] Date: 10/7/19

Duly Authorized

STATE OF ~~NEW HAMPSHIRE~~ ILLINOIS  
COUNTY OF ~~ROCKINGHAM~~ LAKE

In \_\_\_\_\_, on the 7<sup>th</sup> day of October, 2019, before me,  
personally appeared **Michael Kane and Steve Perdue** of Sobow Square, LLC, known  
to me or proved to be the persons named in and who executed the foregoing  
instrument, and being first duly sworn, such persons acknowledged that they executed  
said instrument for the purposes therein contained as their free and voluntary act and  
deed.

[Signature]  
Justice of the Peace/Notary Public



## **Exhibit A**

### **Preliminary Conceptual Building Elevations and Site Plans for Project**

**Exhibit B**  
**Project Budget**

**Exhibit C**  
**Development Schedule**

## **Exhibit D**

### **List of Anticipated Permits and Approvals**

**[Add GSA's requirement to go through Section 106]**

1

## Exhibit E

### Basic Terms of Ground Lease

#### McIntyre Project Ground Lease Summary

<b>Property Name:</b>	<b>McIntyre Redevelopment Project</b>	
<b>Address:</b>	<b>80 Daniel Street Portsmouth, NH</b>	
<b>Owner / Landlord</b>	City of Portsmouth, New Hampshire	
<b>Tenant</b>	Sobow Square, LLC	
<b>Guarantors</b>	Redgate and Kane Companies	
<b>Subordination</b>	Ground Lease not Subordinate to Project Financing	
<b>Leased Premises</b>	Approximately 2.1 Acres of Land and Improvements Thereon	
<b>Lease Term</b>	75 Years	
<b>Lease Commencement Date</b>	To Be Determined	
<b>Base Rent Commencement Date</b>	On the 18th Month After Issuance of a Building Permit	
<b>Additional Option Period and Terms</b>	None	
<b>Base Rent</b>	100,000 Annually	Payable Monthly at 8,333.33
<b>Base Rent Escalators</b>	2.5% Annually Beginning 12 Months After Base Rent Commencement	
<b>Revenue Sharing</b>	In Addition to Base Rent, Tenant Will Pay to Landlord 1% of Annual Revenues Beginning in Year 11	
<b>Capital Expense Reserve</b>	\$25,000 Annually First 5 Years after Capital Reserve Commencement Date, \$75,000 Annually Years 6-10	
<b>Capital Reserve Payment Commencement Date</b>	30th Month After Issuance of a Building Permit	
<b>Security Deposit</b>	None Initial \$400,000 Deposit to be Released at Ground Lease Closing	
<b>Option to Purchase</b>	None	
<b>Landlord Expense Responsibility</b>	None	
<b>Tenant Expense Responsibility</b>	All Operating Expenses of Every Kind	
<b>Public Spaces</b>	Tenant to Construct and Maintain at its Sole Expense All Indoor and Outdoor Public Spaces as Illustrated on Approved Site Plan	
<b>Historic Tax Credit Sharing</b>	50/50 Sharing of Net Proceeds After Costs of Application and Administration	
<b>Refinance Proceeds Sharing</b>	7.5% of Net Financing Proceeds for 1st Refinancing Event and 10% of Net Financing Proceeds for all Subsequent Refinancing Events will be Paid to Landlord as Additional Rent	
<b>Profit Sharing</b>	Upon A Leasehold Sale Landlord Will Share in 20% of Project Profit In Excess of an 18% Internal Rate of Return	

8/8/2019

## **Exhibit A**

### **Preliminary Conceptual Building Elevations and Site Plans for Project**

**NOTES:**

1) ZONE: CHARACTER DISTRICT 4 (CD4) & CHARACTER DISTRICT 5 (CD5)

REFER TO THE CITY OF PORTSMOUTH ZONING ORDINANCE FOR RESTRICTIONS AND PERMITTED USES. A ZONING REPORT OR LETTER WAS NOT PROVIDED AT THE TIME OF THIS SURVEY.

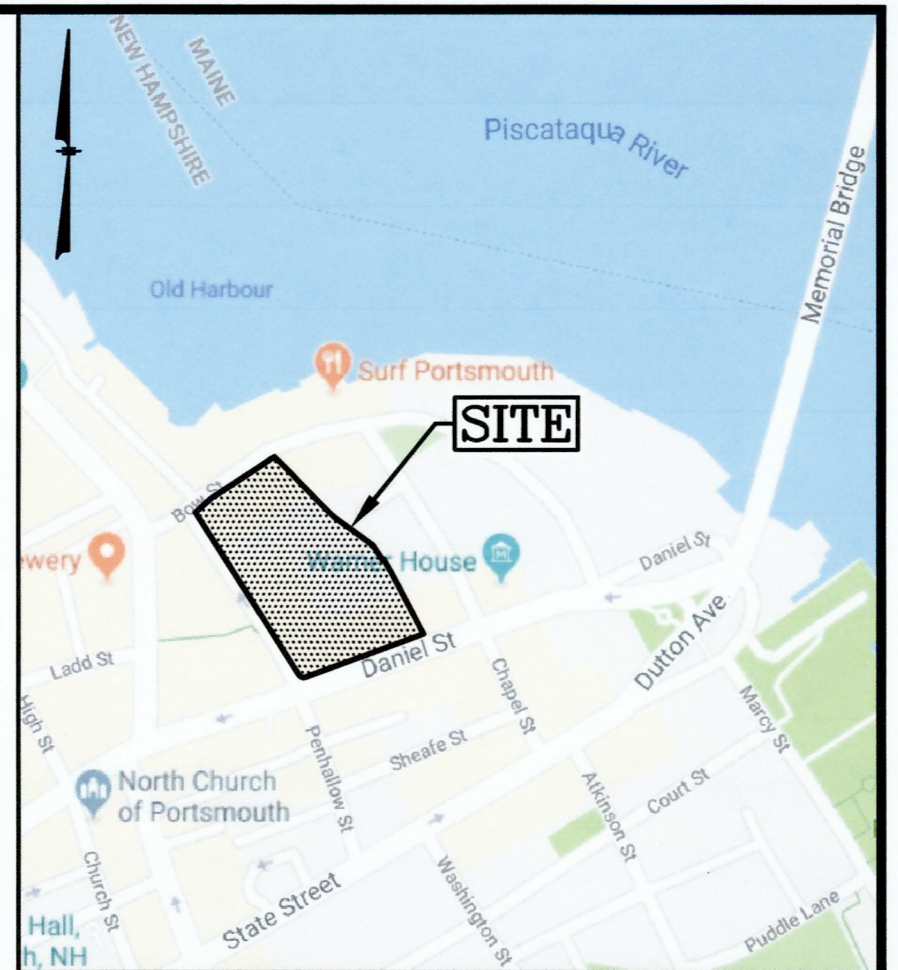
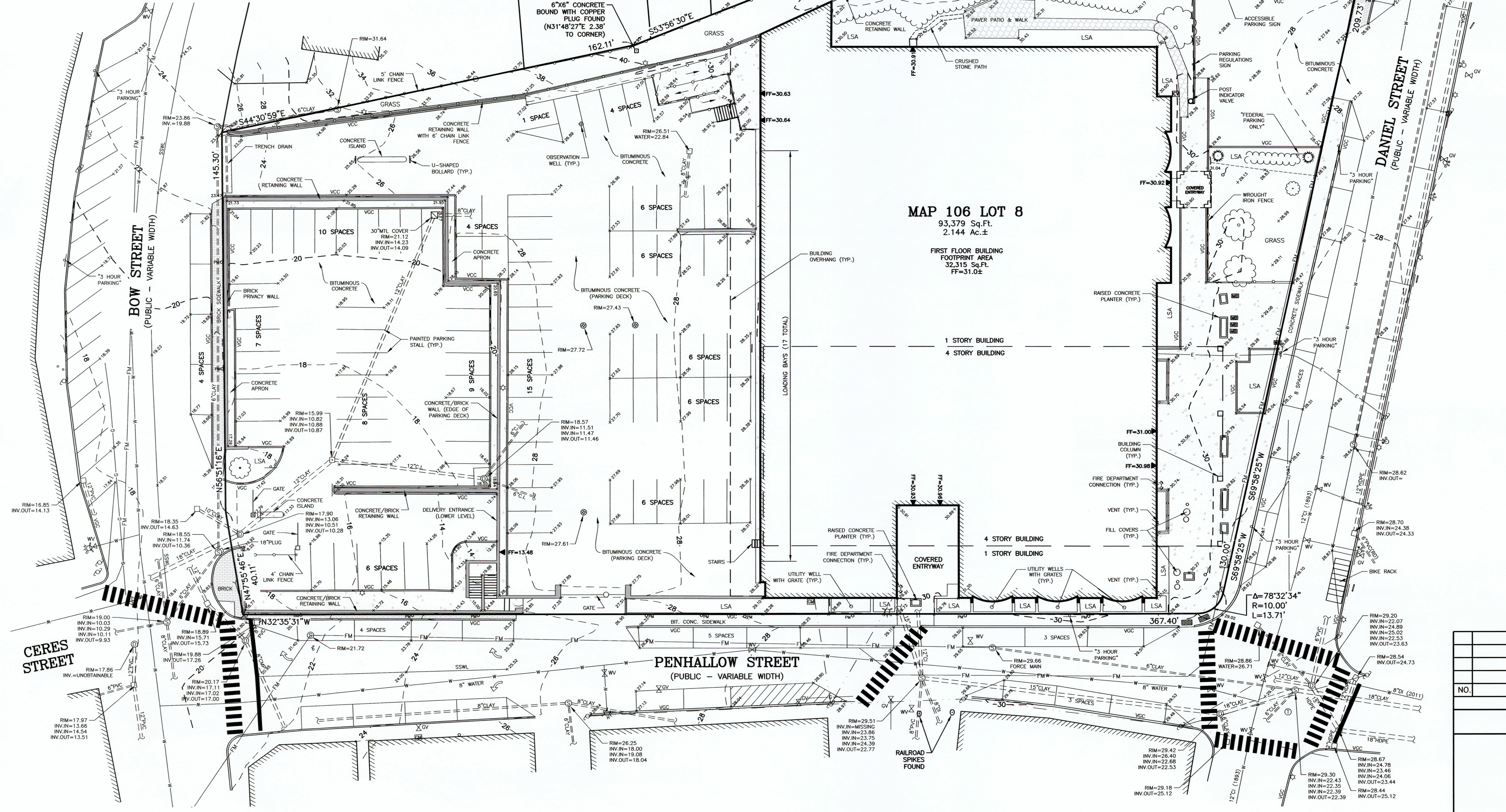
2) THIS PLAN IS THE RESULT OF AN ON-THE-GROUND FIELD SURVEY PERFORMED BY THIS OFFICE IN MAY & JUNE 2018.

3) BEARINGS SHOWN HEREON ARE BASED ON NAD83 PER GPS OBSERVATIONS PERFORMED BY THIS OFFICE ON JUNE 6, 2018.

4) ELEVATIONS SHOWN HEREON ARE BASED ON NGVD29 PER GPS OBSERVATIONS PERFORMED BY THIS OFFICE ON JUNE 6, 2018 (ADJUSTED UTILIZING VERTCON).

5) LOCATION OF UNDERGROUND UTILITIES IS APPROXIMATE ONLY. ADDITIONAL UNDERGROUND UTILITIES OTHER THAN THOSE SHOWN MAY BE ENCOUNTERED.

6) THE SURVEY TRACT IS NOT LOCATED IN A SPECIAL FLOOD HAZARD AREA PER FLOOD INSURANCE RATE MAP NUMBER 33015C0259E, WITH AN EFFECTIVE DATE OF MAY 17, 2005.



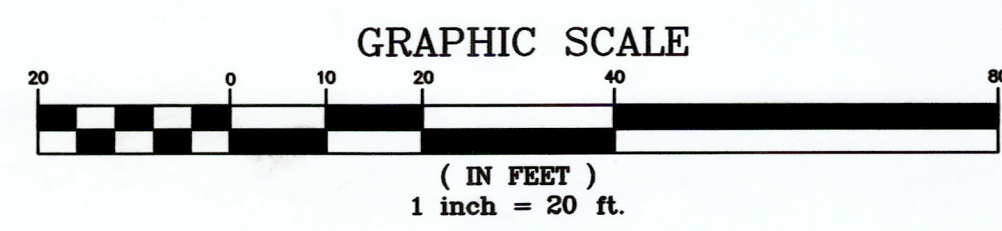
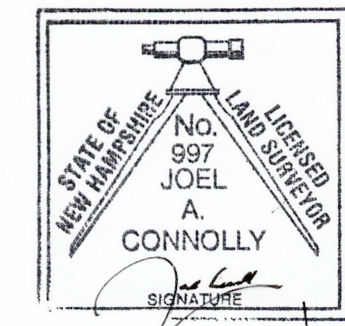
**LOCATION MAP**  
(NOT TO SCALE)

**LEGEND**

- SLOPED GRANITE CURB
- VERTICAL GRANITE CURB
- SLOPED CONCRETE CURB
- VERTICAL CONCRETE CURB
- CAPE COD BERM
- DOUBLE SOLID LINE YELLOW
- DOUBLE DASHED LINE YELLOW
- SINGLE DASHED LINE YELLOW
- SINGLE SOLID LINE YELLOW
- SINGLE SOLID LINE WHITE
- SINGLE DASHED LINE WHITE
- GAS LINE
- UNDERGROUND TELEPHONE
- WATER LINE
- UNDERGROUND ELECTRIC
- CHAIN LINK FENCE
- STOCKADE FENCE
- POST & RAIL FENCE
- WIRE FENCE
- CONTOUR ELEVATION
- TREE
- UTILITY POLE
- GUY WIRE
- OVERHEAD WIRE
- TREELINE
- PULL BOX
- SIGN
- SPOT ELEVATION
- DRAIN MANHOLE
- CATCH BASIN
- SEWER MANHOLE
- TELEPHONE MANHOLE
- ELECTRIC MANHOLE
- WATER MANHOLE
- MANHOLE
- GAS VALVE
- WATER VALVE
- WATER SHUT OFF
- FIRE HYDRANT
- BOLLARD
- GAS METER
- ELECTRIC METER
- MONITORING WELL
- LIGHT POLE

**CERTIFICATION:**

I CERTIFY THAT THIS SURVEY AND PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION AND THAT THIS PLAN IS THE RESULT OF AN ACTUAL SURVEY PERFORMED ON THE GROUND IN MAY & JUNE 2018 AND HAS AN ERROR OF CLOSURE OF NOT MORE THAN ONE PART IN TEN THOUSAND.



**PLAN REFERENCES:**

- 1) ROCKINGHAM COUNTY REGISTRY OF DEEDS (R.C.R.D) PLAN 00555.
- 2) R.C.R.D. PLAN 176.
- 3) R.C.R.D. PLAN 476.
- 4) R.C.R.D. PLAN 19045.
- 5) R.C.R.D. PLAN 37569.

**OWNER OF RECORD:**

MAP 106 LOT 8  
UNITED STATES OF AMERICA  
1600 PENNSYLVANIA AVENUE  
WASHINGTON, DC 20004  
BOOK 1708 PAGE 428  
BOOK 1710 PAGE 422  
BOOK 1693 PAGE 470  
BOOK 1719 PAGE 326  
BOOK 1706 PAGE 462  
BOOK 1706 PAGE 464  
BOOK 1708 PAGE 66

NO.	DESCRIPTION	BY	DATE
EXISTING CONDITIONS PLAN			
ASSESSORS MAP 106 LOT 8			
62 DANIEL STREET PORTSMOUTH, NH 03801			
PREPARED FOR:			
SoBow SQUARE			
c/o REDGATE 265 FRANKLIN STREET BOSTON, MA 02110			
SCALE: 1"=20'			
DATE: JULY 5, 2018			
DRAWING NO. 44201WS.DWG			
DRAWN BY: AKC			
CHECKED BY: JAC			
PROJECT NO. 442018			
SHEET NO. 1 OF 1			

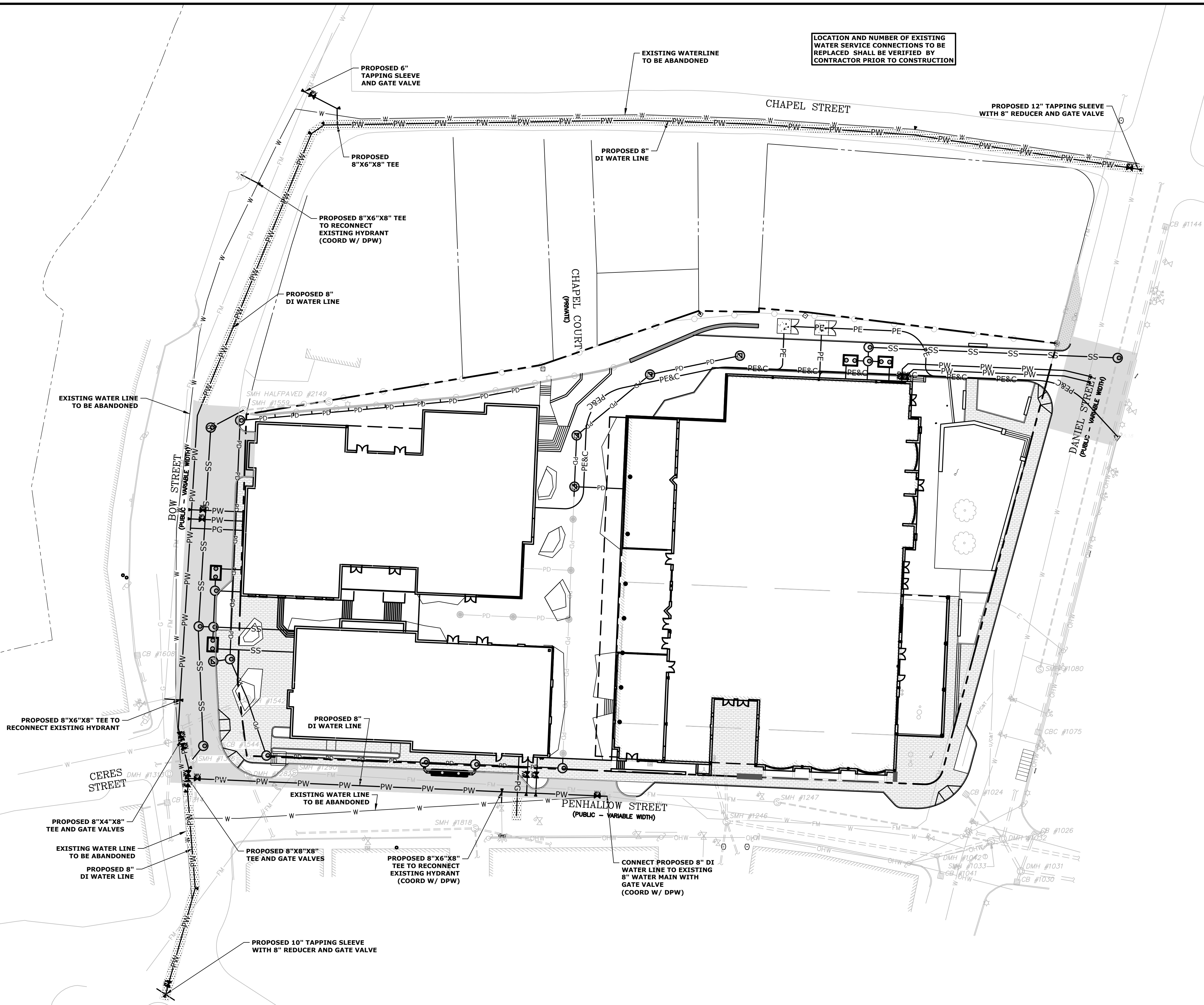


44 Silles Road, Suite One  
Salem, New Hampshire 03079  
(603) 893-0720  
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www.mhfdesign.com

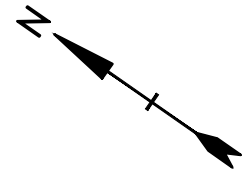


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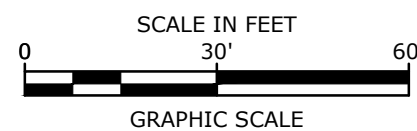
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Plot Date: Friday, October 05, 2018 Plotted By: Craig M. Langston  
File Location: J:\Projects\2018\2018-10-05\2018-10-05-SoBow Square, LLC Drawings - Figures\AutoCAD\SheetR-5029-001-C-DSGN.dwg Layout Tab: WATER



LOCATION AND NUMBER OF EXISTING  
WATER SERVICE CONNECTIONS TO BE  
REPLACED SHALL BE VERIFIED BY  
CONTRACTOR PRIOR TO CONSTRUCTION



**PRELIMINARY**



**McIntyre  
Building  
Federal  
Property**

**SoBow Square,  
LLC**

**80 Daniel Street  
Portsmouth, NH**

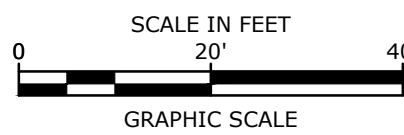
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PROJECT NO:		R5029-001
DATE:		10/5/2018
FILE:		R-5029-001-C-DSGN.DWG
DRAWN BY:		CML
CHECKED:		PMC
APPROVED:		BLM

**WATER MAIN REPLACEMENT  
PLAN**

SCALE: AS SHOWN

**C-104.1**

PRELIMINARY



McIntyre  
Building  
Federal  
Property

SoBow Square,  
LLC

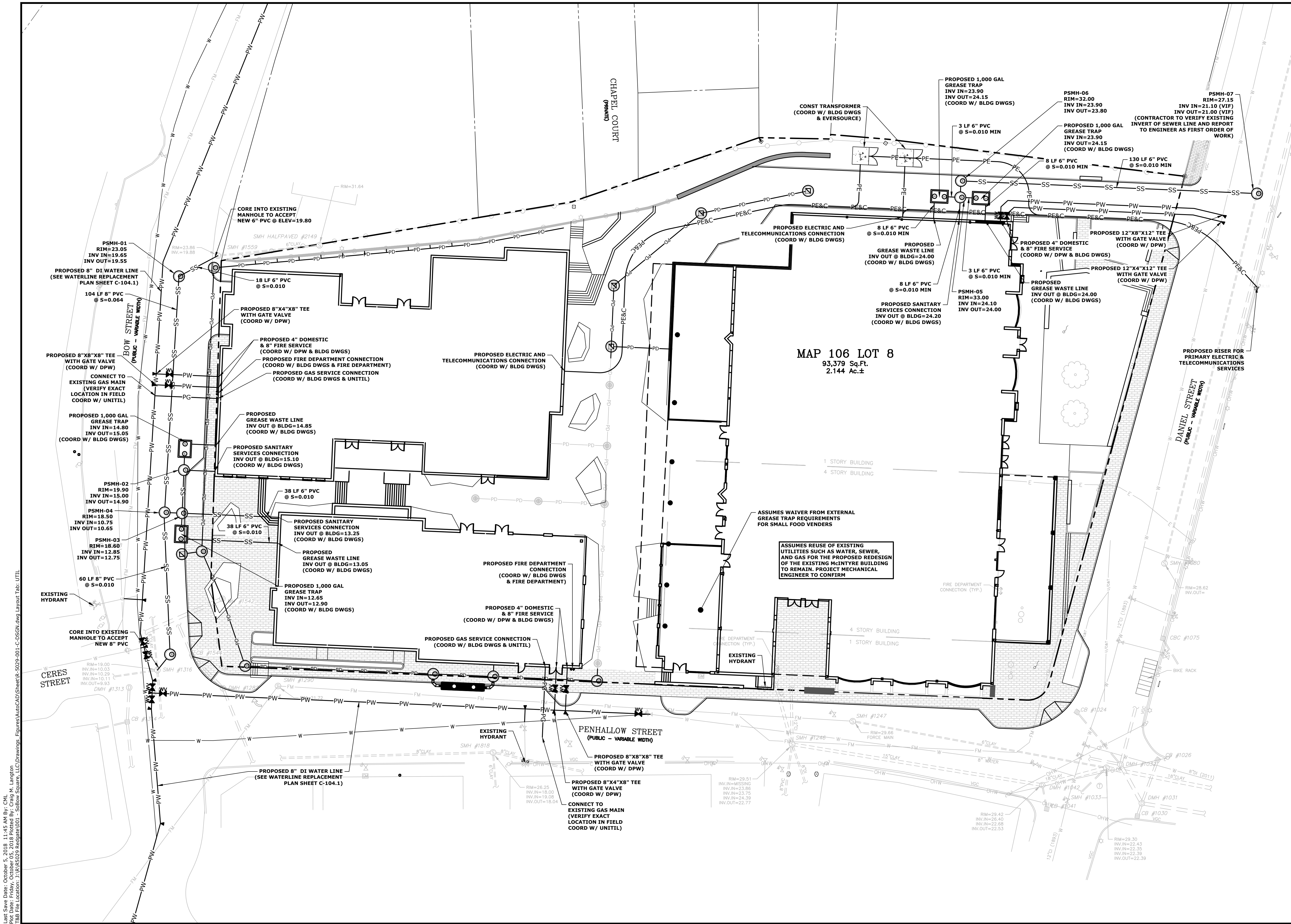
80 Daniel Street  
Portsmouth, NH

MARK	DATE	DESCRIPTION
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PROJECT NO: R5029-001		
DATE: 10/5/2018		
FILE: R-5029-001-C-DSGN.DWG		
DRAWN BY: CML		
CHECKED: PMC		
APPROVED: BLM		

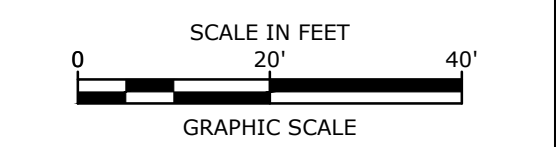
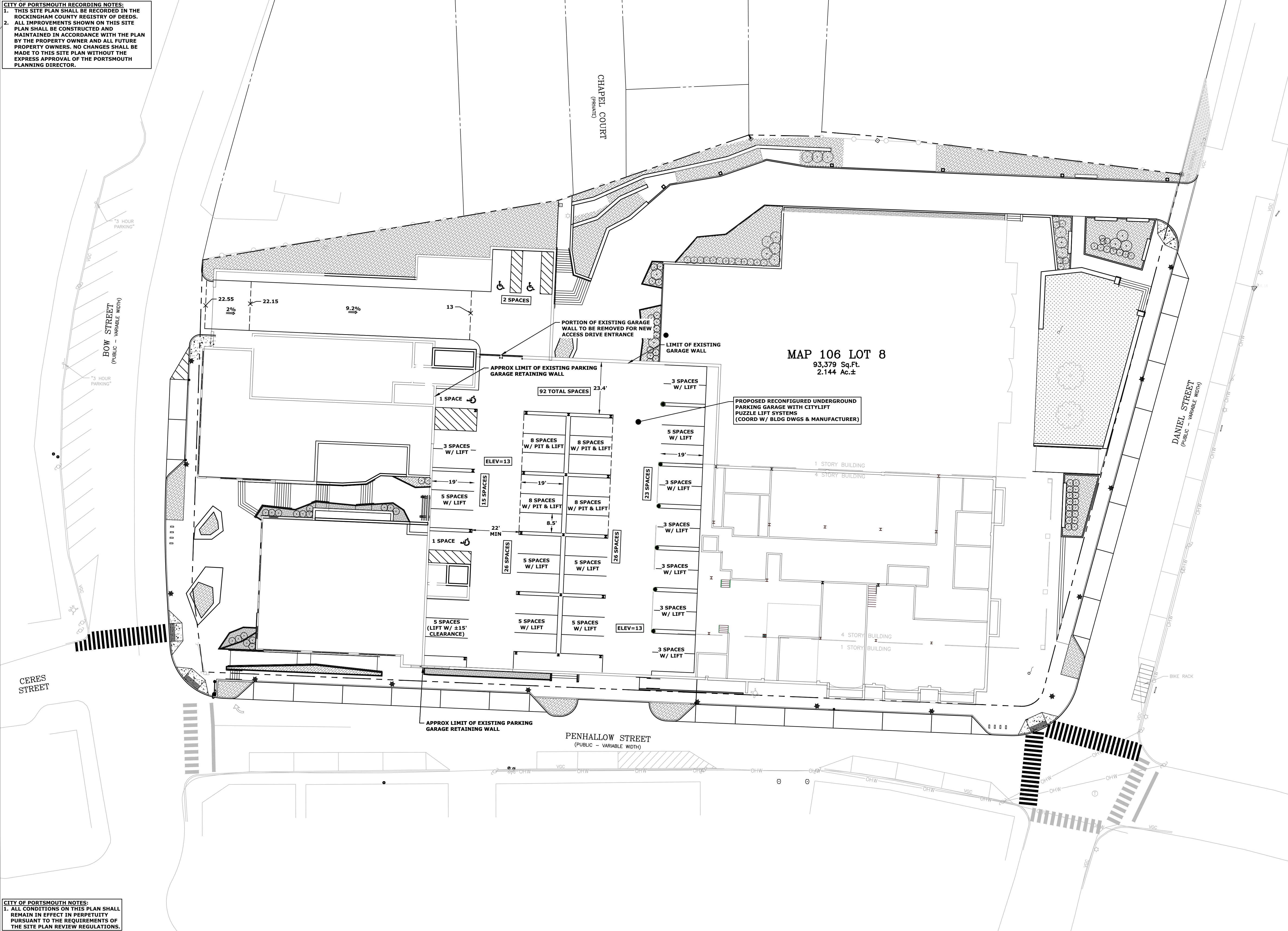
UTILITIES PLAN

SCALE: AS SHOWN

C-104



CITY OF PORTSMOUTH RECORDING NOTES:  
1. THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.  
2. ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THIS SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DIRECTOR.



**McIntyre Building  
Federal Property  
Redevelopment**

SoBow Square, LLC

62 Daniel Street  
Portsmouth, NH

A		TAC Submission
MARK	DATE	DESCRIPTION
PROJECT NO:		R5029-001
DATE:		
FILE:		R-5029-001-C-DSGN.DWG
DRAWN BY:		CML
CHECKED:		PMC
APPROVED:		BLM

BASEMENT LEVEL PARKING  
PLAN OPTION 1

SCALE: AS SHOWN

C-102.1

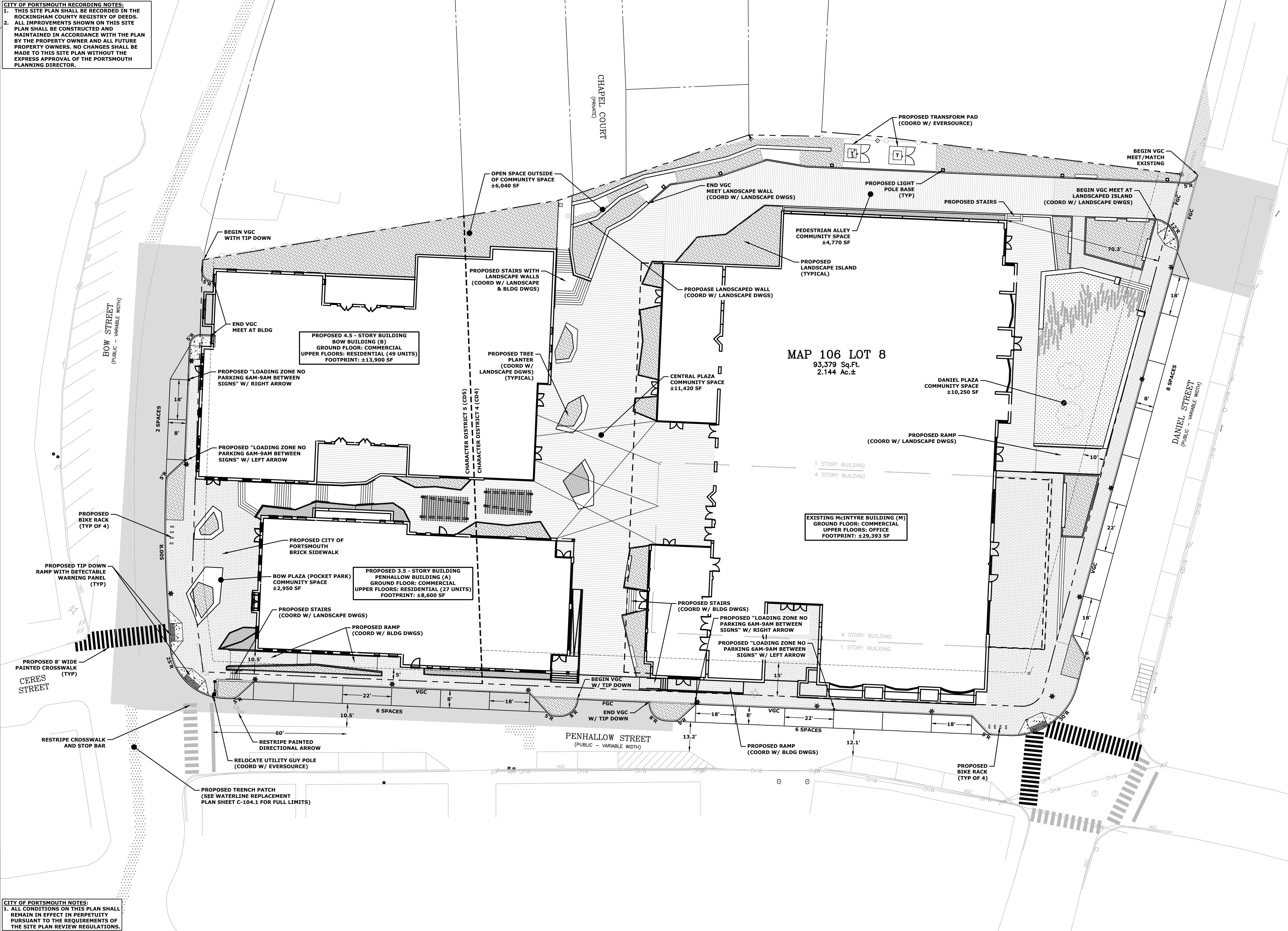
CITY OF PORTSMOUTH NOTES:  
1. ALL CONDITIONS ON THIS PLAN SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE SITE PLAN REVIEW REGULATIONS.

Last Save Date: June 13, 2019 10:13 AM By: CML  
Plot Date: Thursday, June 13, 2019 Plotted By: Craig M. Langton  
200 File Location: J:\R5029\Redevelop\001 - SoBow Square, LLC Drawings Figures\AutoCAD\Sheet\R-5029-001-C-DSGN.dwg Layout Tab: SITE-UG

CITY OF PORTSMOUTH RECORDING NOTES:  
1. THIS SITE PLAN SHALL BE RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS.  
2. ALL IMPROVEMENTS SHOWN ON THIS SITE PLAN SHALL BE CONSTRUCTED AND MAINTAINED IN ACCORDANCE WITH THE PLAN BY THE PROPERTY OWNER AND ALL FUTURE PROPERTY OWNERS. NO CHANGES SHALL BE MADE TO THIS SITE PLAN WITHOUT THE EXPRESS APPROVAL OF THE PORTSMOUTH PLANNING DIRECTOR.

CITY OF PORTSMOUTH NOTES:  
1. ALL CONDITIONS ON THIS PLAN SHALL REMAIN IN EFFECT IN PERPETUITY PURSUANT TO THE REQUIREMENTS OF THE SITE PLAN REVIEW REGULATIONS.

Last Save Date: June 13, 2019 10:13 AM By: CML  
Plot Date: Thursday, June 13, 2019 Plotted By: Craig M. Langton  
Plot File Location: J:\R5029\Redline\001 - SoBow Square, LLC Drawings Figures\AutoCAD\Sheet\R-5029-001-C-DSGN.dwg Layout Tab: SITE



**McIntyre Building  
Federal Property  
Redevelopment**

SoBow Square, LLC

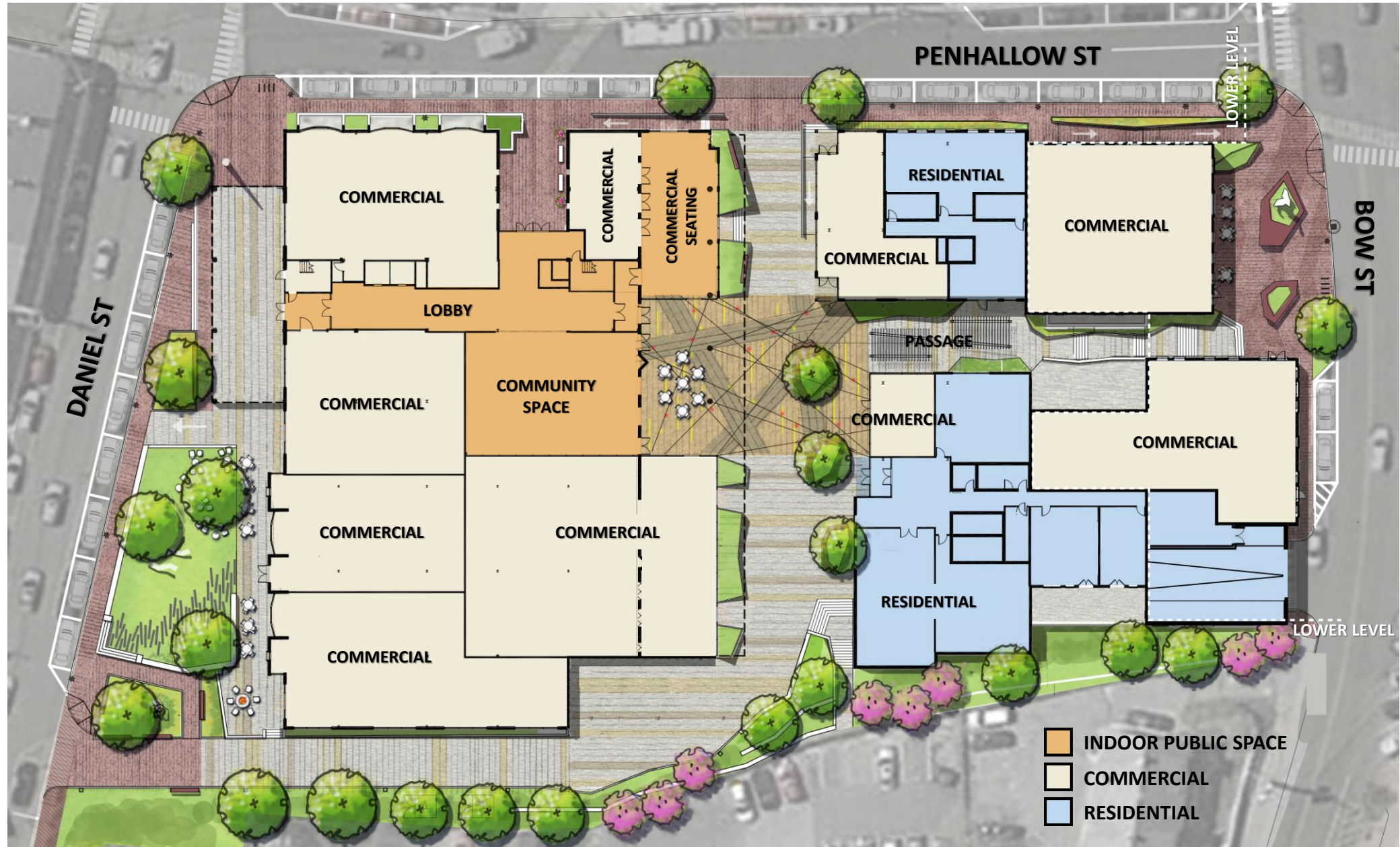
62 Daniel Street  
Portsmouth, NH

A		TAC Submission
MARK	DATE	DESCRIPTION
PROJECT NO:		R5029-001
DATE:		
FILE:		R-5029-001-C-DSGN.DWG
DRAWN BY:		CML
CHECKED:		PMC
APPROVED:		BLM

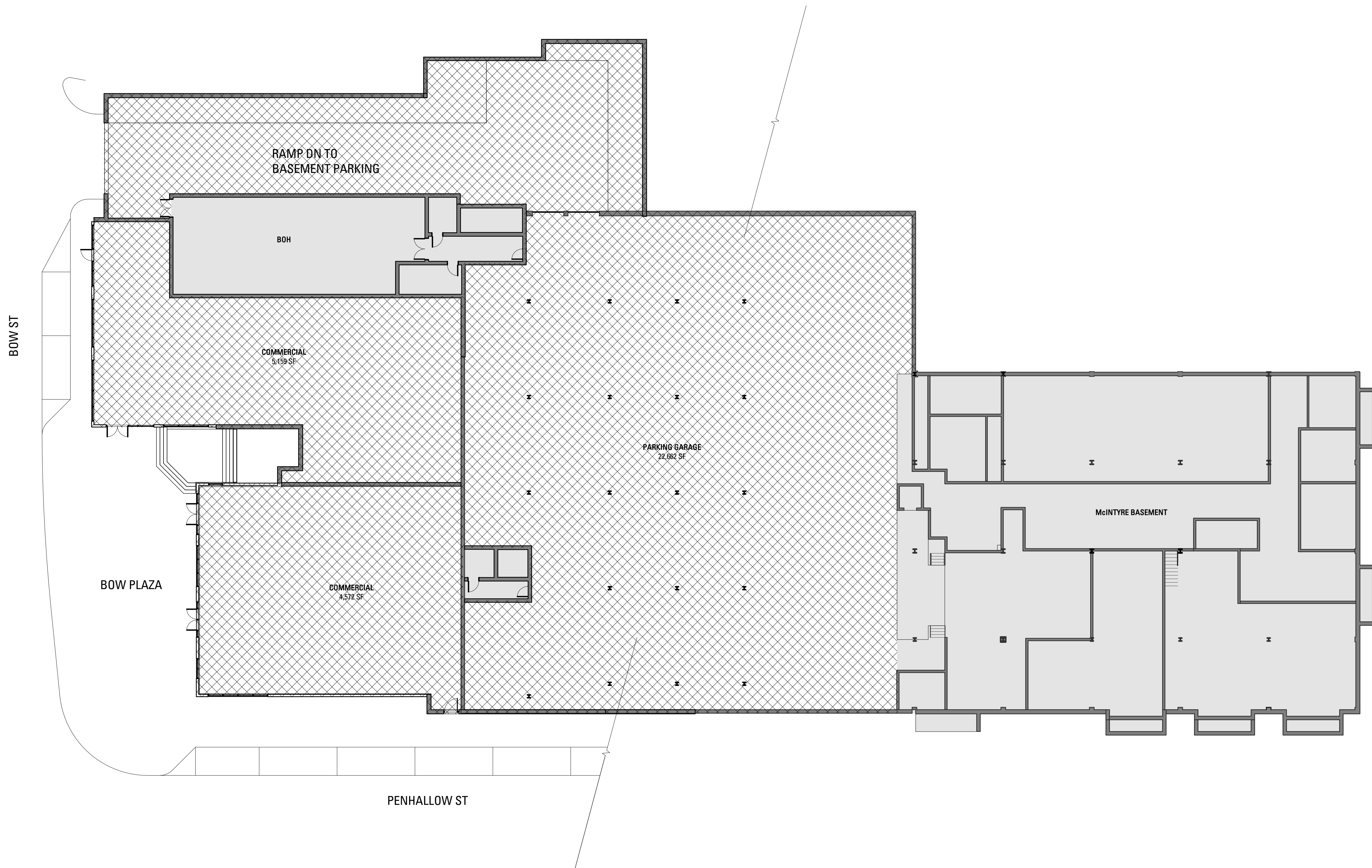
SITE PLAN  
SCALE: AS SHOWN  
C-102

# McIntyre Project

## PROPOSED PEDESTRIAN LEVEL






IF THIS SHEET IS NOT 22" X 34", IT HAS BEEN REDUCED OR ENLARGED.



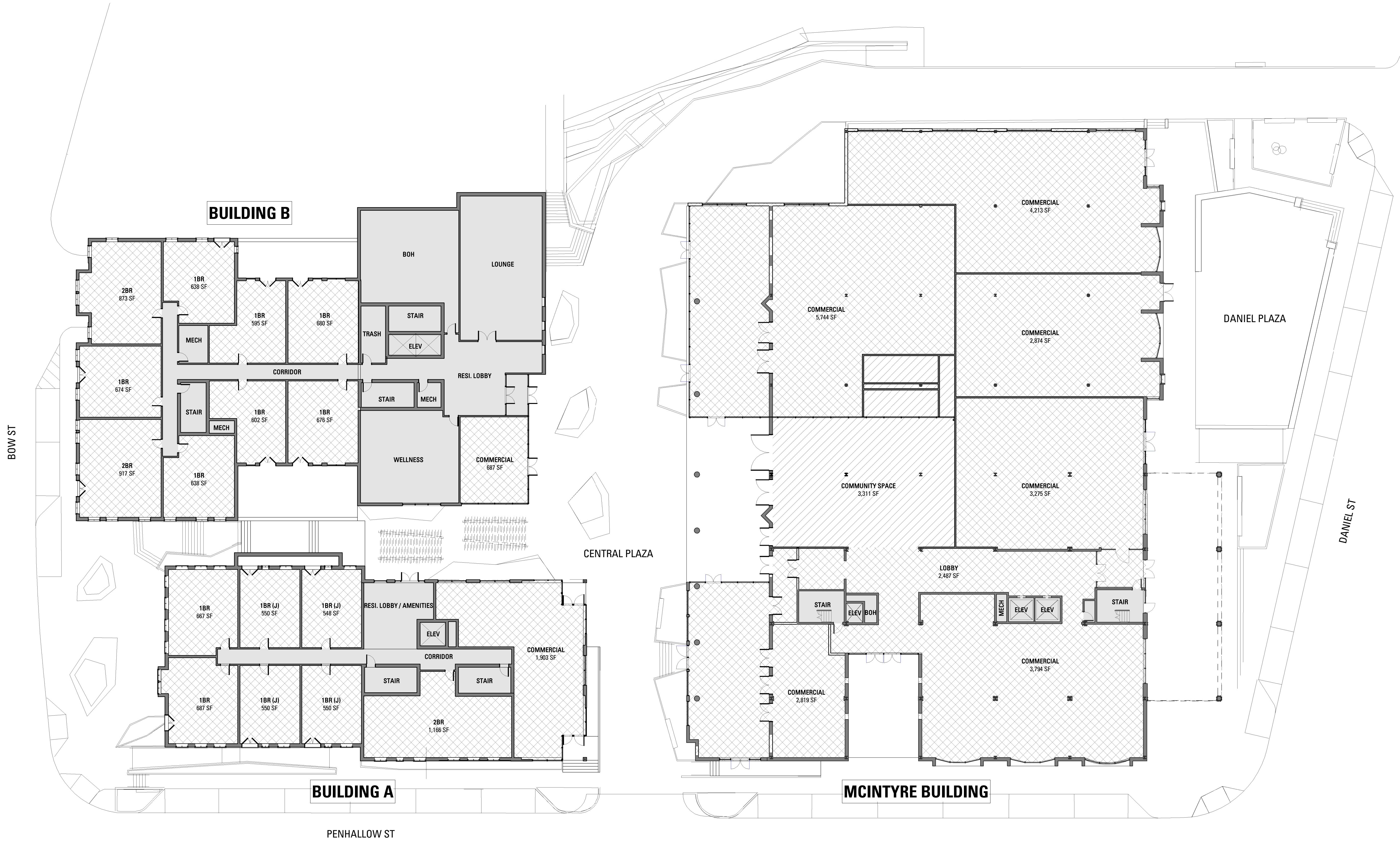
**1** OVERALL GROUND FLOOR PLAN  
SCALE: 1/16" = 1'-0"

**USE PLAN LEGEND**

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS




**USE PLAN - GROUND FLOOR**

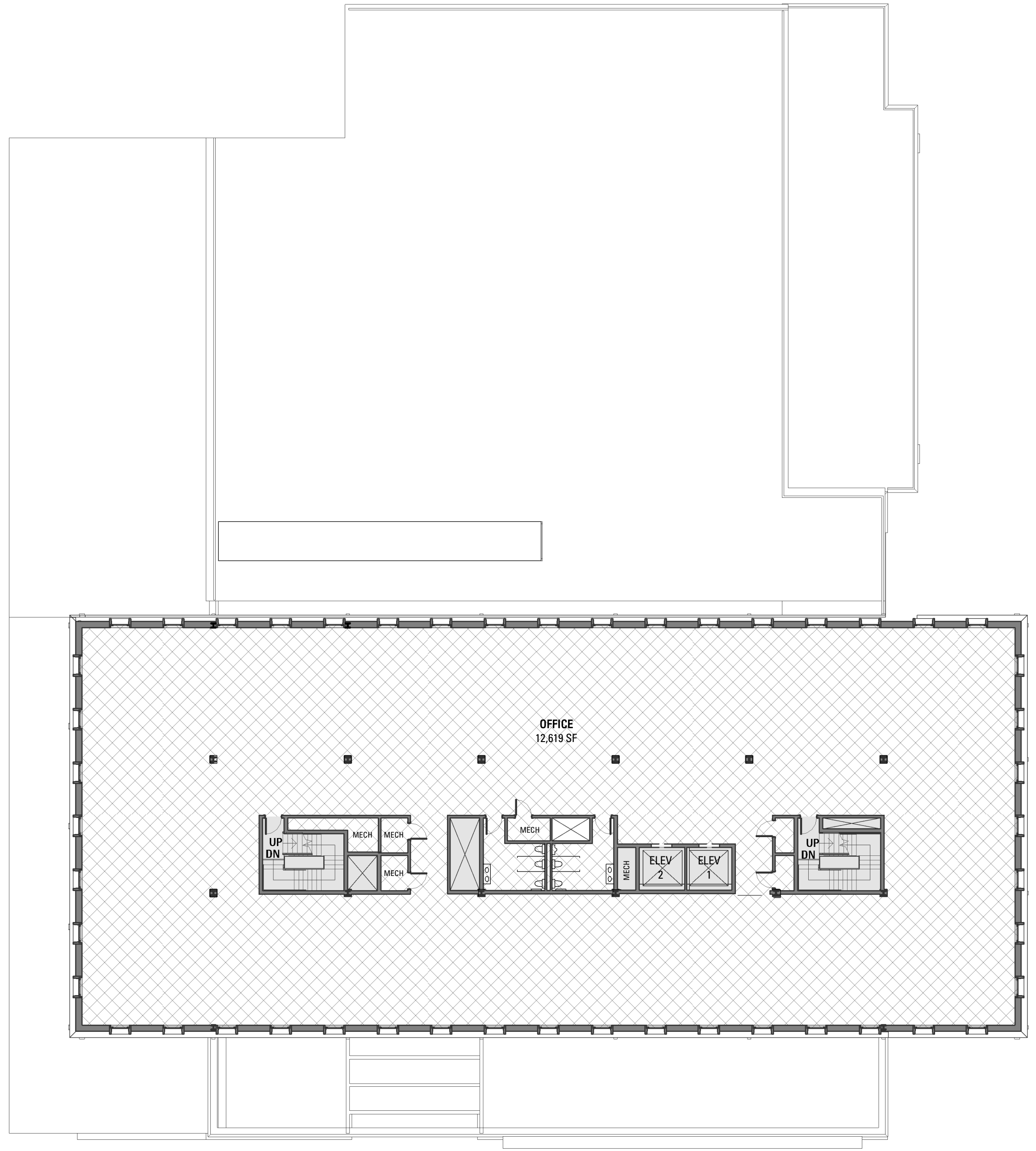
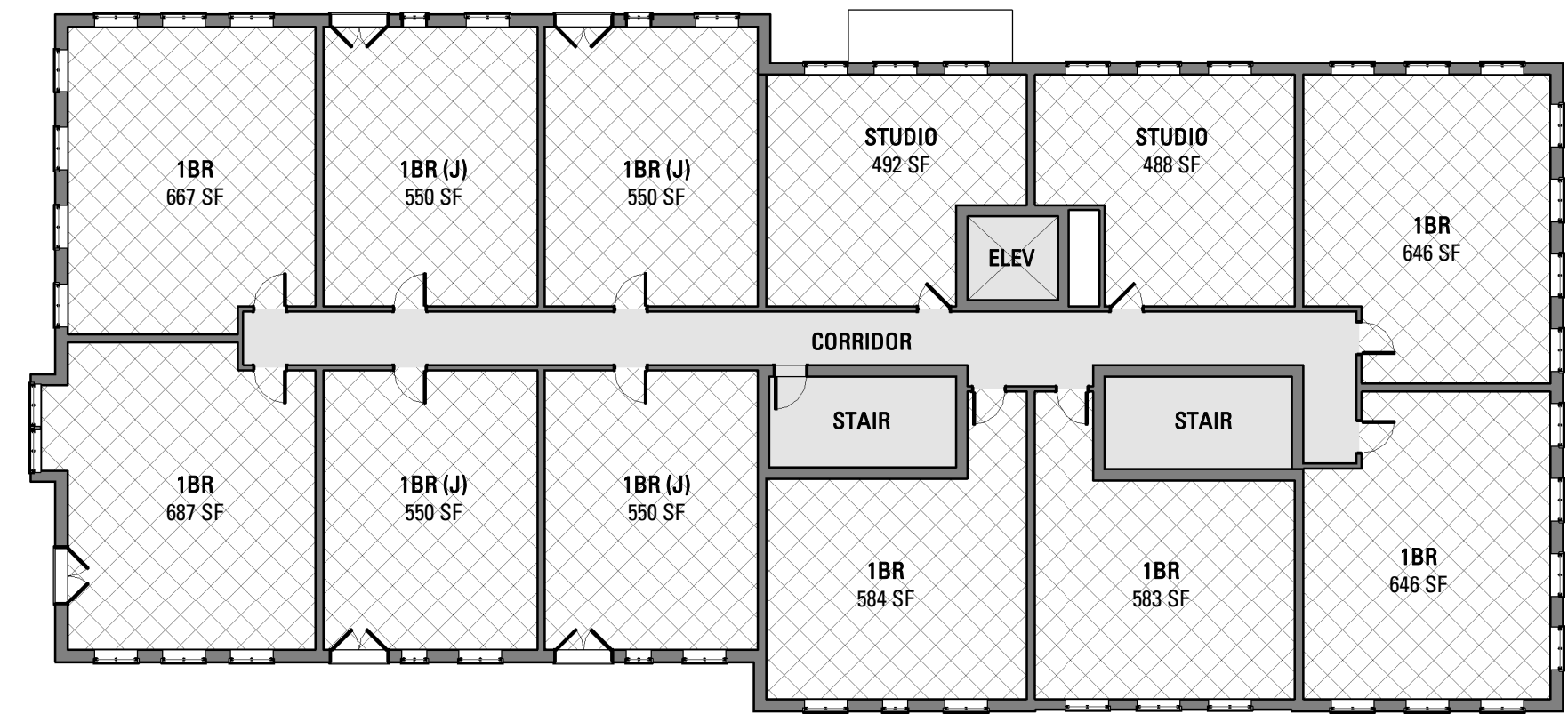
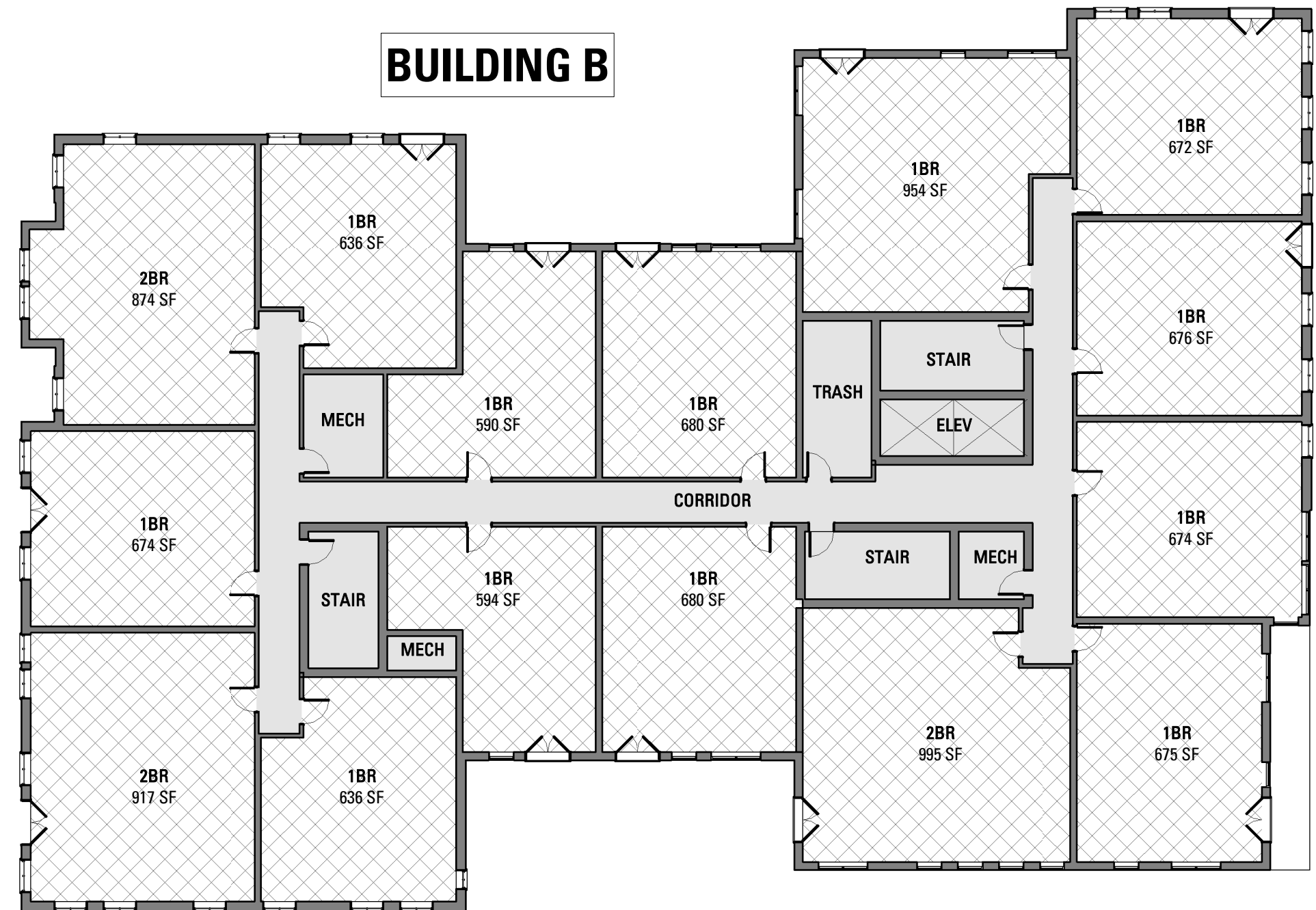
IF THIS SHEET IS NOT: 22" x 34", IT HAS BEEN REDUCED OR ENLARGED.



**1 OVERALL 1ST FLOOR PLAN**  
SCALE: 1/16" = 1'-0"

**USE PLAN LEGEND**

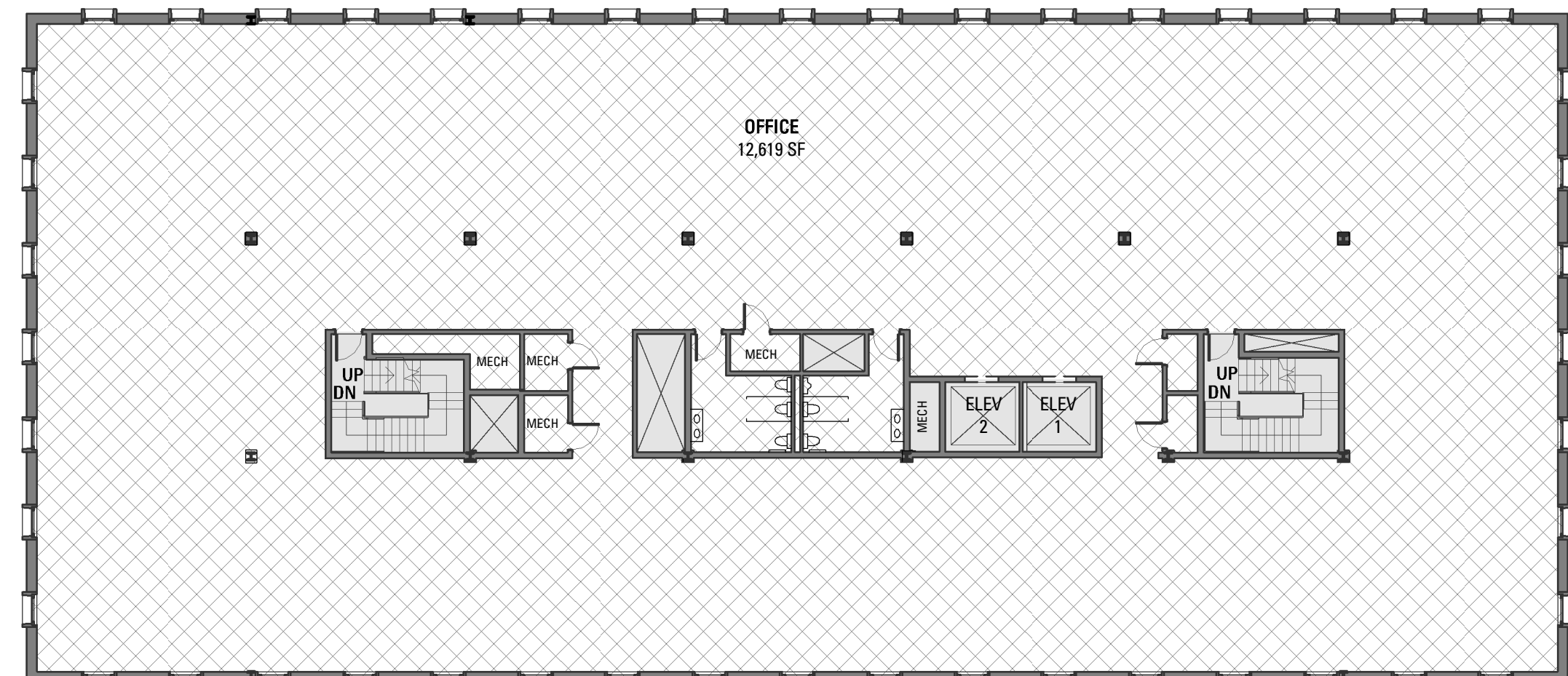
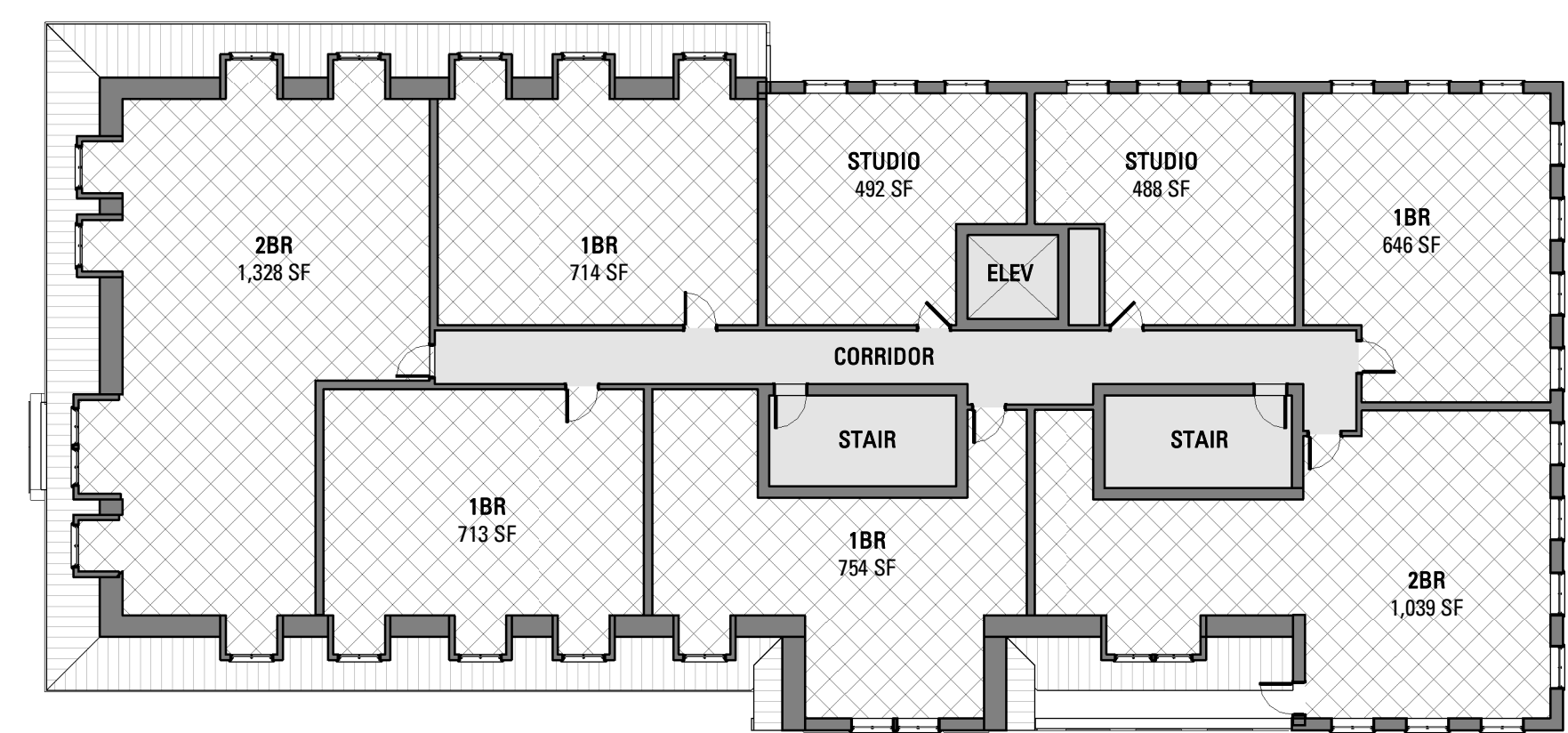
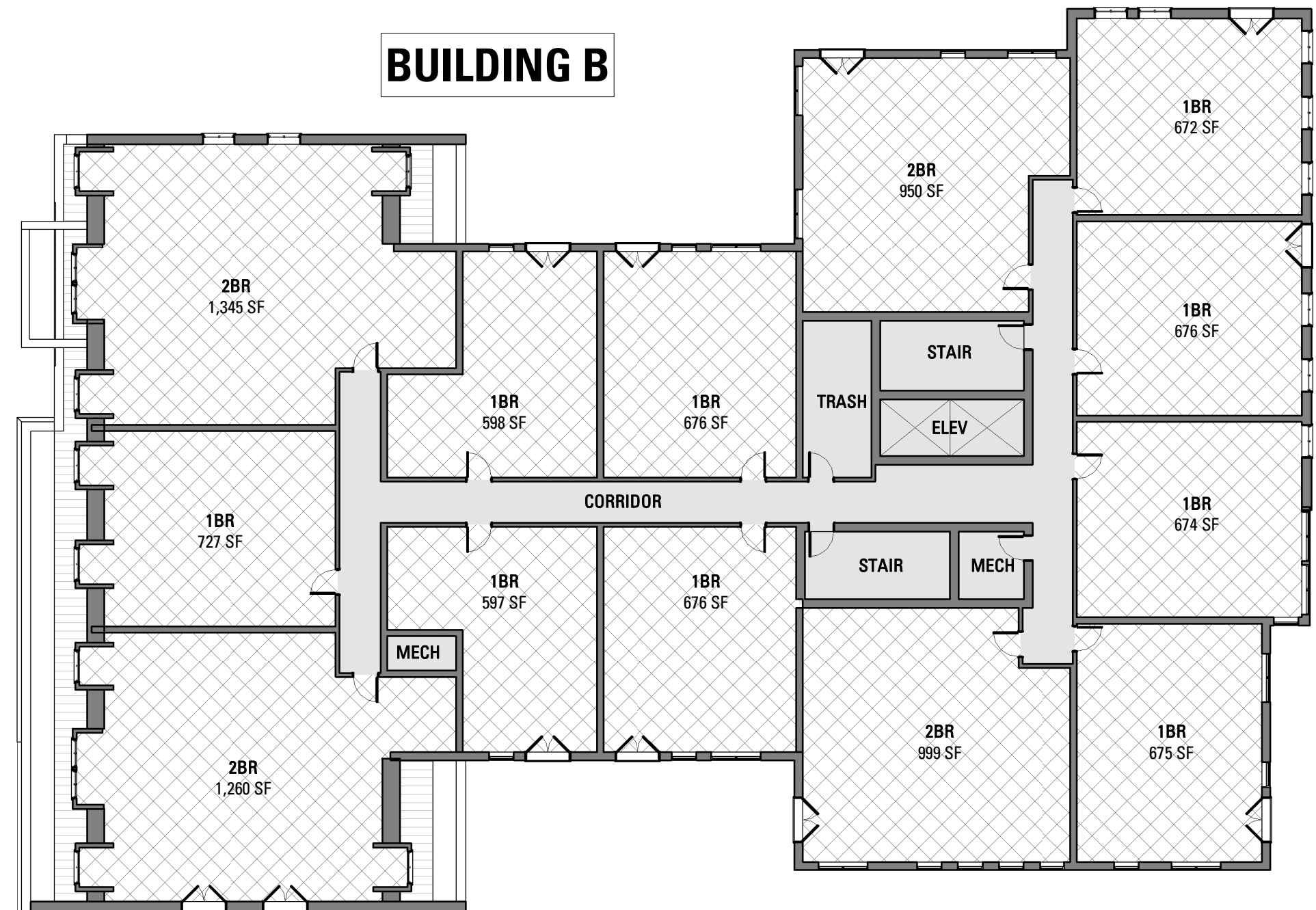
-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS



**1 OVERALL 2ND FLOOR PLAN**  
SCALE: 1/16" = 1'-0"

- USE PLAN LEGEND**
- REVENUE PRODUCING
  - NON REVENUE PRODUCING
  - NO PUBLIC ACCESS

**OVERALL USE PLAN - 2ND FLOOR**

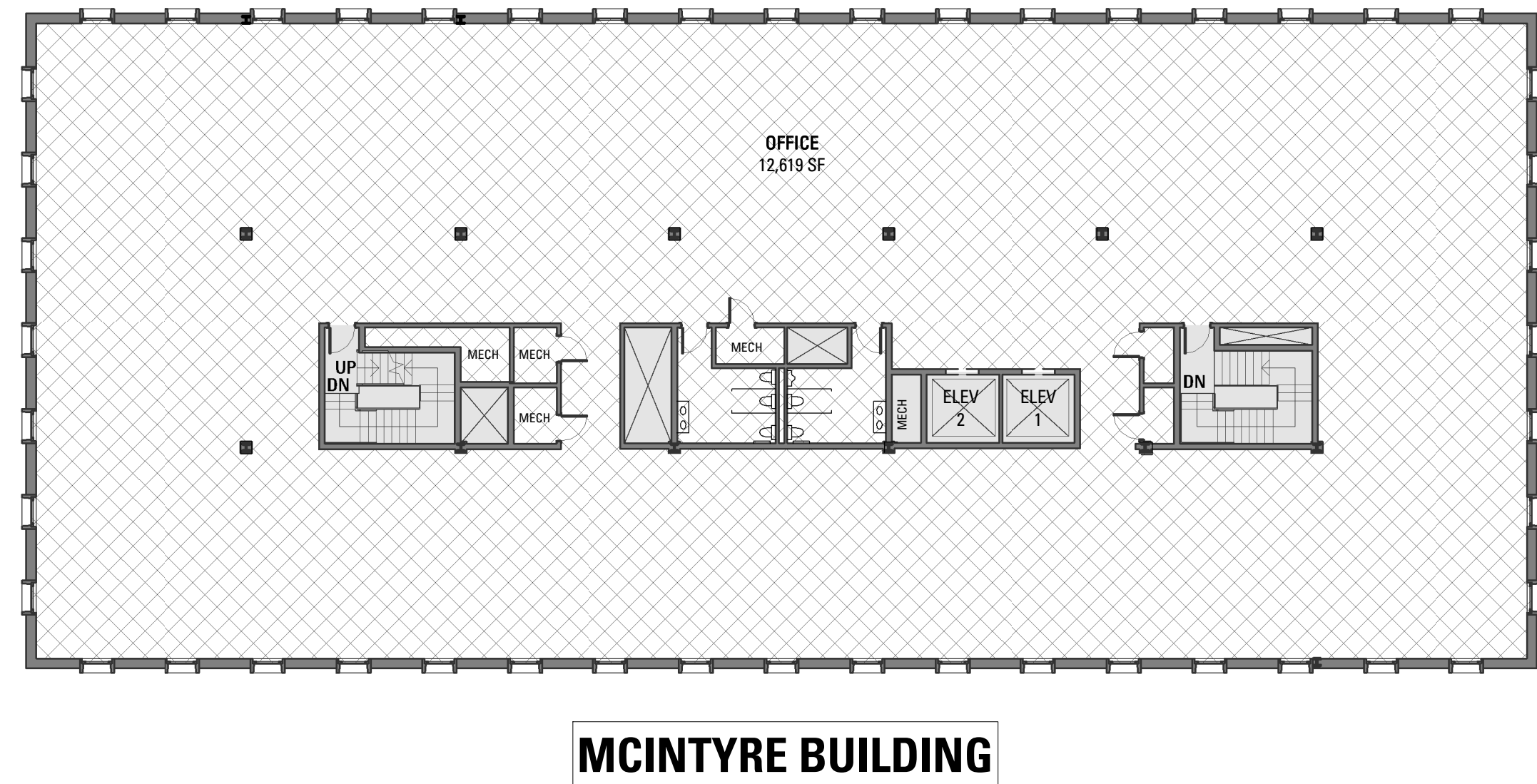
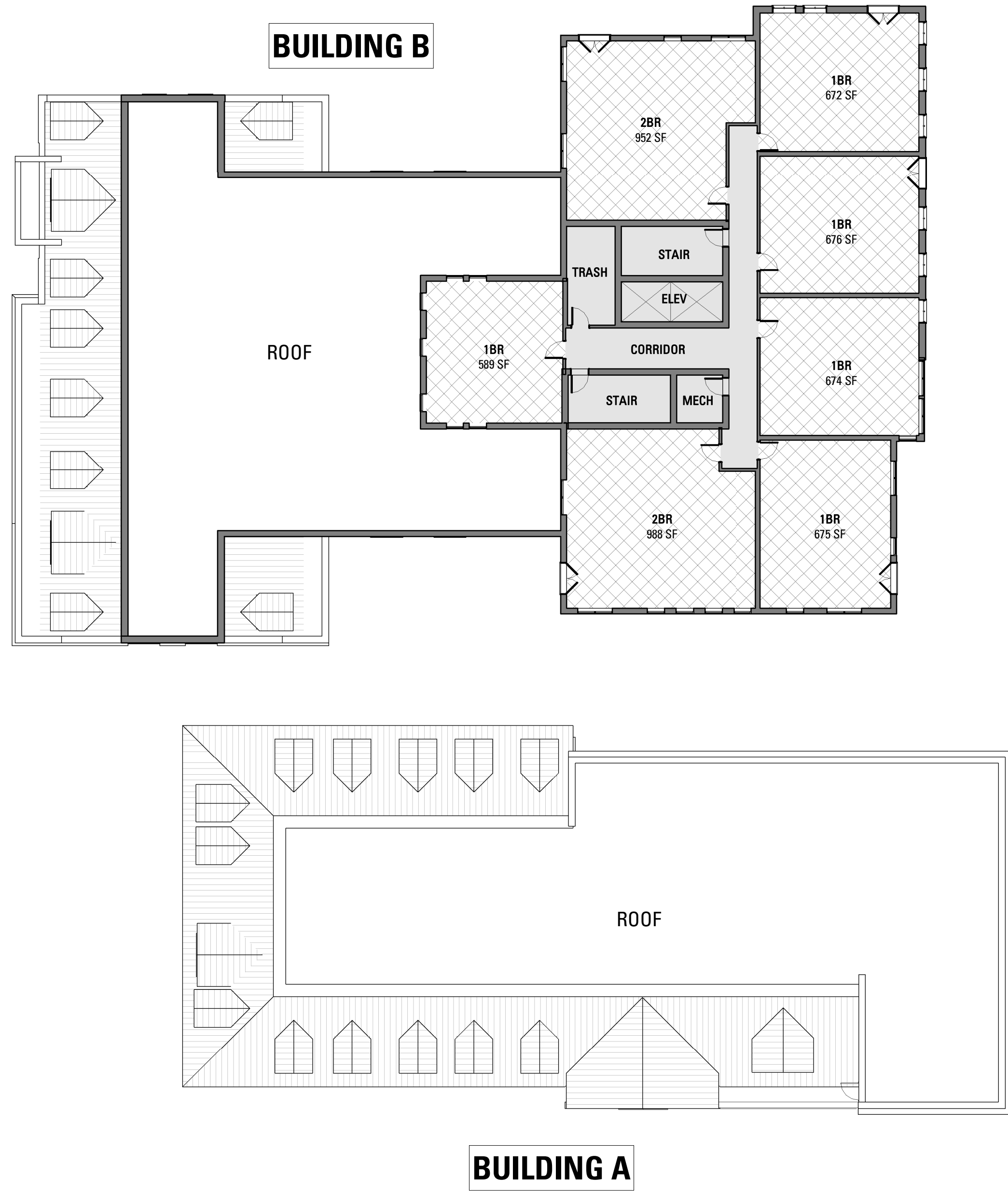


**1 OVERALL 3RD FLOOR PLAN**  
SCALE: 1/16" = 1'-0"

**USE PLAN LEGEND**

- REVENUE PRODUCING
- NON REVENUE PRODUCING
- NO PUBLIC ACCESS

**OVERALL USE PLAN - 3RD FLOOR**

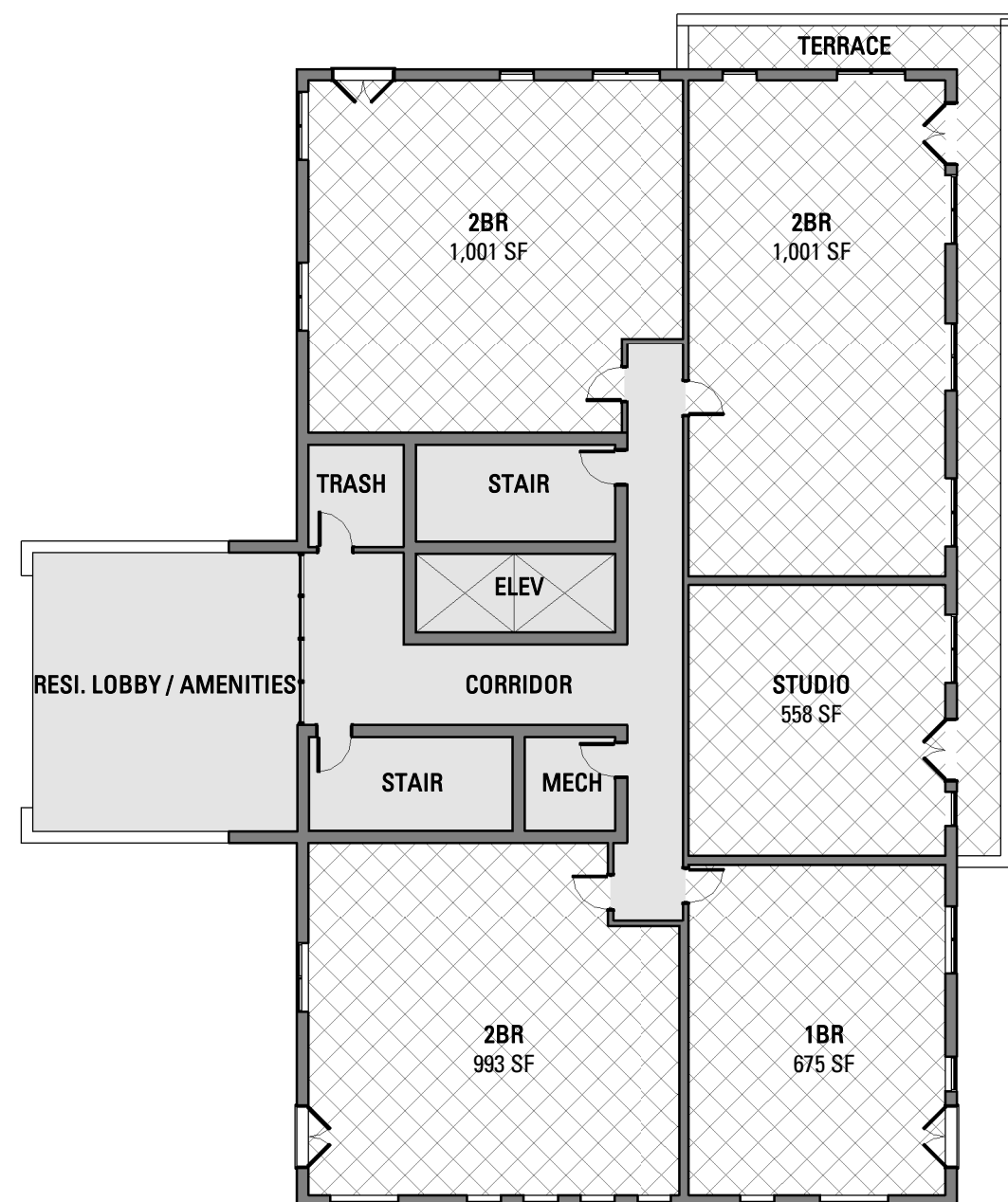


**1** OVERALL 4TH FLOOR PLAN  
SCALE: 1/16" = 1'-0"

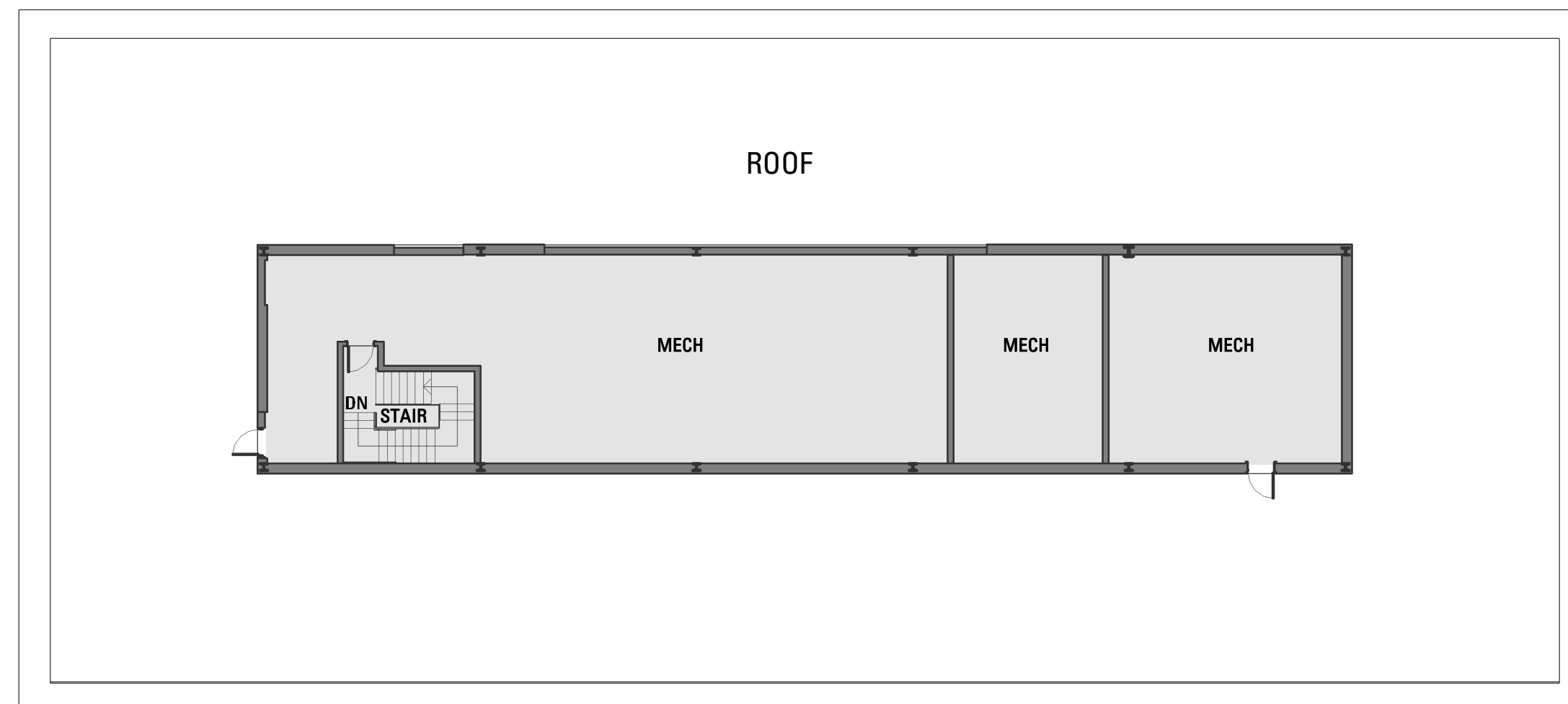
**USE PLAN LEGEND**

- REVENUE PRODUCING
- NON REVENUE PRODUCING
- NO PUBLIC ACCESS

**OVERALL USE PLAN - 4TH FLOOR**






**BUILDING B**



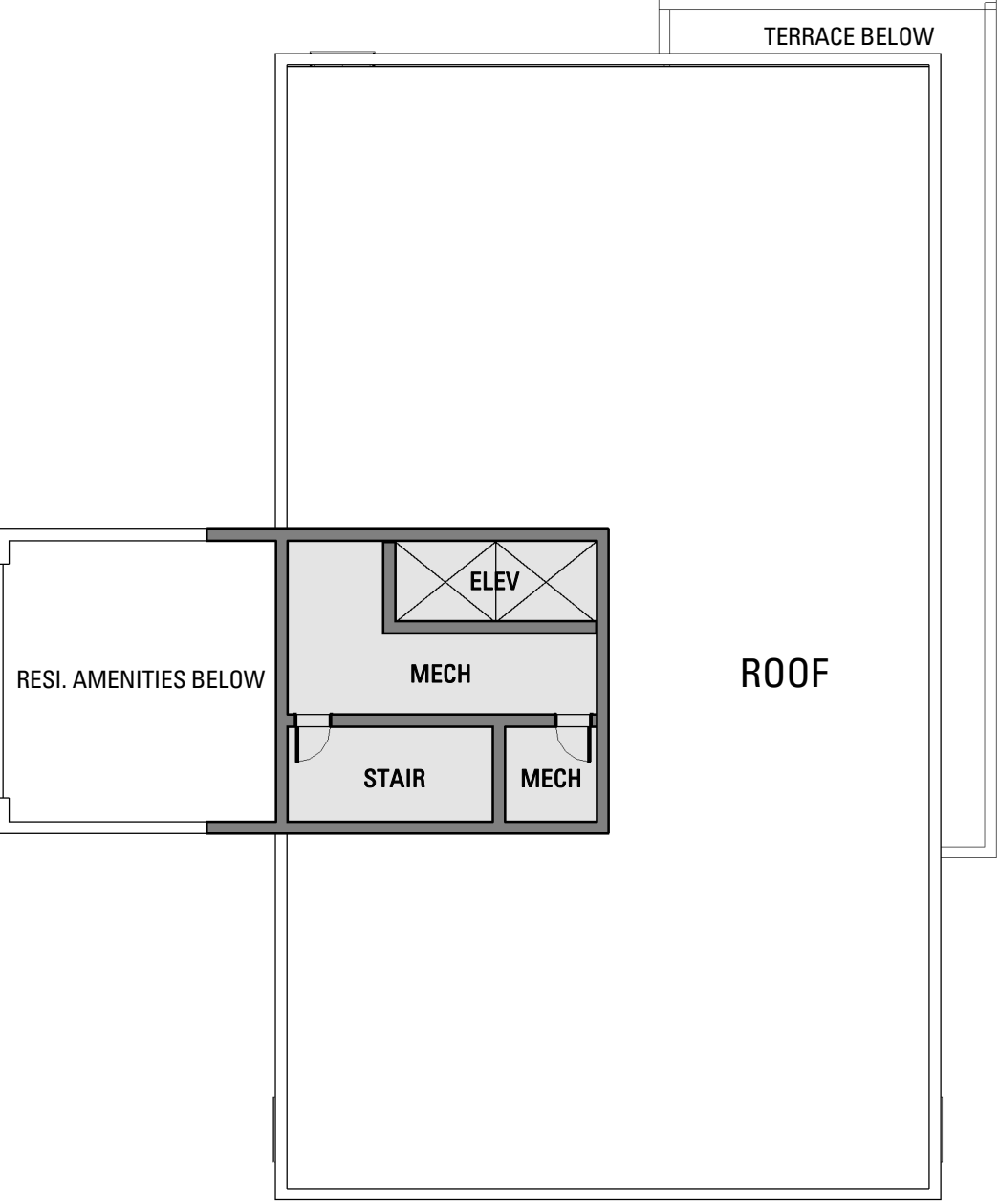
**MCINTYRE BUILDING**

**1 OVERALL 5TH FLOOR PLAN**  
SCALE: 1/16" = 1'-0"

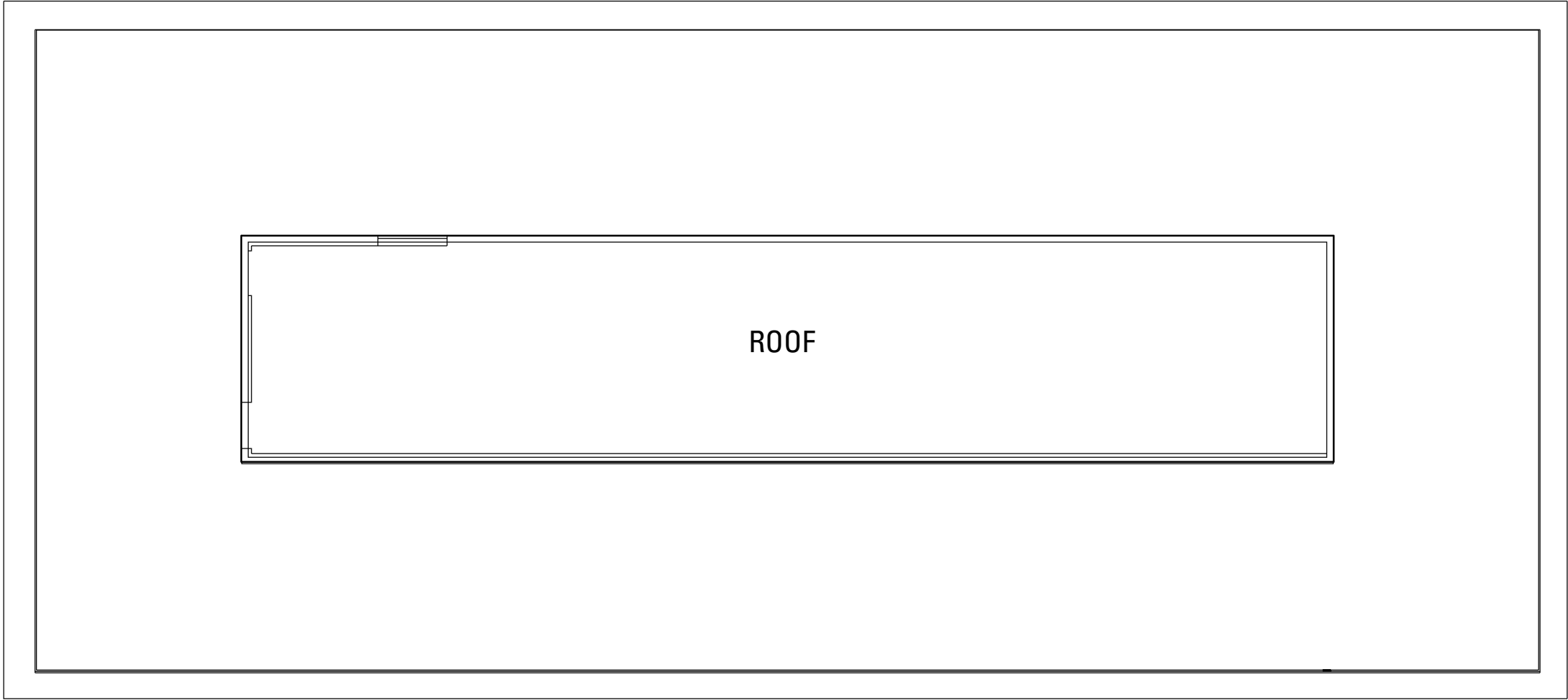
**USE PLAN LEGEND**

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

**OVERALL USE PLAN - 5TH FLOOR**






**BUILDING B**



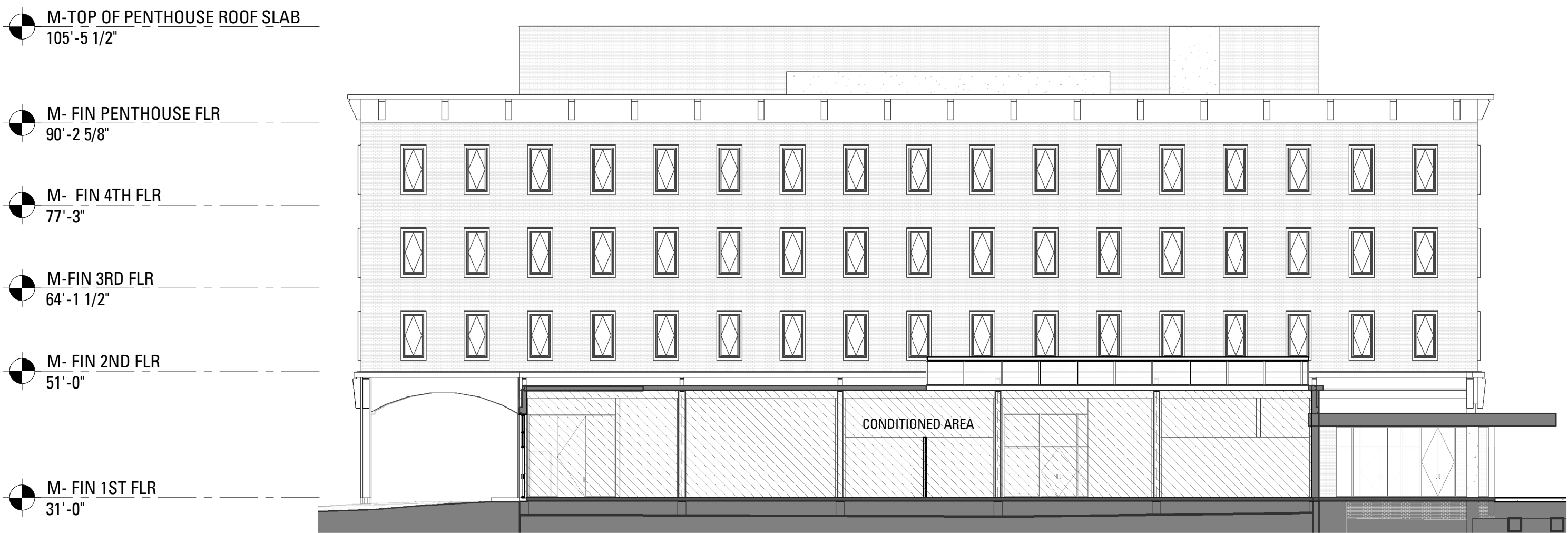
**MCINTYRE BUILDING**

**1 OVERALL 6TH FLOOR PLAN**  
SCALE: 1/16" = 1'-0"

**USE PLAN LEGEND**

-  REVENUE PRODUCING
-  NON REVENUE PRODUCING
-  NO PUBLIC ACCESS

**OVERALL USE PLAN - 6TH FLOOR**



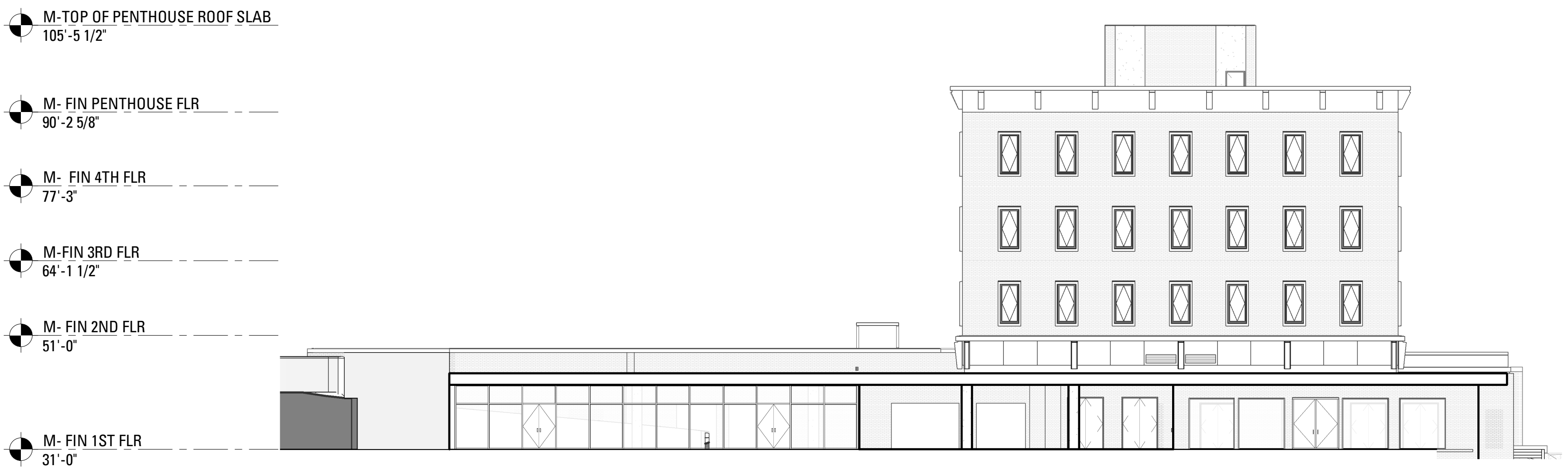
4 NORTH ELEVATION ABOVE McINTYRE  
SCALE: 1/16" = 1'-0"



5 WEST (PENHALLOW STREET) ELEVATION  
SCALE: 1/16" = 1'-0"



1 SOUTH (DANIEL STREET) ELEVATION  
SCALE: 1/16" = 1'-0"



2 NORTH (LINDEN WAY) ELEVATION  
SCALE: 1/16" = 1'-0"



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

# Bruner/Cott

ARCHITECTS

225 Friend St., Suite 701  
Boston, MA 02114  
617.492.8400  
www.brunercott.com

Rev.	Date	Remarks

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

## MCINTYRE PROJECT

80 DANIEL ST  
PORTSMOUTH, NH

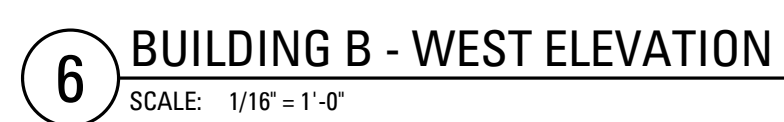
NOT FOR CONSTRUCTION

EXTERIOR ELEVATIONS

# A-300

3/12/2019 1:13:47 PM

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



Date	May 5, 2019
Scale	1/16" = 1'-0"
Project Number	17.021
Drawn By	KW/VR/LK

80 DANIEL ST  
PORTSMOUTH, NH

## EXTERIOR ELEVATIONS

**Exhibit B**

**Project Budget**

## Exhibit B - Budget

### **Portsmouth McIntyre**

**Portsmouth, NH**

June 28, 2019

#### **CAPITAL BUDGET**

Gross Square Feet:	88,657 GSF	69,758 GSF
Net Square Feet (Res):	67,340 NSF	66,413 NSF
Unit Count:	76 Units	0 Units

	TOTAL BUDGET	New Construction	McIntyre Building
Total Land Costs	\$ 248,781	\$ 125,252	\$ 123,528
Subtotal Legal	\$ 475,000	\$ 265,834	\$ 209,166
Subtotal Design Costs	\$ 2,817,390	\$ 1,576,753	\$ 1,240,637
Subtotal Marketing Costs	\$ 1,679,895	\$ 582,325	\$ 1,097,570
Subtotal Permits & Fees	\$ 693,376	\$ 388,048	\$ 305,328
Subtotal Financing, Fees & Operations	\$ 4,860,653	\$ 3,105,537	\$ 1,755,116
Total Soft Costs	\$ 10,526,314	\$ 5,918,497	\$ 4,607,817
Total Hard Costs	\$ 50,310,775	\$ 32,721,546	\$ 17,589,230
Total Project Cost	\$ 61,085,869	\$ 38,765,295	\$ 22,320,575

## **Exhibit C**

### **Development Schedule**

## Exhibit C - Schedule

### McIntyre Schedule

4/12/2019

Milestone	Date	Comments
NPS Approval	Jul '19	
Predevelopment		
Land Use Boards	Jul '19 - Aug '19	Assumes Design Development is concurrent with Land Use Boards
Design and Contracts	Jul '19 - Dec '19	
Ground Lease Closing	Jan '20	
Construction		
Groundbreaking	Jan '20	
Phase I: McIntyre Office/Retail Core & Shell Delivery	Dec '20	12 Months
Phase II: Residential and Retail	Jul '21	18 Months

## **Exhibit D**

### **List of Anticipated Permits and Approvals**

## Exhibit D - Anticipated Permits

<b><u>Federal Permits:</u></b>	Description
EPA NPDES permit	The project will exceed one (1) acre of disturbance. We will file the Notice of Intent (NOI) with EPA for coverage under the Construction General Permit (CGP) in order to discharge stormwater during construction activities. The NOI requires that a Stormwater Pollution Prevention Plan (SWPPP) be prepared and implemented
EPA Dewatering General Permit	The EPA has promulgated a general permit for the qualifying discharges of non-processed dewatering and dewatering-related activities into "waters of the United States." Will be required for utility corridors as well.
NPS Approval of the Application for Obtaining Real Property for Historic Monument Purposes	National Park Service to review and approve City's application in concert with the General Services Administration: Application and exhibits, development agreement and ground lease document.
Section 106	GSA to conduct.
<b><u>State Permits:</u></b>	Description
NHDES Sewer Connection Permit	The project is anticipated to exceed an additional 5,000 GPD of average daily sewer flow. Requires Sign Off from City prior
NHDES Shoreland Protection Permit	The project is located within 250 feet of the Piscataqua River.
NHDES Alteration of Terrain Permit	Tighe & Bond created an exhibit and performed consultations with NHDES to work around having to submit for this project. Need NHDES letter confirming the aforementioned.
<b><u>Local Permits:</u></b>	Description
Historic District Commission	Certificate of Approval
Planning Board	Technical Advisory Committee Recommendation + Planning Board Site Plan Approval
Building Permit	Project document approval by Inspectional Services Department
Driveway Permit	Department of Public Works
Flammable Storage License (Garage Permit)	Fire Department
City Roads & Public Street Permits	Street Encumbrance Permit Approval from City Manager's Office
Food Service Permit	Approval from Health Department for Restaurant Core/Shell

## Exhibit E

### Basic Terms of Ground Lease

#### McIntyre Project Ground Lease Summary

<b>Property Name:</b>	<b>McIntyre Redevelopment Project</b>	
<b>Address:</b>	<b>80 Daniel Street Portsmouth, NH</b>	
<b>Owner / Landlord</b>	City of Portsmouth, New Hampshire	
<b>Tenant</b>	Sobow Square, LLC	
<b>Guarantors</b>	Redgate and Kane Companies	
<b>Subordination</b>	Ground Lease not Subordinate to Project Financing	
<b>Leased Premises</b>	Approximately 2.1 Acres of Land and Improvements Thereon	
<b>Lease Term</b>	75 Years	
<b>Lease Commencement Date</b>	To Be Determined	
<b>Base Rent Commencement Date</b>	On the 18th Month After Issuance of a Building Permit	
<b>Additional Option Period and Terms</b>	None	
<b>Base Rent</b>	100,000 Annually	Payable Monthly at 8,333.33
<b>Base Rent Escalators</b>	2.5% Annually Beginning 12 Months After Base Rent Commencement	
<b>Revenue Sharing</b>	In Addition to Base Rent, Tenant Will Pay to Landlord 1% of Annual Revenues Beginning in Year 11	
<b>Capital Expense Reserve</b>	\$25,000 Annually First 5 Years after Capital Reserve Commencement Date, \$75,000 Annually Years 6-10	
<b>Capital Reserve Payment Commencement Date</b>	30th Month After Issuance of a Building Permit	
<b>Security Deposit</b>	None Initial \$400,000 Deposit to be Released at Ground Lease Closing	
<b>Option to Purchase</b>	None	
<b>Landlord Expense Responsibility</b>	None	
<b>Tenant Expense Responsibility</b>	All Operating Expenses of Every Kind	
<b>Public Spaces</b>	Tenant to Construct and Maintain at its Sole Expense All Indoor and Outdoor Public Spaces as Illustrated on Approved Site Plan	
<b>Historic Tax Credit Sharing</b>	50/50 Sharing of Net Proceeds After Costs of Application and Administration	
<b>Refinance Proceeds Sharing</b>	7.5% of Net Financing Proceeds for 1st Refinancing Event and 10% of Net Financing Proceeds for all Subsequent Refinancing Events will be Paid to Landlord as Additional Rent	
<b>Profit Sharing</b>	Upon A Leasehold Sale Landlord Will Share in 20% of Project Profit In Excess of an 18% Internal Rate of Return	