

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF PORTSMOUTH, NEW HAMPSHIRE
AND
CATE STREET DEVELOPMENT LLC

THIS DEVELOPMENT AGREEMENT (the “Agreement”), made and entered into this ____ day of August, 2019, by and between the **CITY OF PORTSMOUTH**, a New Hampshire municipal corporation (hereinafter referred to as the "City"), with a place of business, and mailing address, at 1 Junkins Avenue, Portsmouth, New Hampshire 03801, and **CATE STREET DEVELOPMENT LLC**, a New Hampshire limited liability company with an address of 11 Elkins Street, Suite 420, Boston, MA 02127 (hereinafter individually “Developer”), (the entities referred to in this paragraph are sometimes hereinafter collectively referred to as the “Parties”), as follows:

RECITALS:

WHEREAS, The Developer is the owner of certain parcels of real estate which are comprised of four separate parcels of real estate, said property consisting of 12.2 acres, more or less, identified as follows:

- A. Map 172, Lot 1 (428 US Route 1 By-Pass)
- B. Map 173, Lot 2 (Cate Street)
- C. Map 165, Lot 2 (55 Cate Street)
- D. Map 163, Lot 33 (161 Cate Street)
- E. Map 163, Lot 34 (1 Cate Street)

WHEREAS, The City is the owner of (1) a certain parcel of real property identified as Map 163, Lot 37, said property consisting of 21,344 square feet, more or less; and (2) certain adjacent property consisting of 26,126 square feet, more or less, same being a portion of the current public road known as Cate Street adjacent to said Map 163, Lot 37.

WHEREAS, the City and the Developer would like to engage in the conveyances depicted on the exhibit attached hereto as **Exhibit A**, whereby fee title to approximately 136,919 square feet of land will be conveyed from the Developer to the City free and clear of all encumbrances to allow for the relocation of a portion of Cate Street, and fee title to approximately 47,470 square feet of land will be conveyed from the City to Developer to allow for the development of the Project, as such term is defined below (collectively, the “Land Swap”). Transfer of title for the Land Swap shall occur within sixty (60) days after Developer obtains full unconditional site plan review approval from the City of Portsmouth Planning Board (hereinafter the “Planning Board”).

WHEREAS, the Developer has applied for site plan review approval from the Planning Board to allow for the construction of a mixed use commercial/residential development

consisting of (1) 250 residential apartment units in two buildings (134 apartment units in proposed “Building A” and 116 apartment units in proposed “Building B”), which will include 27 apartments as workforce housing; (2) 23 townhouse style condominium units; (3) 22,000 square feet of retail space; (4) 22,000 square feet of office space; and (5) 495 parking spaces. In addition, certain other improvements will be completed by the Developer such as the cleaning up of Hodgdon’s Brook, a public recreational dog park, appurtenant roadways, parking lots, drainage structures and other on-site and off-site public and private infrastructure improvements for the residential, office, retail entertainment, and other permitted uses (hereinafter the “**Project**”), the same to be located on land currently owned by Developer, situated on Cate Street and the US Route 1 By Pass in Portsmouth, New Hampshire (the “**Project Premises**”); all as more particularly shown and/or described in/on the plans, documents, and representations made by Developer, in connection with its Project application and presentations made to the Planning Board in conjunction with the obtaining of Developer’s aforementioned site plan review approvals; and

WHEREAS, as a result of such approvals for the Project by the Planning Board, the Parties require an Agreement to include provisions regarding funding for the new public road, various off-site public infrastructure improvements (hereinafter the “**Off-Site Public Infrastructure Improvements**”), and on-site public improvements to benefit the public (hereinafter the “**On-Site Public Improvements**” and together with the **Off-Site Public Infrastructure Improvements**, the “**Public Infrastructure Improvements**”, as more particularly described in Section 1.2 hereof), as well as provisions relating to the timing of development, the coordination of such matters, and other issues of need and/or necessary cooperation and coordination between the City and Developer, and/or with other governmental agencies and/or private entities, such as the State of New Hampshire and/or the Federal Government or its departments or agencies and/or private utilities and the like, in order for Developer to develop the Project as approved by the Planning Board; and

WHEREAS, the City desires to have Developer develop the Project in Portsmouth, and to have Developer’s prospective Project tenants located in Portsmouth, as it will result in the creation of housing, including but not limited to, workforce housing, office and retail buildings, construction jobs and other permanent full and part time jobs in the City, will significantly expand the City's tax base, and will also result in significant expansion of, and contribution to, substantially enhanced Public Infrastructure Improvements, and, therefore, the City and Developer have agreed to cooperate to bring about the creation of such Public Infrastructure Improvements, including the improvements required by the Planning Board, and/or by the State of New Hampshire Department of Transportation (hereinafter “**NHDOT**”) and/or other governmental agencies having jurisdiction over the Project, or aspects thereof; and

WHEREAS, it is the intent of the City and Developer to execute this Agreement for the

purpose of identifying, providing for the creation of, and allocating responsibility for the costs of, and payment for, the Public Infrastructure Improvements required by the City, the State of New Hampshire and the Planning Board's site plan review approval for the Project in accordance with **Exhibit E**, and the maintenance thereof, including the creation and implementation of payment and payment guarantee mechanisms for the same; and

WHEREAS, given the importance of the coordination of the construction of the Project with the availability of a viable financing mechanism to pay the cost of providing the Public Infrastructure Improvements designed and intended or required to complement the Project, it is the intent of the parties to establish a schedule for the timely completion of the Public Infrastructure Improvements of the Public Infrastructure Improvements contemplated or required by the Project's approval in order to permit Developer to occupy the Project in a timely manner; and if necessary to allow Developer to assist the City with Public Infrastructure Improvements, at the City's or other available funding mechanisms' or entities' expense, in order to allow occupancy in a timely manner, provided that the City consents, in advance, to the allocation of such expense.

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

1. Public Infrastructure Improvements

1.1 The term "**Public Infrastructure Improvements**" as used in this Agreement includes the acquisition of land and construction of public improvements, on and off the Project Premises, which are being constructed in conjunction with the Project and which are more particularly described and/or referred to in Section 1.2 below or contemplated on **Exhibit B** hereto. The limits of Public Infrastructure improvements are defined as work within the existing Cate Street and proposed Cate Street right of way, and also includes work within the Bartlett Street and Route 1 By-Pass right of way.

1.2 The planning, design, permitting, and construction of **Public Infrastructure Improvements** referred to in this Agreement include the following:

- a. Planning, Design, Permitting and Construction Documents. As part of the design of the new public road, the Developer has incurred cost for the purchase, survey, design, permitting of the public road. These soft costs incurred by Developer prior to this Agreement shall be the sole responsibility of Developer.

- b. The City shall be solely responsible for all costs incurred in connection with the following:
 - i. Relocation of the portion of public sewer line that exists on Developer's property for which the City has no documented easement (extending approximately from the Route 1 Bypass to the rear of the U-Haul property);
- c. The Developer and the City shall share the following costs equally:
 - i. Engineering and construction for site preparation, drainage, and physical roadway improvements (and related sidewalks, landscaping, and lighting) within the proposed **City ROW**, as such term is defined below. Notwithstanding the foregoing, costs associated with any engineering and construction for site preparation, drainage, and physical roadway improvements (and related sidewalks, landscaping, and lighting) that Developer counts toward its "public realm improvements" or "community space" as required by zoning shall be the sole responsibility of Developer, and the City shall have no obligation to reimburse Developer for all or any portion of such costs, including, but not limited to, engineering and construction of walking or biking trails and other improvements associated with the Developer's "public realm improvements" or "community space" as required by zoning;
 - ii. Engineering and construction for physical improvements to the new intersection of US Route 1 Bypass and Cate Street, as well as to the existing Cate Street, related to the creation of the public road;
 - iii. Engineering and construction for physical improvements to the intersection of Bartlett Street and Cate Street related to the creation of the public road, provided that such improvements are required by the City Planning Board. If the City Planning Board grants all necessary final unconditional approvals without requiring any improvements to the intersection of Bartlett Street and Cate Street, Developer shall not be responsible for any costs associated with such improvements.
 - iv. New Hampshire Department of Transportation ("NHDOT") driveway permitting costs for the new road;

- v. Design engineer’s construction oversight and so-called “stamp of approval” at project completion of the work within the proposed right of way for which fee title will be conveyed to the City (the “**City ROW**”), beyond City staff involvement;
 - vi. NHDES Alteration of Terrain (“AOT”) permit, proportional, on a square footage proration basis, to the area of disturbance within the **City ROW**;
 - vii. A contribution to the NHDES General Construction Plan proportional to the areas of disturbance with the **City ROW**;
 - viii. Engineer’s preparation of bid ready, construction drawings and specifications relating to improvements to the **City ROW**, to the extent required for competitive construction bidding;
 - ix. Engineer’s assistance and advice on any unforeseen change orders, and the like regarding the **City ROW**;
 - x. Site preparation and physical roadway improvements within the proposed **City ROW**;
 - xi. Landscaping within the **City ROW**;
 - xii. Lighting within the **City ROW**;
 - xiii. COAST bus/trolley stop construction within the **City ROW**;
 - xiv. Drainage improvements within the **City ROW**;
 - xv. Physical improvements along Route 1 Bypass, excluding NHDOT improvements, which shall be the sole responsibility of the City;
 - xvi. Physical improvements in existing Cate Street and Bartlett Street ROW; and
- d. The Developer shall be solely responsible for all costs incurred in connection with the following:
- i. Design, engineering, permitting, replacement, construction, improvement, or relocation of any and all water or sewer lines, including the extension of any water lines north along US Route 1 Bypass, if necessary;
 - ii. Preparation of a New Hampshire Department of Environmental Services (“NHDES”) sewer connection permit with associated

cross sections as needed, as well as any permits otherwise required by NHDES or the State of New Hampshire or its departments or agencies for the extension of City services;

- iii. Design of any improvements to the water system required to increase pressure as needed for the Project;
- iv. Water and sewer main lines within the proposed **City ROW**, including service stubs to property lines, except as set forth in Section 1.2(b) above. The location of service stubs shall be coordinated with City Staff and subject to the City's approval;
- v. Underground electric, underground communications, and gas improvements within the **City ROW**;
- vi. Creating and improving walking and bike trails;
- vii. All other planning, design, permitting, engineering, and construction costs not set forth in Sections 1.2(b) and 1.2(c) above.
- viii. Any costs incurred prior to the date of this Agreement by Developer of any kind and nature whatsoever.

1.3 Developer and City agree that if Developer completes the above-referenced Public Infrastructure Improvements to the satisfaction of the City, the City will reimburse Developer for its equal share of costs for the work set forth in Section 1.2(c) above. Such costs arising from the work set forth in Section 1.2(c) above shall be agreed to in writing by the parties prior to the start of construction. Any changes in the scope of work set forth in Section 1.2(c) above shall be approved by the City before the City shall be required to reimburse Developer for its equal share of such changes, and the City may withhold its consent to any such changes in its sole discretion.

1.4 Developer represents and agrees that all Public Infrastructure Improvements will be constructed per City standards and the City will have the opportunity to observe and inspect the construction to insure the construction is per City standards and otherwise satisfactory to the City.

1.5 The parties agree that in the event that the City Council does not approve the bonding for construction of the new road on or before October 8, 2019, the parties will nonetheless consummate the Land Swap contemplated by this Agreement, provided, however, that Developer shall not be required to contribute towards half the costs of construction of the new road if the City Council approves such construction in the future. If the City Council does not approve the bonding for construction of the new road, the City will grant an access easement to Developer over the land conveyed from the Developer to the City, upon which Developer shall construct, at Developer's sole cost, a driveway for access to the Project Premises. If the City approves bonding for

construction of the new road after October 8, 2019, or if the City otherwise elects to approve such construction after October 8, 2019, Developer's access easement shall terminate and the City shall construct the new road as contemplated herein.

2. Developer Obligations.

2.1 Developer will perform, or cause to be performed, all of the planning, design, engineering, permitting, and construction for the work to be completed and construction to be done on the Project Premises and the Off-Site Public Infrastructure Improvements constructed by, or on behalf of, the City on a portion(s) of the Project Premises to be conveyed, or otherwise transferred, to the City pursuant to the Planning Board's anticipated site plan review approval and this Agreement for use in connection with the Off-Site Public Infrastructure Improvements. The hiring or retention by Developer of any and all planning, design, engineering, permitting, and construction contractors, subcontractors, or other personnel shall be subject to the City's approval, which approval shall not be unreasonably withheld.

2.2 Developer and its consultants, contractors, agents, and representatives shall coordinate the design of On-site Infrastructure Improvements for the Project by Developer with the Public Infrastructure Improvements. Such coordination shall include, but not be limited to, attending meetings as well as providing copies of plans/designs to the City in both hard and electronic format (in an AutoCAD format reasonably acceptable to the City).

2.3 Developer shall, upon receipt of full unconditional site plan review approval from the Planning Board, convey fee title to approximately 136,919 square feet as shown on **Exhibit A**, upon which the Off-Site Public Infrastructure Improvements shall be constructed and located.

2.4 Developer agrees to pay for 100% of the City's legal fees and costs associated with the Land Swap contemplated herein and the parties' performance under this agreement, including but not limited to, legal fees and costs incurred by the City in connection with drafting, revising, and negotiating this Agreement. The City represents that it is represented by the law firm of Bernstein, Shur, Sawyer and Nelson, P.A. ("BSSN") in this matter. BSSN has estimated, but has not guaranteed, that legal fees and costs in this matter will total approximately \$25,000.00. BSSN will provide to Developer original invoice summaries on a monthly basis for all services provided hereunder, with payment due from Developer within thirty (30) days of the delivery of each such invoice summary. To the extent Developer desires further invoice details, it shall inquire with the City, and BSSN shall have no obligation to provide invoice details directly to Developer. Upon the City's request, Developer shall provide a copy of the relevant payment documentation to the Planning Director of the City.

2.5 Should Developer wish to obtain a title insurance policy through Monument Title, a subsidiary of BSSN, or otherwise, in connection with the property conveyed to Developer from the City, such title insurance policy premium and any associated costs shall not be considered legal fees and costs, and such premium shall be paid by Developer directly. The Developer shall also

pay the premium for the title insurance policy obtained by the City for the land conveyed from Developer to the City.

2.6 Developer shall be responsible for any and all closing costs associated with the Land Swap including, but not limited to, recording fees, L-CHIP fees, and transfer tax.

2.7 Prior to commencement of construction of the Public Infrastructure Improvements, the City shall convey a temporary construction easement to Developer and its agents, employees, representatives, guests, invitees, contractors, subcontractors, successors and assigns on, over and across the property to be conveyed from Developer to the City in connection with the Land Swap (consisting of approximately 139,919 square feet) as shown on **Exhibit A**, for the site preparation of the **City ROW**, including without limitation the storage of materials from any and all improvements located thereon, the demolition, razing, and necessary removal of any and all improvements, and any site preparation work for purposes of construction of the new road, which easement shall be automatically terminated upon completion of construction of the improvements thereon and acceptance by the City.

2.8 Prior to commencement of construction of the Public Infrastructure Improvements, Developer shall convey a temporary construction easement to the City and its agents, employees, representatives, guests, invitees, contractors, subcontractors, successors and assigns on, over and across the property to be conveyed from the City to Developer in connection with the Land Swap (consisting of approximately 47,470 square feet), and on, over, and across Developer's surrounding property (consisting of approximately 395,659 square feet), as shown on **Exhibit A**, for the site preparation of the **City ROW**, including without limitation the storage of materials from any and all improvements located thereon, the demolition, razing, and necessary removal of any and all improvements, and any site preparation work for purposes of construction of the new road, which easement shall be automatically terminated upon completion of construction of the improvements thereon.

2.9 The Public Infrastructure Improvements will be substantially completed on or before July 1, 2021.

3. City of Portsmouth Obligations.

3.1 The City shall, upon Developer's receipt of full unconditional site plan review approval from the Planning Board, transfer title to approximately 47,470 square feet of land as shown on **Exhibit A** to the Developer or its assignee, upon which a portion of the On-Site Public Infrastructure Improvements shall be constructed and located.

3.2 The construction of the Public Infrastructure Improvements shall be subject to the following:

- a. The City obtaining proper authorization to enter into this Agreement;

- b. Developer providing the City, for the City's review, recommendations, and approval, which approval shall not be unreasonably withheld, a copy of the plan, design, and schedule for the Public Infrastructure Improvements, when such plan, design, and schedule becomes available.

3.3 The City (subject to the provisions of the Development Schedule set forth in **Exhibit D**) shall have no obligation to perform improvements unless Developer performs all of developer's obligations contained in Sections 2.1 through 2.5 of this Agreement in a timely fashion and to the satisfaction of the City, as provided herein and subject to the provisions contained herein.

3.4 Whenever this Agreement shall require the City to reimburse Developer for any costs incurred by Developer, the City shall only be required to reimburse Developer for such costs upon Developer providing adequate documentation (determination of which shall be within the City's sole discretion) that such costs were actually incurred and paid by Developer.

4. Development Schedule.

4.1 Attached to this Agreement is a Development Schedule (**Exhibit D**, the "**Development Schedule**") showing the anticipated date and sequence of various elements of the Project that are to be completed by the respective Parties as set forth herein. The Parties acknowledge that the Development Schedule is a complex schedule requiring the coordinated efforts of multiple parties and is dependent in many instances on the actions or approvals of third parties. The Parties agree to use diligent efforts and to cooperate with each other in undertaking their respective responsibilities under this Agreement, including, but not limited to, those events listed on the Development Schedule. It is further understood by the Parties that the Development Schedule (**Exhibit D**) may require adjustment based upon economic conditions, site constraints, actions of third parties, and circumstances beyond the control of Developer or the City. Any such adjustment(s) shall be reviewed and agreed to in writing by the Parties hereto. Consent to such Development Schedule adjustment shall not be unreasonably withheld by either party.

4.2 For the purposes of any of the provisions of this Agreement, the Parties shall not be considered in breach or default of their respective obligations hereunder (except for any obligation to pay a sum of money pursuant to their agreement) in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not restricted to, acts of God, or of the public enemy, acts of the other party, fires, floods or other casualties, epidemics, quarantine restrictions, labor disputes, litigations (including, without limitation, any appeal of any approval needed, including the appropriation vote or any permit or approval needed for the Project), freight embargoes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the

enforced delay, provided that the party seeking the benefit of the provisions of this section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other party thereof in writing stating the cause or causes thereof and requested an extension for the period of the enforced delay. In calculating the length of the delay, the City and Developer shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

5. Representations and Warranties.

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

5.1.1 This Agreement constitutes a legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.

5.1.2 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or governmental authority, pending or to the best of the City's knowledge threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder or the performance by the City of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

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

5.2.1 Cate Street Development LLC is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New Hampshire, the state of its formation, with all requisite authority to own its property and assets and to conduct its business as presently conducted or proposed to be conducted, and is duly qualified or authorized to transact business and is in good standing under the laws of the State of New Hampshire.

5.2.2 Developer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by Developer, constitute

valid, legal and binding obligations of Developer enforceable in accordance with the respective terms thereof.

- 5.2.3 Neither the execution or delivery by Developer of this Agreement, the performance by Developer of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by Developer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to Developer, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, to which Developer is a party or by which Developer or any of its properties or assets are bound, or constitutes a default there under.
- 5.2.4 There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or governmental authority, pending or to the best of Developer's knowledge threatened against Developer, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Developer of its obligations hereunder or the performance by Developer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Developer in connection with the transactions contemplated hereby.
- 5.2.5 Developer shall provide certification from their respective corporate secretary or manager, as the case may be, indicating that the signatory to the within Agreement has obtained all necessary corporate authority to execute and perform the terms of the within Agreement.
- 5.2.6 If required by the City, Developer shall provide the City with a legal counsel's opinion, in a form acceptable to the City, with respect to the matters described in this section.

6. Default.

6.1 If:

- a. Developer shall fail to cure any default in the performance of any of its non-monetary covenants, agreements or obligations hereunder within thirty (30) days of written notice of default from City plus, so long as Developer has diligently commenced cure within said thirty (30) days and has been unable to complete same within said thirty (30) days, such additional time as is reasonably necessary to cure with commercially reasonable efforts; or

- b. Developer shall fail to cure any monetary default within five (5) business days of written notice thereof, or
- c. Developer is unable to obtain any permit(s) necessary for completion of the Project; or
- d. Developer shall make any assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for themselves or any of their property, or Developer shall be adjudged an involuntary bankrupt, or a decree or order for reorganization under the federal bankruptcy laws as now or hereafter amended, or under the laws of any state, shall be entered against Developer, and any such decree or judgment or order shall not have been vacated or set aside within sixty (60) days from the date of the entry or granting thereof; or
- e. In addition to the foregoing and not in lieu of any of City's rights and remedies hereunder or at law or in equity, if a petition is filed by Developer for relief under Chapter 11 of Title 11 of the United States Code, or for reorganization or arrangement under any provision of the Bankruptcy Code as then in force and effect, or any involuntary petition under any provision of the Bankruptcy Code is filed against Developer and is not dismissed within sixty (60) days thereafter, then in either of such cases this Agreement shall at the option of City terminate upon notice of termination to Developer,

then (notwithstanding any license of any former breach of this Agreement or waiver of the benefit hereof or consent in any former instance) in any of such cases, the City may lawfully, immediately and at any time thereafter, and without further notice or demand, and without prejudice to any other remedies, terminate this Agreement.

6.2 Further, in case of any termination of this Agreement under Section 6.1, and notwithstanding any such termination, Developer shall (i) shall immediately pay to the City as damages all amounts due to the City prior to and including the date of termination; (ii) shall be liable for and pay to the City the entire unpaid charges and all other balances due under this Agreement for the remainder of the then-effective term; and (iii) shall additionally be liable for and pay to the City, as damages for breach of this Agreement, all reasonable amounts and categories of damages that the City is not expressly prohibited by law to obtain or collect from Developer. In addition to the foregoing and notwithstanding any other damages or payments due from Developer under this Agreement or at law or in equity, Developer agrees that, in the event of

its breach of this Agreement prior to the consummation of the Land Swap, the City shall be entitled to an order of specific performance from a court of competent jurisdiction whereby Developer shall be required to convey fee title of approximately 136,919 square feet of land to the City as contemplated by the terms of the Land Swap. In addition to the foregoing and notwithstanding any other damages or payments due from Developer under this Agreement or at law or in equity, Developer agrees that, in the event of its breach of this Agreement, it shall be liable to the City for the City's reasonable attorneys' fees and court costs related to or arising out of Developer's breach or default of its obligations under this Agreement, in the event of termination or otherwise.

6.3 Nothing herein contained shall limit or prejudice the right of City to prove for and obtain in proceedings for bankruptcy or insolvency by reason of the termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, the damages are to be proved, provided that such amount is equal to or less than the amount of the loss or damage referred to herein.

7. General Provisions.

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

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

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

To Developer:

Cate Street Development, LLC
Attn: Jay Bisognano
11 Elkins Street. Suite 420
Boston, MA 02101

With a copy to:

Bosen & Associates, PLLC
Attn: John K. Bosen, Esq.
266 Middle Street
Portsmouth, NH 03801

To the City:

City Manager

City of Portsmouth
ATTN: Legal Department
1 Junkins Ave.
Portsmouth, NH 03801

With a copy to: Bernstein, Shur, Sawyer & Nelson, P.A.
Attn: Ovide Lamontagne, Esq.
670 N. Commercial Street, Suite 108
PO Box 1120
Manchester, NH 03105

7.4 Time is of the essence with regard to this Agreement.

7.5 This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations of this Agreement may be assigned or delegated by any party without the prior written consent of the other parties.

7.6 Developer shall not pledge or assign this Agreement or any documents relating thereto as security for any financing without the prior written consent of the City, which consent may not be unreasonably withheld or delayed; provided, however, in the event of said financing pledge and/or assignment, the obligations of Developer shall not be relieved or diminished.

7.7 The Parties anticipate that the obligations set forth herein will be further described in other agreements and/or deeds or leases as agreed to by the Parties. The Parties agree to cooperate in good faith with regard to each and every aspect required for the completion of construction, operation and financing contemplated by this Agreement. The Parties recognize, however, that the land use regulatory authorities of the City and the State must perform their responsibilities in accordance with the law governing that performance and consequently are not obligated in any way by this Agreement. The Parties agree to further negotiate in good faith and to enter into such other and further agreements as may be necessary to implement any aspect of design, engineering, or construction contemplated under this Agreement.

7.8 Developer submits to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Rockingham County New Hampshire Superior Court.

7.9 Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another

party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

7.10 The execution of this Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse Developer from the requirement to apply for and receive all necessary permits and approvals from all applicable City or other governmental Boards, Committees, Commissions, or Departments.

7.11 In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have set their hands this ____day of _____, 2019.

CITY OF PORTSMOUTH

Witness

By: _____
John P. Bohenko, City Manager
Duly authorized

CATE STREET DEVELOPMENT, LLC

Witness

By: _____
Jay Bisognano, Manager
Duly authorized

Exhibit A

Land Swap Plan

Exhibit B

Public Infrastructure Improvements

Exhibit C

[INTENTIONALLY OMITTED]

Exhibit D

Development Schedule

Exhibit E

Sharing of Costs