

At the hearing, the Applicant proposed the multifamily project and the commercial building for development in the front portion of the Lot; and, as part of the development proposal, the applicant proposed to donate the back portion of the Lot to the Town for public use and benefit. In the request, the Applicant proposed the rear portion of the Lot would be dedicated or donated to the Town of Exeter "open to the public as protected open space". At the hearing, the benefits discussed included protection of wetland, consolidation of public open space, and expansion of public recreation areas. To the rear (west) of the Lot, the Town of Exeter and the State of New Hampshire have substantial holdings of public land open for hiking (trails) and other public recreational purposes. Generally, the Applicant proposed and the ZBA accepted, that there was public benefit in concentrating development on the front (east) portion of the Lot in order to preserve and protect the rear (west) portion of the Lot for public purposes and public benefit.

As this Project has moved through the review and permitting process, representatives from the Town have weighed in on the benefits and use of receiving the rear portion of the Lot. Specifically, the Conservation Commission has considered the proposed donation and has made certain recommendations which are included in the Memorandum dated November 19, 2019 which is attached for your reference.

The Applicant continues to cooperate with the Town and be open to the Town's wishes regarding future restrictions and use of the donated Property. The Applicant remains committed to donate the Property as presented in the hearing before the Zoning Board of Adjustment.

It is important to note that the back acreage proposed for donation is approximately forty-three (43) acres. It has substantial wetlands, and one of the reasons for restricting development on the Lot was to protect those wetlands. In fact, the acreage is affording the Applicant \$600,000 of credit toward wetland mitigation. However, the value of the portion of the land proposed for donation (as determined by an appraisal from Kraft Appraisals dated March 2020) is estimated to be One Million Eight Hundred Fifty-Five Thousand Dollars (\$1,855,000). Therefore, the Applicant is voluntarily contributing approximately One Million Two Hundred Fifty-Five Thousand Dollars (\$1,255,000) in value to the Town as part of this Application. At the Zoning Board of Adjustment hearing, the contribution was acknowledged as a benefit to the Town for wetland purposes and as a benefit to the Town for open space and recreational purposes.

WAIVER SECTION 11.3.4 SITE AND SUBDIVISION REGULATIONS

Under Section 11 of the Site and Subdivision Regulations,

"...the Planning Board and the Board of Adjustment will be guided by Article 7 OPEN SPACE DEVELOPMENT of the Zoning Ordinance, these regulations, and the following additional requirements: ...

Section 11.3.1 Site Plan Specifications...

4. Recreational Space: ... The site shall provide an area or areas devoted to the

joint recreational use of the residence thereof. Such recreational space shall consist of not less than four hundred (400) square feet of space per dwelling unit... “

Under Section 13.7 of the Site and Subdivision regulations, the Planning Board may approve waivers based upon specific criteria. The Applicant's request is for a waiver pursuant to Section 13.7 waiving the guideline requirements set forth in Section 11.3.4 as they relate to this particular multi-family workforce housing rental project.

The granting of the waiver will not be detrimental to the public safety, health and welfare or injurious to other property.

The Applicant owns approximately sixty-three (63) acres of land on Epping Road in Exeter. Of that acreage, the Applicant will donate approximately 43 acres to the Town of Exeter. The donation accomplishes important protection of wetland areas, but it also accomplishes the consolidation of open space. This Property is immediately adjacent other publicly owned property. The publicly owned property includes land which is presently part of the Exeter Trail System and specifically it is adjacent to the Little River Trail System properties.

While the Town may have restrictions on use of the donated land, the occupants of the residential community will have ample recreational space immediately available on site and next door at the open land. (This is true whether access is through the donated parcel or whether access is through a planned access off Continental Drive.)

Granting the waiver will not be detrimental in any fashion. Rather, it will significantly advance the stated goals and purposes of the Town as stated in the Zoning Ordinance, Planning Regulations, and the Master Plan.

The conditions upon which the request for a waiver is based are unique to the Property for which the Property is sought and are not applicable generally to other property.

This is a situation unlike any other situation in the Town of Exeter. It is a property on Epping Road which is a gateway to the Town. The Town has invested in the infrastructure along Epping Road in hopes of encouraging reasonable development. This Lot is a relatively large undeveloped property with excellent access to the infrastructure, but also immediately adjacent to important public lands. While the Lot is zoned for commercial uses, the Zoning Board of Adjustment has determined, in its variance, that the residential use is a reasonable use under the special circumstances of the Lot. Those same special circumstances regarding this Lot make it unique. It is a unique opportunity to gain important development at the gateway of Town, but significantly accomplish public goals and purposes through donated land. The reasons for the waiver in this case would not be generally applicable to any other property.

Because the particular physical surroundings, shape or topographic conditions of this specific Property involved, a particular hardship would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.

As discussed above, the Lot has particular physical conditions and characteristics which make it important to the Town's public interests. Strict application of the guideline will present a true hardship to the Project with no benefit to the Town.

In this particular case, the whole purpose of the variance was to concentrate development on the front (east) portion of the Lot to enable donation of the rear (west) portion of the Lot. If this requirement is applied to this Project, the Applicant will need to use more of the Lot and therefore donate less of the Lot. Under Section 11.3.1 (4) of the guidelines, four hundred (400) square feet per unit would amount to approximately two (2) acres of land which must be set aside for recreational purposes for the residents of the community. The Applicant could set that two (2) acres aside but it would be counter-productive to the several purposes that are accomplished by donating the full forty-three (43) acres. In view of the circumstances, the occupants of the multifamily units will have ample recreational space immediately available. Strict application of these regulations will not afford the residents any benefit.

The granting of the waiver will not be contrary to the spirit and intent of the regulations.

The Applicant has capacity to separate 2 +/- acres from the forty-three (43) acres proposed as public land. However, if the Applicant is required to keep the land within the Project, the Town of Exeter will lose some control of the land. By incorporating all of the land into one large public donation, many public purposes are accomplished, consistent with the spirit and intent of the Zoning and Planning regulations.

The waiver will not, in any manner, vary the provisions of the zoning ordinance or the master plan.

The Applicant's proposal to donate the entire forty-three (43) acres as public land is clearly consistent with the master plan goals of accomplishing contiguous open protected spaces. It is also consistent with and accomplishes the purposes of amassing sufficient open passive recreational spaces. The waiver requested affords the Town an opportunity to take important steps to accomplish the goals of zoning (workforce rental housing, protect wetlands, amass public open recreation areas etc.) within the spirit of the site plan regulations, and to advance the master plan goals. To require the Applicant to separate out areas for recreation for this particular Project alone, would be counterproductive.

REQUEST WAIVER FOR IMPACT FEES – ARTICLE 11.7

Under Article 11.7, the Planning Board may grant a full or partial waiver of impact fees based upon several specific criteria. The Applicant is requesting a partial waiver of impact fees – the impact fees assessed for recreational facilities only.

The property which the Applicant proposes to donate is immediately adjacent to the property that is being developed and it is also immediately adjacent to public property presently held for passive recreation and other open space purposes. At the Zoning Board hearing, the Applicant specifically stated that the Property would be donated and "open to the public as protected open space". The donation was proposed to accomplish the many goals of open space

including recreation. While the Town of Exeter may impose restrictions on the use of the donated property, those restrictions are at the discretion of the Town. From the standpoint the Applicant, the Applicant will donate open space beyond the requirements of any regulation and also beyond the value of any impact fee. The donation is a contribution of real property with substantial value - One Million Eight Hundred Fifty-Five Thousand (\$1,855,000) Dollars. [While the Applicant acknowledges that a portion of \$1,855,000. in value is used as wetland mitigation, approximately \$1,255,000. in value is being donated above and beyond wetland mitigation or any other requirement.] Under Section 11.7.2 the Planning Board has authority to acknowledge contributions of real property and to acknowledge the value of those contributions as a credit against impact fees. The circumstances at hand justify a credit. The open space is being donated above and beyond other impact fees and other exactions. It is not lieu of off-site improvements. Rather, it is a true donation of open space to the Town for purposes as the Town sees fit. The donation supports many goals including recreation. The Applicant is asking that the Planning Board accept, in lieu of a cash payment, the contribution of the real property as satisfaction of the Applicant's obligation to pay the impact fees assessed against the property for purposes of recreation.

While the request is reasonable and supported by the Projects unique and specific circumstances, the request is also supported because this is a workforce housing rental project.

SUMMARY

This Project is a workforce housing rental project. As a workforce housing rental project, the collective impact of ordinances and regulations have significant expense and present significant impediment to affordability. In this instance, the strict application of the recreation regulations and fees is not necessary or reasonable. A waiver is uniquely appropriate.

While workforce housing occupants need recreational space just as any other tenant, to require the Applicant to set aside additional recreational space and to pay additional recreational impact fees is unreasonable and unnecessary under the circumstances. The Applicant is donating land worth One Million Eight Hundred Fifty-Five Thousand Dollars (\$1,855,000). While Six Hundred Thousand Dollars (\$600,000) may be allocated for wetland mitigation, the residual value of One Million Two Hundred Fifty-Five Thousand Dollars (\$1,255,000) fully offsets any cost or expense that the Town of Exeter may incur and also meets the demands of the occupants of the new community. Under the circumstances of workforce housing, it is reasonable to grant the waiver and maintain affordability.

We thank you for your consideration.

Sincerely,



Thomas J. Leonard

TOWN OF EXETER
CONSERVATION COMMISSION MEMORANDUM

Date: November 19, 2019
To: Planning Board
From: Kristen Murphy for the Conservation Commission
Subject: Gateway at Exeter LLC, Epping Road Wetland Waiver

Project Info:

Project Location: Epping Road, Exeter, NH
Map/Lot: Map 47, Lots 6 & 7
NHDES File No: Unknown
CC Review Date: Site Walk 10/30/19, Meeting 11/12/19
PB CASE: 19-16

Wetland Waiver

The Exeter Conservation Commission reviewed the proposed project and associated application materials at a site walk and their monthly meeting as noted above. During the November 12th meeting, the commission voted unanimously that they have reviewed the application and have **no objection to the issuance of the wetland waiver as proposed**. They did identify several items they request the Planning Board consider:

Given their review was prior to TRC review of the application, **should designs change such that it causes an increase to wetland buffer impacts, they request the applicant return** so the Commission has an opportunity to review the increased impacts. They were **supportive of excluding the trail parking area if removal would allow a reduction in impacts** to either the wetland or wetland buffer.

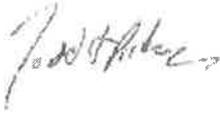
They were **supportive in concept of the Town holding conservation interest in the proposed mitigation land with details and deed terms to be developed prior to the Commission officially recommending acceptance**. They further request the following items be completed prior to acceptance: Phase 1 environmental assessment, receipt of a surveyed plan of the conservation land and boundary markers, completion of a baseline documentation report, on-site confirmation that any boundary markers indicated were in place, and payment of a stewardship fee of an amount to be determined in later discussions. They were unsure whether providing public access via trail parking at this location would increase impacts to the sensitive area proposed for conservation and reserve a decision on trails/access to be addressed when deed terms were decided with the applicant at a later date.

Their willingness to hold land interest the rear portion includes consideration of the role this land would provide in providing the long term protection of an important wildlife corridor, protection of the Little River watershed as well as the mapped vernal pools located within this area. They do note that the use of the underpasses beneath Route 27 and Route 101, is fencing currently limited due to existing fencing blocking access for many larger species. The Commission had inquired with the state previously about the ability to modify the fencing to facilitate access through the underpasses but no change has been implemented. Their memo to NHDES highlighted this concern and requested the State's support should they have any ability to provide assistance with

this regard as a slight modification to fencing would further increase the role this property would serve for wildlife corridor preservation.

The Commission noted the wetland application was missing a response from NH Fish and Game and NH Heritage on the state sensitive species highlighted in the Heritage report. **They request the applicant furnish NH Fish and Game and NH Heritage Bureau's recommendation, and the agency's recommendations be incorporated into project design to reduce or eliminate potential impacts.**

The commission also requested to minimize lighting overspill into the conservation area, encouraged landscaping to incorporate native, non-invasive species where possible, and requested the applicant explore pervious pavement where possible to minimize the impact of the large impervious areas proposed.



Todd Piskovitz
Chair, Exeter Conservation Commission

cc: Jim Petropulos, HSI
Brendan Quigley, GES Inc.



TOWN OF EXETER, NEW HAMPSHIRE
10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX
772-4709
www.exeternh.gov

May 22, 2019

Thomas J. Leonard, Esquire
Wells, White & Fontaine, P.C.
29 Factory Street
POB 507
Nashua, New Hampshire 03061

Re: Zoning Board of Adjustment Case #19-07
Variance Request -- Gateway at Exeter, LLC
Epping Road, Exeter, N.H. (former Kevin King Irrevocable Trust property)
Tax Map Parcel #47-6 and #47-7

Dear Attorney Leonard:

This letter will serve as official confirmation that the Zoning Board of Adjustment, at its May 21st, 2019 meeting, voted to grant the above-captioned application for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.3 Schedule II: Density and Dimensional Regulations (Residential) to permit a multi-family residential complex as part of a mixed use development plan within the area shown as the site on the display plan submitted with the application, and as presented.

The variance approval was granted subject to the following conditions:

- the remaining approximately 45± acres to the rear of the site remaining undeveloped;
- that 25% of the residential rental units qualify as workforce housing rental units as defined under the NH State workforce housing statute;
- that the restriction for workforce housing rental shall be for not less than 30 years;
- that the residential portion shall remain as rental units for not less than 30 years; and
- the multi-family portion of the complex shall include not more than 224 residential rental units.

Please contact the Planning and Building Department for the appropriate paperwork to move forward with your project. If you should have any questions, please do not hesitate to contact their office.

Sincerely,

Laura J. Davies
Chairwoman
Exeter Zoning Board of Adjustment

cc: Thomas Monahan, Gateway at Exeter, LLC, property owner
Dave Sharples, Town Planner
Douglas Eastman, Building Inspector/Code Enforcement Officer
Janet Whitten, Deputy Assessor

LJD:bsm

Return to:
Box 627
Thomas J. Leonard
Welts, White & Fontaine, P.C.

RECEIVED

MAY 13 2020

EXETER PLANNING OFFICE

WORKFORCE HOUSING RESTRICTIVE COVENANT AND AGREEMENT

This Workforce Housing Restrictive Covenant and Agreement (the "Covenant") dated this ___ day of _____, 2020 is entered into by and between Gateway at Exeter, LLC, a New Hampshire limited liability company with a mailing address of 20 Trafalgar Square, Suite 610, Nashua, New Hampshire 03064 ("Gateway at Exeter, LLC) and the Town of Exeter, New Hampshire, a municipality with a mailing address of 10 Front Street, Exeter, New Hampshire 03833 (the "Town").

RECITALS:

A. Gateway at Exeter, LLC owns a certain tract of land located at 170 Epping Road, Exeter, County of Rockingham, State of New Hampshire, known as Lot 47-7 as shown on a subdivision plan entitled "Lot Line Adjustment/Subdivision Plan (Map 47, Lots 6 & 7) 170 Epping Road NH Route 27 Exeter, New Hampshire" prepared for/record owner: Gateway at Exeter, LLC dated 6 November 2019 and revised through _____ which Plan is recorded at the Rockingham County Registry of Deeds as Plan No. _____ (Subdivision Plan). For a more particular metes and bounds description of Lot 47-7 refer to the Subdivision Plan. Lot 47-7 is hereinafter referred to as the "Property";

B. Gateway at Exeter, LLC intends to develop the Property in accordance with the final Site Plan entitled "Map 47 Lots 6 & 7 Site Plan Gateway at Exeter 170 Epping Road NH Route 27 Exeter, New Hampshire" prepared for/record owner Gateway at Exeter, LLC 6 November 2019 and amended through _____ (the "Site Plan"). The Site Plan was approved by the Town of Exeter on the ___ day of _____, 2020;

C. As a condition of approving the development under its Municipal Land Use Ordinances Rules and Regulations, the Town has required that twenty five percent (25%) of the rental units within the development be occupied as "Workforce housing" rental units defined under RSA 674:58 through 674:61 as amended through the date of this Agreement; and

D. This covenant is intended to assure that twenty five percent (25%) of the rental units meet the definitional requirements of Workforce housing rental units and to assure continued affordability and compliance as required by the Town of Exeter Municipal Land Use Ordinances, Rules and Regulations.

NOW THEREFORE the parties agree as follows:

AGREEMENTS:

SECTION 1 – DEFINITIONS

For purposes of this Covenant and Agreement, the definition of terms used in this Agreement shall be the definitions set forth in NH RSA 674:58 and in the Town of Exeter Municipal Land Use Ordinances, Rules and Regulations both as amended through the date of this Agreement. In the event there is a discrepancy or difference, the state law definition shall prevail and become the meaning of the term contained in this Covenant and Agreement.

1.1 *“Affordable”*. “Affordable” means housing with combined rental and utility costs that do not exceed thirty percent (30%) of a household’s gross annual income.

1.2 *“Owner(s)”*. “Owner(s)” means the Owner(s) of the Fee Simple Interest in Lot 47-7 as shown from time to time in the records of the Rockingham County Registry of Deeds; provided, however, that:

- (a) The term Owner(s) shall not include a person holding an interest in any portion of the Property merely as security for repayment of a debt or satisfaction of any other obligation; and
- (b) If a person leases or subleases all or a portion of the Property to another person, the Lessor shall be the Owner of the Property unless the lease or sublease designates the Lessee or the sublessee as the Owner and the designation is recorded at the Rockingham County Registry of Deeds;

1.3 *“Property”*. “Property” means the land shown on the Subdivision Plan as Lot 47-7.

1.4 *“Site Plan”*. “Site Plan” means the final Site Plan entitled ““Map 47 Lots 6 & 7 Site Plan Gateway at Exeter 170 Epping Road NH Route 27 Exeter, New Hampshire” prepared for/record owner Gateway at Exeter, LLC 6 November 2019 and amended through _____.

1.5 *“Subdivision Plan”*. Subdivision Plan means the subdivision plan entitled ““Lot Line Adjustment/Subdivision Plan (Map 47, Lots 6 & 7) 170 Epping Road NH Route 27 Exeter, New Hampshire” prepared for/record owner: Gateway at Exeter, LLC dated 6 November 2019 and revised through _____ which Plan is recorded at the Rockingham County Registry of Deeds as Plan No. _____.

1.6 *Workforce housing.* “Workforce housing” means rental housing which is affordable to a household with an income of no more than sixty percent (60%) of the medium income for a household in the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development.

SECTION 2 - DEVELOPMENT

The Owner will develop the Property in accordance with the final Site Plan approved by the Exeter Planning Board on May __, 2020. Pursuant to the Subdivision Plan and the Site Plan, the Owner will build 3 buildings for residential dwelling units. There will be a total of Two Hundred Twenty-Four (224) residential dwelling units. Of the 224 residential dwelling units, fifty-six (56) dwelling units shall be Workforce housing units for rent. The Workforce housing units will meet the following general requirements:

2.1 *Interspersed.* Workforce housing units shall be interspersed with market rate housing units throughout the overall development. There shall be a minimum 18 Workforce housing units in each of the 3 buildings. There shall be a minimum of fifty-six (56) workforce housing units in the development.

2.2 *Certificates of Occupancy.* Dwelling units qualifying as Workforce housing units shall be made available for occupancy on approximately the same schedule as dwelling units which are market rate units. However, the certificates of occupancy for the last 2 market rate dwelling units of each building shall be withheld until certificates of occupancy have been issued for all the Workforce housing units in that building.

SECTION 3 - WORKFORCE UNITS

The fifty-six (56) Workforce housing dwelling units developed pursuant to the above-referenced Subdivision Plan and Site Plan shall remain Workforce housing rental units for a period of forty (40) years. As such, the Workforce housing rental units must remain “affordable” as defined in NH RSA 674:58, as amended through the date of this Agreement.

3.1 *Rental Increase.* For all Workforce housing units, Gateway at Exeter, LLC or its successors or assigns shall limit annual rental increases to assure that each unit is affordable.

3.2 *Restrictive Covenant.* This Covenant and Agreement must be documented on all plans filed with the Planning Board and the Rockingham County Registry of Deeds.

3.3 *Certificate of Occupancy.* No certificate of occupancy shall be issued for a Workforce housing unit without written confirmation of the income eligibility of the renter of the Workforce housing unit and confirmation of the rent as documented by an executed lease.

SECTION 4 COMPLIANCE, MONITORING AND ENFORCEMENT

The Planning Board, or its designee, for the Town of Exeter shall have the responsibility of monitoring the compliance and rental restrictions on Workforce housing dwelling units. The

Planning Board may adopt and publish policies and procedures for administration, compliance and monitoring the requirements of Workforce housing statutes and ordinances. The procedures must include a provision for waiver of the regulations. The basis for any waiver granted by the Planning Board must be recorded in the minutes of the Board. The Planning Board may grant a waiver of regulations only if the Board finds, by majority vote, that: (i) strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; or (ii) specific circumstances relative to the applicant indicate that the waiver is consistent with the spirit and intent of the regulations.

4.1 *NHHFA Financing.* In the event that the development participates in a program through New Hampshire Housing Financing Authority, and in the event the New Hampshire Housing Financing Authority provides administration, monitoring and enforcement of compliance with Workforce housing rules and regulations and practices, then the New Hampshire Housing Financing Authority (NHHFA), or its agent, shall also be the agent for the Town of Exeter for purposes of administration, monitoring and enforcement of compliance. The certification of the NHHFA or its agent shall suffice as certification for compliance with the requirements of Workforce housing statutes and ordinances.

4.2 *Compliance/Documentation.* In order to ensure that only eligible households rent the dwelling units designated as Workforce housing units, the prospective renters of a Workforce housing unit must submit reasonable documentation together with a written certification verifying that their income, combined with household assets, does not exceed the maximum level as established by the New Hampshire Workforce housing statute as amended through the date of this Agreement. For purposes of this Agreement, "Workforce housing" means rental housing which is affordable to a household with an income of no more than sixty percent (60%) of the medium income for a three person household for the metropolitan area or county in which the housing is located, as published and as published annually by the United States Department of Housing and Urban Development. For purposes of documenting and determining compliance, the rules, regulations and practices of the United States Department of Housing and Urban Development (HUD) and the New Hampshire Housing Financing Authority (NHHFA) shall be determinative unless expressly modified or waived by the Town of Exeter Planning Board.

4.3 *Annual Report.* Gateway at Exeter, LLC or its successors or assigns or successor owners, shall prepare an annual report, due on December 31st each year, certifying that the gross rents of Workforce housing dwelling units and the household income of renters of Workforce housing dwelling units have been maintained in accordance with the requirements of NH RSA 674:58, as amended through the date of this Agreement. Reports must be submitted to the Planning Board for the Town of Exeter, or its designee and shall list the contract rent and occupant household income of all Workforce housing dwelling units for the calendar year ending December 31st.

SECTION 5 – BINDING COVENANT

Gateway at Exeter, LLC intends, declares and covenants on behalf of itself and its successors and assigns that this Covenant and the rights and restrictions contained in this Covenant shall be covenants running with the land, encumbering the Property for a term of 40

years from the date of recording, and are binding upon its successors in title. These covenants are not merely personal covenants. They shall bind the owner, its successors and assigns to the benefit of the Town of Exeter and the Planning Board for the Town of Exeter, their respective agents, successors and assigns for the term of this Covenant.

SECTION 6 – MISCELLANEOUS

6.1 *Amendments.* This Covenant was reviewed and approved as part of the Site Plan approval. It may be amended by an application of the Owner of the Property so long as the application is approved by all municipal land use authorities as may be required at the time of the application and amendment. No amendment shall be effective unless amended with a written instrument duly executed by the Owner of Lot 47-7 and the duly authorized signatory for the Town of Exeter Planning Board.

6.2 *Acknowledgment by Town of Exeter.* This covenant is signed by the Town of Exeter solely as an acknowledging party. As a signatory to this document, the Town of Exeter is not taking on any additional obligations or duties except as are contained in the laws, rules and regulations otherwise in force. By executing this document, the Town of Exeter is acknowledging that Gateway at Exeter, LLC has agreed to covenants and restrictions contained herein.

GATEWAY AT EXETER, LLC

Date: _____

By: _____
Name: Thomas F. Monahan
Title: Manager

TOWN OF EXETER

Date: _____

By: _____
Name:
Its Duly Authorized Agent

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Personally appeared before me on this ___ day of _____, 2020 the above named Thomas F. Monahan, as Manager of Gateway at Exeter, LLC, and acknowledged that he executed the foregoing instrument as his free act and deed for the purposes therein contained on behalf of said Gateway at Exeter, LLC.

Notary Public/Justice of the Peace

Name:

My commission expires:

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

Personally appeared before me on this ____ day of _____, 2020 the above named _____, as Duly Authorized Agent for the Town of Exeter, and acknowledged that he/she executed the foregoing instrument as his/her free act and deed for the purposes therein contained on behalf of said Town of Exeter.

Notary Public/Justice of the Peace

Name:

My commission expires:



WELTS, WHITE & FONTAINE, P.C.
Attorneys at Law

May 11, 2020

Town of Exeter
Planning Board
10 Front Street
Exeter, NH 03833

RE: Gateway at Exeter, LLC / Epping Road, Exeter, NH

To the Members of the Exeter Planning Board:

This office represents Gateway at Exeter, LLC who is the "Applicant" requesting subdivision approval and site plan approval for a multifamily residential development and commercial building (the "Project") proposed for a portion of a lot presently known as Lot 47-7 on Epping Road, Exeter, NH (the "Lot"). The residential component of the Project is permitted by variance from the Exeter ZBA. As part of the proposal to the ZBA, the Applicant intentionally concentrated development in the eastern portion of the Lot to leave a substantial portion of the Lot open and undeveloped. The Applicant proposed to donate the remaining open land area to the Town for recreation and other public purposes, as the Town deemed appropriate. Presently, the plans show approximately 20 acres of development and approximately 43 acres of open land that will be donated to the Town.

Under the Zoning Ordinance and under the Site and Subdivision Regulations, there are requirements for recreation space that do not provide credit for land donations such as proposed in this Project. The purpose of this letter is to request two (2) waivers that relate to requirements for recreational space and contributions to recreational needs:

1. A waiver from the guidelines of Section 11.3.4 which requires that the multi-family developments provide four hundred (400) square feet of recreational space per dwelling unit; and
2. A waiver of the impact fees assessed under Article 11 of the Exeter Zoning Ordinance as they relate to recreational facilities. The waiver is requested in accordance with Article 11.7.

NARRATIVE

The Applicant applied for a "variance to permit a multifamily residential development C-3 District; and to permit density as proposed". Following a hearing on May 21, 2019, the Zoning Board of Adjustment issued a Decision Letter dated May 22, 2019 approving the variance and imposing certain conditions (a copy of which is attached for your information).

At the hearing, the Applicant proposed the multifamily project and the commercial building for development in the front portion of the Lot; and, as part of the development proposal, the applicant proposed to donate the back portion of the Lot to the Town for public use and benefit. In the request, the Applicant proposed the rear portion of the Lot would be dedicated or donated to the Town of Exeter "open to the public as protected open space". At the hearing, the benefits discussed included protection of wetland, consolidation of public open space, and expansion of public recreation areas. To the rear (west) of the Lot, the Town of Exeter and the State of New Hampshire have substantial holdings of public land open for hiking (trails) and other public recreational purposes. Generally, the Applicant proposed and the ZBA accepted, that there was public benefit in concentrating development on the front (east) portion of the Lot in order to preserve and protect the rear (west) portion of the Lot for public purposes and public benefit.

As this Project has moved through the review and permitting process, representatives from the Town have weighed in on the benefits and use of receiving the rear portion of the Lot. Specifically, the Conservation Commission has considered the proposed donation and has made certain recommendations which are included in the Memorandum dated November 19, 2019 which is attached for your reference.

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WAIVER SECTION 11.3.4 SITE AND SUBDIVISION REGULATIONS

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"...the Planning Board and the Board of Adjustment will be guided by Article 7 OPEN SPACE DEVELOPMENT of the Zoning Ordinance, these regulations, and the following additional requirements: ...

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The granting of the waiver will not be detrimental to the public safety, health and welfare or injurious to other property.

The Applicant owns approximately sixty-three (63) acres of land on Epping Road in Exeter. Of that acreage, the Applicant will donate approximately 43 acres to the Town of Exeter. The donation accomplishes important protection of wetland areas, but it also accomplishes the consolidation of open space. This Property is immediately adjacent other publicly owned property. The publicly owned property includes land which is presently part of the Exeter Trail System and specifically it is adjacent to the Little River Trail System properties.

While the Town may have restrictions on use of the donated land, the occupants of the residential community will have ample recreational space immediately available on site and next door at the open land. (This is true whether access is through the donated parcel or whether access is through a planned access off Continental Drive.)

Granting the waiver will not be detrimental in any fashion. Rather, it will significantly advance the stated goals and purposes of the Town as stated in the Zoning Ordinance, Planning Regulations, and the Master Plan.

The conditions upon which the request for a waiver is based are unique to the Property for which the Property is sought and are not applicable generally to other property.

This is a situation unlike any other situation in the Town of Exeter. It is a property on Epping Road which is a gateway to the Town. The Town has invested in the infrastructure along Epping Road in hopes of encouraging reasonable development. This Lot is a relatively large undeveloped property with excellent access to the infrastructure, but also immediately adjacent to important public lands. While the Lot is zoned for commercial uses, the Zoning Board of Adjustment has determined, in its variance, that the residential use is a reasonable use under the special circumstances of the Lot. Those same special circumstances regarding this Lot make it unique. It is a unique opportunity to gain important development at the gateway of Town, but significantly accomplish public goals and purposes through donated land. The reasons for the waiver in this case would not be generally applicable to any other property.

Because the particular physical surroundings, shape or topographic conditions of this specific Property involved, a particular hardship would result, as distinguished from a mere inconvenience, if the strict letter of these regulations are carried out.

As discussed above, the Lot has particular physical conditions and characteristics which make it important to the Town's public interests. Strict application of the guideline will present a true hardship to the Project with no benefit to the Town.

In this particular case, the whole purpose of the variance was to concentrate development on the front (east) portion of the Lot to enable donation of the rear (west) portion of the Lot. If this requirement is applied to this Project, the Applicant will need to use more of the Lot and therefore donate less of the Lot. Under Section 11.3.1 (4) of the guidelines, four hundred (400) square feet per unit would amount to approximately two (2) acres of land which must be set aside for recreational purposes for the residents of the community. The Applicant could set that two (2) acres aside but it would be counter-productive to the several purposes that are accomplished by donating the full forty-three (43) acres. In view of the circumstances, the occupants of the multifamily units will have ample recreational space immediately available. Strict application of these regulations will not afford the residents any benefit.

The granting of the waiver will not be contrary to the spirit and intent of the regulations.

The Applicant has capacity to separate 2 +/- acres from the forty-three (43) acres proposed as public land. However, if the Applicant is required to keep the land within the Project, the Town of Exeter will lose some control of the land. By incorporating all of the land into one large public donation, many public purposes are accomplished, consistent with the spirit and intent of the Zoning and Planning regulations.

The waiver will not, in any manner, vary the provisions of the zoning ordinance or the master plan.

The Applicant's proposal to donate the entire forty-three (43) acres as public land is clearly consistent with the master plan goals of accomplishing contiguous open protected spaces. It is also consistent with and accomplishes the purposes of amassing sufficient open passive recreational spaces. The waiver requested affords the Town an opportunity to take important steps to accomplish the goals of zoning (workforce rental housing, protect wetlands, amass public open recreation areas etc.) within the spirit of the site plan regulations, and to advance the master plan goals. To require the Applicant to separate out areas for recreation for this particular Project alone, would be counterproductive.

REQUEST WAIVER FOR IMPACT FEES – ARTICLE 11.7

Under Article 11.7, the Planning Board may grant a full or partial waiver of impact fees based upon several specific criteria. The Applicant is requesting a partial waiver of impact fees – the impact fees assessed for recreational facilities only.

The property which the Applicant proposes to donate is immediately adjacent to the property that is being developed and it is also immediately adjacent to public property presently held for passive recreation and other open space purposes. At the Zoning Board hearing, the Applicant specifically stated that the Property would be donated and "open to the public as protected open space". The donation was proposed to accomplish the many goals of open space

including recreation. While the Town of Exeter may impose restrictions on the use of the donated property, those restrictions are at the discretion of the Town. From the standpoint the Applicant, the Applicant will donate open space beyond the requirements of any regulation and also beyond the value of any impact fee. The donation is a contribution of real property with substantial value - One Million Eight Hundred Fifty-Five Thousand (\$1,855,000) Dollars. [While the Applicant acknowledges that a portion of \$1,855,000. in value is used as wetland mitigation, approximately \$1,255,000. in value is being donated above and beyond wetland mitigation or any other requirement.] Under Section 11.7.2 the Planning Board has authority to acknowledge contributions of real property and to acknowledge the value of those contributions as a credit against impact fees. The circumstances at hand justify a credit. The open space is being donated above and beyond other impact fees and other exactions. It is not lieu of off-site improvements. Rather, it is a true donation of open space to the Town for purposes as the Town sees fit. The donation supports many goals including recreation. The Applicant is asking that the Planning Board accept, in lieu of a cash payment, the contribution of the real property as satisfaction of the Applicant's obligation to pay the impact fees assessed against the property for purposes of recreation.

While the request is reasonable and supported by the Projects unique and specific circumstances, the request is also supported because this is a workforce housing rental project.

SUMMARY

This Project is a workforce housing rental project. As a workforce housing rental project, the collective impact of ordinances and regulations have significant expense and present significant impediment to affordability. In this instance, the strict application of the recreation regulations and fees is not necessary or reasonable. A waiver is uniquely appropriate.

While workforce housing occupants need recreational space just as any other tenant, to require the Applicant to set aside additional recreational space and to pay additional recreational impact fees is unreasonable and unnecessary under the circumstances. The Applicant is donating land worth One Million Eight Hundred Fifty-Five Thousand Dollars (\$1,855,000). While Six Hundred Thousand Dollars (\$600,000) may be allocated for wetland mitigation, the residual value of One Million Two Hundred Fifty-Five Thousand Dollars (\$1,255,000) fully offsets any cost or expense that the Town of Exeter may incur and also meets the demands of the occupants of the new community. Under the circumstances of workforce housing, it is reasonable to grant the waiver and maintain affordability.

We thank you for your consideration.

Sincerely,



Thomas J. Leonard

TOWN OF EXETER
CONSERVATION COMMISSION MEMORANDUM

Date: November 19, 2019
To: Planning Board
From: Kristen Murphy for the Conservation Commission
Subject: Gateway at Exeter LLC, Epping Road Wetland Waiver

Project Info:

Project Location: Epping Road, Exeter, NH
Map/Lot: Map 47, Lots 6 & 7
NHDES File No: Unknown
CC Review Date: Site Walk 10/30/19, Meeting 11/12/19
PB CASE: 19-16

Wetland Waiver

The Exeter Conservation Commission reviewed the proposed project and associated application materials at a site walk and their monthly meeting as noted above. During the November 12th meeting, the commission voted unanimously that they have reviewed the application and have **no objection to the issuance of the wetland waiver as proposed**. They did identify several items they request the Planning Board consider:

Given their review was prior to TRC review of the application, **should designs change such that it causes an increase to wetland buffer impacts, they request the applicant return** so the Commission has an opportunity to review the increased impacts. They were **supportive of excluding the trail parking area if removal would allow a reduction in impacts** to either the wetland or wetland buffer.

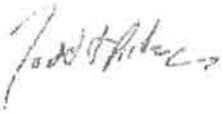
They were **supportive in concept of the Town holding conservation interest in the proposed mitigation land with details and deed terms to be developed prior to the Commission officially recommending acceptance**. They further request the following items be completed prior to acceptance: Phase 1 environmental assessment, receipt of a surveyed plan of the conservation land and boundary markers, completion of a baseline documentation report, on-site confirmation that any boundary markers indicated were in place, and payment of a stewardship fee of an amount to be determined in later discussions. They were unsure whether providing public access via trail parking at this location would increase impacts to the sensitive area proposed for conservation **and reserve a decision on trails/access to be addressed when deed terms were decided with the applicant at a later date**.

Their willingness to hold land interest the rear portion includes consideration of the role this land would provide in providing the long term protection of an important wildlife corridor, protection of the Little River watershed as well as the mapped vernal pools located within this area. They do note that the use of the underpasses beneath Route 27 and Route 101, is fencing currently limited due to existing fencing blocking access for many larger species. The Commission had inquired with the state previously about the ability to modify the fencing to facilitate access through the underpasses but no change has been implemented. Their memo to NHDES highlighted this concern and requested the State's support should they have any ability to provide assistance with

this regard as a slight modification to fencing would further increase the role this property would serve for wildlife corridor preservation.

The Commission noted the wetland application was missing a response from NH Fish and Game and NH Heritage on the state sensitive species highlighted in the Heritage report. **They request the applicant furnish NH Fish and Game and NH Heritage Bureau's recommendation, and the agency's recommendations be incorporated into project design to reduce or eliminate potential impacts.**

The commission also requested to minimize lighting overspill into the conservation area, encouraged landscaping to incorporate native, non-invasive species where possible, and requested the applicant explore pervious pavement where possible to minimize the impact of the large impervious areas proposed.



Todd Piskovitz
Chair, Exeter Conservation Commission

cc: Jim Petropulos, HSI
Brendan Quigley, GES Inc.



TOWN OF EXETER, NEW HAMPSHIRE
10 FRONT STREET • EXETER, NH • 03833-3792 • (603) 778-0591 • FAX
772-4709
www.exeternh.gov

May 22, 2019

Thomas J. Leonard, Esquire
Welts, White & Fontaine, P.C.
29 Factory Street
POB 507
Nashua, New Hampshire 03061

Re: Zoning Board of Adjustment Case #19-07
Variance Request – Gateway at Exeter, LLC
Epping Road, Exeter, N.H. (former Kevin King Irrevocable Trust property)
Tax Map Parcel #47-6 and #47-7

Dear Attorney Leonard:

This letter will serve as official confirmation that the Zoning Board of Adjustment, at its May 21st, 2019 meeting, voted to grant the above-captioned application for a variance from Article 4, Section 4.2 Schedule I: Permitted Uses and Section 4.3 Schedule II: Density and Dimensional Regulations (Residential) to permit a multi-family residential complex as part of a mixed use development plan within the area shown as the site on the display plan submitted with the application, and as presented.

The variance approval was granted subject to the following conditions:

- the remaining approximately 45± acres to the rear of the site remaining undeveloped;
- that 25% of the residential rental units qualify as workforce housing rental units as defined under the NH State workforce housing statute;
- that the restriction for workforce housing rental shall be for not less than 30 years;
- that the residential portion shall remain as rental units for not less than 30 years; and
- the multi-family portion of the complex shall include not more than 224 residential rental units.

Please contact the Planning and Building Department for the appropriate paperwork to move forward with your project. If you should have any questions, please do not hesitate to contact their office.

Sincerely,

Laura J. Davies
Chairwoman
Exeter Zoning Board of Adjustment

cc: Thomas Monahan, Gateway at Exeter, LLC, property owner
Dave Sharples, Town Planner
Douglas Eastman, Building Inspector/Code Enforcement Officer
Janet Whitten, Deputy Assessor

LJD:bsm

Return to:
Box 627
Thomas J. Leonard
Welts, White & Fontaine, P.C.

RECEIVED

MAY 13 2020

EXETER PLANNING OFFICE

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS FOR GATEWAY AT EXETER

Gateway at Exeter, LLC is a New Hampshire limited liability company with a mailing address of 20 Trafalgar Square, Suite 610, Nashua, New Hampshire 03064 (“Declarant”).

RECITALS:

A. Gateway at Exeter, LLC owns two contiguous tracts of land located on Epping Road, Exeter, County of Rockingham, State of New Hampshire, known as Lot 47-6 and 47-7 all as shown on a subdivision plan entitled “Lot Line Adjustment/Subdivision Plan (Map 47, Lots 6 & 7) 170 Epping Road NH Route 27 Exeter, New Hampshire” prepared for/record owner: Gateway at Exeter, LLC dated 6 November 2019 and revised through _____ which Plan is recorded at the Rockingham County Registry of Deeds as Plan No. _____.” Lot 47-6 and Lot 47-7 are collectively referred to as the “Property”.

B. Gateway at Exeter, LLC will be developing Lot 47-6 and Lot 47-7 of the Property. Lot 47-7 will be developed in accordance with the Final site plan entitled “Map 47 Lots 6 & 7 Site Plan Gateway at Exeter 170 Epping Road NH Route 27 Exeter, New Hampshire” prepared for/record owner Gateway at Exeter, LLC 6 November 2019 and amended through _____ (the “Site Plan”). Final site plan approval was issued by the Town Exeter on ___ day of _____, 2020. Sheet ___ of ___ is the “Easement Plan” defined in Section 1.3 below. The Subdivision Plan and the Easement Plan are collectively referred to as the “Plans”.

C. The purpose of this Declaration is to protect the value and desirability of the Property and to enable the organized development of Lot 47-6 and Lot 47-7 of the Property. The Declarant wishes to impose upon the Property covenants, conditions and restrictions under a general plan of improvement of the Property; and wishes to grant to the owners of Lot 47-6 and Lot 47-7

reciprocal easements beneficial and burdensome to the Lot 47-6 and Lot 47-7 and the Property generally.

NOW THEREFORE, the Declarant hereby declares that all of the Property shall be held, sold, used and conveyed subject to the easements, restrictions, and covenants contained in this Declaration. This Declaration shall be binding upon and shall inure to the benefit of all parties having any right, title or interest in Lot 47-6 and Lot 47-7 or any part thereof, their heirs, successors, successors in title, or assigns; and the easements, restrictions and covenants shall be appurtenant and shall run with the land.

SECTION 1 – DEFINITIONS

For purposes of this Declaration, the definitions of terms used in this Declaration shall be:

1.1 "Access Easement" means the easement over, under and upon the Access Easement Area, as herein declared and established pursuant to Section 3.1.

1.2 "Access Easement Area" means the area of all roadways, driveways, entrance ways, exterior walkways, exterior aisles and sidewalks which are a part of the Project and which are shown on the Site Plan from time to time.

1.3 "Access Facilities" means the pavement and other Improvements which are shown on the Site Plan from time to time and are constructed and installed in the Access Easement Area.

1.4 "Declarant" means Gateway at Exeter, LLC, a New Hampshire limited liability company with a mailing address of 20 Trafalgar Square, Suite 610, Nashua, New Hampshire 03064.

1.5 "Drainage Easement" means the easement in and to the Drainage Easement Area declared and established pursuant to Section 3.3.

1.6 "Drainage Easement Area" means all any areas of the Project on which Drainage Facilities may be installed and maintained for the benefit of more than one Lot.

1.7 "Drainage Facilities" means all privately owned pipes, lines, conduits, culverts, drop inlets, catch basins, junction boxes, headwalls, weirs, surface drainage ditches, gullies, detention ponds, cisterns and similar aboveground and underground facilities and improvements for providing drainage or detention of storm and surface waters flowing from the Project which are shown on the Site Plan from time to time.

1.8 "Easement Plan" means sheet ____ of the final site plan entitled "Map 47 Lots 6 & 7 Site Plan Gateway at Exeter 170 Epping Road NH Route 27 Exeter, New Hampshire" prepared for/record owner Gateway at Exeter, LLC 6 November 2019 and amended through _____ (the "Site Plan"). Final site plan approval was issued by the Town

Exeter on ____ day of _____, 2020. Sheet ____ of ____ is the "Easement Plan" and is recorded at the Rockingham County Registry of Deeds as Plan # _____.

1.9 "Lot" shall mean Lot 47-6 and Lot 47-7.

1.10 "Owner(s)" means the owner(s) of a fee simple interest in a Lot (Lot 47-6 and Lot 47-7) as shown from time to time in the records of the Rockingham County Registry of Deeds; provided, however, that: (a) the term Owner(s) shall not include a person holding an interest in any portion of a Lot merely as security for the repayment of a debt or satisfaction of any other obligation; and (b) if a person leases or subleases a Lot or portion thereof to another person, the lessor shall be the "Owner" of such Lot unless the lease or sublease designates the lessee or sublessee as the Owner and the designation is recorded at the Rockingham County Registry of Deeds.

1.11 "Occupant" means, as the context requires, an Owner, a tenant, or any other lawful user or occupier of any portion of the Project or any Improvements, including, without limitation, agents, employees, customers, contractors, subcontractors, invitees, licensees and visitors.

1.12 "Property" means the land shown on the Subdivision Plan including Lot 47-6 and Lot 47-7.

1.13 "Site Plan" means the final site plan entitled "Map 47 Lots 6 & 7 Site Plan Gateway at Exeter 170 Epping Road NH Route 27 Exeter, New Hampshire" prepared for/record owner Gateway at Exeter, LLC 6 November 2019 and amended through _____ (the "Site Plan"). Final site plan approval was issued by the Town Exeter on ____ day of _____, 2020.

1.14 "Subdivision Plan" means the subdivision plan entitled plan entitled "Lot Line Adjustment/Subdivision Plan (Map 47, Lots 6 & 7) 170 Epping Road NH Route 27 Exeter, New Hampshire" prepared for/record owner: Gateway at Exeter, LLC dated 6 November 2019 and revised through _____ which Plan is recorded at the Rockingham County Registry of Deeds as Plan No. _____."

1.15 "Utility Easement" means the easement for the installation, use, maintenance, repair, replacement and removal of certain utility lines as declared and established pursuant to Section 3.2.

1.16 "Utility Easement Area," means any areas of the Project, exclusive of any portion of a Lot, designated for the installation of Improvements on which Utility Facilities may be installed and maintained for the benefit of another Lot or Lots.

1.17 "Utility Facilities" means all privately owned lines, facilities, equipment and systems for providing water, sanitary sewer, gas, communications, or electrical service to any portion of the Project which are shown on the Site Plan from time to time.

SECTION 2 - DEVELOPMENT

The purpose of these easements, covenants and restrictions (collectively referred to as these "Covenants") is to establish a general plan for the improvement and development of the Property in accordance with the approved Site Plan, as it may be further amended and approved (the "Project"). Lot 47-6 and Lot 47-7 may be developed separately, but only consistent with and subject to these Covenants. The development is designed as a dynamic mixed-use development under the ordinances of the Town of Exeter, New Hampshire. The Site Plan is an approved site plan for two hundred twenty-four (224) residential dwelling units on Lot 47-7 and a ____ square foot commercial building on Lot 47-6.

SECTION 3 – RECIPROCAL EASEMENTS

The ownership interests in the Property shall be held subject to and with the benefit of all easements as shown on the Easement Plan. Each of the easements shall be deemed to be established upon recording of the said Easement Plan and shall thence forth be deemed to be appurtenant to and running with the land for the use and benefit of the Owners and their Lots. Without limiting the aforesaid, the Declarant does hereby grant, declare and establish the following:

3.1 Access Easement. Declarant hereby declares, establishes, creates and grants for the benefit of, and as a burden upon, each Lot, a reciprocal, non-exclusive, permanent, perpetual easement, right and privilege, for vehicular and pedestrian access, ingress and egress over the Access Easement Area, for the purpose of providing pedestrian and vehicular access, passage, ingress and egress (a) between the Lots and (i) the public rights of way located adjacent to the Project, including without limitation the public rights of way known as Epping Road (ii) any future private or public right of way along any boundary of the Project, each right of way being located adjacent to the Project, and (iii) any private roadway, driveway, entrance way or walkway which the occupants of the Project have an easement or right to use, and (b) between the Lots within the Project.

Any Owner shall have the right to change the traffic flow pattern on its Lot, provided that any such change does not materially adversely impact access (a) between any Lot and any public rights of way located adjacent to the Project. The easement granted and created in this Section 3.1 shall be for the benefit of, but not restricted solely to, the Owners, and each Owner may grant the benefit of such easement to the Occupant(s) of its Lot for the duration of such occupancy, and to their respective successors, assigns, tenants, customers, employees, agents and business invitees. The easement granted and created in this Section 3.1 is not intended to, and does not,

create for the benefit of any Lot, any right, license, or easement for parking purposes upon another Lot.

3.2 Utility Easement. Declarant hereby declares, establishes, creates and grants for the benefit of, and as a burden upon, each Lot, a reciprocal, non-exclusive, permanent, perpetual easement, right and privilege, encumbering the Utility Easement Area, to construct, install, operate, maintain, repair, remove, relocate and replace Utility Facilities within the Utility Easement Area, which Utility Facilities shall serve the Lots and the Improvements located thereon. If Utility Facilities are proposed for installation over or across a Lot, the installation of any Utility Facilities shall be subject, as to location, to the approval of the Owner over whose Lot the same cross, which approval shall not be unreasonably withheld, conditioned or delayed. In no event should installation of Utility Facilities encroach upon the footprint of a planned building for a particular Lot. Any Utility Facilities installed within the Utility Easement Areas shall be no larger than (a) whatever is necessary to reasonably satisfy the requirements of the provider of such service if the applicable Utility Facilities are to be owned by a public utility. The Owner of any Lot burdened by such easement shall have the right to require, at the expense of the Owner of the Lot(s) benefited by such easement, that a copy of an as-built survey of such Utility Facilities be delivered to the Owner of such burdened Lot after installation of the Utility Facilities. All Utility Facilities shall be underground except: (a) that pad mounted electrical transformers, if any, shall be located at the rear of a building; (b) as may be necessary during periods of construction, reconstruction, repair, or temporary service; (c) as may be required by governmental agencies having jurisdiction over the Lot(s); or (d) as may be required by the provider of such service. Any Owner shall have the right at any time to relocate Utility Facilities located upon its Lot at such Owner's expense upon fifteen (15) days' prior written notice to the other Owners whose Lots are served by such Utility Facilities; provided, however, that such relocation: (a) shall not diminish or unreasonably interfere with the utility service to the other Lots; (b) shall not reduce or unreasonably impair the usefulness or function of such Utility Facilities; (c) shall be performed without cost or expense to the other Owners; (d) shall be completed using materials and design standards which equal or exceed those originally used; and (e) shall have been approved by the provider of such service and the Governmental Authorities having jurisdiction thereover, if applicable. The Owner relocating the Utility Facilities shall repair and restore, at its sole cost and expense, any damage to any Improvements caused by such relocation, and shall indemnify and hold harmless the other Owners from any and all claims, damages or losses which may result from the relocation of such Utility Facilities. The easement granted and created in this Section 3.3 shall be for the benefit of, but not restricted solely to, the Owners, and each Owner may grant the benefit of such easement to Occupants of its Lot for the duration of such occupancy, and to their respective successors, assigns, tenants, customers, employees, agents and business invitees.

3.3 Drainage Easement. Declarant hereby declares, establishes, creates and grants for the benefit of, and as a burden upon, each Lot, a reciprocal, non-exclusive, permanent, perpetual

easement, right and privilege, encumbering the Drainage Easement Area, to construct, install, operate, maintain, repair, remove, relocate and replace Drainage Facilities within the Drainage Easement Area, which Drainage Facilities shall serve the Lots and the Improvements located thereon. If the Drainage Facilities are proposed for installation over or across a Lot, the installation of any Drainage Facilities shall be subject, as to location, to the approval of the Owner over whose Lot the same cross, which approval shall not be unreasonably withheld, conditioned or delayed. In no event should installation of Drainage Facilities encroach upon the footprint of a planned building for a particular Lot. The Owner of any Lot burdened by such easement shall have the right to require, at the expense of the Owner of the Lot(s) benefited by such easement, that a copy of an as-built survey of such Drainage Facilities be delivered to the Owner of such burdened Lot after installation of the Drainage Facilities. Any Owner shall have the right at any time to relocate Drainage Facilities located upon its Lot at such Owner's expense upon fifteen (15) days' prior written notice to the other Owners whose Lots are served by such Drainage Facilities; provided, however, that such relocation: (a) shall not diminish or unreasonably interfere with the drainage of the Lots sewed by such Drainage Facilities; (b) shall not reduce or unreasonably impair the usefulness or function of such Drainage Facilities; (c) shall be performed without cost or expense to the other Owners; (d) shall be completed using materials and design standards which equal or exceed those originally used; and (e) shall have been approved by the Governmental Authorities having jurisdiction thereover, if applicable. The Owner relocating the Drainage Facilities shall repair and restore, at its sole cost and expense, any damage to any Improvements caused by such relocation, and shall indemnify and hold harmless the other Owners from any and all claims, damages or losses which may result from the relocation of such Drainage Facilities. The easement granted and created in this Section 3.3 shall be for the benefit of, but not restricted solely to, the Owners, and each Owner may grant the benefit of such easement to Occupants of its Lot for the duration of such occupancy.

3.4 Encroachment Easement. Declarant hereby declares, establishes, creates and grants for the benefit of, and as a burden upon, each Lot, a non-exclusive, permanent, perpetual easement, right and privilege of minor encroachment and for maintenance and use of any permitted encroachment, between adjacent Lots due to the unintentional placement or settling or shifting of building foundation footings, overhangs, support columns, canopies, pilasters, eaves, signs and related incidental improvements constructed, reconstructed or altered thereon, to a distance of not more than five (5) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. Notwithstanding the foregoing, in no event shall an easement for encroachment exist if such encroachment occurred due to the willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

3.5 Easement in Favor of Declarant. There is hereby reserved, declared, established, created and granted for the benefit of Declarant a perpetual limited easement, upon reasonable notice, except in emergency situations, for access, ingress and egress in, on, over, under, through

and across the Project in order to permit the exercise of the Declarant Powers and the performance of the Declaration Obligations, including without limitation the performance of the Shared Maintenance Work. Entry under this Section shall not constitute a trespass.

3.6 General Provisions Regarding Easements.

(a) Declarant Powers as to Easement Areas. Declarant Powers shall include the right, power and authority, always, to do the following, at any time and from time to time, in Declarant's sole judgment and discretion, or as Declarant shall deem necessary, desirable or proper:

(i) to excavate, construct, erect, operate, repair, maintain, replace, modify, alter or relocate Easement Facilities on, in, and under any Easement Area, provided that Declarant shall not exercise such right, power and authority in any manner that would (A) materially and adversely affect (1) access to and from any Lot between any public streets adjacent to the Project, or (2) utility availability to any Lot, or (3) the Drainage Facilities available to any Lot, without the prior written consent of the Owner of such affected Lot, except to the extent that the same is necessary to comply with any Governmental Requirement applicable to the Project, or (B) reduce the number of parking spaces at the Project below the number required by any applicable Governmental Requirement;

(ii) without being liable to any Owner, to enter upon any portion of any Easement Area to enforce the provisions of this Declaration or to maintain, repair or replace any Easement Facilities therein;

(iii) to grant and convey easements and rights-of-way encumbering the Easement Areas, and to cause any portion of the Access Easement Area, Utility Easement Area, and Drainage Easement Area and any Easement Facilities therein, thereon or thereto to be dedicated and conveyed to any governmental authority or quasi-governmental authority, or to any public or private utility provider;

(iv) to make, establish and amend rules and regulations, not in conflict with this Declaration, governing the use of the Easement Areas, so long as such rules and regulations are commercially reasonable;

(v) to convey fee simple title to any Easement Areas and Easement Facilities to the Association; and

(vii) to take such other actions as are in keeping with the purpose and intent of this Declaration.

Notwithstanding anything else herein contained, and without limiting the generality of the foregoing provisions of this Section 3.7(a) the Declarant shall not exercise such right, powers, or authorities in a manner that will interfere with the construction of Improvements on a

Lot pursuant to the Site Plan, or another site plan approved by the appropriate Governmental Authorities. This provision shall not be construed to limit Declarant's remedies pursuant to Article 13 below.

(b) No Assignment of Declarant's Rights. The granting or conveyance of title to, or a leasehold estate in or to, any portion of the Easement Areas by Declarant to any Owner shall not be deemed or construed to grant or assign to such Owner any of the Declarant Powers with respect thereto as set forth in this Article or elsewhere in this Declaration, such Declarant Powers being hereby expressly retained by Declarant. Each Owner of any portion of the Project within the Easement Areas, by acceptance of a deed, lease, sublease, or other instrument granting or conveying title to, or a leasehold estate in or to, portion of the Project that is within the Easement Areas, whether or not it shall be so expressed in any such deed, lease, sublease, or other instrument, shall take such title or estate subject to the Declarant Powers with respect thereto, and the portion of the Project that is within an Easement Area shall remain an Easement Area during the term of this Declaration.

(c) Designation by Declarant of Easement Areas. Declarant shall have the right, at any time and from time to time, in its sole discretion, to designate as Easement Areas any part of the Project with respect to which Declarant is the Owner, or modify the configuration of, or relocate, or reduce the area contained within, that part of any Easement Area located on any part of the Project with respect to which Declarant is the Owner, without the joinder or consent of any other Owner being required and without compensation to any other Owner, in which case Declarant shall execute and record an instrument amending this Declaration that sets out Easement Areas so designated, modified or revised. Notwithstanding the foregoing, following the initial construction of the Project Declarant shall not modify or re-configure any Easement Area in any manner that would (i) materially and adversely affect (A) access to and from any Lot between the Common Parking Facilities or any public streets adjacent to the Project, or (B) utility availability to any Lot, or (C) the Drainage Facilities available to any Lot, without the prior written consent of the Owner of such affected Lot, except to the extent that the same is necessary to comply with any Governmental Requirement applicable to the Project, or (ii) reduce the number of parking spaces at the Project below the number required by any applicable Governmental Requirement.

(d) No Easements in Public. This Declaration is not intended to, nor shall it be construed as, creating any easements or rights in or for the benefit of the general public, nor shall it affect any property outside the Project.

SECTION 4 – ACCESS FACILITIES, ETC.

By this Declaration, the Declarant, for himself his successors and assigns, establishes and reserves the right to construct and reconstruct the Access Facilities, Utility Facilities, and

Drainage Facilities in the designated Easement Area; and, the Declarant establishes and grants mutual rights and obligations appurtenant to Lot 47-6 and Lot 47-7 to maintain and repair the common Access Facilities, common Utility Facilities, and common Drainage Facilities in the designated Easement Area.

The Owners of Lot 47-6 and Lot 47-7 shall construct the Access Facilities and other improvements within the designated Easement Area as the primary access to each Lot.

4.1 Maintenance. The Owners of Lot 47-6 and Lot 47-7, individually and together, shall maintain and keep the common Access Facilities in good repair and working order. For purposes of this Agreement, the Owners of the two Lots shall maintain the including but not limited to (a) any and all paved areas, walkways, roadways, landscaped areas, drainage and other improvements which are a part of the Access Facilities, and (b) any common Utility Facilities, and common Drainage Facilities which serve both Lots exclusively together with the right to excavate and refill ditches and/or trenches for the location of said pipes or conduits. As a part of their maintenance obligations, the Owners of the Lots shall keep the Access Facilities in good condition and repair, safe for use and travel, free of snow and ice and other debris that may interfere with the right to pass and repass safely. The commercially reasonable, actual, out-of-pocket expenses for reconstruction, repair, replacement and maintenance of the Access Facilities, common Utility Facilities, and common Drainage Facilities are collectively referred to as the "Common Facilities Expenses". The Common Facilities Expenses will be shared fairly among all Lots; the Owners of each Lot will pay a fair share of the commercially reasonable, actual, out-of-pocket Common Facilities Expenses.

Any taxes assessed based upon the Access Facilities (or the improvements thereon) shall be assessed fairly to the account of each Lot.

4.2 Assessments. The Owners of the Lots may establish a mutually agreeable process or procedure to collect and pay for the Common Facilities Expenses.

In the event that the Owners collectively fail to promptly perform maintenance obligations hereunder, then each Owner shall have the right (but not the obligation) to perform such maintenance obligations on behalf of the group, and each non-performing Owner shall promptly reimburse the performing Owner for non-performing Owners fair share of the Common Facilities Expenses, after demand therefor.

Each and all Lot Owners shall have the right to enforce and collect the Common Facilities Expenses together with interest, costs and reasonable attorney's fees through a suit-at-law or through any means or process available at law or in Equity. There is and shall be a present lien for due but unpaid Common Facilities Expenses. Upon recording a Notice of Lien at the Rockingham County Registry of Deeds, there shall exist a perfected lien for unpaid Common Facilities Expenses which shall be prior to and superior to all other liens, except (i) real estate taxes, bonds, assessments and other levies which by law would be superior thereto, and (ii) the lien or charge of any prior recorded mortgage. The lien shall be for the full assessment, together with interest at the statutory rate under New Hampshire law, plus costs and reasonable attorney's fees. The sale or transfer of any Lot pursuant to foreclosure of a prior mortgage or a transfer to a prior mortgagee pursuant to a deed in lieu of foreclosure, shall extinguish the lien of such

assessment as to payments which became due prior to the recording of the deed affecting such transfer. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter.

SECTION 5 – AMENDMENTS

This Declaration may be amended from time to time with a written instrument duly executed by all of the then Owners of Lot 47-6 and Lot 47-7.

SECTION 6 – ENFORCEMENT

Failure by the Declarant, its successors and assigns, or any Owner of a lot to enforce any of the provisions of this Declaration or any amendment thereto shall, in no event, be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

SECTION 7 – DURATION/BENEFIT

The rights, easements, covenants, and restrictions stated in this document are part of an overall plan created to and reserved for the mutual benefit of all interests in the Lots which comprise the Property. All rights, easements, covenants, and restrictions shall constitute permanent and perpetual equitable servitudes for the mutual benefit of all property interests in the Property. The rights, easements, covenants, conditions, and restrictions of this Declaration are appurtenant to and shall run with and bind the Property – Lot 47-6 and Lot 47-7; and shall inure to the benefit of and be enforceable, as aforesaid, by the Owners of any Lot, their respective legal representatives, heirs, successor and assigns.

GATEWAY AT EXETER, LLC

Date: _____

By: _____

Name: Thomas F. Monahan

Title: Manager

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

Personally appeared before me on this ____ day of _____, 2014 the above named Thomas F. Monahan, as Manager of Gateway at Exeter, LLC, and acknowledged that he executed the foregoing instrument as his free act and deed for the purposes therein contained on behalf of said Gateway at Exeter, LLC.

Notary Public/Justice of the Peace
Name:
My commission expires: