

Development Agreement

This Agreement is entered into this the 14th day of November, 2023 by and between the City of Newburyport, 60 Pleasant St., Newburyport, MA by and through its Mayor (“City”) and Clipper City Development, LLC, a Massachusetts Limited Liability Company, 435 Main Street, Amesbury, MA 01913 (“Developer”).

WHEREAS, the Developer seeks to develop a certain parcel of property located in the HSR-A Zoning District (“HSR-A”) known as the “Mobile Gas Station” site (*107 State Street and 95 High Street, Assessors Map/Lot 33-43 and 33-42, respectively*) as more fully set forth on the plan attached hereto and which shall be referred to as the “Concept Plan” more specifically set forth on Exhibit A and consisting of 22,623 sq. ft. +/- (the “Premises”).

WHEREAS, the Developer has control of the Premises pursuant to a Purchase and Sale Agreement by and between the Premises Owner, Global Companies, LLC and the Developer which is dated May 18, 2023; and

WHEREAS, the Premises have been vacant for more than two years and is the site of a former gas station which use is no longer appropriate for the site and the existing zoning will not allow for an appropriate economically viable redevelopment of the Premises; and

WHEREAS, Developer and the City desire to facilitate viable adaptive reuse of said Premises for residential purposes, in a manner consistent with the development patterns in the general area and assure the redevelopment is done in a manner consistent with the architectural style and density of the surrounding historic area; and

WHEREAS, the City is desirous of the Developer undertaking the implementation of the Concept Plan and will assist and support the necessary zoning changes which will allow for the Concept Plan to be implemented.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below, the Parties agree as follows:

1. The Developer shall develop the Premises consistent with and in substantial conformance with the Concept Plan. It is fully understood and recognized by the City that the Concept Plan is merely a representation of the development generally and that details and final design have not yet occurred. Therefore, the City accepts and understands that the final design may result in minor changes to the actual exact location of the buildings and the detailed design of the structures. However, generally speaking the layout of the buildings on the lot, the location of units among buildings, the general parking layout, and the approximate height of the proposed buildings will all remain consistent with said Concept Plan. The exterior design of the proposed structures at 95-97 High Street shall be suggestive of the Victorian era architectural style, with cleanly appointed, not overly ornate features, not dissimilar to those found at the abutting property of 93 High Street. The exterior cladding shall be evocative of wood, and might have some masonry features. The window configurations/patterns will be

consistent with what might have been found in the Victorian era. The principal structure (3 units) will be 3 stories with a mansard style roof, with the third floor within the mansard roof. The height shall not exceed the 35 foot median roof height limit as permitted in the R3 zoning district. The secondary structure (1 Unit) may not be more than 2 ½ stories, and may have a roof style different from that of the principal structure. It is the design intention that the secondary structure have the appearance of a renovated carriage house that once belonged to the principal structure. Ground level outdoor recreational spaces for the individual units shall be generally located where shown on the conceptual site plan. The outdoor/recreational space for Unit 2, currently indicated as the middle unit of the principal structure on the conceptual site plan, shall be located at the second floor level opposite the high street side. Internal unit configurations may be further adjusted during final design and permitting, including the location for external points of ingress/egress to the individual units *(not including proposed garage doors which shall be located as shown)*.

2. The City will put forth the proposed zoning amendment attached hereto as Exhibit B without which the Concept Plan cannot be realized. The City will support the plan to facilitate redevelopment of the former gas station site consistent herewith, and as such make an effort to encourage an efficient hearing process between the City Council and Planning Board.
3. Once the City adopts the zoning, if it is adopted, the Developer will commence final design, and thereafter apply for all appropriate permits with the City in order to implement the Concept Plan. The proposed four-unit multifamily residential development will require, upon adoption of the zoning amendment contained in Exhibit B, a Special Permit for use from the Newburyport Zoning Board of Appeals (ZBA). As noted on the Concept Plan in Exhibit A, the proposed development and any plans submitted to the ZBA shall include only one driveway access off of State Street, at the southern end of the site, in order to provide a safe distance from the intersection with High Street. No driveway access or curb cut shall be permitted to the Premises off of the High Street frontage. All parking required for the four (4) dwelling units under Newburyport zoning shall be provided on-site (typical).
4. Any notice hereunder shall be in writing and shall be deemed duly given if mailed by certified or registered mail, postage and registration charges paid, by overnight delivery service with receipt, or by hand delivery to the City of Newburyport and the Developer at the addresses set forth below:

City of Newburyport
60 Pleasant Street
Newburyport, MA 01721
Attention: Mayor
Attention: Director of Planning & Development

With a copy to:

Karis North
Murphy, Hesse, Toomey & Lehane, LLP
50 Braintree Hill Office Park, Suite 410,
Braintree, MA 02184

To Developer
Clipper City Development LLC
435 Main Street
Amesbury, MA 01950
Attn: John Grossi

With a copy to:
Lisa L. Mead
Mead, Talerma & Costa, LLC
30 Green Street
Newburyport MA 01950

5. It is the expressed intention of the Developer that each and every term, condition and provision hereof be fully enforceable and binding on the Premises. Should, however, any one or more of the provisions contained herein for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, but each shall be construed as if such invalid, illegal or unenforceable provision had never been included.
6. This Agreement shall be governed and constructed in accordance with the laws of the Commonwealth of Massachusetts. Nothing in this Agreement shall affect the rights of the City of Newburyport, in the exercise of any of its powers under applicable law with respect to the proposed development of the Property, including, but not limited, to the powers of the Newburyport Planning Board, City Council and/or Zoning Board pursuant to the Zoning amendment process and/or the Special Permit Process. Nothing in this Agreement shall release the Developer from the obligation to satisfy all applicable provisions of law in the proposed development of the Property.
7. If Developer shall default in the performance of any term, covenant or condition of this Development Agreement, which default shall continue for more than thirty (30) days after written notice to Developer (or if such default shall be reasonably expected to take more than thirty (30) days to cure, said longer period of time), Newburyport shall have the right to (i) terminate this Development Agreement; (ii) withhold any Approvals issued by Newburyport; or (iii) exercise any other remedy available at law or in equity, including

commencing an action for specific performance. Developer shall reimburse the City its reasonable legal fees and other expenses in seeking enforcement hereof.

8. In an effort to mitigate the existing and historic conditions of the intersection lighting system and walkways at the adjacent intersection, the Developer will pay to the City \$25,000 upon the issuance of the first certificate of occupancy, to be deposited in an account specifically to improve the intersection lighting and crosswalks at High and State Street. As indicated on the Concept Plan, the Developer shall install new sidewalks along both High and State Street frontages of the property including code complaint access ramps at the intersection. All such work shall be in accordance with relevant City ordinances, regulations and specifications issued by the Department of Public Services.
9. This Development Agreement shall be effective as of the date it shall be executed by both Developer and the City.
10. In the event the zoning is not approved on or before January 31, 2024, this agreement shall be null and void.
11. Prior to the initiation of any court proceeding regarding the terms of this Agreement or performance thereunder, the City and the Developer agree that such disputes shall be first subject to nonbinding mediation, for a period not longer than sixty (60) days.
12. This Development Agreement is the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions.
13. This Agreement may be signed in counterparts and when put together shall be deemed the entire Agreement between the parties.

IN WITNESS WHEREOF, this instrument is sealed and delivered as of the date first above written.

City of Newburyport



Its Mayor

Name (*print legibly*):

Sean R. Reardon

Developer

Clipper City Development LLC

DocuSigned by:

366287004626423

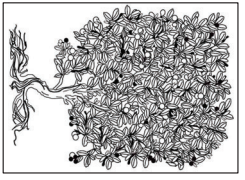
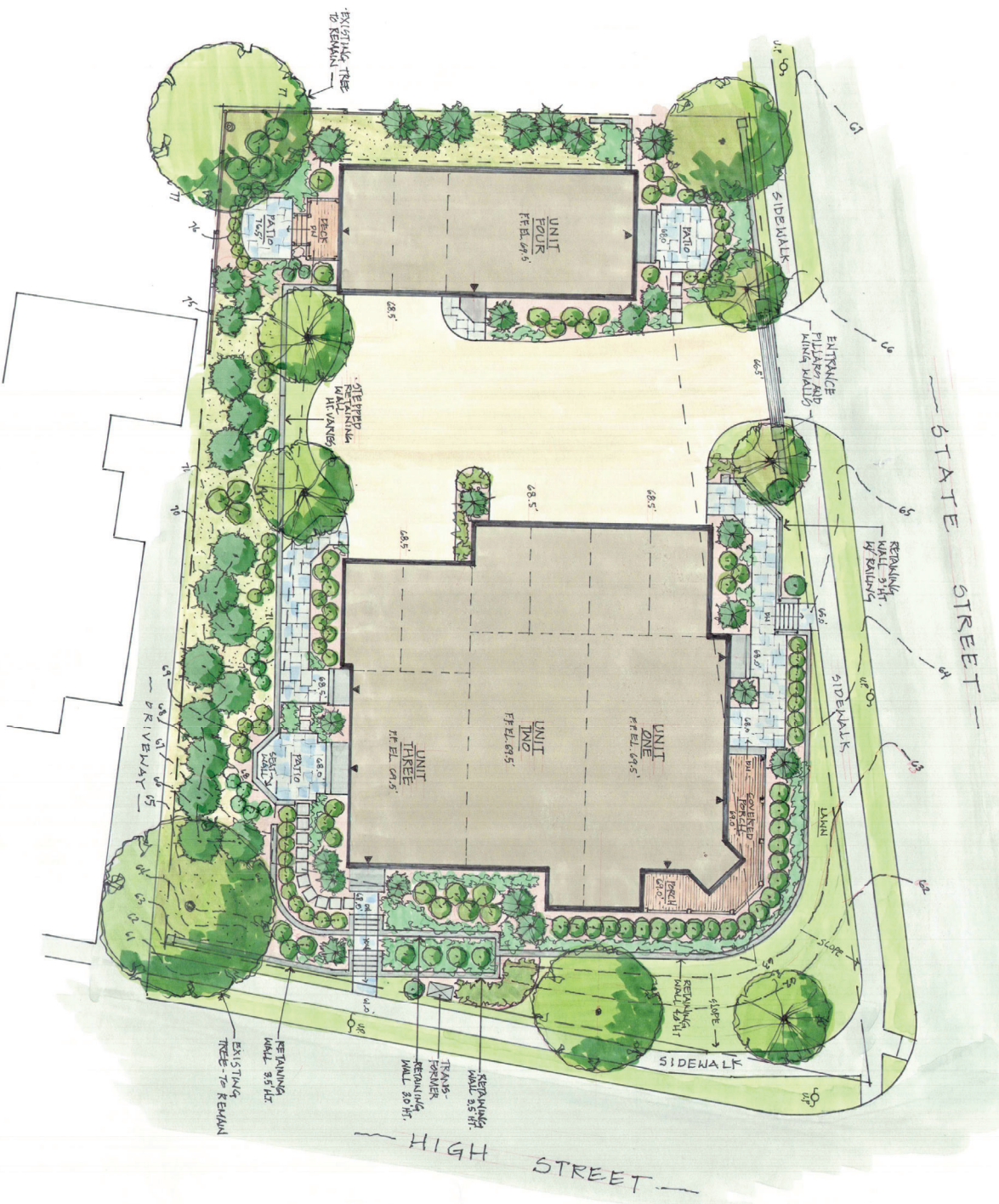
Its Manager

11/14/2023

Name (*print legibly*):

JOHN GROSSI

EXHIBIT A
PREMISES
CONCEPT PLAN



LANDSCAPE ARCHITECTURE PLANNING AND DESIGN, LLC.

Landscape Architecture
Planning and Design
284 AVY ROAD
SOUTH HAVEN, MASS. 01924
PHONE: (978) 468-1942
FAX: (978) 468-1108
http://www.landscape.com
www.landscape.com



CONCEPTUAL SITE PLAN
FOR
PROPOSED RESIDENCES
95-97 HIGH STREET
NEWBURYPORT, MA
01950

Red Scott Brown Architects
Proposed Site Plan
Option #17
Dated October 9, 2023

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Date: 14 OCTOBER, 2023

#	Date	Revision

SHEET **L1**
Scale: 1" = 10'-0"

EXHIBIT B
PROPOSED ZONING AMENDMENT

ODNC164_10_30_2023

CITY OF NEWBURYPORT



IN CITY COUNCIL

October 30, 2023

(To Be Presented "As Amended" at 11/15/2023 Joint Public Hearing)

ORDERED:

A ZONING ORDINANCE AMENDMENT TO REZONE LAND AT THE INTERSECTION OF HIGH STREET AND STATE STREET, AND TO UPDATE THE DEFINITION OF MULTI-FAMILY RESIDENTIAL USE TO PERMIT REDUCED MASSING THROUGH THE USE OF MULTIPLE STRUCTURES

Be it ordained by the City Council of the City of Newburyport as follows:

WHEREAS, the Newburyport City Council has previously initiated proceedings relative to continued "blight" on land which contains an abandoned gas station at the intersection of State Street and High Street; and

WHEREAS, the City wishes to facilitate a viable redevelopment project for this land which is both residential in nature, and more consistent with the surrounding intersection and neighborhood; and

WHEREAS, the definition of Multifamily use within the Newburyport Zoning Ordinance currently, and inadvertently, precludes the use of multiple structures in developments of three or more residential units, for the otherwise beneficial purposes of reducing apparent building volumes,

THEREFORE, LET IT BE ORDAINED THAT the definition for use number 103 within Section V-E of the Newburyport Zoning Ordinance (List of allowable uses) be amended and revised, pursuant to

Section XII-B (Adoption and Amendment) to read as follows, with deletions ~~stricken through and bold~~ and additions double underlined and in bold as follows:

Section V-E – List of allowable uses

USE	NUM	
Multifamily	103	<p><u>One or more</u> A building(s) or structure(s) that <u>together</u> contain(s) three (3) or more dwelling units on the same lot, and <u>where at least one such building or structure contains three (3) or more units.</u></p> <p>w<u>Where there is more than one dwelling unit in a building, the units must be separated by</u> either common floor-ceiling assemblies between the dwelling units, or Common Wall Connectors as defined in section II-B, definitions.</p>

AND FURTHER, THAT the Zoning Map of said Zoning Ordinance entitled “Zoning Map of the City of Newburyport,” referenced in Section III-C (entitled Zoning Map) is hereby amended pursuant to Section III-D “Changes to Zoning Map” by changing the zoning designation of the following parcels of land, in their entirety, from HSR-A (High Street Residential A) to R-3 (Residential Three):

- 107 State Street (Assessors Map/Lot 33-43)
- 95 High Street (Assessors Map/Lot 33-42)

Councillor Jennie L. Donahue

Councillor Edward C. Cameron Jr.

Councillor Heather L. Shand