

# LEWISTON CITY COUNCIL SPECIAL MEETING

## CITY COUNCIL CHAMBERS

**Tuesday, December 29, 2015**

**6:00 p.m. Executive Session** - Executive Session pursuant to MRSA Title 1, section 405(6) ( c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

**7:00 p.m. Special Meeting**

Pledge of Allegiance to the Flag.  
Moment of Silence.

### SPECIAL MEETING

1. Authorizing the City Administrator to execute an Ominbus Exit 80-South Lewiston Tax Increment Financing District Initial TIF Agreement and Program, and a Joint Development Agreement with GRE, LLC, and/or Assigns.
2. Adjourn

# LEWISTON CITY COUNCIL

## MEETING OF DECEMBER 29, 2015

AGENDA INFORMATION SHEET:

AGENDA ITEM NO. ES

### SUBJECT:

Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

### INFORMATION:

The Maine State Statutes, Title 1, section 405, define the permissible grounds and subject matters of executive sessions for public meetings.

### APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:

State statutes define the purposes for entering into an executive session.

*EAR/KMM*

### REQUESTED ACTION:

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To enter into an Executive Session pursuant to MRSA Title 1, section 405 (6) (c) to discuss an Economic Development issue of which the premature disclosure of the information would prejudice the competitive bargaining position of the City.

# LEWISTON CITY COUNCIL

## MEETING OF DECEMBER 29, 2015

**AGENDA INFORMATION SHEET:**

**AGENDA ITEM NO. 1**

**SUBJECT:**

Authorizing the City Administrator to execute an Omnibus Exit 80-South Lewiston Tax Increment Financing District Initial TIF Agreement and Program, and a Joint Development Agreement with GRE, LLC, and/or Assigns.

**INFORMATION:**

City staff has been negotiating with GRE, LLC for some time regarding the potential for retail development at a site in South Lewiston adjacent to Exit 80. Throughout, the Council has been appraised and provided direction to this effort. Conceptual agreement on a Joint Development Agreement and Tax Increment Financing District and Initial TIF agreement and program has been reached and an initial public workshop has been held to review the proposal and agreements.

As proposed, the City would establish an omnibus TIF district in the Exit 80 South Lewiston area encompassing a variety of parcels owned by GRE. Within this larger area, an initial TIF would be established to cover the initial phase of development. Greater detail, including drafts of the agreements, is provided in the attached material. Note that subsequent to the recent workshop, a number of issues were raised by the Council and the public that may require modifications to these agreements. We anticipate these changes, if any, will be available at or before Tuesday's meeting.

Prior to taking action, the City Council must hold a public hearing on the proposed TIF district and program.

**APPROVAL AND/OR COMMENTS OF CITY ADMINISTRATOR:**

The City Administrator recommends approval of the requested action.

*EAB/kmm*

**REQUESTED ACTION:**

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1) To open and hold a Public Hearing on the proposed Omnibus Exit 80 - South Lewiston Tax Increment Financing District Initial TIF Agreement and Program.

2) To approve the Order, Authorizing the City Administrator to execute an Omnibus Exit 80-South Lewiston Tax Increment Financing District Initial TIF Agreement and Program, and a Joint Development Agreement with GRE, LLC, and/or Assigns.

# Economic and Community Development

Lincoln Jeffers  
Director



**To:** Honorable Mayor and Members of the City Council  
**From:** Lincoln Jeffers  
**RE: Exit 80 – South Lewiston Omnibus TIF District and Program**  
**Date:** December 23, 2015

Last night the City Council held a workshop to publicly discuss the creation of the *Exit 80 – South Lewiston TIF District and Development Program*. Attached are drafts of the legal documents that the City Council are scheduled to take action on in a public meeting on December 29<sup>th</sup>. Public notice of the meeting was published in the Sun Journal on December 11<sup>th</sup>, which meets the statutory requirement of at least 10 day public notice.

Based on last night's discussion and the public comments received the enclosed legal documents will change to a limited extent. Final documents will be ready before the December 29<sup>th</sup> council meeting. Among the changes you can expect include amending the documents to more clearly articulate how TIF revenues may be used to further support economic development in the community. They will be structured to allow the City to capture, if it chooses to do so, 100% of the TIF revenues from the district to be used toward eligible projects cost as allowed by Maine statute. These eligible project costs could include using TIF funds to support downtown revitalization efforts, economic development staff salaries, and capitalization of economic development loan, grant or marketing programs. If an Omnibus TIF District is created downtown, TIF revenues from the *Exit 80 – South Lewiston TIF District and Development Program* could be directed to the downtown TIF to help offset impacts that retail development at Exit 80 may have on the downtown. It is important to note that the TIF Program will be structured to allow 100% of the TIF revenues to be captured, but will not require that they be. After covering the city's costs for utilities and offsite improvements, and reimbursement of 40% of the TIF revenues to GRE, it will be the decision of future councils as to how much of the remaining TIF revenues are used each year from this TIF.

Concerns were expressed about the size of the proposed *Exit 80 – South Lewiston TIF District*. Maine has statutory caps that limit any single TIF district to include no more than 2% of the total acreage of a community, and 5% for all TIF districts within the community. At 425.81 acres the proposed district is 1.91% of the total acreage of the Lewiston. Combined with all other Lewiston TIF Districts the total acreage is 3.25% of the total Lewiston acreage. This is less than the 4.01% of total acreage in TIFs if this TIF is approved I reported at the

Council workshop. I discovered a formula mistake in one cell when I was double checking the attached spreadsheet. If this TIF is approved 389.46 acres would remain under the cap for subsequent TIF districts. The attached spreadsheet shows all Lewiston TIFs, their acreage, and when they expire.

There was discussion of creating an Omnibus TIF District downtown. Under state statute, state approved downtown TIF districts are not subject to or included against the state caps.

Also attached, as background, is my December 11, 2015 memo to the council which explains the structure of the *Exit 80 – South Lewiston TIF District and Development Program*.

Ed Barrett's memo addresses the other issues that have been raised during the public review of this proposal.

I look forward to further discussion and City Council action on December 29<sup>th</sup>.



# Economic and Community Development

Lincoln Jeffers

Director

Lewiston



2007



**To:** Honorable Mayor and Members of the City Council  
**From:** Lincoln Jeffers  
**RE: Exit 80-South Lewiston TIF District and Development Program**  
**Date:** December 18, 2015

Dave Gendron (GRE), under various corporate names, is a major land owner in the vicinity of Exit 80 and extending south toward Lisbon. GRE is a long time and active developer in the community with a proven track record of delivering projects on time and budget.

Several months ago GRE approached the city to make us aware of interest from a major retailer that was conducting due diligence to site a new store at Exit 80. Development of retail at Exit 80 has long been a goal of the City and a desire often articulated by the public. GRE informed the City the costs to develop the land for retail far exceeded the amount the retailer was willing to pay for the land. GRE asked if the city would be willing to enter into a public/private partnership that would allow this initial project to go forward and to provide a catalyst for additional future development in the area. City staff has been negotiating with GRE for the last several months to structure an agreement that will assist in the redevelopment of the Exit 80-South Lewiston area.

Much of the land in this area of the city is challenging to develop. Ledge and wetlands are prevalent. There are slopes and some of the land is significantly higher or lower than existing roads. Ledge is expensive to blast and haul away and the filling of wetlands is expensive to mitigate. The existing road and utility network has limited capacity to accommodate growth. GRE is taking a long view of its ownership in that area and the cost to develop it. They are willing to fund the costs of improvements, but are asking that the City create a TIF District and Program that will return a portion of the new tax revenues generated within the District to make GRE whole over time for the extraordinary site costs GRE incurs.

Attached is a map showing a significant portion of GRE ownership in the Exit 80 - South Lewiston area. It includes approximately 426 acres. A build out scenario for this land conducted by Mike Gotto of Stonybrook Consulting projects GRE land on the map the area could accommodate:

2,165,000 s.f. of Commercial/warehouse  
540,000 s.f. of retail  
231,000 s.f. of Office

13,000 s.f. of Restaurant  
3,000 s.f. of Gas Station  
200 Hotel rooms

The actual square footage of development in the various categories will likely be different as market demand influences what's built, but the analysis summarized above is a reasonable build out scenario.

City Assessor Bill Healey has estimated that if all of that development existed in Lewiston today it would have total real property Assessed Valuation of \$150,152,247. At today's mil rate of .02737 that value would generate \$4,109,675 annually in taxes.

The site of initial retail anchor interest has turnpike visibility and proximity, but will require the blasting of more than 300,000 square yards of ledge, the relocation of a major pipeline, construction of a large retaining wall, and the a major rock cut for a road to get access to the site from Alfred Plourde Parkway.

The initial inquiry from GRE seeking municipal support for the initial retail project has evolved into taking a longer and more comprehensive view of development in the South Lewiston area. As noted above, the area can accommodate nearly 3 million square feet of new commercial development that could generate over \$4 million annually in taxes

Following is an outline of the agreement that has been negotiated.

### **Omnibus Tax Increment Financing District**

Historically, Lewiston has created TIF districts and agreements on a project by project basis. Over the last several years, the state has created a mechanism that allows for the creation of a large TIF *district* (that must be specifically defined) in which different TIF *agreements* can be created. The large district that is defined and created is called an "Omnibus TIF District."

With the significant GRE land holdings in South Lewiston, an Omnibus TIF District is well suited to achieving GRE and the City's goals. The City and GRE have negotiated terms of the initial TIF agreement (summarized below), which include the city making some public infrastructure investments and reimbursing Gendron a portion of the new taxes generated over time. Having a larger TIF district than just the land used by the initial retail anchor allows the taxes generated by new investment within the District, even when it does not require City infrastructure investment or incur extraordinary site costs to GRE, to be used to more quickly pay off the extraordinary site costs incurred by GRE through larger payments. The percentage of the TIF payment going to Gendron would not increase, just the size of the payments, which would be attributable to other new investment within the District.

If subsequent development projects within the Omnibus TIF *District* require infrastructure or other municipal support; or if GRE expects to incur extraordinary site costs beyond what they can recoup through sale or lease of

the land, the City and GRE have the opportunity to negotiate a new TIF *Agreement*. There is no requirement for the city to participate in future TIF *Agreements*; each will be evaluated on its own merits and their return on investment to the city.

The real estate to be included in an "Exit 80-South Lewiston Omnibus TIF District" is still being finalized, but it currently includes most of the Gendron owned land in that area of the City. It will not include land that is already in the Gendron Business Park Phase II TIF District. It is recommended that the Omnibus TIF District be established with a term of 30 years, which is the maximum allowed by statute.

It is important to note that although the district may have a term of 30 years, it does not need to direct revenues back to the developer or be used to pay city costs for 30 years. How additional tax revenue generated within the district is used will be determined by the TIF *agreements* created within the district. Each TIF agreement created within the district will have its own negotiated business points as well a specified length of time where TIF revenues are directed to the project.

### **Anchor Tenant TIF Agreement**

It has long been recognized that for retail to develop at Exit 80 a major retail anchor must be secured. The first TIF Agreement proposed for creation within the Exit 80- South Lewiston Omnibus TIF District is one that will provide municipal support to support GRE in its effort to attract a major retail anchor. There is a large gap between what the retailer is willing to pay GRE for the site and the costs for preparing the site for the retail development. Following is an outline of the TIF terms being negotiated:

#### City Obligations

1. Extend water and sewer utilities within existing city street to service project
2. Pay for offsite traffic improvements as required by a traffic study.
3. Provide GRE 40% of new tax revenue attributable to increased valuations generated within the Omnibus TIF District.

#### Gendron Obligations

1. Extend utilities on private land to service the project, blast ledge on the turnpike on-ramp side of the property, build roads to service the interior of the parcel, relocate an oil pipeline
2. Many of the costs noted in #1 above are extraordinary. Staff are negotiating to more clearly define what "ordinary" site costs will be, and what are "extraordinary." Any retail project would need to have land leveled, utilities extended, and roads built. However, most would not need to have 300,000+ square yards of ledge removed, 40' deep road cuts, or a tall and long retaining wall built.
3. Gendron will pay the costs noted in # 2 above, but is seeking to have the *extraordinary* site costs reimbursed by the city through TIF revenues.

## City Protections

- a. City gets to review project costs and come to agreement with GRE on what will qualify as extraordinary.
- b. City gets to sign off on traffic improvements required by traffic study before moving forward with project.
- c. If the City incurs costs to support the development, and the retail anchor ultimately does not come to Lewiston, GRE will pay the debt service incurred by the city in support of the project.
- d. TIF revenues will first flow to the City to pay debt service and other costs incurred in extending utilities and making offsite improvements. Only after the city costs are paid will revenue flow to GRE.
- e. If the District does not generate enough revenue to cover city costs and pay GRE 40% of new revenues, GRE receives whatever percentage is left after the city's costs.
- f. If GRE receives less than 40% in any given year, the shortfall will be carried forward into a subsequent year(s).
- g. The 40% TIF payment to GRE ends when they have has been made whole on extraordinary site costs or when the term of the TIF ends, *whichever comes first*.
- h. Subsequent TIF Agreements within the district will need to be approved by the City Council. Each is evaluated for economic viability and the return on investment to the city. If it doesn't make sense, the city is not obligated to approve subsequent TIF Agreements. In practice, as subsequent TIFs are approved, a running tally will be created where extraordinary site costs and city debt incurred and paid through TIF revenues will be tracked.
- i. Some projects developed within the Omnibus TIF District will not require city participation. Those projects will increase the TIF revenues raised without increasing City costs. Those increased TIF revenues will allow for faster repayment of Gendron's extraordinary site costs, which would result in a shorter TIF Agreement term and more money available to the General Fund.

I look forward to discussing this opportunity with you in greater detail at the December 22<sup>nd</sup> City Council workshop. Creation of the Exit 80 –South Lewiston Omnibus TIF District and approval of the original Anchor Tenant TIF Program is scheduled for City Council action on December 29<sup>th</sup>.



## EXECUTIVE DEPARTMENT

**Edward A. Barrett, City Administrator**  
**Phil Nadeau, Deputy City Administrator**

December 23, 2015

To: Honorable Mayor and Members of the City Council  
Fr: Edward A. Barrett  
Su: Proposed Development Project at Exit 80

During the Council's workshop on this subject on December 22<sup>nd</sup>, a number of questions were raised by both the public and members of the Council. The following addresses them.

### 1. Impact on Statutory Limitations on Total TIF Value and Acreage

Under state law, certain limits are placed on the percentage of a community's acreage and assessed value that can be placed into TIF Districts. A concern was raised that the proposed omnibus TIF might limit the City's ability to create other TIF districts in the future. Generally, the total of all TIF districts in a community may not exceed 5% of that community's total assessed value or 5% of its total acreage.

Prior to the proposed new TIF, the City's assessed value percentage was at 0.185%, considerably below the 5% limit. With the new TIF, this increases to 0.55%, still considerably below the limit. As to acreage, the City is now at 1.34%, which would increase to 3.25% with this addition of 426 acres. This remains below the 5% limit and would allow for adding an additional 389 acres to TIF districts in the future. This would be more than adequate to establish an omnibus downtown TIF as some have suggested.

It should be noted that most of the City's TIF districts are less than two acres in size since they have generally been tied to one specific project. With the addition of the new TIF, three would be larger: the Larrabee substation at 15 acres; Gendron Business Park II at 145 acres; and the proposed new TIF. If necessary, the size of the Gendron Business Park TIF could be amended to eliminate some of the undeveloped lots in this subdivision, freeing up additional acreage.

A listing of the City's TIFs has been included elsewhere in the agenda material.

### 2. How would this development assist in spurring development and redevelopment along adjacent arterial corridors and into our downtown?

In addition to access from I-95, the development will have access from two locations on Lisbon Street and from Plourde Parkway, which ties into River Road/Lincoln Street. Lisbon is the major connector into our downtown and Lincoln leads directly to our Riverfront Island area and downtown Auburn. The City has begun implementing a wayfinding signage program that includes plans for the I-95/Plourde/Lisbon/Lincoln area. Signage has not yet been installed in the Exit 80 area due to the redesign of the interchange. This signage, once installed, will direct travelers to the downtowns and riverfront.

New development in this area is also likely to positively impact commercial development in the Lisbon Street corridor. Our new draft comprehensive plan designates much of this area as a retrofit growth area. As you are aware, many of the commercial structures along this arterial were developed some time ago and are showing their age. The additional activity created by the development of a new retail complex will have a positive impact on the values and investment opportunities within this corridor and should spur redevelopment.

3. Is the \$4 million in projected new tax revenue related to the anchor tenant alone or the entire build-out? If for the entire build-out, how much will the anchor tenant alone generate?

The \$4 million in estimated new annual property taxes is based on the full build out scenario for the entire omnibus TIF district. The City Assessor has estimated that the initial project will produce \$381,862 in new revenue once constructed. A full proforma for this initial project has been provided elsewhere in the agenda material.

4. Do we already have water and sewer capabilities at the site? What infrastructure needs to be added? What are the costs?

Water and sewer are available at the boundaries of the site on Apple and Plourde. The mains will have to be extended to the site. While water is available from both sides of the initial development parcel, this property lies between two of the City's pressure zones, which poses some issues for development at the higher elevations in this area. The City's plan would be to change the boundaries of the two pressure zones to improve service throughout the area. This will require extending the water main through the site and follow-on work in future years. This would be required at some point to supply adequate water pressure to potential customers within adjacent business parks. The system improvement costs are estimated at \$600,000. Note, however, that the developer will be required to install and pay for the lines connecting any new structures to the city's distribution system

5. How much will the traffic study cost?

The Developer is and will remain responsible for the cost of the traffic study. Since a traffic study is a normal requirement for any significant development, the City will not reimburse the developer for any of these costs. The traffic study will identify any offsite improvements required to the City's existing road system to support this project and future follow-on development.

6. What is the status of the discussions between the retailer and the Developer? Is there a commitment to this site?

The retailer has expressed interest in this site. To date, however, there is no commitment, in part because of the need for the developer and the city to agree to a joint development agreement. The retailer may also be looking at other sites. The Developer has expressed a sense of urgency to have something in place with the City so that he can continue to negotiate with the potential retailer. The issue is coming forward at this time both at the Developer's request and in recognition that this Council has been involved in these discussions for some time and may be in a better position to evaluate a proposal and make a decision than a new Council might be. As a result, staff suggested some time ago that an effort be made to complete these negotiations before the current Council leaves office, and

the Council supported doing so. While there is no assurance that a significant delay in acting on this proposal might derail the project, such a delay might have that effect.

7. What are the long-term operating and maintenance costs that the City may face as a result of development at Exit 80. Will the City be responsible for maintenance of the development's parking lots, roads, and utilities?

The City will not be responsible for maintenance associated with the parking lots or the driveways leading from Plourde and Apple onto the site. They will all be private. The City will not be responsible for private water and sewer lines connecting the development to the City's system. The City will be responsible for maintaining the main sewer and water lines that support the development as well as for the public ways in the immediate area, as it is now. It should be noted that the Exit 80 area has long been designated by the City for additional development and that significant resources have been expended toward that end, including investments by the Turnpike and Maine Department of Transportation in the Exit 80 interchange and associated roadways. As noted above, significant public infrastructure is already present in the area and it is included within the area that the new draft comprehensive plan will identify for development and redevelopment.

8. How will city resources, including staff time, be impacted by the project and what does that mean for other continuing obligations within the city. How will this deal impact the city's ability to invest in other areas?

According to Police Chief Bussiere, it should not affect our staffing as any additional calls for service would be absorbed by current staff. As with any major retail development, we will have some calls for thefts/shoplifting and there will likely be some traffic accidents in the parking lots and access roads, but nothing the Department can't handle. We periodically adjust beat boundaries based on calls for service and, if there are significant increases to this beat area, we would make the necessary adjustments to beat boundaries. Given the extent of existing infrastructure in the area, minimal additional staff time will be required to deal with infrastructure additions. Staff time will need to be devoted to negotiating with the developer regarding any future projects within the omnibus TIF area.

9. Is there a full cost-benefit analysis available dealing with the full build out scenario for the Omnibus TIF District?

At this time, it is not possible to develop such an analysis because of the wide range of variables involved. Build out will take time and the associated costs can be highly variable depending on what actually happens. Significant uncertainties will also affect the initial project. For example, while we know a pipeline must be relocated, we do not know what that will cost since the work will be done by the pipeline owner and then billed to the developer. Similarly, the traffic study has not yet been completed. While we have a rough estimate, it may be either too low or too high. Given this level of uncertainty, the City will have the ability to end the agreement at various points. This includes when the full cost of off-site traffic improvements can be better estimated as well as when firm numbers are available for extraordinary site development costs. Additionally, each new project within the omnibus TIF district will also require a separate agreement and a financial analysis. Each of these projects will be required to stand or fall on its own.

**Pro Forma for Exit 80 Anchor Tenant Retail Development**

Year	OAV	New Value (1)	CAV	Projected Mil rate	Total TIF Revenue	40% to Developer	Offsite improvement debt (2)	Annual Net	GF revenues
2015	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 136,000	\$ 69,117	20.22%
2016	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 133,200	\$ 71,917	21.04%
2017	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 130,400	\$ 74,717	21.86%
2018	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 127,600	\$ 77,517	22.67%
2019	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 124,800	\$ 80,317	23.49%
2020	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 122,000	\$ 83,117	24.31%
2021	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 119,200	\$ 85,917	25.13%
2022	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 116,400	\$ 88,717	25.95%
2023	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 113,600	\$ 91,517	26.77%
2024	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 110,800	\$ 94,317	27.59%
2025	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 108,000	\$ 97,117	28.41%
2026	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 105,200	\$ 99,917	29.23%
2027	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 102,400	\$ 102,717	30.05%
2028	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 99,600	\$ 105,517	30.87%
2029	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 96,800	\$ 108,317	31.68%
2030	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 94,000	\$ 111,117	32.50%
2031	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 91,200	\$ 113,917	33.32%
2032	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 88,400	\$ 116,717	34.14%
2033	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 85,600	\$ 119,517	34.96%
2034	\$ 7,938,932	\$ 20,429,322	\$ 12,490,390	0.02737	\$ 341,862	\$ 136,745	\$ 82,800	\$ 122,317	35.78%
						<b>\$ 2,734,896</b>		<b>\$ 1,914,344</b>	

(1) OAV + City Assessor projected value of \$12,850,000 for initial 168,600 s.f. of retail development

(2) 20 year debt@ 3.5% on \$1 million offsite road, \$600K water/sewer



**COUNCIL ORDER**

**Order,** Authorizing the City Administrator to Execute an Omnibus Exit 80-South Lewiston Tax Increment Financing District Initial TIF Agreement and Program, and a Joint Development Agreement with GRE, LLC and/or Assigns.

Whereas, the City and the Developer have identified a need and an opportunity for the commercial development or redevelopment of real property owned by the Developer located near the I-95 Exit 80 interchange in South Lewiston; and

Whereas, the Developer is negotiating with a major national retailer that may construct a store on a portion of the District and serve as a catalyst for further commercial development in and adjacent to the District; and

Whereas, this would provide new employment opportunities, broaden and improve the City's tax base, and enhance the general economy of the City; and

Whereas, the Joint Development Agreement describes the site development efforts the Developer agrees to undertake in order to prepare a portion of the Exit 80 TIF District for the initial tenant; and

Whereas, in recognition of the extraordinary costs associated with developing this site, potential off-site transportation improvements, and necessary utility enhancements, the Developer and the City have agreed to finance these costs in part through tax increment financing, subject to the terms and conditions of the Joint Development Agreement; and

Whereas, the City has determined that the proposed TIF district and development program meets all the requirements of state statute for the establishment of such a district; and

Whereas, the City Council has determined that providing tax increment financing to the Developer in connection with the Anchor Project will permit the Developer and the City to finance the expansion, improvement, and development or redevelopment of commercial facilities adjacent to and throughout the District and will create and expand economic opportunities;

**Now, therefore, be It Ordered by the City Council of the City of Lewiston that**

The City Administrator is hereby authorized to execute an Omnibus Exit 80-South Lewiston Tax Increment Financing District Initial TIF Agreement and Program and a Joint Development Agreement with GRE, LLC and/or Assigns in a form substantially as attached hereto.

# DRAFT

## JOINT DEVELOPMENT AGREEMENT

This Joint Development Agreement (“Agreement” or “JDA”) is made this \_\_\_ day of December, 2015 (the “Effective Date”), by and between the **CITY OF LEWISTON**, a municipal corporation and body politic located in Androscoggin County, Maine (the “City”), and **GRE, LLC**, a Maine Limited Liability Company and/or assigns (the “Developer”). The City and the Developer are each individually referred to as a “Party” and collectively, the “Parties.”

### BACKGROUND

The Developer is in the business of developing commercial real estate.

The Developer has targeted for development certain real property located within the City and more particularly described in the attached **Exhibit A** which the City agrees is suitable for commercial development or redevelopment, and which the City desires to place in an Omnibus Tax Increment Financing District (the “District”)

The City wishes to encourage development or redevelopment of the District in order to attract employers, increase economic activity, convert vacant properties to economically productive use, expand the tax rolls, and otherwise enhance the City’s attractiveness as a destination to live, work, and recreate.

The Developer is negotiating with a major national retailer (the “Anchor Tenant”), which will construct a retail store on a portion of the District (the “Anchor Tenant Property”) and serve as a catalyst for further commercial development on the Property. The Anchor Tenant Property and sketch of Planned Improvements are attached as **Exhibit B**.

Preparation of the Anchor Tenant Property for commercial development and use by the Anchor Tenant will require extraordinary site preparation work and municipal infrastructure improvements.

The City has agreed to provide development assistance to the Developer in the form of tax increment financing, as well as municipal improvements, as an impetus for development of the Anchor Tenant Property and to assist the Developer in attracting an Anchor Tenant and future development to the City.

THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the City and the Developer agree as follows:

### **ARTICLE I** **PREAMBLE AND RECITALS**

The preamble and recitals set forth above are true and correct and are an integral part of this Agreement and not mere recitations.

**ARTICLE II**  
**OBLIGATIONS OF THE PARTIES**

2.1. **Joint Obligation to Cooperate and Inform.** The Parties shall (a) cooperate fully with one another to the extent reasonably necessary to enable all parties to satisfy their obligations under this Agreement; (b) keep the other Party informed as to the progress of each party's obligations; and (c) meet and confer and negotiate in good faith regarding the creation of additional Tax Increment Financing Agreements within the District in the event Developer obtains commitments to build or open commercial facilities on the Property from other tenants in addition to the Anchor Tenant.

2.2. **Initial Development.** The Parties' obligations for the initial development of the Anchor Tenant Property under this Agreement shall proceed incrementally, with each increment referred to herein as a "Stage" (the "Project"). Each Party's obligations shall be conditioned upon the other's satisfaction of one or more Stages, some of which may occur simultaneously or out of order, as necessary to the development of the Project. When action is required to be commenced after an event it shall be done in a reasonable period after the event has occurred. The Stages for the initial development of the Anchor Tenant Property shall be as follows:

**DRAFTING NOTE: THIS SECTION IS IN ACTIVE NEGOTIATION AND SUBJECT TO CHANGE.**

**2.2.1. Stage 1: Creation of the Exit 80 TIF District and the Initial TIF Agreement**

Stage 1(a) The City shall create an Omnibus Municipal Tax Increment Financing Development District, to be known as the Exit 80- South Lewiston Omnibus TIF District, for the purposes of providing Tax Increment Financing ("TIF") support to the Developer and financing the City's capital improvements and economic development costs, as permitted by 30-A M.R.S. § 5225 and as specifically agreed to by the City and the Developer (the "Exit 80 TIF District"). The geographic boundaries of the Exit 80 TIF District shall be as described in **Exhibit A**. The Exit 80 TIF District shall have a term of 30 years beginning with the date of approval by DECD. Each property located within the TIF District shall be subject to its own agreement for tax-increment financing ("TIF Agreement") to be made by the City and the Developer. Each parcel for which the Developer seeks a TIF Agreement, shall be subject to its own review and approval by the City before the City will be obligated to enter into subsequent TIF Agreements.

Stage 1(b) Simultaneous with the execution of this JDA, the City and the Developer shall execute the first TIF Agreement (the "Initial TIF Agreement"). The Initial TIF Agreement shall be in substantial conformity with the attached **Exhibit C**, and shall have a term of 20 years beginning with the date on which the first tax payments following the issuance of a Certificate of Occupancy to the Anchor Tenant. The Initial TIF Agreement will require the City to reimburse the Developer for its Extraordinary Site Preparation Costs, as the City and the Developer shall determine in accordance with Stages 3 and 7, as well as payment of any debt or other costs incurred by the City to finance the Traffic Improvements and the Water and Sewer Improvements defined below. However, the City shall have no obligations to the Developer under the Initial

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TIF Agreement, unless and until the Developer first satisfies Stages 2 through 7, below.

## **2.2.2. Stage 2 Traffic Study and Analysis of Improvement Costs for Anchor Tenant Property**

Stage 2(a) Once this JDA and the Initial TIF Agreement are signed, the Developer and/or the Anchor Tenant shall conduct a traffic study that will determine what offsite traffic improvements the Anchor Tenant project will require in order for the Developer to receive a Traffic Movement Permit from the Maine Department of Transportation (the "Traffic Study"). Upon completion of the Traffic Study, the Developer shall provide it to the City for review.

Stage 2(b) The City will review the Traffic Study and the on-site and off-site improvements that it proposes for the Anchor Tenant Property (the "Traffic Improvements"), as well as the cost of extending municipal water and sewer lines to serve the Anchor Tenant Property (the "Water and Sewer Improvements"). The City will then determine whether the Initial TIF District will generate sufficient incremental tax revenues to fund any debt service or other associated costs the City may incur in connection with the Traffic Improvements of the Water and Sewer Improvements that the City agrees to construct in order to support the development of the Anchor Tenant Property. The City shall notify the Developer of its determination within 21 days of its receipt of the Traffic Study. In the event the City concludes that TIF revenues will not be sufficient to fund these costs, the City shall have no obligation to make the Traffic Improvements or the Water and Sewer Improvements. Stage 2 shall be completed when the City notifies the Developer of its determination.

## **2.2.3. Stage 3 Submission and Review of Extraordinary Site Preparation Costs**

Stage 3(a) After completion of Stage 2, the Developer shall submit complete design drawings for the Anchor Tenant Property to the City, including site plans and elevations depicting the work to be performed, along with a detailed statement of estimated costs to be incurred by the Developer to prepare the Anchor Tenant Property. Such costs shall be over and above the costs normally incurred in development of an undeveloped site including, without limitation, removal of excessive ledge, mitigation of wetlands, moving or removal of pipelines, installation of retaining walls taller than 8', extraordinary utility cost installation into the site, and the interface of roads to the existing public streets, and which costs the Developer is not otherwise eligible for reimbursement by a third party and for which the Anchor Tenant will not reimburse the Developer (the "Extraordinary Site Preparation Costs"). The detailed cost estimate will also include the Developer's reasonable estimate of what these cost estimates would have been, but for the significant ledge, wetland, and topography issues present on the Anchor Tenant Property (the "Baseline Cost Estimate").

Stage 3(b) The City shall review the Developer's estimate of the Extraordinary Site Preparation Costs, as well as the Baseline Cost Estimate. Within 21 days, the City

shall notify the Developer whether or not the City accepts the Developer's estimate of the Extraordinary Site Preparation Costs. If the City accepts the Developer's initial estimate as presented, the City and the Developer shall add them to the Extraordinary Site Preparation Costs Reimbursement Schedule attached as **Exhibit D**. If the City and the Developer disagree as to which expenses of Site Preparation should be included within the Extraordinary Site Preparation Costs, the City and the Developer shall meet and confer within 15 days following the City's notice, and will use reasonable efforts to agree which expenses shall be included. If the parties are unable to agree as to which expenses shall qualify as Extraordinary Site Preparation Costs eligible for reimbursement under the Initial TIF Agreement, the Developer and City shall each have the right to terminate the Initial TIF Agreement for the Initial TIF District, and the parties shall have no further obligation with respect to said Initial TIF Agreement. Stage 3(b) shall be complete upon the City and the Developer executing the Extraordinary Site Preparation Costs Reimbursement Schedule, or upon either party's notice of termination of the Initial TIF Agreement.

**2.2.4. Stage 4 Anchor Tenant Contingency**

Unless the Initial TIF Agreement is terminated pursuant to Stage 3(b), above, the Developer shall produce a signed lease, Purchase Agreement, or other similar contractual arrangement (redacted as necessary to remove confidential information) to the City, demonstrating to the City's reasonable satisfaction that an Anchor Tenant intends to build and open for business a retail store of not less than 150,000 square feet on the Anchor Tenant Property (the "Anchor Tenant Contingency"). Stage 4 will be complete when the Anchor Tenant Contingency is satisfied.

**2.2.5. Stage 5: Anchor Tenant Permit Approvals**

The Developer shall obtain or cause to be obtained all local, state and federal permits and approvals necessary to prepare the Anchor Tenant Property for the Anchor Tenant to construct its retail location (the "Permits"), as required by municipal ordinance and all applicable laws and regulations, including approval of the Planning Board. As part of its application for Permits, the Developer will develop plans for roads linking the Anchor Tenant Property to Alfred Plourde Parkway and Apple Road (the "Access Roads"), which shall be constructed in accordance with all applicable laws and ordinances, with the requirements of the Traffic Study, and with all conditions stated in the Maine Department of Transportation's Traffic Movement Permit. Stage 5 shall be complete when copies of all such permits and plans have been provided to the City.

**2.2.6. Stage 6: Site Preparation for the Anchor Tenant**

After completion of Stages 1-5, the Developer will construct and perform the Anchor Tenant Property site preparation, and build the Access Roads, in accordance with the Permits (the "Site Preparation"). As construction proceeds

the Developer shall promptly notify the City of any material deviations from the projected Extraordinary Site Preparation Costs agreed to in Stage 3. For purposes of this Section, a material deviation shall be defined as an increase or decrease in the Extraordinary Site Preparation Costs by more than 10%. The Developer shall continue to own the Access Roads until the Site Preparation is complete. Upon completion of the Site Preparation, the Developer shall submit to the City, an itemized statement of its actual Extraordinary Site Preparation Costs, for the City's review and approval (the "Actual Cost Notice"). Stage 6 shall be complete upon the Developer providing the Actual Cost Notice to the City.

**2.2.7. Stage 7: True-Up of Extraordinary Site Preparation Cost Reimbursement Schedule**

The City shall review the Developer's Actual Cost Notice, and shall notify the Developer in writing within 15 days whether the City accepts the Developer's Actual Extraordinary Site Preparation Costs. If the City accepts the costs as presented in the Actual Cost Notice, the City and the Developer shall amend **Exhibit D**. If the actual Extraordinary Site Preparation Costs deviate from those estimated in Stage 3 by more than 10%, the City and the Developer shall meet and confer within 15 days following the Developer's submission of its actual Extraordinary Site Preparation Costs to the City, and will use reasonable efforts to agree which expenses shall be included as Extraordinary Site Preparation Costs; provided, however, that if the Developer has not timely notified the City of any material deviations in Extraordinary Site Preparation Costs during the course of Site Preparation work, the City shall not be bound to reimburse more than the estimate Extraordinary Site Preparation Costs. If the actual Extraordinary Site Preparation Costs exceed the estimated costs by 10% or less, the Developer shall bear those costs, and the estimated costs agreed to in Stage 3 shall be the basis for Developer's reimbursement under the Initial TIF Agreement. If the actual Extraordinary Site Preparation Costs exceed the projected costs by more than 10%, and the Developer has timely notified the City of material deviations in costs during construction, the City and the Developer shall meet and use reasonable efforts to agree on the revised costs and amend **Exhibit D** accordingly. Such agreed actual costs shall become the basis for the Developer's reimbursement under the Initial TIF Agreement. If the parties are unable to agree upon the final Extraordinary Site Preparation Costs within 30 days of the Developer's Actual Cost Notice, the City and the Developer shall resolve their dispute in accordance with the Dispute Resolution provision in Section 5.7., and shall amend **Exhibit D** at the conclusion of the dispute resolution proceeding. Stage 7 shall be completed when the parties amend **Exhibit D**, or when the parties agree to treat the estimated costs as final.

**2.2.8. Stage 8: Transportation and Sewer/Water Line Improvements**

Within a reasonable time after the Developer has satisfied the Anchor Tenant Contingency and completed the Site Preparation, the City shall complete any necessary Transportation and the Water and Sewer Improvements set forth in **Exhibit E**. The Access Roads will serve as access points for the Anchor Tenant

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and shall be retained by the Developer or Anchor Tenant as private drives accessing the Anchor Tenant Property and such other portions of the Exit 80 TIF District as are reasonably necessary to accommodate future development.

**2.3 Subsequent Developments within the District.** After completion of the Anchor Tenant Property and the issuance of a certificate of occupancy to the Anchor Tenant, the Developer may submit other development plans to the City for development or redevelopment of any other portion of the property within the Exit 80 TIF District. In the event that the City and the Developer agree that said newly identified site (the "New Development Site") is proper for development and the City determines that the projected tax increment revenues for any New Development Site will be sufficient to finance the costs and obligations incurred by the City to develop the New Development Site, Stages 1-8 as provided above shall be repeated for the New Development Site, and the parties will enter such new TIF Agreements as are appropriate under the circumstances, except that the Anchor Tenant Contingency shall be known as the "Tenant Contingency" and the square footage of the tenancy shall be determined by mutual agreement of the City and the Developer on a case by case basis. The foregoing process shall repeat itself until all of the property within the District has been developed or until the City has determined that projected tax increment revenues for any remaining New Development Sites will not be sufficient to finance the costs and obligations incurred by the City to develop the New Development Site. The parties hereto agree to negotiate in good faith on all subsequent developments of the District during the 30 year term of the District.

## **ARTICLE III LIMITATION OF LIABILITY**

Notwithstanding any other provision of this Agreement, in no event shall the Parties, by reason of any of their respective acts or omissions relating to any of their obligations under this Agreement, be liable whether in contract, tort, warranty, negligence, strict liability or otherwise for any special, indirect, incidental or consequential damages arising out of or in connection with this Agreement, or the performance, non-performance or breach thereof; provided, however, that nothing in this Article III shall be deemed a waiver of claims for injunctive relief, specific performance and direct damages.

## **ARTICLE IV INDEMNIFICATION**

4.1 Each Party shall indemnify, defend and hold harmless the other Party and its agents, servants, officers, directors, employees and affiliates from and against any loss, cost, liability, claim, damage, expense (including, without limitation, all out-of-pocket expenses, reasonable attorneys' and paralegal fees, disbursements and costs), penalty or fine incurred in connection with any claim or cause of action arising from or in connection with this Agreement to the extent caused by the negligence, misrepresentation, fraud, fault or misconduct of the indemnifying Party.

## **ARTICLE V MISCELLANEOUS**

5.1. **Representations and Warranties.** Each Party represents and warrants that (a) it is an entity or municipality, as the case may be, duly organized, validly existing and in good standing under the laws of the State of Maine; (b) it has the necessary power and authority to enter into and perform its obligations under this Agreement; (c) it has duly authorized the persons(s) signing

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this Agreement to execute this Agreement on its behalf; (d) upon execution, this Agreement will be a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms; and (e) the execution and delivery of this Agreement and its performance by such Party will not violate, result in a breach of or conflict with any law, rule, regulation, order or decree applicable to such Party, its organizational documents or the terms of any other agreement binding on such Party, except that to the extent that any obligations of the City hereunder require approvals by municipal zoning officials or bodies, including without limitation, the Planning Board and Zoning Board of Appeals, or require approvals of State agencies, or judgments of state courts, such as in the case of eminent domain proceedings, such obligations are contingent upon obtaining the necessary approvals.

- 5.2. **Governing Law.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of Maine, without regard to the conflicts of law principles thereof.
- 5.3. **Relationship of Parties.** The Parties understand and agree that no Party is an agent, employee, contractor, vendor, representative or partner of any other Party; that (except as expressly set forth in writing) no Party shall owe a fiduciary duty to any other Party; that no Party shall hold itself out as such to third parties; and that no Party is capable of binding any other Party to any obligation or liability without the prior written consent of the other Party. Neither the execution and delivery of this Agreement, nor consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement between or among the Parties.
- 5.4. **Remedies.** In the event of any breach or threatened breach of this Agreement by any Party hereto, the other Party shall be entitled to such equitable relief as is determined to be appropriate by a court of competent jurisdiction, through an injunction in addition to any other rights and remedies available to it.
- 5.5. **Integration.** The terms and provisions contained in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof. This Agreement supersedes and terminates all previous undertakings, representations and agreements, both oral and written, between the Parties with respect to their activities and obligations with regard to the subject matter covered by this Agreement.
- 5.6. **No Oral Modifications.** This Agreement may not be amended or modified except by written agreement executed by each of the Parties hereto.
- 5.7. **Dispute Resolution.** Except for claims for equitable relief, including claims for specific performance, all disputes arising in connection with or under this Agreement shall be finally settled by arbitration. The parties shall first confer in good faith on the selection of an arbitrator. If the parties are unable to agree on the selection of an arbitrator and the rules of the arbitration within fifteen (15) days of notice by one party to the other party, then an arbitrator shall be selected by JAMS and the arbitration shall be administered under the then prevailing JAMS Streamlined Arbitration Rules and Procedures. The proceedings shall be held in Lewiston, Maine. The prevailing party in any such arbitration proceeding shall be awarded its costs, including reasonable attorney and paralegal fees.

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5.8. **No Third Party Beneficiary.** This Agreement is exclusively for the benefit of the Parties hereto. It may not be enforced by any party other than the Parties to this Agreement, and shall not give rise to liability to any third party. Notwithstanding and without waiving this provision, Developer may assign its rights under this Agreement to any other entity owned or controlled by David M. Gendron, or his lineal descendants.

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SIGNATURES ON FOLLOWING PAGE

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The parties are signing this Agreement as of the Effective Date.

GRE, LLC

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By: David Gendron  
Its Member

CITY OF LEWISTON

---

By: Edward Barrett  
Its City Administrator

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## INDEX TO EXHIBITS

EXHIBIT A	Description of Property
EXHIBIT B	Anchor Tenant Property and Site Improvement Sketch
EXHIBIT C	TIF Agreement
EXHIBIT D	Extraordinary Site Preparation Costs Reimbursement Schedule
EXHIBIT E	Transportation and Sewer/Water Line Improvements

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EXHIBIT A  
DESCRIPTION OF THE Exit 80 – South Lewiston Omnibus Tax Increment Financing District



Proposed  
**Exit 80/  
South Lewiston  
TIF District**

Total Area: 431.72

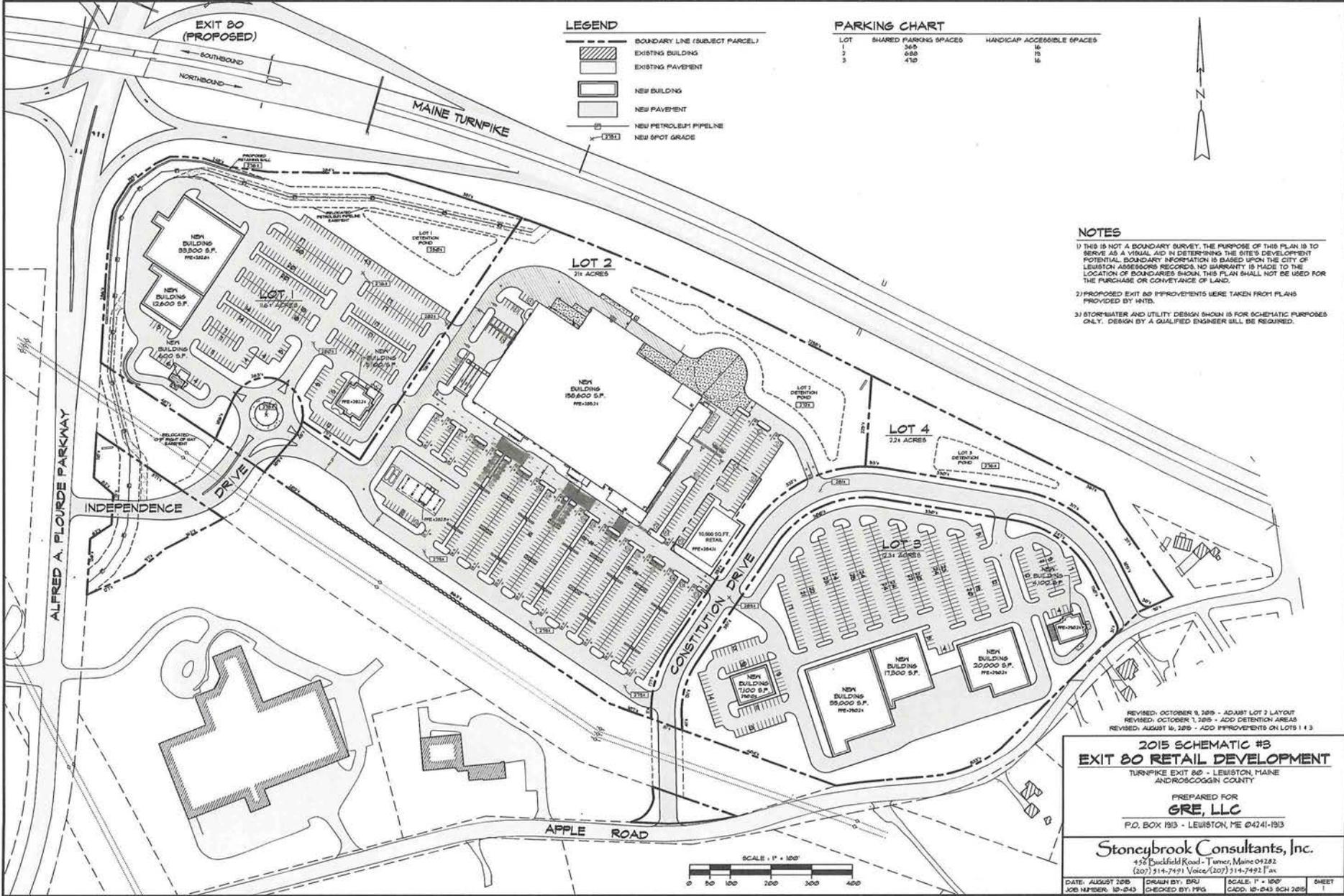
December 2015

Scale: 1" = 400'



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EXHIBIT B  
ANCHOR TENANT PROPERTY AND SITE IMPROVEMENT SKETCH



**LEGEND**

- BOUNDARY LINE (SUBJECT PARCEL)
- [Hatched Box] EXISTING BUILDING
- [Dotted Box] EXISTING PAVEMENT
- [White Box] NEW BUILDING
- [Light Gray Box] NEW PAVEMENT
- [Line with 'P'] NEW PETROLEUM PIPELINE
- [Line with 'S'] NEW SPOT GRADE

**PARKING CHART**

LOT	SHARED PARKING SPACES	HANDICAP ACCESSIBLE SPACES
1	349	16
2	488	19
3	410	16



- NOTES**
- THIS IS NOT A BOUNDARY SURVEY. THE PURPOSE OF THIS PLAN IS TO SERVE AS A VISUAL AID IN DETERMINING THE SITE'S DEVELOPMENT POTENTIAL. BOUNDARY INFORMATION IS BASED UPON THE CITY OF LEWISTON ASSESSORS RECORDS. NO WARRANTY IS MADE TO THE LOCATION OF BOUNDARIES SHOWN. THIS PLAN SHALL NOT BE USED FOR THE PURCHASE OR CONVEYANCE OF LAND.
  - PROPOSED EXIT 80 IMPROVEMENTS WERE TAKEN FROM PLANS PROVIDED BY INTS.
  - STORMWATER AND UTILITY DESIGN SHOWN IS FOR SCHEMATIC PURPOSES ONLY. DESIGN BY A QUALIFIED ENGINEER WILL BE REQUIRED.

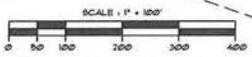
REVISED: OCTOBER 9, 2015 - ADJUST LOT 2 LAYOUT  
 REVISED: OCTOBER 1, 2015 - ADD DETENTION AREAS  
 REVISED: AUGUST 18, 2015 - ADD IMPROVEMENTS ON LOTS 1 & 3

**2015 SCHEMATIC #3**  
**EXIT 80 RETAIL DEVELOPMENT**  
 TURNPIKE EXIT 80 - LEWISTON, MAINE  
 ANDROSCOGGIN COUNTY

PREPARED FOR  
**GRE, LLC**  
 P.O. BOX 1913 - LEWISTON, ME 04241-1913

**Stoneybrook Consultants, Inc.**  
 456 Backfield Road - Turner, Maine 04282  
 (207) 514-7991 Voice / (207) 514-7992 Fax

DATE: AUGUST 2015    DRAWN BY: BRJ    SCALE: 1" = 100'  
 JOB NUMBER: 10-043    CHECKED BY: FRG    CAD: 10-043 SCH 2015    SHEET 1



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EXHIBIT C  
AGREEMENT FOR DEVELOPMENT ASSISTANCE AND TAX INCREMENT FINANCING

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## EXIT 80- SOUTH LEWISTON OMNIBUS TAX INCREMENT FINANCING DISTRICT: INITIAL TIF AGREEMENT AND PROGRAM

This Initial TIF Agreement (“Agreement”) is made as of this \_\_\_ day of December, 2015 (the “Effective Date”) by and between the **CITY OF LEWISTON**, a municipal corporation and body politic located in Androscoggin County, Maine (the “City”), and **GRE, LLC** and/or assigns, a Maine Limited Liability Company located in Lewiston, Androscoggin County, Maine (the “Developer”).

### BACKGROUND

The Developer is in the business of developing commercial real estate, and has a proven track record of developing properties for commercial uses within the City.

The City and the Developer have identified a need and an opportunity for the commercial development or redevelopment of real property owned by the Developer and described in **Exhibit A** (the “Anchor Tenant Property”), which description is attached to and incorporated within this Agreement by reference, for the purpose of providing new employment opportunities, broadening and improving the City’s tax base, and improving the general economy of the City.

The City and the Developer have entered into a Joint Development Agreement of near or even date herewith (the “JDA”), in which this Agreement is incorporated.

The JDA describes the site development efforts the Developer agrees to undertake in order to prepare a portion of the Exit 80 TIF District, as the same is defined in the JDA, in preparation for an Anchor Tenant (the “Anchor Project”).

The Developer and the City have agreed to finance the Developer’s Extraordinary Site Preparation Costs, the Transportation Improvements, and the Water and Sewer Improvements, in part through tax increment financing, as permitted by 30-A M.R.S. §§ 5221, *et seq.*, subject to the terms and conditions of the JDA.

The City has determined that at least 25% of the real property within the Exit 80 TIF District is suitable for commercial uses and is in need of development or redevelopment.

The total acreage of the Exit 80 TIF District does not exceed 2% of the total acreage of the City, and the total area of all development districts created by the City does not exceed 5% of the total acreage of the City.

The original assessed value of the Exit 80 TIF District, plus the original assessed value of all existing tax increment financing districts created by the City, does not exceed 5% of the total value of taxable property within the City.

The Anchor Project will result in significant new job creation and expansion of the City’s tax base, and will expand the City’s attractiveness to employers, residents, and visitors.

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The City Council has determined that providing tax increment financing to the Developer in connection with the Anchor Project pursuant to authority granted by 30-A M.R.S. §§ 5221, *et seq.*, will permit the Developer and the City to finance the expansion, improvement and development or redevelopment of commercial facilities, and create and expand economic development programs.

THEREFORE, the City and the Developer agree as follows:

### Article I City's Obligations

**1. Establishment of Development District.** Subject to the parties' satisfaction of the terms and conditions in the JDA, the City has established, or is in the process of establishing, the Exit 80 TIF District as an Omnibus Tax Increment Financing District, for the purpose of facilitating the provision of the financial assistance contemplated by this Agreement.

**2. Creation of Development Program Fund.** No later than sixty (60) days prior to the due date of the first tax payment for the Anchor Project following issuance of a certificate of occupancy to the Anchor Tenant, the City shall create and establish a segregated fund designated as the "Exit 80-South Lewiston Development Program Fund" (hereinafter, the "Development Program Fund") pursuant to, and in accordance with the terms and conditions of the Development Program and 30-A M.R.S. § 5227(3). The Development Program Fund shall include a Project Cost Account that is pledged to and charged with the payment of project costs as outlined in the financial plan of the Development Program and as provided in 30-A M.R.S. § 5227(3)(A)(1) and as submitted to the State of Maine Department of Economic and Community Development ("DECD"). The Project Cost Account shall be used and applied to fund the City's obligation to reimburse the Developer for the Extraordinary Site Preparation Costs, and to fund City debt service and other approved project costs incurred as defined in the JDA, including the Transportation Improvements and the Water and Sewer Improvements for which the City is responsible under the JDA.

**3. Deposits into Development Program Fund.** Each year during the term of this Agreement, commencing with the Tax Year in which the Anchor Tenant Property is issued a certificate of occupancy for the completed Anchor Tenant facility following the parties' agreement on the Extraordinary Site Preparation Costs and the Developer's satisfaction of the Anchor Tenant Contingency as defined in the JDA, and continuing for a total of 20 consecutive tax years, there shall be deposited in the Development Program Fund contemporaneously with each payment of Property Taxes, an amount sufficient to fund the City's debt service and other direct costs incurred to provide the Transportation and Sewer/Water Line Improvements, as defined in the JDA, as well as an amount sufficient to fund the City's payment obligation to the Developer, and any of the City's Project Costs or other costs within the scope of 30-A M.R.S. § 5225. Any interest earned upon the deposits shall inure to the benefit of the City. The Development Program Fund shall be under the City's exclusive control, and will disburse each year's Tax Increment Revenues in the following order:

- (a) **Reimbursement of City Costs.** The City shall first apply the Tax Increment Revenues to make all installment payments for the year at issue or any

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deficiencies in prior payments for the debt or direct costs incurred by the City in order to construct and finance the Transportation Improvements and the Water and Sewer Improvements, which may be made within the Anchor Tenant Property or elsewhere within the Exit 80 TIF District and incurred by the City as a result of the establishment and operation of the Exit 80 Development District (the "City Costs").

- (b) **Reimbursement to Developer of Extraordinary Site Preparation Costs.** Only after payment of the City Costs, the City shall deposit Tax Increment Revenues in the Developer TIF Account in order to reimburse the Developer for the Extraordinary Site Preparation Costs as determined in accordance with the JDA and in an amount not to exceed 40% of the Tax Increment Revenues generated by the Anchor Tenant Property in any applicable Tax Year. Once all conditions precedent to the City's obligation to reimburse the Developer for Extraordinary Site Preparation Costs have been satisfied, if in any Tax Year during the reimbursement schedule stated in Exhibit D to the JDA, insufficient TIF funds are generated by the Anchor Tenant Property to first pay City Costs and then to reimburse Developer that scheduled portion of the Extraordinary Site Preparation Costs, the parties will amend Exhibit D to apportion the amount of that year's shortfall over the remaining reimbursement schedule so that the City may make up any shortfalls in fully funding the TIF Revenue reimbursement owed to the Developer in subsequent years. The 40% TIF Reimbursement to the Developer will stop when the Developer has been repaid the entirety of the agreed Extraordinary Site Preparation Costs or the 30 year term of the Exit 80 TIF District has elapsed, whichever comes first.
- (c) **City Economic Development Programs.** The remainder of the Tax Increment Revenues may be captured and allocated to the City's costs of funding economic development programs and events, costs of marketing the City as a business and arts location, funding improvements in Downtown TIF Districts and any other costs within the scope of 36 M.R.S. § 5225(1)(C).

### Article II

#### Developer's Obligations

1. **Satisfaction of JDA Requirements.** The Developer shall satisfy all requirements of the JDA. The Developer acknowledges that it shall not receive any reimbursement of Tax Increment Revenues from the City until the Site Preparation is complete, the Anchor Tenant Contingency has been satisfied, and the parties have agreed upon the final Extraordinary Site Preparation Costs and signed a reimbursement schedule in the form attached as **Exhibit D** to the JDA, and the Anchor Tenant building is occupied and paying taxes.
2. **State Reporting Requirements.** To the extent required by statute and regulations, Developer shall comply with all reporting requirements relating to this tax increment financing project

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## Article III

### Administration of Tax Increment Financing

1. **Taxable Status of the Property: Tax Base Conservation Payment.** The parties agree that, other than public ways, water pipes or conduits, industrial inventories or stock in trade, there is no real property located within the boundaries of the Anchor Tenant Property which is entitled to exemption from municipal taxation by reason of the status or other qualification of its owner, or the use to which it is put, and that, in the event that any part of such real property now or hereafter located, constructed or delivered at or within the Anchor Tenant Property should be determined to be entitled to such exemption from municipal taxation, the owner of such real property shall annually be liable to City in an amount equal to the amount of tax which, but for the exemption, would be due to the City with respect to such real property (hereinafter the "Tax Base Conservation Payment"). Payment of the Tax Base Conservation Payment shall be made in two equal installments, one on or before September 15 and one on or before March 15 of each year in which it is due. Developer shall promptly pay the Tax Base Conservation Payment. This Agreement shall be recorded in the Androscoggin County Registry of Deeds and shall be binding upon the parties and upon all Lessees and/or successors-in-title to Developer with respect to property located within the District for so long as this Agreement shall remain in effect. The Agreement to make Tax Base Conservation Payments with respect to property which is subject to tax exemptions (i) shall be a covenant running with the land, made in consideration of the assistance by the City of Lewiston's Development Costs; (ii) is a voluntary contractual arrangement; and (iii) is not and shall not be construed to create a service charge.

2. **Payments to City.** The Owner of the Anchor Tenant Property shall pay to the City when due the taxes on the assessed value of the Anchor Tenant Property. The City shall withhold from any payment to be made by the City pursuant to this Agreement any amount due from Developer that is due and unpaid. No payment, or only a partial payment, shall be made to the Developer if the owner of the Anchor Tenant Property does not pay, or pays only a portion of, the real estate tax associated therewith.

3. **Deposits into Development Program Fund.** Each year during the term of this Agreement, commencing with the Tax Year following the year in which the City and the Developer agree upon the actual Extraordinary Site Preparation Costs, the City shall retain in the District the amount of Captured Assessed Value necessary to generate the Tax Increment Revenues to be distributed in accordance with Article I, Section 3, provided that nothing herein shall commit the City to deposit any amount in any TIF Reimbursement Year in excess of collected property taxes for real property located within the TIF District for such TIF Reimbursement Year.

4. **Developer Reimbursement.** If, for any reason, the City completes the Transportation and Sewer/Water Line Improvements, as defined in the JDA, and the Anchor Tenant does not obtain a Certificate of Occupancy for the Anchor Tenant Property, the Developer shall reimburse to the City the cost of the Transportation and Sewer/Water Line Improvements promptly upon demand.

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## Article IV Default and Remedies

**1. Events of Default.** Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

(a) Failure to Honor. Developer shall fail to timely make payments to City arising out of its obligations under Article III, Section 4 above;

(b) Abandonment of Project. Developer shall abandon or otherwise fail to complete the Project as required by the JDA;

(c) Other Failures to Perform. Any other failure by a party hereto to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the party to be observed or performed; or

(d) Events of Insolvency. If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of a party's affairs shall have been entered against the party or the party shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the party or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the party or the failure by the party to have a petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the party.

**2. Remedies on Default.** Whenever any Event of Default shall have occurred and be continuing for a period of fifteen (15) days in the case of a payment obligation, and thirty (30) days after a party's receipt from the other party of written notice of an Event of Default by the party, the other party may, in its discretion, (a) specifically enforce the performance or observance of any obligations, agreements or covenants of the defaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder; (b) suspend its performance under this Agreement for so long as the Event of Default continues or remains uncured; and/or (c) declare an Event of Default to exist, terminate this Agreement and its obligations under this Agreement. Developer agrees to pay the City's expenses, including reasonable attorneys' and paralegal fees, incurred in connection with enforcing this Agreement or as a result of an Event of Default.

**3. Remedies Cumulative.** No remedy herein conferred upon or reserved to a party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to the remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay in exercising rights arising

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out of an Event of Default shall impair any such right or power or be considered or taken as a waiver.

## **Article V** **Indemnification**

Developer shall indemnify, defend and hold harmless the City and its agents, servants, officers, directors, employees and affiliates from and against any loss, cost, liability, claim, damage, expense (including, without limitation, all out-of-pocket expenses, reasonable attorneys' and paralegal fees, disbursements and costs), penalty or fine incurred in connection with any claim or cause of action arising from or in connection with Developer's activities under this Agreement or to the extent caused by the negligence, misrepresentation, fraud, fault or misconduct of Developer.

## **Article VI** **Miscellaneous**

**1. Invalidity.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

**2. Integration.** Except as otherwise expressly provided herein, this Agreement contains the entire agreement between the parties hereto with respect to tax increment financing, and no modification, amendments, change or discharge of any term or provision of this Agreement shall be valid or binding unless the same is in writing, signed by all parties hereto. No waiver of any of the terms of this Agreement shall be valid unless signed by the party against who such waiver is asserted. The parties agree that they will not assert in any action arising under this Agreement that an amendment or waiver of this Agreement has occurred unless made in writing.

**3. Notices.** Any notice, demand, offer, or other written instrument required or permitted to be given, made, or sent hereunder shall be in writing, signed by the party giving or making the same, and shall be sent by certified mail to the other at its respective address stated above. Any party hereto shall have the right to change the place to which any such notice, offer, demand, or writing shall be sent to it by similar notice sent in like manner to the other party. The date of mailing of any offer, demand, notice, or instrument shall be deemed to be the date of such offer, demand, notice, or instrument and shall be effective from such date.

**4. Choice of Law.** Maine law shall govern this Agreement and any proceedings under this Agreement.

**5. Effective Date and Term.** The term of the Exit 80-South Lewiston Omnibus Tax Increment Financing District shall be for up to 30 years. It will take effect with the Tax Year 2018 and will expire no later than Tax Year 2048. Individual Tax Increment Financing Agreements

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approved within the District may be for shorter terms. The Term of the Initial TIF Agreement outlined in the JDA is for 20 years, which will commence with the first payment of TIF Revenues generated by Increased Assessed Valuation from the Anchor Tenant. This Agreement shall remain in full force from the date of execution of this Agreement and shall expire upon the payment of all amounts due to Developer and the performance by the City and Developer of their respective obligations under this Agreement unless sooner terminated as provided in this Agreement. Thereafter, all property within the Development District shall be taxable by the City to the extent provided by law.

**6. Waiver.** The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**7. Assignability.** Developer shall have the right to transfer or assign its rights in, to and under this Agreement at any time, to any entity owned or controlled by David M. Gendron, or his lineal descendants.

**8. Parties in Interest.** Nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person other than the City and Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and Developer.

**9. No Personal Liability of Officials of the City.** No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation, or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and no such person shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof.

**10. Section Headings.** The title to the Sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

**11. Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

### **Article VII** **Definitions**

**1. Agreement** - shall mean this Agreement for Development Assistance and Tax Increment Financing between the City and the Developer.

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2. **Developer** - shall mean GRE, LLC, with a mailing address of 50 Alfred Plourde Parkway, Lewiston, Maine 04240, Attention: Dave Gendron. Copies of notices required under this Agreement shall be sent to Shawn K. Bell, Esq., The Bell Firm, P.A., 810 Lisbon Street, P.O. Box 1776, Lewiston, Maine 04241-1776.

3. **Captured Assessed Value** - shall mean that portion of new tax revenues generated within the Exit 80 TIF District necessary to pay eligible costs hereunder, which may in any given year require as much as 100% of the Increased Assessed Value.

4. **City** - shall mean the City of Lewiston, Maine, with a mailing address of 27 Pine Street, Lewiston, Maine 04240 Attention: Director of Finance. Copies of notices required under this Agreement shall be sent to Martin I. Eisenstein, Esq., Brann & Isaacson, 184 Main Street, P.O. Box 3070, Lewiston, Maine 04243-3070.

5. **City Council** – shall mean the legislative body of the City.

6. **Current Assessed Value** - shall have the meaning set forth in 30-A M.R.S., Section 5222(4), and for the purposes of this Agreement shall mean the assessed value of all real property in the District as of April 1<sup>st</sup> 2017, and continuing up to April 1, 2047 the date of this Agreement.

7. **Development Costs** - shall mean the expenditures made and/or monetary obligations incurred by the Developer and City to complete components of the Development Program in connection with completion of the Anchor Tenant Project and any other eligible City Costs, and including any additional costs that are eligible for reimbursement pursuant to 30-A M.R.S., § 5225 et seq. or in regulations promulgated thereunder and set forth in the Joint Development Agreement, as that term is defined for purposes of this Agreement but in any event not to exceed the Tax Increment Revenues under this Agreement.

8. **Development District or District** - shall mean the District established by resolution of the City Council pursuant to 30-A M.R.S., Sections 5223, *et seq.*, and as illustrated and described in Exhibit A.

9. **Development Program** - shall mean the Exit 80 Development Program adopted by the City Council pursuant to Title 30-A, Sections 5224, *et seq.*

10. **Development Program Fund** - shall mean the fund established by the City for the District pursuant to 30-A M.R.S. § 5227 and shall consist of the (1) Development Sinking Fund Account, if any, which shall be an account pledged to and charged with the payment of any interest and principal on any Bond, if issued, or any other costs permitted by law as the same shall fall due; and (2) the Project Cost Account which shall be pledged to and charged with the payment of the City's Project Costs as permitted by statute.

11. **Event of Default** - shall have the meaning stated in Article IV, Section 1.

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**12. Increased Assessed Value** - shall mean the difference between the Current Assessed Value, as certified by the City Tax Assessors, and the Original Assessed Value of the Development District for each of the 30 Tax Years or portion thereof beginning In the Tax Year after which the City and the Developer sign the Extraordinary Site Preparation Reimbursement Schedule.

**13. Original Assessed Value** – shall mean the taxable assessed value of all real property in the District as of March 31 of the tax year preceding the year in which the District is established by the Lewiston City Council. That value is \$\_\_\_\_\_.

**14. Optimal Assessed Value** – [Reserved].

**15. Project** – shall have the same meaning as that set forth in the Parties' Joint Development Agreement, which may be amended from time to time.

**16. Anchor Tenant Property** – shall have the meaning set forth above, to wit: the Real Property described in **Exhibit A**.

**17. Tax Increment Revenues** - shall mean those real property tax revenues attributable to Increased Assessed Value in each Tax Year, during the 20 year period beginning in the Tax Year after which the City and the Developer sign the Extraordinary Site Preparation Costs Reimbursement Schedule.

**18. Tax Year** - shall mean the municipal tax year which begins on July 1<sup>st</sup> after the preceding April 1<sup>st</sup> assessment date in that same calendar year, and which ends on the following June 30. By way of illustration, Tax Year 2017 begins on July 1, 2016.

[REMAINDER OF THIS PAGE INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS]

**DRAFT**

The parties are signing this Agreement as of the Effective Date.

CITY OF LEWISTON

\_\_\_\_\_  
By: Edward Barrett  
Its City Manager

GRE, LLC

\_\_\_\_\_  
By: David Gendron  
Its Member

STATE OF MAINE  
ANDROSCOGGIN, SS.

December\_\_\_\_, 2015

Personally appeared before me the above-named Edward Barrett, City Administrator of the City of Lewiston and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said City of Lewiston.

\_\_\_\_\_  
Notary Public/Attorney-at-Law

STATE OF MAINE  
ANDROSCOGGIN, SS.

December\_\_\_\_, 2015

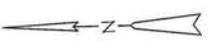
Personally appeared before me the above-named David Gendron, Member of GRE, LLC and acknowledged the foregoing instrument to be his free act and deed in his said capacity, and the free act and deed of said GRE, LLC.

\_\_\_\_\_  
Notary Public/Attorney-at-Law

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Exhibit A  
Property Description

(See Attached)



**PARKING CHART**

LOT	SHARED PARKING SPACES	HANDICAP ACCESSIBLE SPACES
1	340	14
2	410	16
3	410	16

**LEGEND**

	BOUNDARY LINE (SUBJECT PARCEL)
	EXISTING BUILDING
	EXISTING PAVEMENT
	NEW BUILDING
	NEW PAVEMENT
	NEW PETROLEUM PIPELINE
	NEW SPOT GRADE

**NOTES**

1) THIS IS NOT A BOUNDARY SURVEY. THE PURPOSE OF THIS PLAN IS TO SERVE AS A VISUAL AID IN DETERMINING THE SITE'S DEVELOPMENT POTENTIAL. THE INFORMATION CONTAINED HEREIN IS BASED ON THE RECORDATION ASSESSORS RECORDS. NO WARRANTY IS MADE TO THE LOCATION OF BOUNDARIES SHOWN. THIS PLAN SHALL NOT BE USED FOR THE LOCATION OF BOUNDARIES FOR ANY PURPOSE.

2) PROPOSED SPOT GRADINGS WERE TAKEN FROM PLAN AND PROVIDED BY HNTB.

3) STOPWATER AND UTILITY DESIGN SHOWN IS FOR SCHEMATIC PURPOSES ONLY. DESIGN BY A QUALIFIED ENGINEER WILL BE REQUIRED.

**2015 SCHEMATIC #3**  
**EXIT 90 RETAIL DEVELOPMENT**  
 TURNPIKE EXIT 90 - LEWISTON, MAINE  
 ANDROSCOGGIN COUNTY

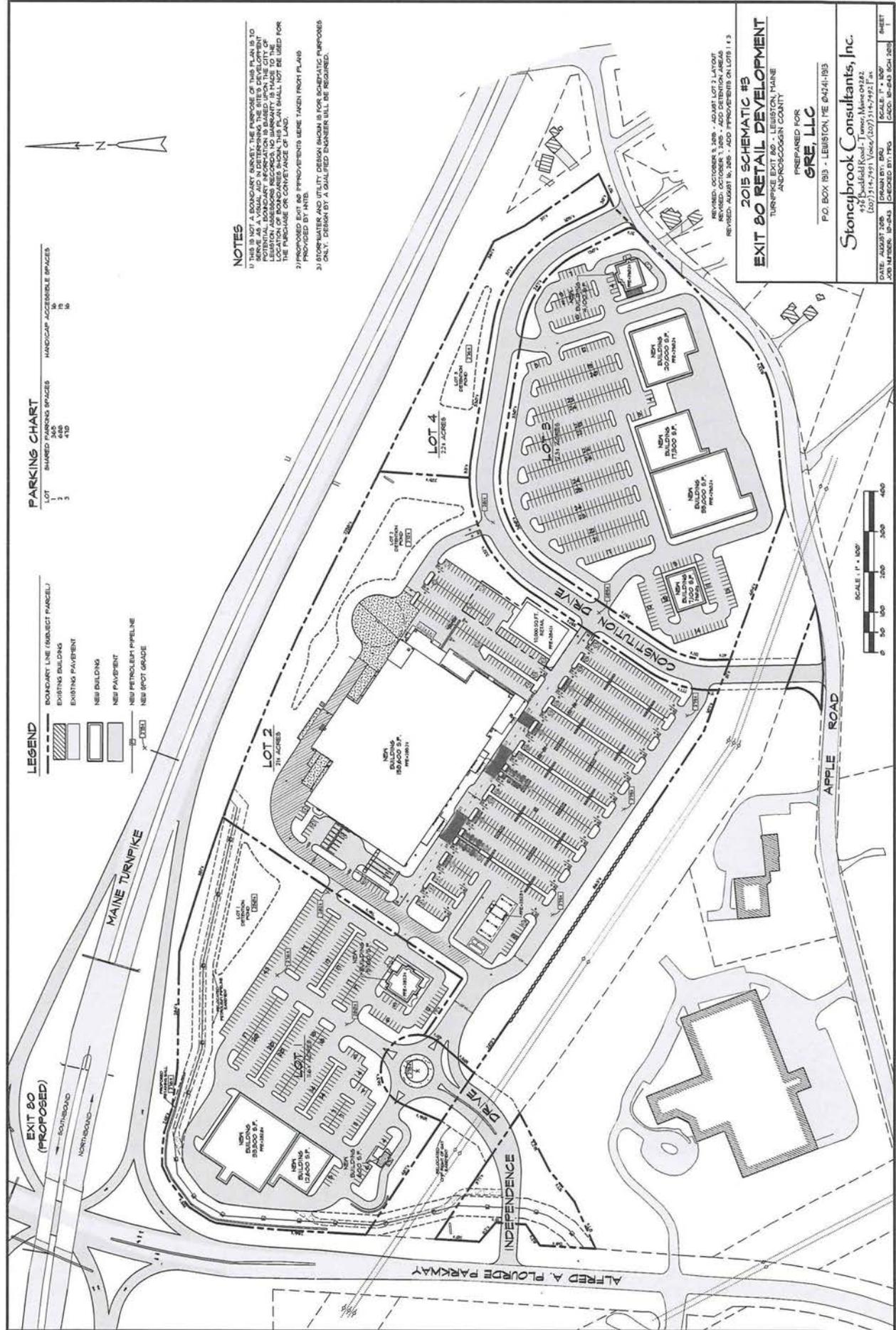
PREPARED FOR  
**GRE, LLC**  
 P.O. BOX 193 - LEWISTON, ME 04241-193

REVISED: OCTOBER 8, 2015 - ADJUST LOT 2 LAYOUT  
 REVISED: OCTOBER 1, 2015 - ADD DIRECTIONAL LARGES  
 REVISED: AUGUST 19, 2015 - ADD IMPROVEMENTS ON LOTS 1 & 3

**Stoneybrook Consultants, Inc.**  
 426 Dunfield Road - James, Maine 04222  
 (207) 514-7991 / Fax: (207) 514-7992 / E-mail: info@stoneybrook.com

DATE: AUGUST 2015  
 DRAWN BY: DRJ  
 JOB NUMBER: B-343  
 CHECKED BY: TFS

SCALE: 1" = 100'  
 SHEET 1 OF 1



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EXHIBIT D  
EXTRAORDINARY SITE PREPARATION COSTS REIMBURSEMENT SCHEDULE

Total Extraordinary Site Preparation Costs: \$\_\_\_\_\_.

TIF Reimbursement Year	Developer TIF Reimbursement, subject to payment of the City's debt service regarding the Project:
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Agreed and accepted this \_\_\_ day of \_\_\_\_\_.

CITY OF LEWISTON

\_\_\_\_\_  
By: Edward Barrett  
Its City Manager

GRE, LLC

\_\_\_\_\_  
By: David Gendron  
Its Member

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## EXHIBIT E TRANSPORTATION AND SEWER/WATER LINE IMPROVEMENTS

**[To be refined as project plans come together]**

1. The City will extend a 12 inch water distribution line from the existing Ferry Road line, extending up Apple Road a distance of 520 feet.
2. The City will extend a 12 inch sewer collection line from the existing Ferry Road line, extending up Apple Road a distance of 520 feet **[NOTE: will require public works confirmation]**.
3. The City will improve lane markings, traffic signals, and other traffic patterns at the following intersections: