

## OPTION TO PURCHASE AGREEMENT

This **OPTION TO PURCHASE** ("Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the "Effective Date") by and between the City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (referred to the "Seller" or "the City") and the Caleb Development Corporation, a Massachusetts non-profit corporation, with a principal place of business at 491 Humphrey Street, Swampscott, Massachusetts 01907, its successors and assigns (referred to as the "Buyer"), and referred to collectively as the "Parties".

### RECITALS

This Agreement relates to the granting of an option for the real estate known as "Penacook Landing" or the "Former Allied Leather Tannery" located at 35 Canal Street, Penacook (Concord), New Hampshire 03303 (the "Property"), City Assessing Department Parcel 0543-P-18.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Seller owns certain real estate located at 35 Canal Street, Penacook (Concord), New Hampshire 03303, City Assessing Department Parcel 0543-P-18, consisting of 4.04 +/- acres of land, as described on the attached plan titled "Activity and Use Restriction Plat on the land of the City of Concord", prepared by Richard D. Bartlett and Associates dated July, as attached to this Agreement as "Exhibit 1", as well as a Notice of Lot Consolidation recorded at the Merrimack County Registry of Deeds (the "MCRD") at Book 3486, Pages 1123-1124, as, and attached hereto as Exhibit 2;
- II. The Seller, subject to the contingencies set forth within this Agreement, upon exercise of the option contained herein, desires to convey to the Buyer approximately 2 to 2.5+/- acres of the Property for the purpose of constructing an affordable housing project featuring up to 54 garden-style dwelling units, together with parking lots, landscaping, and related infrastructure (herein referred to as the "Buyer's Project") as conceptually shown on Exhibits 3 and 4, and in accordance with the schedule set forth within Exhibit 5.
- III. The Buyer, subject to the contingencies set forth within this Agreement, upon exercise of the option contained herein, desires to acquire approximately 2 to 2.5+/- acres of the Property (the "Premises") for the purpose of constructing the "Buyer's Project".
- IV. All Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

**1. DESCRIPTION OF PREMISES AND REAL ESTATE TRANSACTION:**

1.1. **General:**

(a) The Seller, hereby grants to the Buyer, in accordance with the term of this Agreement, an exclusive option (the "Option") to purchase the Premises together with any improvements on the Premises, as well as any and all easements, rights of way, plants, trees, shrubbery, assignable permits, approvals, licenses, and other appurtenances thereto as described on the attached plan titled "Activity and Use Restriction Plat on the land of the City of Concord", prepared by Richard D. Bartlett and Associates dated July, as attached to this Agreement as "Exhibit 1", as well as a Notice of Lot Consolidation recorded at the Merrimack County Registry of Deeds (the "MCRD") at Book 3486, Pages 1123-1124, as, and attached hereto as Exhibit 2. The Option must be exercised by written notice received by the Seller, in accordance with the terms hereof, but in no event sooner than completion of an environmental review pursuant to 24 C.F.R. 58, subject to the provisions below (the "FONSI Receipt").

(b) The Option shall be exercised by written notice from the Buyer to the Seller (the "Buyer's Exercise") within sixty (60) days after the FONSI Receipt (the "Option Period"). In the event that the Buyer does not exercise this Option before the end of the Option Period, this Option shall automatically terminate with no further action required by the Seller.

1.2. **Purchase Price:** The purchase price for the Premises shall be Five Hundred Forty Thousand Dollars (\$540,000.00).

1.3. **Option Payment:** Upon execution of this Agreement, the Buyer shall provide an option payment in the amount of Five Thousand Four Hundred Dollars (\$5,400.00) (the "Option Payment"). Unless the Buyer terminates this agreement prior to the conclusion of the 90 day due diligence period, the Option Payment shall become nonrefundable upon conclusion of the ninety (90) day due diligence period. However, if the Buyer elects to terminate this Agreement after the expiration of the ninety (90) day due diligence period, the Buyer shall forfeit its Option Payment. In the event the Buyer elects to proceed to Closing, the Option Payment shall be credited against the final sale price of the Premises.

1.4. **Payment of Purchase Price:** The Purchase Price, less any Option Payment, shall be paid in full by the Buyer to the Seller at Closing and conveyance of the Premises to the Buyer in the form of bank treasurer's check, wire funds transfer, or other immediately available funds satisfactory to the Seller.

- 1.5. **Access to Premises**: The Seller hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Premises during the Option Period for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement.

The Buyer and the Seller shall coordinate all access to the Premises by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

The Buyer shall defend, indemnify and hold harmless the City and its officials, agents and employees (collectively, the "*Indemnified Parties*"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "*Liabilities*") resulting from any third party actions relating to this paragraph regarding Buyer's inspection of the Premises and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Buyer (or its contractors, agents or employees) in connection with this paragraph; provided, however, that nothing herein shall require the Buyer to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of the Seller. Additionally, to the fullest extent permitted by law, no official, employee, agent or representative of the City shall be individually or personally liable for any obligation or liability of Buyer under this paragraph. During Buyer's inspection of the Premises, the Buyer shall have in force, general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this paragraph, in an amount not less than the amount of \$2 million in the aggregate and \$1,000,000 per incident or occurrence. Buyer shall also require that any and all contractors who it retains for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this paragraph, and who access the Premises, to obtain a certificate of insurance in the amount of \$2 million in the aggregate, \$1 million per occurrence naming the Seller as an additional insured by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this paragraph.

- 1.6. **Closing**: Closing may occur at the time period set forth in Buyer's Exercise, but in no event later than December 31, 2018. The Parties agree that all Closing documents, including the Quitclaim Deed for conveyance of the Premises, easement deeds (if applicable) and other Closing documents, shall not be recorded at the Merrimack County Registry of Deeds and that the purchase price shall not be exchanged

between the Parties until all of the Buyer's and Seller's contingencies, as set forth within Articles 2 and 3, respectively, have been achieved, satisfied, or otherwise waived in writing.

- 1.7. **Title and Deed Restrictions**: The Seller shall convey the Premises by Quitclaim Deed. In addition to the terms and conditions set forth within this Agreement, the Seller has no commitment to provide Buyer with good, marketable and insurance title. However, the Buyer may conduct a title search to determine whether title to the Premises is good, marketable title and insurable, so that the Buyer may acquire, for the benefit of the Buyer by a title insurer licensed in the State of New Hampshire and acceptable to the Buyer, an American Land Title Association ALTA standard form title insurance policy in an amount equal to the Purchase Price, insuring that the Buyer holds marketable fee simple title to the Premises, at Buyer's expense and subject to the following:
- a) Existing matters of record accepted and approved by the Buyer.
  - b) A reservation to the City of all easements necessary or desirable for the construction, maintenance, and operation of public improvements to serve the Buyer's Project (if any).
  - c) Any other easements or right-of-way dedications as identified by the City during the development permitting process and which are acceptable to the Buyer, including potential easements which the City may require in order to facilitate pedestrian connectivity with potential future improvements on the Seller's Lot as conceptually depicted in Exhibit 4.
  - d) A provision within the Deed to expressly notify the Buyer, its heirs, successors, and assigns, that the operations of the adjacent hydroelectric facility will generate noise which may not be typical in residential areas and that persons purchasing the Premises from the City, its heirs, successors, or assigns, shall specifically acknowledge said circumstance. This provision is required per the terms and conditions of a "Cross Easement Agreement" between Briar Hydro Associates and the City of Concord dated February 27, 2008 and recorded at the Merrimack County Registry of Deeds at Book 3058 Page 486 – 493, as further described elsewhere within this Agreement.
  - e) A deed restriction on the Premises to the benefit of the City which shall require that, in the event any portion of the Buyer's Project or Premises is leased or sold to an entity that would cause the Premises to be exempt from the payment of real estate taxes ("Exempt Owner" or "Exempt Lessee"), said Exempt Owner(s) or Lessee(s) shall be obligated to enter into an agreement for Payments In Lieu of Taxes



("PILOT") with the City. Pursuant to the PILOT, the Exempt Owner or Lessee shall agree to make payments to the City in an amount equal to all State, County, Municipal and School District property taxes that would otherwise be payable with respect to the respective property interest. Each deed or other transfer document from the Buyer to any future transferee of any interests in the Buyer's Project shall incorporate this covenant, which shall run with the land. This provision shall not be construed to require the Buyer, its heirs, successors, or assigns, to forgo its rights concerning real estate assessments and associated payment of property taxes as specifically provided for within RSA 75:1-a "Residential Property Subject to Housing Covenant under the Low-Income Housing Tax Credit Program."

- f) A reservation or other mechanism which shall compel the Buyer to convey the Premises to the Seller, at the Seller's sole option, at a price equal to the Purchase Price originally paid by the Buyer to the Seller in the event Commencement of Construction for the Buyer's Project has not occurred within twenty four (24) months after the date of recording of the quitclaim deed conveying the Premises from the City to the Developer. The Seller recognizes that the Buyer's preference would be to construct the Buyer's Project in one phase; however, financing restrictions imposed by the New Hampshire Housing Finance Authority may make it necessary to construct the Buyer's Project in two separate phases. "Commencement of Construction" shall be defined as the Buyer, its heirs, successors, and assigns, securing a building permit for Phase I of the of the Buyer's Project, fully executing a construction contract with a general contractor or construction manager for the Buyer's Project, and completion of the building foundation for Phase 1 of the Buyer's Project. Notwithstanding the above, if prior to the Closing the Buyer secures a building permit for Phase I of the of the Buyer's Project, fully executes a construction contract with a general contractor or construction manager for the Buyer's Project then the deed into Buyer shall not contain the above revereter, provided the Buyer supplies the Seller with copies of said permits and contracts in such a manner to give Seller a reasonable time to review prior to drafting the deed.

- 1.8. **Seller's Affidavits and Certificates:** To the extent applicable and if requested to do so by the Buyer, the Seller, at the Closing, shall deliver such affidavits (in customary form) as may be required by the Buyer or Buyer's title insurance company with respect to: (1) parties in possession of the Premises, (2) rights of third parties and title claims in or to the Premises, and (3) mechanic's and materialmen's liens affecting the Premises. All such requested affidavits and certificates shall be provided to the Seller at least five (5) business days in advance of the closing.

- 1.9. **Deed Preparation; Recording Fees**: The Seller shall convey the Premises by Quitclaim Deed. The Seller shall prepare all deeds at its expense. The form and content of the deed shall be reasonably satisfactory to the Buyer. The Seller shall deliver the draft deed to the Buyer as soon as practical upon the Seller's receipt of written notice from the Buyer declaring the Buyer's intent to proceed to Closing for this transaction. The Buyer shall review the deed(s) and provide comments to the Seller (if any) no later than thirty (30) days of receipt of the draft deed from the Seller. The Seller shall address the comments and respond in a timely manner.
- 1.10. **Transfer Taxes and Recording Fees**: The Parties shall pay their respective shares of normal and customary recording fees and transfer taxes customarily associated with real estate transactions. The parties acknowledge that the Seller is exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I. To the extent the Buyer is not exempt from the real estate transfer tax; the Buyer hereby agrees to pay its respective half of the transfer tax in the customary fashion.
- 1.11. **Discharge of Liens**: The Seller shall, at its expense, pay or discharge all liens, mechanics liens, encumbrances, and attachments, if any (the "Liens"), which may exist on the Premises through the date of Closing or filed after recording of the deed transferring the Premises to the Buyer due to an action by the Seller prior to recording of the deed, except those which the parties agree will not be discharged in accordance with Section 1.7 above. To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the deed, use the Purchase Price or any portion thereof to clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed. The Seller shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances, and receive therefrom a discharge(s) to be recorded in the ordinary course of business.

In the event that the Seller is unable or otherwise unwilling to pay or discharge all liens, mechanics liens, encumbrance and attachments which exist before the date of Closing, the Buyer, at its sole option, may proceed with any of the following options:

- 1.11.1. Afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Liens; or,
- 1.11.2. Terminate this Agreement, in which case the Buyer shall be entitled to the return of the Option Payment (if any), following

which this Agreement shall be null and void, and of no further force or effect; or,

- 1.11.3. The Parties may renegotiate the Purchase Price to appropriately account for said Liens and then proceed to Closing.
- 1.12. **Prorating of Property Taxes and Utility Costs:** At the time of recording of the Deed, the Buyer shall be required to pay all property taxes and utilities (as applicable) for the Premises pro-rated from the date of Closing through March 31<sup>st</sup> of said tax year.
- 1.13. **Delivery of Premises, Removal of Tenants, and Property to be Retained by Seller:** The Seller shall deliver possession of the Premises to the Buyer in its "AS IS, WHERE IS" condition, free and clear of all tenants and third parties.
- 1.14. **Title Insurance:** If applicable and in accordance with Section 1.8, the Seller shall execute all customary documents required by the Buyer's Title Insurance Company.
- 1.15. **Real Estate Broker's Fees & Commissions:** The Seller hereby confirms that it has engaged the NAI Norwood Group of Bedford, New Hampshire, to market the Premises. The Seller shall be solely responsible for paying its broker any fees or commissions owed to the NAI Norwood Group resulting from this transaction.
- 1.16. **Seller's Disclosures:**
  - 1.16.1. **Environmental Condition of Premises:** The Seller hereby discloses, represents and warrants that an extensive voluntary environmental cleanup project was undertaken at the Premises between 2003 and 2014. Said remediation efforts were funded, in part, by the New Hampshire Department of Environmental Services (NHDES) and US Environmental Protection Agency (USEPA), as well as other agencies. Environmental cleanup activities were undertaken in accordance with NHDES approved Remedial Action Plans (RAPs) for the Premises. The results of cleanup activities are detailed in various documents, including, but not limited to:
    - a) "Remedial Action Plan Implementation Report 31 and 35 East Street and 15 Crescent Street" prepared by Environmental Compliance

Services dated August 2007. This report was accepted and approved by the NHDES through the issuance of a "Certificate of Completion" December 7, 2007.

- b) "Remedial Action Implementation Report" dated June 10, 2015 prepared by Loureiro Engineering Associates, Inc. This report was accepted and approved by the NHDES on July 31, 2015.

In accordance with the recommendations of the June 10, 2015 Remedial Action Implementation Report, certain institutional controls previously enacted for the Premises have been, or shall be, amended. These include an Activity and Use Restriction (AUR) and Ground Water Management Permit (GWMP), as further described elsewhere within this Agreement.

The Seller makes no warranties or representations regarding environmental contamination or sub-surface environmental or geotechnical conditions at the Premises beyond those specifically detailed within the documents listed above, or those documents prepared by the Seller which are otherwise available from the NHDES or USEPA.

- 1.16.2. Cross Easement Agreement with Briar Hydro Associates. The Seller hereby discloses that the Premises are subject to a Cross Easement Agreement between Briar Hydro Associates and the City of Concord dated February 27, 2008 and recorded at the Merrimack County Registry of Deeds at Book 3058 Page 486 – 493. The purpose of this document was to restructure various easements encumbering the Premises, as well as grant the City of Concord certain rights to construct certain improvements on property owned by Briar Hydro Associates at the City's sole option in the future. The Buyer, as successor of the Seller, shall be subject to the provisions of this Agreement. The Seller shall, within ten (10) business days of the Effective Date, provide the Buyer, at no cost, with copies of the Cross Easement Agreement, as well as related easement deeds and plans.

- 1.17. **Casualty and Condemnation:** In the event that the Premises, prior to Closing, are damaged by fire, flood, collapse, or other casualty, or is subject to an eminent domain proceeding, the Buyer at any time after the occurrence of such damage or casualty may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease, any Option Payment shall be returned to the Buyer, and this Agreement shall thereupon be void and of no further force or effect.

In the event of partial eminent domain (leaving suitable residual Premises area for the Buyer's intended use of the Premises), the Buyer may choose to proceed with the acquisition and redesign of its intended use of the Premises to accommodate the portion of Premises taken and the Parties shall negotiate an extension of timing requirements for Closing. Further, the Parties shall agree to reduce the Purchase Price in an amount directly proportionate to the total lot area seized by said taking.

The City warrants and represents to the Seller that the City has no plans to take all or any portion of the Premises by eminent domain and is unaware of plans by any other entity to do so.

## 2. **BUYER'S RESPONSIBILITIES AND CONTIGENCIES:**

### 2.1. **Buyer's Responsibilities and Covenants:**

- 2.1.1. **Development of the Buyer's Project:** Upon acquisition of the Premises, the Buyer (its heirs, successors, or assigns) hereby covenants that it shall proceed with the development of a garden style multifamily apartment project featuring up to 54 dwelling units, of which up to 14 units shall be two bedroom units and the remainder of the dwelling units shall be one bedroom units

The Buyer's Project may be developed in two distinct phases, provided, however, that Phase 1 shall feature not more than 30 dwelling units and Phase 2 would feature not more than 24 dwelling units. The Buyer's project shall be substantially similar to the conceptual site plan and building elevations included within Exhibit 3 of this Agreement, as well as the conceptual subdivision depicted in Exhibit 4 of this Agreement. The schedule for the Buyer's Project shall be substantially similar to the schedule set forth within Exhibit 5 of this Agreement. The Buyer covenants and agrees that it will apply for a building permit from the City of Concord to construct Buyer's Project no more than thirty (30) days after the Closing and shall use commercially reasonable efforts to complete the Buyer's Project in a timely manner consistent with industry practices for projects of the same type and kind as Buyer's Project.

The Buyer further covenants that said development shall be a multigenerational affordable housing project, with preference for senior citizen tenants, to be financed, in part, by Low Income Housing Tax Credits (LIHTCs). Of the 54 total maximum units planned, 6 units shall be “market rate” units and offered to tenants regardless of household income, 40 units would be reserved for households earning no more than 60% of the Area Median Income for Merrimack County as defined by the US Department of Housing and Urban Development, and 6 units would be reserved for households earning no more than 30% of the Area Median Income for Merrimack County as defined by the US Department of Housing and Urban Development.

The Buyer hereby covenants, represents and warranties that it shall make every effort to preserve, renovate, and incorporate the existing 2,600SF brick office building at the Premises into the Buyer’s Project. However, the Parties hereby recognize that the structure is in poor condition. Therefore, the Buyer shall not be obligated to retain the building in the event the Buyer determines in its sole discretion that preservation of the structure is not financially viable, or that preservation of the structure would impede the development of the two new apartment buildings planned as part of the Buyer’s Project.

The Buyer may, at its sole option, incorporate the 4,100SF former warehouse building into its project. However, the Buyer shall have no obligation to do so.

- 2.1.2. Subdivision of Premises: In conjunction with the development permitting process for the Buyer’s Project, the Buyer shall prepare a subdivision application for the purpose of subdividing the Property into two distinct parcels in accordance with the attached conceptual plans included in Exhibit 4 of this Agreement. The Buyer shall retain that parcel located along the westerly portion of the Property, shown as Parcel 1 on Exhibit 4. The Buyer shall acquire from the Seller Parcel 2 as approximately shown on Exhibit 4 for the purpose of developing the Buyer’s Project. As part of its acquisition, the pile of structural fill located on Parcel 2 shall be conveyed to the Buyer at no cost. However, the pile of granite curbing located near the Former Brick Office Building shall be retained by the Seller and removed from Parcel 2 by the Seller prior to Closing.

The Buyer shall be solely responsible for the cost of preparing the subdivision application, including preparation of the subdivision plan and related forms, as well as all required application fees.

The Parties hereby acknowledge that it is the Seller's goal to retain as much of the water frontage on the Contoocook River as possible in order to support potential future development of a riverfront park and that the final configuration of the lots to be created by the subdivision shall be mutually acceptable to the Buyer and Seller.

2.1.3. Buyer Responsible for Infrastructure Improvements and Demolition of Existing Buildings Not Incorporated Into Buyer's Project: The Buyer hereby covenants, represents, and warrants that it shall be solely responsible for the cost of designing, permitting, and constructing any and all improvements to utilities, roadways, sidewalks and other infrastructure, without limitation, which might be required by Buyer's Project. Further, the Buyer shall be responsible for demolition of the 4,100SF former warehouse / waterproofing building and 2,600SF former brick office building by at the Buyer's sole expense in the event that the Buyer does not incorporate reuse of these structures into the Buyer's Project.

2.1.4. Compliance with Environmental Institutional Controls: Upon acquisition of the Premises, the Buyer hereby covenants, represents, and warrants that it shall be solely responsible for the cost of compliance for all environmental institutional controls for that portion of the Premises acquired by the Buyer for the Buyer's project, including, but not limited to, Activity and Use Restrictions (AURs), Ground Water Management Permits (GWMP), Soil Management Plans (SMPs), as well as the Covenant Not to Sue for the Premises issued by the State of New Hampshire.

2.2. Buyer's Contingencies: The Buyer's obligation to close on acquisition of the Premises shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Buyer.

2.2.1. Due Diligence.

a) 90 Day Due Diligence Period: The Buyer shall have until the ninetieth (90<sup>th</sup>) day after the execution of this Agreement by all parties (such period being referred to herein as the "90 Day Due Diligence Period" or "Due Diligence Period") to complete any and all assessments, tests, studies, surveys, and research, at its sole cost and expense, as the Buyer

deems necessary or appropriate, including, but not limited to, environmental site assessments (including soil and groundwater testing and sub-surface explorations), real estate title reviews, boundary surveys, building and property inspections, flood zone reviews and certifications, reviews of all applicable governmental regulations and ordinances, economic and financial feasibility studies, due diligence pertaining to the availability of financing for the Buyer's project (including, but not limited to, Low Income Housing Tax Credits), engineering studies, geotechnical studies, parking and traffic studies, as well as reviews to determine the adequacy and availability of public and private utilities serving the Premises. If Buyer shall discover or determine prior to the expiration of the Due Diligence Period that it is not satisfied in any way with the status of the Premises or the results of any of its due diligence or inspections, Buyer shall have right to terminate this Option, and all the parties shall thereafter be released from any further obligations hereunder and the Option Payment shall be refunded forthwith.

- b) *Title Due Diligence – Special Provisions:* During the 90 Day Due Diligence Period, the Buyer shall perform a title examination of the Premises, and must be reasonably satisfied that title to the Premises is good, marketable and insurable, and not otherwise subject to any Liens, encumbrances, covenants or other restrictions which would prevent the Buyer from using the Premises for the Buyer's Project ("Title Defects"). In the event that the title to the Premises is not good, marketable and insurable, or is otherwise subject to any Title Defects, the Seller shall be provided a reasonable period of time, no less than ninety (90) days, within which to resolve such title defects. In the event that the Seller is unable or otherwise unwilling to provide good, marketable and insurable title, or to remove the Title Defects within the ninety (90) day period, the Buyer, at its sole option, may proceed with any of the following options:
- i. Afford the Seller additional time to cure said title defects; or,
  - ii. Terminate this Agreement and receive a return of the Option Payment; or,



- iii. The Parties may renegotiate the Purchase Price to appropriately account for the condition of title to the Premises, and then proceed to Closing.
- c) *Environmental Due Diligence – Special Provisions:* During the 90 Day Due Diligence Period, the Buyer shall have the right to conduct such studies and investigations it deems necessary with respect to the environmental condition of the Premises and any environmental contamination or hazardous material related thereto.

The Seller shall provide the Buyer (or its agents, employees, consultants, contractors, and representatives) reasonable access to the Premises for the purpose of carrying out any environmental investigations or other due diligence required by the Buyer. In order to complete such examinations or investigations, the Buyer may undertake soil borings, test pits, or installation of groundwater monitoring wells. The Buyer shall perform these tasks at its own risk and at its own expense. The Buyer accepts full responsibility for the use of the Premises during its inspections and due diligence, and acknowledges that such access is subject to the indemnity provisions of Section 1.5.

The Seller shall, within ten (10) business days of the Effective Date, provide the Buyer, at no cost, with copies of the following environmental studies, assessments, or reports:

- Remedial Action Plan Implementation Report 31 and 35 East Street and 15 Crescent Street” prepared by Environmental Compliance Services dated August 2007.
- “Remedial Action Implementation Report” dated June 10, 2015 prepared by Loureiro Engineering Associates, Inc.
- January 13, 2016 Letter from Loureiro Engineering to NHDES titled “Post Remedial Groundwater Quality Data Transmittal Former Allied Leather Tannery Complex”.
- November 11, 2016 Letter from Loureiro Engineering to NHDES titled “Groundwater Management Permit Renewal”, together with a copy of the Permit Application.
- Activity and Use Restriction (AUR), which was approved by the NH Department of Environmental Services

(NHDES) on August 29, 2016 and recorded at the Merrimack County Registry of Deeds at Book 3532 Pages 2046-2057.

The Buyer hereby acknowledges and agrees that it may not rely upon the representations, certifications, and statements contained therein without the express written consent of the parties who authored such reports or generated said data. Further, the Buyer acknowledges that the provision of such materials by the Seller does not constitute any representation or warranty by the Seller related to environmental conditions or potential presence of hazardous materials at the Premises.

If the Buyer determines that the Premises are not acceptable because of the presence of environmental contamination, hazardous materials, or other buried materials at the Premises, the Buyer shall have the following options, as follows:

- i. Terminate this Agreement and receive a return of the Option Payment; or,
- ii. Accept the Premises in its "as is condition" and proceed to Closing, subject to other contingencies as set forth within this Agreement. If the Buyer proceeds to Closing, the Buyer shall accept full responsibility for the Premises in its "as is, where is" environmental condition with respect to the potential presence of hazardous waste or other buried materials regardless whether such waste or other materials were identified by said due diligence, tests, studies, or investigations.

2.2.2. **Development Approvals and Permits:** This Agreement is contingent upon the Buyer, at its sole cost and expense, obtaining any and all required development permits and approvals applicable governmental agencies, upon such terms and conditions as are satisfactory to the Buyer in its reasonable discretion, for the Buyer's Project. If the Buyer is unable to secure said approvals and permits prior to the Closing, the Buyer may elect to terminate this Agreement.

2.2.3. **Subdivision of Premises:** This Agreement is specifically contingent upon subdivision of the Premises into two lots; one of which shall be conveyed to the Buyer for the Buyer's Project and the other retained by the Seller. The configuration of the

subdivision shall be satisfactory to the Buyer in its reasonable discretion. In the event configuration of the parcels is not acceptable to the Buyer, the Buyer may terminate this Agreement.

- 2.2.4. **Buyer's Financing and Low Income Housing Tax Credits:** This Agreement is specifically contingent upon the Buyer obtaining financing, including Low Income Housing Tax Credits (LIHTCs) in sufficient amounts at such prices, rates and terms that are satisfactory to the Buyer, in its sole discretion, for the development of the Buyer's Project. The Buyer shall provide proof, in writing, of a preliminary commitment for such financing arrangements as soon as is reasonably practicable. If the Buyer is not able to obtain an acceptable financing package for the development of the Buyer's Project prior to the Closing, the Buyer may elect to terminate this Agreement.
- 2.2.5. **Finding of No Significant Action:** The parties acknowledge and understand further that prior to Buyer exercising its rights pursuant to this Option and purchasing the Premises, that an environmental review must be performed pursuant to 24 C.F.R. 58, or otherwise, and Buyer must be granted a Finding of No Significant Impact ("FONSI") or similar clearance from the U.S. Department of Housing and Urban Development ("HUD"). The Buyer shall use commercially reasonable efforts to receive the HUD approval(s) specified in this Section. In the event that the Buyer does not receive the FONSI, or similar clearance, prior to the expiration of the Due Diligence Period, the Buyer may terminate this Option and have the Option Payment refunded forthwith, and all parties shall thereafter be released from any further obligations hereunder. Buyer agrees that if the Closing does not occur, it shall keep all environmental test result information confidential, unless the Buyer is legally required to disclose the same.
- 2.2.6. **Covenant Not to Sue Amendment by Seller:** This Agreement shall be specifically subject to the Seller securing an amended Covenant Not to Sue in the event the NH Department of Environmental Services determines that amendment of the Covenant issued in 2008 is warranted, as further described in Section 3.1.1 of this Agreement.
- 2.2.7. **Environmental Cleanup Institutional Controls Amendments by Seller:** This Agreement shall be specifically subject to the Seller securing amended institutional controls for the Premises in the event the NH Department of Environmental Services determines that amendment of such controls (if any) is warranted, as further described in Section 3.1.2 of this Agreement.

### 3. SELLER'S RESPONSIBILITIES AND CONTINGENCIES:

#### 3.1. Seller's Responsibilities:

3.1.1. Covenant Not to Sue Amendment: The Seller hereby represents and warrants that the individual underlying parcels which originally comprised the Premises were enrolled in the State of New Hampshire Department of Environmental Services' (NHDES) Voluntary Cleanup / Covenant Not to Sue Program on June 17, 2003, October 6, 2004, and June 20, 2012. The State of New Hampshire issued a Covenant Not to Sue for the Premises on February 14, 2008, which was subsequently recorded at the Merrimack County Registry of Deeds at Book 3050 Pages 423-428. Because additional cleanup occurred after issuance of the Covenant, and the City acquired other parcels (5-11 Canal Street) which were subsequently merged with the Premises after 2008, the NH Department of Environmental Services (NHDES) may determine that updating the Covenant might be appropriate. Should the NHDES make such a determination, the Seller shall secure a revised Covenant Not to Sue prior to Closing.

3.1.2. Environmental Cleanup Institutional Controls: The Seller hereby represents and warrants that the Premises was the subject of a multi-phase voluntary environmental cleanup and remediation project which was undertaken during 2003-2014. Those activities were funded, in part, by the New Hampshire Department of Environmental Services and US Environmental Protection Agency, as well as other agencies.

In conjunction with said cleanup efforts, certain institutional controls were instituted for the Premises, as described below. Because the final round of environmental remediation was completed in September 2014, the NHDES may determine that some existing institutional controls may need to be amended to reflect the final condition of the Premises. Should the NHDES make such a determination, the Seller shall secure revised institutional controls, as might applicable and further described herein, prior to Closing.

a) Activity and Use Restriction: The Seller hereby discloses that the Premises are subject to an Activity and Use Restriction (AUR), which was approved by the NH Department of Environmental Services (NHDES) on August 29, 2016 and recorded at the Merrimack County Registry of Deeds at Book 3532 Pages 2046-2057. Because the AUR reflects the final post-environmental cleanup of the

Premises, the Seller anticipates that there shall be no need to update this document prior to Closing.

- b) *Ground Water Management Permit:* The Seller hereby discloses that the Premises are subject to a NH Department of Environmental Services (NHDES) Ground Water Management Permit (GWMP). On or about December 14, 2016, the Seller filed an application with the NHDES to amend the existing GWMP to reflect the final, post-environmental cleanup conditions of the Premises. The Seller shall secure an amended GWMP for the Premises prior to Closing.

3.2. *Seller's Contingencies:* The Seller's obligation to close on the sale of the Premises shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Seller any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Seller shall have no further obligation to the Buyer.

3.2.1. *Buyer's Financing:* This Agreement is specifically contingent upon the Buyer obtaining financing in sufficient amounts at such rates and terms as are satisfactory to the Buyer, in its sole discretion, for the development of Phase I of the Buyer's Project, as further described in Section 2.2.4. If the Buyer is not able to obtain an acceptable financing package for the development of Phase I of the Buyer's Project as set forth in this Section prior to the Closing, the Seller may elect to terminate this Agreement.

3.2.2. *Development Permits and Approvals:* This Agreement is specifically contingent upon the Buyer, at its sole cost and expense, obtaining any and all required development approvals and permits from applicable governmental agencies, upon such terms and conditions as are satisfactory to the Buyer in its reasonable discretion, for the Buyer's Project as further described in Section 2.2.2. Prior to applying for any development permits and approvals, the Buyer shall provide the Seller with copies of proposed plans and applications for the Seller's review, approval, and, in the case of applications, the Seller's execution on behalf of the Buyer. The Seller's approval of proposed plans and applications shall not be unreasonably withheld, conditioned or delayed. Seller shall have fifteen (15) days to review and consent to any proposed plans or applications. If Seller does not respond to Buyer's request to approve any plans or applications within said fifteen (15) day period, then said plan or application shall be deemed approved. If the Buyer delivers notice to the Seller that

Buyer is unable to secure said approvals and permits prior to the Closing, the Seller may elect to terminate this Agreement.

3.2.3. **Subdivision of Premises:** This Agreement is specifically contingent upon subdivision of the Premises into two lots; one of which shall be conveyed to the Buyer for the Buyer's Project and the other retained by the Seller. The configuration of the subdivision shall be satisfactory to the Seller in its reasonable discretion. In the event configuration of the parcels is not acceptable to the Seller, the Seller or Buyer may terminate this Agreement.

3.2.4. **Infrastructure Improvements and Demolition of Existing Buildings:** This Agreement is specifically contingent upon the Buyer being solely responsible for any and all infrastructure improvements which might be required for the Buyer's Project. Further, the Parties hereby agree that the Seller shall have no obligation to design, construct, or finance any infrastructure improvements, or improvements to public or private property, to support the Buyer's efforts to develop the Buyer's Project. Lastly, this agreement is contingent upon the Buyer being responsible for demolition of the 4,100SF former warehouse / waterproofing building and the 2,600SF former brick office building at the Buyer's sole expense in the event the Buyer does not incorporate these structures into the Buyer's Project.

#### 4. **REPRESENTATIONS AND WARRANTIES**

4.1. **Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the best of its knowledge and belief that:

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

4.1.2. Subject to the conditions set out in this Agreement, neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the City of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the

City is a party or by which the City or any of its properties or assets are bound, or constitutes a default there under.

4.1.3. The City Council, by its approval of Resolution # \_\_\_\_\_ on May 8, 2017, authorized the City Manager to execute this Agreement.

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

4.2. **Representations and Warranties of the Buyer.** The Buyer hereby represents and warrants to the best of its knowledge and belief that:

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

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

4.2.3. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Buyer, except such as have been duly obtained or made.

4.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority,

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

## 5. **GENERAL PROVISIONS**

- 5.1. **Cooperation**: The Buyer and the Seller agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Seller, the Buyer, or their representatives, agents, and consultants.
- 5.2. **Entire Agreement; Amendments**. This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 5.3. **Binding Effect; Successors and Assignors**. The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees. The Buyer shall be permitted to assign this Agreement to an affiliate or subsidiary limited liability company or limited partnership formed for the purpose of undertaking Buyer's Development as a so-called "Low Income Housing Tax Credit Project", provided, however, that the general partner of a limited partnership assignee or the managing member of a limited liability company assignee, as appropriate, is a wholly owned subsidiary of either Caleb Development Corporation or the Caleb Foundation, Inc..
- 5.4. **Headings**. The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.



- 5.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 5.6. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 5.7. **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and the Parties agree to negotiate in good faith to amend the Agreement to provide for each party to the Agreement the same relative rights and obligations existing prior to such determination of illegality or unenforceability.
- 5.8. **Consent to Jurisdiction and Venue.** The Buyer and Seller submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. Both Parties hereby waive their right to a jury trial.
- 5.9. **Independent Parties.** The Buyer and Seller are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 5.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement and Closing.
- 5.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 5.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted

assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

- 5.13. **Preservation of Rights.** Nothing herein or in any related agreement shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.
- 5.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 5.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 5.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable City or other governmental Boards, Committees, Commissions, or Departments.
- 5.17. **Warranties and Representations:** The Buyer and Seller each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 5.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.
- 5.19 **Default by Buyer.** If the Buyer shall fail to fulfill its obligations hereunder, then the Seller shall have the right to terminate this Agreement and retain the Option Payment, if any, as the Seller's exclusive remedy, whereupon neither party shall have any further rights against the other under this Agreement.

5.20 **Default by Seller.** If the Seller shall fail to fulfill its obligations hereunder, then the Buyer shall have the option to (a) waive the default and proceed to Closing; or (b) give notice that it is terminating this Agreement, and neither party shall have any further rights against the other under this Agreement; or (c) pursue its rights at law and in equity to address any such breach, including, but not limited to, the remedy of specific performance.

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

## LIST OF EXHIBITS

- Exhibit 1 Plan titled "*Activity and Use Restriction Plat on the Land of the City of Concord*" prepared by Richard D. Bartlett and Associates LLC., dated July 2015
- Exhibit 2 Notice of Lot Consolidation dated July 29, 2015, recorded at the Merrimack County Registry of Deeds at Book 3486 Page 1123-1124, as recorded at the Merrimack County Registry of Deeds.
- Exhibit 3 Site Concept and Conceptual Elevations for "Penacook Apartments" (a.k.a. the Buyer's Project) prepared by Richard Curtis and Associates dated December 21, 2016
- Exhibit 4 Conceptual Subdivision Plan
- Exhibit 5 Schedule for the Buyer's Project

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

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**SELLER**

**CITY OF CONCORD**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Thomas J. Aspell, Jr., City Manager  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

\_\_\_\_\_  
Justice of the Peace/Notary Public

**BUYER**

**CALEB DEVELOPMENT CORPORATION**

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

Debra S. Nutter, President  
Duly Authorized

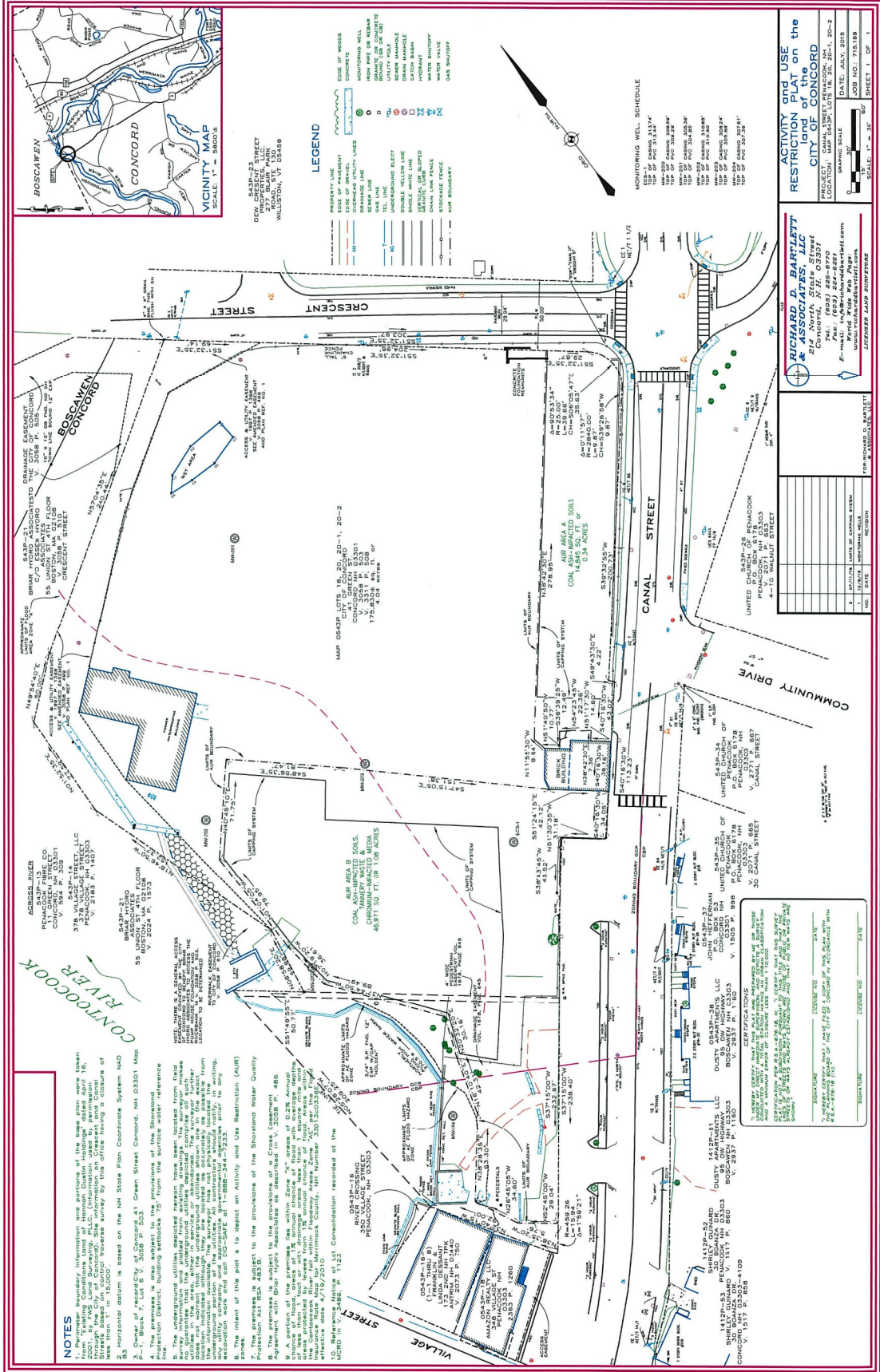
COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF \_\_\_\_\_

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me, personally appeared Debra S. Nutter, President of Caleb Development Corporation, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that she executed said instrument for the purposes therein contained as her free and voluntary act and deed.

\_\_\_\_\_  
Justice of the Peace/Notary Public

**Exhibit 1**

**Plan titled “Activity and Use Restriction Plat on the Land of the City of Concord”  
prepared by Richard D. Bartlett and Associates LLC., dated July 2015**



**ACTIVITY and USE RESTRICTION PLAN on the land of the CITY OF CONCORD**

**RICHARD D. BARTLETT ASSOCIATES, LLC**  
 300 North Main Street  
 Concord, N.H. 03301  
 Phone: (603) 224-1200  
 www.rdbartlett.com

DATE: JULY, 2015  
 JOB NO: 715189  
 SCALE: 1" = 30'  
 SHEET 1 OF 1

**MONITORING WELL SCHEDULE**

WELL NO.	DEPTH	CONSTRUCTION	LOCATION
1	10'-15'	CONCRETE	TOP OF CROWN
2	10'-15'	CONCRETE	TOP OF CROWN
3	10'-15'	CONCRETE	TOP OF CROWN
4	10'-15'	CONCRETE	TOP OF CROWN
5	10'-15'	CONCRETE	TOP OF CROWN
6	10'-15'	CONCRETE	TOP OF CROWN
7	10'-15'	CONCRETE	TOP OF CROWN
8	10'-15'	CONCRETE	TOP OF CROWN
9	10'-15'	CONCRETE	TOP OF CROWN
10	10'-15'	CONCRETE	TOP OF CROWN

**NOTES**

1. Precise boundary information and portions of the same plan were taken from the 2001 State Land Survey, P.L.C. (Information used by permission. Streets based on a 2001 increase survey by the office having a closure of 2001).
2. Horizontal datum is based on the NH State Plane Coordinate System NAD 83.
3. Block 7, Lot 6, V. 3058 P. 503, Green Street Concord, NH 03301 Map 110.
4. Block 7, Lot 6, V. 3058 P. 503, Green Street Concord, NH 03301 Map 110.
5. The information contained herein has been obtained from field survey information and plotted from aerial photography. The surveyor reserves the right to correct errors of omission or commission. The surveyor's liability is limited to the information contained herein and the surveyor is not responsible for any errors or omissions that may occur in the future.
6. The extent of this plan is to depict an activity and Use Restriction (AUR) zone.
7. The premises are subject to the provisions of the Concord Water Quality Ordinance, Chapter 228:203B.
8. A portion of the premises lies within Zone "C" area of 0.25 Annual Average Daily Flow (ADF) and is subject to the provisions of the Concord Water Quality Ordinance, Chapter 228:203B.
9. The information contained herein is based on a survey conducted on or about 4/19/2015.



**Exhibit 2**  
**Notice of Lot Consolidation dated July 29, 2015, recorded at the Merrimack  
County Registry of Deeds at Book 3486 Page 1123-1124, as recorded at the  
Merrimack County Registry of Deeds**

MERRIMACK COUNTY RECORDS *Kathi L. Guay, CPO, Register*

B  
1449  
2-

Return to: Community Development Dept.  
Planning Division  
41 Green Street  
Concord, NH 03301



### Notice of Lot Consolidation Pursuant to RSA 674:39-a

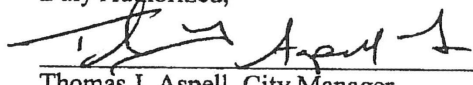
The City of Concord, of 41 Green Street, Concord, New Hampshire 03301, hereby acknowledges ownership of four (4) parcels of land located on Canal Street in the City of Concord, State of New Hampshire: Parcel one (1) is identified as Assessor's Map 0543P Lot 18 (Tract Nos. 7001 and 7002) and acquired by deed recorded at the Merrimack County Registry of Deeds ("MCRD") in Book 3311, Page 508; Parcels two (2), three (3), and four (4) are identified as Assessor's Map 0543P Lot 20 (Tract Nos. 7002-A, 7002-B, 7002-C-1 and 7002-H), Assessor's Map 0543P Lot 20/1 (Tract Nos. 7002-A-1, 7002-E and 7002-H-2), and Assessor's Map 0543P Lot 20/2 (Tract Nos. 7002-A-2, 7002-D-1 and 7002-H-3), respectfully.

Parcels two (2), three (3), and four (4), were previously shown as four parcels of land as shown on MCRD Plan Number 14821. Those four parcels of land on MCRD Plan 14821 were acquired by the City of Concord by Book 2585, Page 422, Book 2585, Page 430, Book 2585, Page 426, and Book 2662, Page 624. Subsequently, the City of Concord merged those four parcels by Notice of Lot Consolidation ("Notice") recorded at the MCRD in Book 2975, Page 1136.

The City of Concord in 2010 prepared a Subdivision Plat and caused it to be recorded at the MCRD at Plan Number 19569. Three new parcels were created by Plan Number 19569, and are known as the parcels described above in paragraph 1: Assessor's Map 0543P Lot 20, Assessor's Map 0543P Lot 20/1, and Assessor's Map 0543P Lot 20/2.

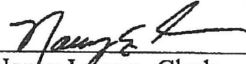
Henceforth, all the above-mentioned parcels of land, Assessor's Map 0543P Lot 18, Assessor's Map 0543P Lot 20, Assessor's Map 0543P Lot 20/1, and Assessor's Map 0543P Lot 20/2, shall for all purposes be considered a single lot and shall not be sold separately or any other divided interest be conveyed except with the prior approval of the City Planning Board in accordance with its duly adopted subdivision regulations.

Signed this 21<sup>st</sup> day of July, 2015.

Duly Authorized,  
By:   
Thomas J. Aspell, City Manager  
City of Concord


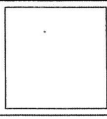
The above consolidation of lots has been approved by Nancy Larson, Clerk of the City Planning Board, pursuant to RSA 674:39-a as the City Planning Board's designee.

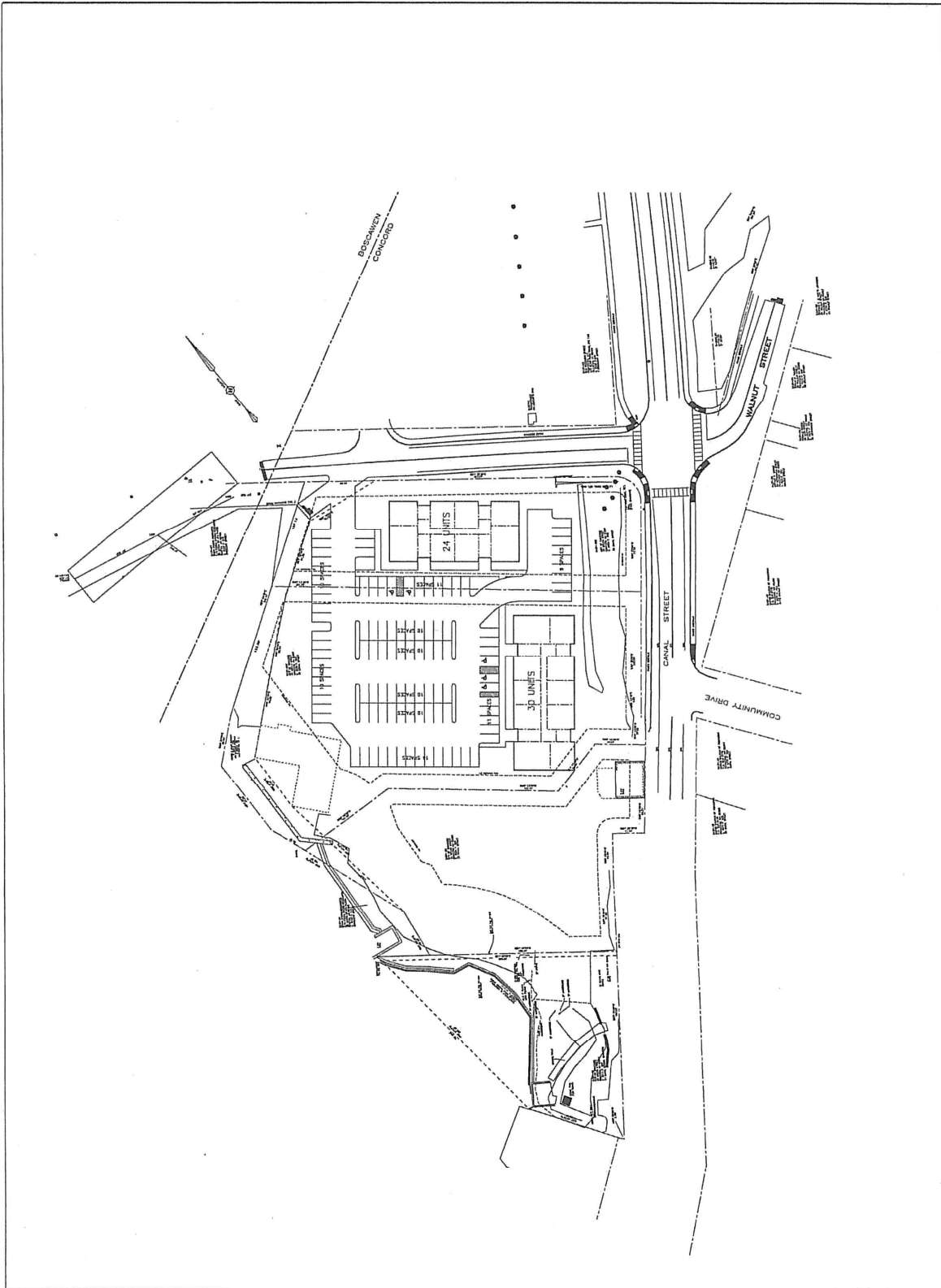
7/29/2015  
Date


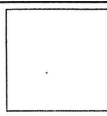
  
Nancy Larson, Clerk  
City Planning Board  
Duly Authorized

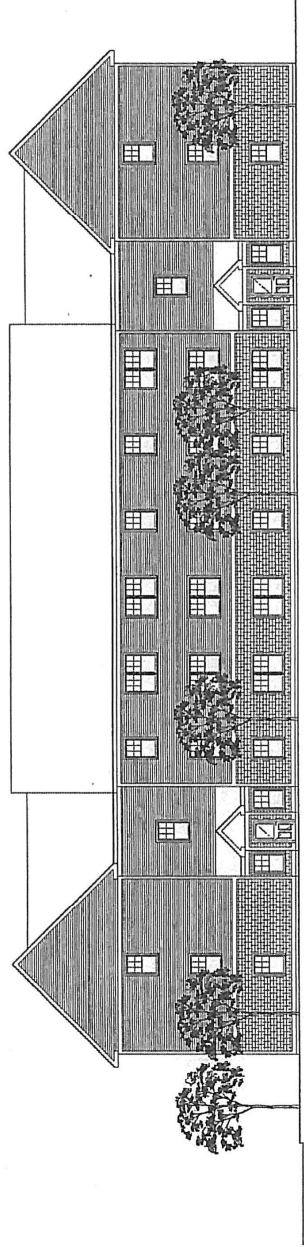
Original: Merrimack County Registry of Deeds/Owner  
Copies: Planning, Assessing, Code Enforcement,  
Engineering, and Solicitor's Office

**Exhibit 3**  
**Site Concept and Conceptual Elevations for “Penacook Apartments” (a.k.a. the**  
**Buyer’s Project) prepared by Richard Curtis and Associates dated**  
**December 21, 2016**

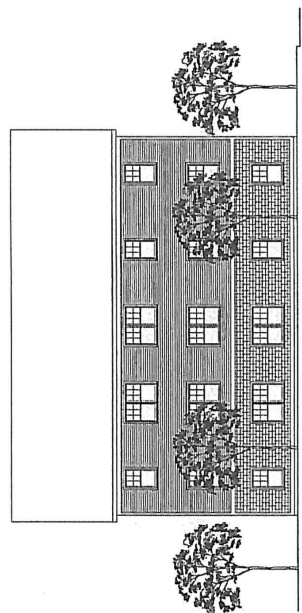
	<p>Richard Curfio &amp; Associates 400 Washington Avenue Plymouth, MA 01901 Tel: (508) 233-9122 Fax: (508) 233-9122 www.rcand.com</p>		<p>Owner: <b>THE CALLEB GROUP</b> 481 Humboldt Street Smythport, MA 01967 Contractor: *****</p>	<p>Project: <b>PENACOOK APARTMENTS</b> Canal Street Penacook, NH</p>	<p>Project No: 16304 Drawing Title: <b>SITE CONCEPT</b> Scale: 1" = 40' Date: 21 Dec 2016 Revision Dates:</p>	<p>Drawing Number: <b>SP1</b></p>
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	<p>Richard Orris &amp; Associates 100 Woodbridge Avenue Piscataway, NJ 08854 Tel: (732) 724-1100 Fax: (732) 724-1111 www.rcand.com</p>		<p>Owner: <b>THE CALEB GROUP</b> 461 Hampshire Street Riverside, NJ 07070 781-525-4265 Contractor: *****</p>	<p>Project: <b>PENACOOK APARTMENTS</b> Canal Street Penacook, NH</p>	<p>Project No: 10304 Drawing Title: <b>CONCEPTUAL ELEVATIONS</b> Scale: 1/8" = 1'-0" Date: 21 Dec 2018 Revision Dates:</p>	<p>Drawing Number: <b>C1</b></p>
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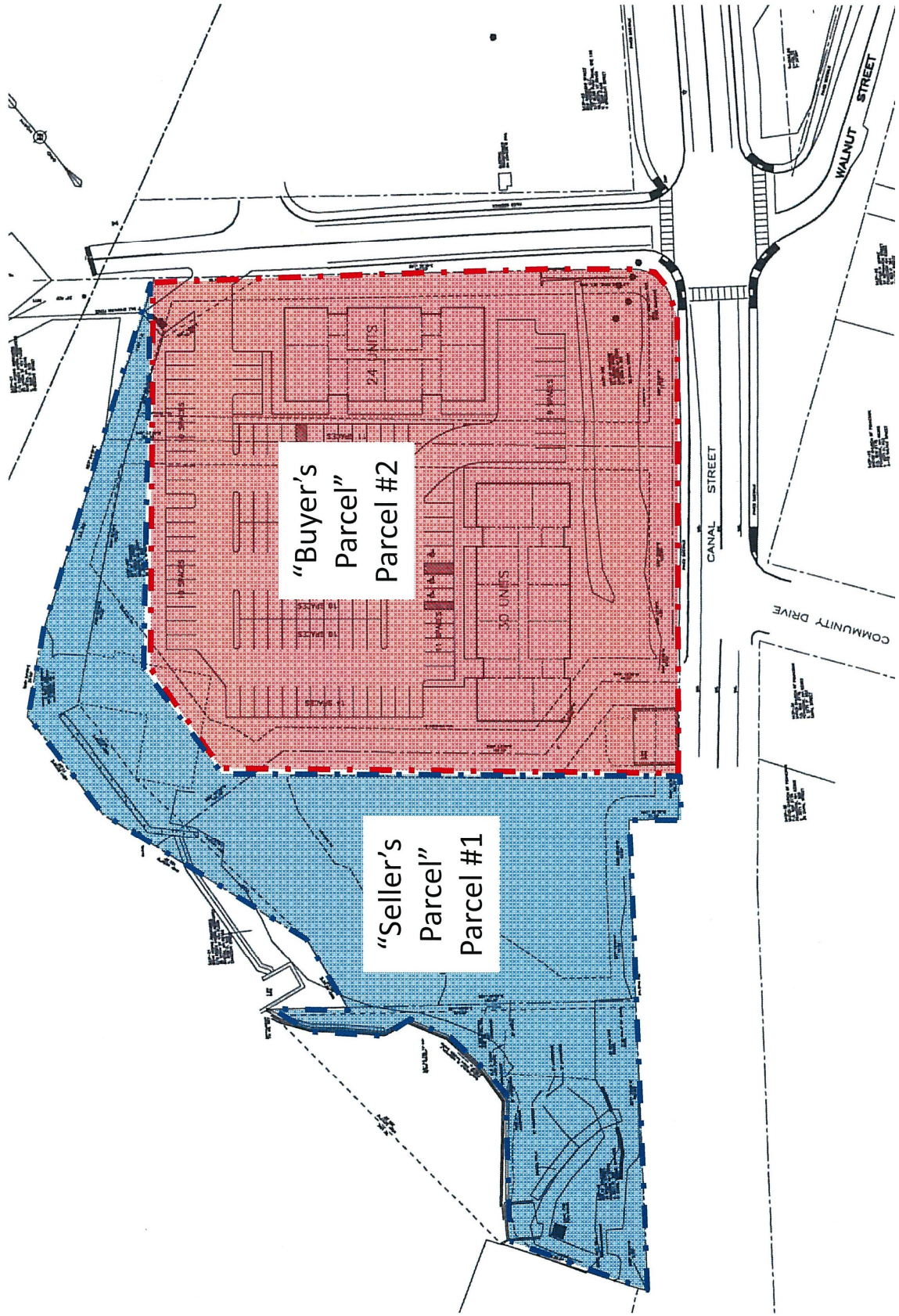
FRONT ELEVATION  
Scale: 1/8" = 1'-0"



SIDE ELEVATION  
Scale: 1/8" = 1'-0"

**Exhibit 4**  
**Conceptual Subdivision Plan**

**Exhibit #4  
Conceptual Subdivision Plan**





**Exhibit 5**  
**Schedule for Buyer's Project**

- Spring 2017 / Early Summer 2017: Purchase and Sales Agreement executed by the Parties.
- August 2017: Buyer makes initial application for Low Income Housing Tax Credits (LIHTCs) for Phase 1 of Buyer's Project.
- Fall 2017: LIHTCs awards are announced. It is anticipated that LIHTCs will not be awarded for Phase 1 of the Buyer's Project as it is customary for projects not to receive funding upon their initial attempt to secure LIHTCs.
- Fall 2017 – Summer 2018: Buyer proceeds with design and development permitting / approvals for Phase 1 and 2 of the Buyer's Project.
- August 2018:
  - Buyer reapplies for LIHTCs for Phase 1 of Buyer's Project.
  - Buyer makes initial application for LIHTCs for Phase 2 of Buyer's Project.
- Fall 2018:
  - Anticipated award of LIHTCs for Phase 1 of Buyer's Project.
  - It is anticipated that LIHTCs for Phase 2 of Buyer's Project will not be awarded.
- **December 31, 2018: Final day to hold Closing on sale of Premises to Buyer.**
- April 2019: Buyer starts construction of Phase 1 of Buyer's Project.
- August 2019: Buyer reapplies for LIHTCs for Phase 2 of Buyer's Project.
- Fall 2019: Anticipated award of LIHTCs for Phase 2 of Buyer's Project.
- Spring 2020:
  - Phase I of Buyer's Project completed.
  - Commence construction of Phase 2 of Buyer's Project.
- Spring 2021: Phase 2 of Buyer's Project is completed.