

## OPTION TO PURCHASE AGREEMENT

THIS OPTION TO PURCHASE AGREEMENT (the “Agreement”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”), by and between **Concord Area Trust for Community Housing**, a New Hampshire nonprofit corporation having an address of c/o CATCH Neighborhood Housing, 105 Loudon Road, Unit #1, Concord, New Hampshire 03301 or it’s nominee or assigns (the “Buyer”) and the **City of Concord**, a New Hampshire municipal corporation having an address of 41 Green Street, Concord, New Hampshire 03301 (the “Seller”).

WHEREAS, Seller wishes to sell, and Purchaser wishes to buy a 2.1 acre tract or parcel of land known as the “Former Water Tower Lot”, identified by MBL 143/P 31 in the Village of Penacook in Concord, New Hampshire, being the same premises described in a deed recorded at the Merrimack County Registry of Deeds at Book 0540, Page 0517, and attached hereto as Exhibit A together with all rights in adjacent streets or roads not previously conveyed to the Village of Penacook and/or the City of Concord, all riparian rights, all assignments of contracts, leases, rents, security deposits, tax abatements, actions, and other property, rights and interests therein, together with all tangible property owned by Seller and necessary to the operation of the property and all approvals and permits, architectural plans and relevant studies (collectively, the “Property”).

WHEREAS, the parties intend to merge the Property with adjacent land located at 95-97 Village Street (MBL 143/P 30 & MBL 143/P 29) on the terms and conditions hereof.

WHEREAS, Seller wishes to grant to Buyer and Buyer wishes to take from Seller an option to acquire the Property on the terms and conditions hereof.

NOW, THEREFORE, for good and valuable consideration received, Seller hereby grants to Buyer an option to purchase the Property from Seller on the terms and conditions hereof:

### 1. OPTION

1.01 Grant of Option. The Seller, hereby irrevocably grants to the Buyer an exclusive option (the “Option”), to purchase the Property, which option may be exercised by written notice received by the Seller, in accordance with the terms hereof, but in no event sooner than a completion of an environmental review pursuant to 24 C.F.R. 58, subject to the provisions of Section 3.01, below (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.

1.02 Exercise of the Option. The Option may be exercised by written notice from the Buyer to the Seller, delivered on or before the expiration of the Option Period.

## 2. PURCHASE PRICE, OPTION PAYMENT, AND MODE OF PAYMENT

2.01 Purchase Price. If Buyer exercises the Option, the purchase price for the Property (the "Purchase Price") shall be Seventy Five Thousand and 00/100 Dollars (\$75,000.00).

2.02 Option Payment. Within thirty (30) business days of the mutual signing of this Agreement by the Buyer and the Seller, the Buyer shall deliver to Sheehan Phinney Bass & Green, P.A. (the "Escrow Agent") One Hundred Dollars (\$100.00) (the "Option Payment") to be held in a non-interest bearing account.

2.03 Purchase Price Payment. The Purchase Price shall be payable at Closing as follows:

(i) By application of the Option Payment.

(ii) The balance of the Purchase Price by wire transfer, cash, bank or certified check drawn on a member bank of the Boston Clearing House, or other form of current funds.

## 3. CLOSING

3.01 Closing. Subject to the Buyer being granted a FONSI (as defined in Section 6.05,) the closing for purchasing the Property pursuant to Section 1 hereof shall occur on or before two hundred and forty (240) days from the later of: (i) the receipt of all Approvals (as defined in Section 6.04); or (ii) all Financing (as defined in Section 6.03) (the "Closing"). The Closing shall occur at the office of the New Hampshire Housing Finance Authority, or some other mutually agreeable location designated and agreed to by the parties. Notwithstanding the foregoing, in no event shall the Closing occur later than November 30, 2020. If the Closing does not occur on or before November 30, 2020, the Seller shall have the right to terminate this Option Agreement and the Option Payment shall be refunded forthwith to the Buyer, and all the parties shall thereafter be released from any further obligations hereunder.

## 4. OBLIGATIONS OF THE PARTIES AT CLOSING

4.01 Seller's Obligations. At Closing, Seller shall deliver to Buyer:

(i) The Property will be conveyed by a good and sufficient Warranty Deed running to the Buyer, and said deed shall convey a good and clear record, insurable, and marketable title thereto, free from any leases, tenancies, mortgages, liens and any other encumbrances (except for those identified by Buyer during the Due Diligence Period (as defined in Section 6.02) and not timely objected to) which, in the Buyer's reasonable opinion, interferes with the Buyer's intended development, shall be delivered at the Closing. Any deed whether from Seller shall be subject to only the following:

(a) Provisions of existing building and zoning laws;

- (b) Such taxes for the then current year as are not due and payable on the date of the delivery of such deed;
- (c) Any liens for municipal betterments assessed after the date of this agreement;
- (d) Easements, restrictions and reservations of record, not objected to by the Buyer during the Due Diligence Period, if any; and
- (e) A deed restriction on the Property to the benefit of the Seller which shall require that, in the event any portion of the Buyer's Property is leased or sold to an entity that would cause the Property 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 Seller. Pursuant to the PILOT, the Exempt Owner or Lessee shall agree to make payments to the Seller 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

(ii) a copy of the any necessary vote authorizing the transfer and sale of the Property and a copy of the organizational documents of the Seller.

(iii) At the Closing, the Seller shall execute and deliver to any title insurance company insuring the Property to the Buyer and/or any lender granting mortgage financing to the Buyer with respect to the Property an affidavit with respect to: (a) mechanics' or materialmen's liens with regard to the Property sufficient in form and substance to enable the title insurance company to delete its standard ALTA exception for such liens; and (b) there being no parties in possession of or entitled to possession of the Property. In addition, Seller hereby agrees to sign and deliver, at the time of performance, such affidavits, documents and certificates as may be reasonably and customarily required by lending institutions which provide purchase money mortgage funds for commercial purchases.

(iv) releases and discharges necessary to clear title, if the same can be procured by expenditure of amounts less than the Purchase Price. However, in the event that the Seller is unable or otherwise unwilling to pay or discharge all liens, mechanics liens, encumbrances, and attachments which exist before the date of Closing (excluding mortgages with a payoff amount less than the Purchase Price), the Buyer, at its sole option, may proceed with any of the following options: (a) afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Liens; or (b) terminate this Agreement, following which this Agreement shall be null and void, and of no further force or effect; or (c) the Parties may renegotiate the Purchase Price to appropriately account for said Liens and then proceed to Closing.

(v) real estate transfer documents, transfer tax declarations, non-foreign status affidavits and other documents, affidavits, and forms customarily required when transferring property in the state where the Property is located or as reasonably requested by Buyer.

4.02 Buyer's Obligations. At Closing, Buyer shall deliver to Seller:

(i) the Purchase Price.

(ii) a copy of Buyer's, or its assignee's, vote(s) authorizing resolutions or similar evidence, authorizing the purchase of the Property.

(iii) real estate transfer and other forms and affidavits customarily required when transferring property in the state where the Property is located or as reasonably requested by Seller.

4.03 Condition at Closing. Full possession of the Property is to be delivered at the time of delivery of the deed, said Property to be then (a) in the same condition as they now are, reasonable use and wear thereof excepted, and (b) not in violation of said building and zoning laws, and (c) in compliance with provisions of any instrument referred to in Section 4.01(i), above.

## 5. PRORATIONS

5.01 Prorations. The following apportionments shall be made between the parties at the Closing: real estate taxes, special assessments, water and sewer charges, if any, on the basis of the fiscal period for which assessed. If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing. This provision shall survive Closing;

5.02 Costs and Expenses. Each party shall be responsible for all of their own expenses in negotiating and consummating the transaction as contemplated herein and is customary in transactions of this type and nature in the State of New Hampshire.

5.03. Transfer Taxes. The Buyer shall pay all 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.

## 6. DUE DILIGENCE AND CONDITIONS TO CLOSING

6.01 Title. Buyer shall have until the expiration of the Due Diligence Period (as defined below) to undertake such title examinations as it deems appropriate, and if it determines that there is any objection to Seller's title rendering it uninsurable or unmarketable, it shall so notify Seller in writing. If defects or flaws in title are of such character that they may be readily remedied or removed by Seller, then upon receipt of the notice the Seller shall promptly institute and prosecute proceedings to remedy such defects, and upon giving return written notice to Buyer to that effect, Seller shall be entitled to thirty (30) days from Buyer's notice to correct such title defects and if necessary the Closing shall be suitably extended. If Seller is unable to remedy title within said thirty (30) day cure period, then Buyer may either: (i) terminate this Agreement, whereupon Buyer shall be entitled to the return of its Deposit, and both parties shall be discharged from any further liability under this Agreement, or (ii) Buyer may elect to accept such title as Seller can deliver, with no deduction of the Purchase Price.

6.02 Due Diligence Period. Buyer shall have until 5:00 p.m. of the ninetieth (90<sup>th</sup>) calendar day after the Effective Date (the "Due Diligence Period") to undertake at its sole cost and expense: (i) engineering studies and inspections as it deems appropriate; (ii) a soils investigation and inspection as it deems appropriate; (iii) a zoning and use review; (iv) a review of the environmental condition of the Property; (v) the preparation of a survey of the Property; (vi) the preparation and receipt of an appraisal of the Property; (vii) an analysis of on-site water; and (viii) a review of any and all matters, conditions, information and documentation relating to or concerning the Property. If Buyer shall discover or determine, in its sole discretion, prior to the expiration of the Due Diligence Period that it or its lender(s) are not satisfied in any way with the status of the Property or the results of any of its due diligence or inspections, Buyer shall have the right to terminate this Agreement and have the Option Payment refunded forthwith, and all the parties hereto shall thereafter be released from any further obligations hereunder.

6.03 Financing. This Agreement is expressly conditioned upon Buyer receiving, to its sole satisfaction, for one or more of the following: (i) a written commitment and reservation for nine percent (9%) Federal Low Income Housing Tax Credits from the New Hampshire Housing Finance Agency (the "Tax Credits") on terms and conditions reasonably acceptable to the Buyer to finance the acquisition of the Property; (ii) a written commitment for financing from a lender(s) acceptable to the Buyer for loans sufficient to purchase and operate the Property, on terms and conditions reasonably acceptable to the Buyer and usual and customary to transactions of this type and nature; and (iii) a written commitment from a financial institution or syndicator acceptable to the Buyer to invest equity into the Project (as defined in Section 6.04) in exchange for Tax Credits referenced in (i), above, on terms and conditions that are acceptable to the Buyer at a price that makes the Project financially feasible; or (iv) any other form of subsidized financing available for affordable housing projects from one or more financial, non-profit, or governmental institution ((i) through (iv), collectively the "Financing"). If Buyer cannot obtain Financing as described herein Buyer shall have the right to terminate this Agreement and have the Option Payment refunded forthwith, and all the parties shall thereafter be released from any further obligations hereunder. The Buyer's financing contingency is subject to the following:

(i) The Buyer will use good faith efforts to submit an application for Tax Credits to the New Hampshire Housing Finance Authority on or before August 31, 2019.

(ii) The Buyer will use good faith efforts to receive a written commitment and reservation for Tax Credits on or before December 31, 2019.

(iii) The Buyer will use good faith efforts to obtain written commitments for the remaining Financing as provided for in 6.03(ii) through (iv) above on or before March 31, 2020.

Notwithstanding the foregoing, the Buyer's failure to meet target dates provided in Section 6.03(i)-(iii) shall not render the Buyer in default of this Option Agreement. In the event that the tasks identified in Section 6.03(i)-(iii) do not occur on or before the anticipated target date, the Buyer agrees to provide Seller with periodic good faith updates on the status and actions undertaken to accomplish said tasks.

6.04 Approvals. This Agreement is expressly conditioned upon the Buyer receiving, obtaining, verifying, amending and procuring any and all federal, state or local approvals, licenses, permits, zoning changes, variances, special exceptions, site plans, subdivisions, leases, agreements or consents necessary from any federal, state or local officials, regulatory authority(s), homeowners or other association having jurisdiction over the Property, and the expiration of all appeal(s) periods, in order to construct and develop at least thirty six (36) affordable housing units (the "Project") including, but not limited to: (a) Final Site Plan approval from the City of Concord, New Hampshire; (b) waste water disposal permits; (c) potable water, well and any other similar approvals; (d) any required drainage approvals; (e) approval from the party currently holding the responsibility of the existing environmental contamination on the Property for the development of residential housing; (f) the purchase by the Buyer of a parcel adjacent to the Property owned by the Penacook Community Center, Inc.; (g) approval for the Project from the Board of Directors for Buyer; (h) an amendment from Concord City Council to re-zone the Property and the pertinent portion of 97 Village Street from RM to CG; (i) a lot merger from the City of Concord to merge the Property with parcels at 95 & 97 Village Street (MBL 143/P30 & MBL 143/P29) (collectively the "Approvals"). If Buyer shall discover that it is not able to obtain the Approvals, Buyer shall have the right to terminate this Agreement and have the Option Payment refunded forthwith, and all the parties shall thereafter be released from any further obligations hereunder.

6.05 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 Property, 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 Affairs ("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), the Buyer may terminate this Agreement 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.

## 7. ACCESS TO PROPERTY/RECORDS

7.01 Access. Between the date hereof and the date of Closing, Buyer and Buyer's representatives shall have the right to access the Property with not less than 48 hour's advance notice to Seller provided Buyer shall not interfere with Seller's business. Buyer may during the period prior to Closing, conduct invasive tests (including, without limitation, soils and water samples and soil borings) provided, however, that it shall be a requirement of any such testing conducted prior to the Closing that Buyer shall restore the Property, as nearly as practical, to substantially the same condition the Property was in prior to such testing and that no trees or substantial vegetation shall be cut and/or removed.

7.02 Indemnification. Buyer hereby indemnifies and agrees to defend, protect and hold Seller harmless from and against any and all claims, losses, costs or damage resulting from any of said inspections conducted prior to the Closing. Prior to entry onto the Property for any invasive testing, Buyer agrees to provide Seller, upon Seller's request, with evidence of \$1,000,000 liability insurance with companies licensed to do business in the State of New Hampshire, covering such activities to be conducted by Buyer and its employees, agents, contractors, subcontractors, consultants and other representatives and naming Seller as an additional insured. Buyer further agrees to carry sufficient insurance to discharge the obligations of Buyer and its agents under all applicable workers' compensation laws of the state of New Hampshire. The indemnity provisions of this paragraph shall survive the delivery of the deed or other termination of this Agreement.

7.03 Reports Delivery Date. By executing this Agreement, the Seller is hereby confirming and agreeing that it has previously delivered to Buyer any and all reports, materials or information in its possession relating to the title, environmental condition, project design, market information or study or other aspect of the Property and any and all surveys or plans in Seller's possession (or in the possession of any affiliate or subsidiary) in connection with the Property (collectively the "Reports"). In the event that Buyer terminates this Agreement in accordance with this Agreement, Buyer shall return all Reports to the Seller.

## 8. SELLER'S WARRANTIES AND REPRESENTATIONS

8.01 In order to induce Buyer to enter into this Agreement and purchase the Property, the Seller represents and warrants to Purchaser as follows:

(i) The Seller is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of New Hampshire, with the requisite power to carry on its business as now being conducted.

(ii) The Seller has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all appropriate action of the Seller, and no other action or other proceedings

on the part of the Seller is necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(iii) Neither the execution and delivery of this Agreement by the Seller, nor the performance by the Seller of their obligations hereunder, will (a) conflict with or result in a violation of any provision of any organizational document of the Seller, or (b) any agreement to which the Seller is a party.

(iv) There is no claim, action, suit, arbitration or proceeding pending or, to the best of the knowledge of the Seller, threatened against or involving the Seller, or any of its assets or properties, at law or in equity, or before any arbitrator or governmental entity which would have a material adverse affect on the transactions contemplated herein.

(v) The Seller has not entered into any other agreements to sell or lease with respect to the Property or any portion thereof.

(vi) This Agreement has been duly executed and delivered by the Seller and constitutes the valid and binding obligation of the Seller, enforceable against each in accordance with its terms.

(vii) To the best of Seller's knowledge, the Property is free from any and all Hazardous Materials. For purposes of this Agreement, "Hazardous Materials" shall mean and include those elements or substances, including but not limited to asbestos, which are contained in the list of hazardous substances adopted by the United States Environmental Protection Agency (the "EPA") or the list of toxic pollutants designated by Congress or the EPA or which are defined as hazardous, toxic, pollutant, infectious, flammable or radioactive by any other Federal, State, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance or material, as now or at any time hereafter in effect including, without limitation, applicable state laws, statutes and regulations, the Federal Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601 et seq., the Federal Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq., the Federal Resource Conservation and Recovery Act as amended, 42 U.S.C. Section 6901 et seq., the Federal Hazardous Material Transportation Act, the Federal Clean Air Act, the Federal Water Pollution Control Act, or rules and regulations of the EPA, or any other state or federal department, board, or agency, or any other agency or governmental board or entity having jurisdiction over the Property (collectively, the "Environmental Laws").

(viii) That no commitments have been or will be made without the prior written consent of Buyer to any governmental unit or agency, utility company, authority, school or park district or other organization, group or individual relating to the Property or any interest therein, which would impose any obligation on the Buyer, or its partners, to make any contributions of money, land or other items of value, or to install or maintain any improvements (off-site or otherwise) or grant any easements; and there are no pending or proposed special assessments on



the Property, nor is there any pending or threatened condemnation proceeding against any portion of the Property, for any road right of way or other purpose.

(ix) The Seller shall not, directly or indirectly, without the prior written consent of Buyer, enter into any contracts pertaining to the Property or assign title to the Property, or any portion thereof, or any interest therein, or grant or permit any easements or licenses on or affecting the Property, which would be binding on Buyer after the Closing or would abrogate any of the Seller's obligations hereunder.

(x) That the Property is not located within any flood plain, flood hazard area, or wetlands conservation district, or similar district.

(xi) Seller has not been notified of any violation of any statute, ordinance, rule, regulation, order or requirement of any federal, state, county or municipal government, or political subdivision, agency or department thereof, or of any court or other authority pertaining to the Property, or the current development or use thereof.

(xi) That there is permitted and unrestricted access to a public way sufficient for the Property's use and future development, and that all utilities necessary for the use of the Property are available from a public way or an existing easement.

## 9. REAL ESTATE COMMISSION

9.01 Brokers. Buyer and Seller each warrant and represent that they have not engaged the services of any real estate broker (other than the brokers identified in the Agreement) who would be entitled to a commission on the sale contemplated hereby and each hereby agrees to indemnify and hold harmless the other from any loss or damage resulting from his or her own breach of this warranty and representation, including reasonable attorney's fees incurred in connection with defending any claim with respect thereto. The warranty and representations of the parties contained in this paragraph shall survive the delivery of the deed.

## 10. DEFAULT

10.01 Buyer's Default. If the sale of the Property as contemplated hereunder is not consummated due to Buyer's material default hereunder, then Seller shall be entitled, as its sole and exclusive remedy for such default, to terminate this Agreement and receive the Option Payment as liquidated damages for the breach of this Agreement and not as a penalty, it being agreed between the parties hereto that the actual damages to Seller in the event of such breach are impractical to ascertain and the amount of the Option Payment is a reasonable estimate thereof, Seller hereby expressly waiving and relinquishing any and all other remedies at law or in equity. Seller's right to receive the Option Payment is intended not as a penalty, but as full liquidated damages. The right to receive the Option Payment as full liquidated damages is Seller's sole and exclusive remedy in the event of material default hereunder by Buyer, and Seller hereby waives and releases any right to (and hereby covenants that it shall not) sue Buyer: (a) for specific performance of this Agreement, or (b) to recover any damages of any nature or description other

than or in excess of the Option Payment. Buyer hereby waives and releases any right to (and hereby covenants that it shall not) sue Seller or seek or claim a refund of the Option Payment (or any part thereof) on the grounds it is unreasonable in amount and exceeds Seller's actual damages or that its retention by Seller constitutes a penalty and not agreed upon and reasonable liquidated damages.

10.02 Seller's Default. If Seller defaults in performing its obligations hereunder prior to or at the Closing, and Buyer has performed or tendered performance of its obligations hereunder, then subject to the terms and conditions hereof Buyer's sole remedy shall be to either (i) terminate this Agreement and have the full amount of the Option Payment returned to it and the parties shall be relieved of any further liability or obligation hereunder, or (ii) seek specific performance of this Agreement, together with all costs and reasonable attorney's fees incurred in connection with obtaining such specific performance.

## 11. CONDEMNATION, INSURANCE

11.01. Condemnation. In the event of a partial taking of the Property by public authorities anticipated to result in an eminent domain award of less than Ten Thousand Dollars (\$10,000.00), the eminent domain award, shall be paid to the Buyer together with any deductible amounts (if any), and the Buyer shall be bound to purchase the Property without any diminution in the Purchase Price. In the event of a taking where the expected eminent domain proceeds, equal or exceed Ten Thousand Dollars (\$10,000.00), Buyer may, at its option (a) purchase the Property without any diminution in the Purchase Price, in which event the eminent domain proceeds shall be paid to Buyer; or (b) rescind the Agreement in which event the Option Payment shall be returned to Buyer and neither party shall have any further rights or duties hereunder.

## 12. NOTICES

12.01 Notices. All notices required by this Agreement shall be deemed given when sent and shall be either mailed by United States mail, postage prepaid, certified, return receipt requested or by Federal Express or other overnight carrier or sent via electronic mail with a copy sent via regular mail, and shall be mailed to the parties at the following addresses:

If to Seller:

City of Concord  
41 Green Street  
Concord, New Hampshire 03301  
Attn: \_\_\_\_\_  
Email Address: \_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email Address: \_\_\_\_\_

If to Buyer:

CATCH  
76 South State Street  
Concord, New Hampshire 03301  
Attn: Thomas R. Furtado  
Email Address: [tfurtado@catchhousing.org](mailto:tfurtado@catchhousing.org)

With a Copy to:

Kenneth A. Viscarello, Esq.  
Sheehan Phinney Bass & Green, PA  
1000 Elm Street, 17<sup>th</sup> Floor  
Manchester, New Hampshire 03101  
Email Address: [kviscarello@sheehan.com](mailto:kviscarello@sheehan.com)

### 13. MISCELLANEOUS

13.01 Entire Agreement. This Agreement contains all the agreements of the parties with respect to the subject matter hereof. All prior discussions are merged herein.

13.02 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one instrument.

13.03. Captions. The section captions used herein are for convenience of reference only and shall not affect the interpretation or construction hereof.

13.04. Days. Unless otherwise indicated, days shall mean calendar days.

13.05. Amendments. This Agreement may not be amended, changed, supplemented, waived or otherwise modified except by an instrument in writing signed by the party against which enforcement is sought.

13.06. Waiver. Failure of any party to exercise any right, power or remedy provided under this Agreement or otherwise available in respect thereof at law or in equity, or to insist upon compliance by any other party with its obligations hereunder, and any custom or practice of

the parties at variance with the terms hereof, shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.

13.07 Successors and Assigns; No Third Party Beneficiaries. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

13.08. Further Assurances. Each of the parties shall execute and deliver such additional instruments and other documents and shall take such reasonable further actions as may be necessary or appropriate to effectuate, carry out and comply with all of the terms of this Agreement and to consummate the Closing in accordance with the terms hereof.

13.09. Governing Law. This Agreement and all disputes hereunder shall be governed by, and construed in accordance with, the substantive laws of the State of New Hampshire, without giving effect to the conflicts or choice of law provisions of New Hampshire or any other jurisdiction.

13.10. Severability. If any term of this Agreement or the application thereof to any party or any circumstance shall be held invalid or unenforceable to any extent, the remainder of this Agreement and the application of such term to the other parties or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by applicable law, so long as the economic and legal substance of this Agreement is not affected in any manner adverse to any party.

13.11. Assignment. Buyer may assign this Agreement to an entity in which it holds a majority interest or acts as a general partner or acts as the managing member.

13.12. Marketing. Upon execution of this Agreement, the Seller shall cease marketing the Property and all market efforts related thereto.

[PAGE END HERE, SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have set their hands to the written instrument as of the date first above written.

BUYER:

CONCORD AREA TRUST FOR  
COMMUNITY HOUSING

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Name: Thomas R. Furtado  
Title: SVP of Real Estate Development

SELLER:

CITY OF CONCORD

\_\_\_\_\_  
Witness

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