



# CITY OF CONCORD

## REPORT TO MAYOR AND THE CITY COUNCIL

**FROM:** James W. Kennedy, City Solicitor  
**DATE:** December 9, 2022  
**SUBJECT:** Boys and Girls Club of New Hampshire – Purchase and Sale Agreement

### **Recommendation:**

Accept this supplemental report and authorize the City Manager to enter into the attached Purchase and Sale Agreement, as amended (the “Agreement”), between the City of Concord and the Boys and Girls Club of New Hampshire (collectively the “Parties”).

### **Background**

At the November 14, 2022 City Council meeting, the City Council set the Purchase and Sales Agreement with the Boys and Girls Club of Central New Hampshire concerning acquisition of real estate to be developed at 76 Community Drive for the purpose of establishing a new Penacook Branch Library and Community Center for a December 12, 2022 public hearing.

### **Discussion**

Following the November 14, 2022 City Council meeting, the Parties have amended Section III, (2) and Section 8.15 of the Agreement. The remainder of the Agreement remains unchanged. The amendments are as follows:

III. In accordance with this Agreement, Seller will create a two-unit condominium:

1. Unit 1 shall consist of approximately 7,431SF +/-, and shall be created for the purposes of establishing a new Boys and Girls Club of Central New Hampshire facility. Unit #1 shall also be referred to in this Agreement as “Seller’s Unit.”
2. Unit 2 shall consist of approximately 1,471SF +/- and shall be created for the purposes of being sold to Buyer upon completion by Seller subject to the contingencies *and provisions* set forth within this Agreement. Unit 2 is referred to in this Agreement as the “City’s Unit” or the “Buyer’s Unit.” Upon Closing, Buyer shall operate Buyer’s Unit as a community center, whereby Buyer shall provide normal and customary recreational services and programs to the community, library branch services and customary municipal government operations, or, *subject to this Agreement*, any other land use

permitted by the City of Concord Zoning Ordinance, including uses permitted by right, special exception, or variance as granted by the Zoning Board of Adjustment (“Community Center”).

- i. The Buyer and Seller will each make commercially reasonable efforts in good faith to avoid direct competition between the services and programs offered at the Buyer’s Unit and those offered at the Seller’s Unit. “Direct competition” means that the content, time, and ages of the services and programming are substantially the same. The provisions of this Section III 2 I shall be included within the Condominium Documents (defined below).*

The condominium plan shall be substantially consistent with the conceptual plan attached to this Agreement in Exhibit 3. The common area of the condominium shall be that portion of the development which is not: Unit 1, Unit 2, or limited common area of either Unit (“Common Area”).

## 8. GENERAL PROVISIONS

- 8.15. 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 *in good faith*, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.

Explanation: Matter inserted into the current Purchase and Sale Agreement appears in *bold and italics*.