

PURCHASE AND SALE AGREEMENT

BETWEEN

CITY OF CONCORD, NEW HAMPSHIRE

AND

JOHN J. FLATLEY COMPANY

32-34 Main Street and 33 South Street
Concord New Hampshire

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is made and entered into as May ____ 2021 (the “**Effective Date**”) by and between City of Concord, a municipal corporation with a principal place of business located at 41 Green Street, Concord, New Hampshire 03301 (the “**Seller**”) and John J. Flatley, d/b/a John J. Flatley Company, with an address at 45 Dan Road, Suite 320, Canton, Massachusetts 02021 (the “**Buyer**”). Collectively, Seller and Buyer may also be referenced to herein as “Parties” and individually as “Party.”

RECITALS

WHEREAS, Seller is the owner of certain real estate located at 32-34 South Street (Map 34, Block 3, Lot 3) and 33 South State Street (Map 34, Block 3, Lot 2), Concord, New Hampshire depicted on a boundary survey titled “*ALTA / NSPS Land Title Survey of land of the City of Concord*” prepared by Richard D. Bartlett Associates dated April 4, 2018, and evidenced by a deed from the State of New Hampshire to the City of Concord recorded at the Merrimack County Registry of Deeds at Book 3460 Page 218, both of which are included as Exhibit A of this Agreement (the “Property”); and,

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to acquire from Seller, such real property on the terms and conditions set forth in this Agreement for the purposes of facilitating development of the “Buyer’s Project” which shall mean the development, construction, and operation of a 64+/- unit, 6 story, 80,000SF +/- apartment building at the Property featuring Market Rate Apartments as defined in Section 6.1.6 herein, together with 54 parking spaces and other improvements, as depicted in Exhibit F of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. **PURCHASE AND SALE**. Subject to the terms and conditions of this Agreement, Seller shall sell and convey the Property to Buyer, and Buyer shall purchase the Property from Seller, which shall include all documents identified in Exhibit D of this Agreement (“General Intangibles”).
2. **PURCHASE PRICE AND PAYMENT**.
 - 2.1. **Purchase Price**. The Purchase Price shall be Three Hundred Fifty Thousand Dollars (\$350,000.00) (“Purchase Price”), subject to adjustment under this Agreement.
 - 2.2. **Payment**. The Purchase Price shall be paid as follows:
 - 2.2.1. Within three (3) business days after the Effective Date, Buyer shall deposit Thirty-five Thousand and 00/100 Dollars (\$35,000.00) (the “Deposit”) with Escrow Agent (as hereinafter defined), to be held and disbursed pursuant to the provisions of this Agreement; and,

2.2.2. At Closing, Buyer shall pay to Seller the Purchase Price less the Deposit, such sum to be paid by federal funds wire transferred to an account designated by Escrow Agent, subject, however, to such adjustments as may be required by this Agreement.

3. **ESCROW OF DEPOSIT.**

3.1. **Escrow of Deposit.** The Deposit shall be held in escrow by an escrow agent (the “Escrow Agent”) mutually selected by the Parties, and subject to the terms and conditions of this Agreement. If the Closing shall occur, the Deposit shall be delivered to the Seller and credited on behalf of the Buyer towards the Purchase Price. If the Buyer elects to terminate this Agreement for any reason in accordance with a provision of this Agreement which authorizes such termination, the entire Deposit shall be delivered to the Buyer. If the Closing does not occur on the Closing Date, and such failure to close is attributable to the default of the Buyer under this Agreement, the Escrow Agent shall, pursuant to Section 16.1 and upon notice from the Seller to the Escrow Agent and the Buyer, deliver the Deposit to the Seller on the third business day following its receipt of such notice. If the Closing does not occur on the Closing Date, and such failure to close is attributable to the default of the Seller under this Agreement, the Escrow Agent shall, subject to Section 16.2 and upon notice from the Buyer to the Escrow Agent and the Seller, deliver the entire Deposit to the Buyer on the third business day following its receipt of such notice.

3.2. **Terms Governing Escrow Agent.** The Escrow Agent shall be subject to the following terms and conditions and no others:

3.2.1. The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Agreement and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Further, the Escrow Agent shall be under no obligation to refer to any other documents between the Buyer and the Seller related in any way to this Agreement.

3.2.2. The Escrow Agent shall not be liable to anyone by reason of any error of judgment, or for any act done or step taken or omitted by the Escrow Agent in good faith, or for any mistake of fact or law, or for anything which the Escrow Agent may do or refrain from doing in connection herewith, unless caused by or arising out of the actual and intentional misconduct of the Escrow Agent or any act of the Escrow Agent in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Agent.

3.2.3. In the event of any disagreement between the Buyer and the Seller resulting in adverse claims and demands being made in connection with or against the funds held in escrow, or in the event that either of the Buyer or the Seller objects to any proposed disposition of the Deposit, the Escrow Agent shall not comply with the claims or demands of either party until such disagreement is finally resolved: (a) by the Buyer and the Seller as evidenced by a joint written direction to the Escrow Agent, or (b) by a court

of competent jurisdiction (in proceedings which the Escrow Agent or any other party may initiate, it being understood and agreed by the Buyer and the Seller that the Escrow Agent has the authority (but no obligation) to initiate such proceedings). Notwithstanding the foregoing or anything to the contrary contained herein, the Escrow Agent shall be authorized and directed to disburse the Deposit to the Buyer in the event the Buyer does not waive the due diligence in accordance with Section 6.6.1, without the need for confirmation of or agreement with such direction by or from the Seller.

3.2.4. The Escrow Agent may at its sole discretion resign by giving (30) days written notice thereof to the parties hereto. The parties shall furnish to the Escrow Agent written instructions for the release of the Deposit and any documents then held in escrow by the Escrow Agent. If the Escrow Agent shall not have received such written instructions within the thirty (30) days, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor Escrow Agent and upon such appointment deliver the Deposit and any such documents to such successor.

3.2.5. The Parties hereto do hereby certify that they are aware that the Federal Deposit Insurance Corporation ("FDIC") coverages apply only to a cumulative maximum amount of \$250,000 for each individual deposit for all of the depositor's accounts at the same or related institution. The Parties hereto further understand that certain banking instruments such as, but not limited to, repurchase agreements and letters of credit are not covered at all by FDIC insurance.

4. **CLOSING DATE.** Subject to the provisions of this Agreement, including, but not limited to Section 6.6.5, Section 12.7 and Section 17.13, the Buyer and the Seller shall close this transaction (the "Closing") at 2:00 p.m. on October 29, 2021 (the "Closing Date"), or if extended pursuant to Section 6.6.5, the first business day that is thirty (30) days following the end of the Due Diligence or Permitting Period (as such terms are hereinafter defined) in escrow through the offices of Escrow Agent as a mail away or so-called escrow style closing, or at such other time and place as the Seller and the Buyer shall agree in writing.

5. **ACCESS TO PROPERTY.**

5.1. **Right of Entry:** At all times after the Effective Date, Buyer and Buyer's investors, lenders, assignees, engineers, architects, surveyors, contractors, and various representatives (collectively, the "Buyer Parties") shall have the right to inspect and investigate all aspects of the Property. The Buyer and the Buyer Parties shall be entitled to enter upon the Property upon forty-eight (48) hours advance notice to Seller, from time to time for the purpose of conducting such inspections. Seller may be present during such inspections, unless, at Seller's sole discretion, it elects not to be present.

5.2. **Restoration of Property by Buyer:** The Buyer shall promptly restore the Property, at Buyer's sole cost and expense, to substantially its condition before Buyer's entry onto the Property if Buyer terminates this Agreement in accordance

with the terms of this Agreement or is unable to close on the Closing Date or any extended period thereof. The Buyer shall promptly backfill all test pits dug at the Property. The Buyer shall be permitted to leave in place any soil borings or ground water monitoring wells the Buyer may have installed at the Property as part of its due diligence.

- 5.3. **Buyer's Indemnification:** The Buyer shall indemnify, defend, and hold harmless the Seller from and against any and all claims, actions, damages or losses arising out the Buyer's activities pursuant to this paragraph during its inspections of the Property and subsequent tasks related thereto which are caused solely by the Buyer's negligence, provided, however, that the foregoing indemnity shall not apply to (a) the mere discovery of a pre-existing condition, and/or (b) any claim, liability or penalty arising as a result of or in connection with any negligence or misconduct on the part of the Seller or any of its agents, representatives or any other party acting on Seller's behalf. The Buyer shall require any and all contractors who are retained for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this Agreement, and who will need to access the Premises, to carry general liability insurance in the amount of \$1 million in the aggregate, \$1 million per occurrence naming the Seller as an additional insured.

6. **TITLE, SURVEY AND PERMITTING.**

- 6.1. **State of Title.** The Seller shall convey good, clear record, marketable and insurable title to the Property by warranty deed, which shall be free and clear of all encumbrances, except for the utilities serving the Property and the following permitted encumbrances:
- 6.1.1. All existing matters of title that do not prevent or materially interfere with the development of Buyer's Project;
 - 6.1.2. Any deed restrictions or easements reasonably required by the Seller as identified during the development permitting process;
 - 6.1.3. A deed restriction to the benefit of the Seller requiring that, in the event any tax exempt entities come to own or lease the Property, said "tax exempt owner" shall be obligated to enter into a Payment in Lieu of Taxes (PILOT) Agreement with the Seller which shall require said entity to pay all Municipal, School District, County and State property taxes which would have been otherwise owed if the Property continued to be owned or leased by a non-tax exempt entity;
 - 6.1.4. Utilities currently encumbering the Property to the benefit of private real estate located at #36 South Main Street, provided that the same may be relocated by the Buyer.
 - 6.1.5. A covenant requiring the Buyer to convey the Property to the Seller, at the Seller's sole option, at a price equal to the Purchase Price in the event Commencement of Construction for the Buyer's Project has not occurred within twelve (12) months after the date of recording of the deed conveying

the Property from the Seller to the Buyer. “Commencement of Construction” shall be defined as the Buyer demolishing the existing 26,000SF building at the Property and completing the foundation for the Buyer’s Project. The twelve (12) month period shall be subject to any extensions associated with Force Majeure, Excusable Delays, or Winter Conditions, as set forth in Section 17.13.2 of 17.13.3 of this Agreement.

6.1.6. A restriction to the benefit of the Seller requiring that all residential dwelling units at the Property be Market Rate Housing. The term “Market Rate Housing” shall mean residential dwelling units which command sales, prices, or rents that are substantially equivalent to that which is paid for comparable residential dwelling units in arms-length transactions on the open market in the same neighborhood or sales market as such units, without governmental, nonprofit, or other subsidies or assistance to the builder, renter (excepting and excluding any so-called promotional move-in or free rent discounts), developer, or residential dwelling unit owner which (a) have the effect of reducing the price or rents of such residential dwelling units (b) subsidize the costs of the residential dwelling units, or (c) require the owner of the residential dwelling units to give preference to low or moderate income families/households as defined by New Hampshire Housing Finance Authority, United States Department of Housing and Urban Development, or other Federal or State Agency when renting or selling properties. This restriction shall endure in perpetuity unless otherwise modified or released by the City Council of the City of Concord, New Hampshire.

6.2. **Title Objections.** The Buyer shall undertake such examination of title to, and survey of, the Property that it deems necessary or appropriate. The Buyer shall submit to Seller by September 30, 2021 (the “Title Review Period”) such objections that the Buyer may have to the state of title to, and survey of, the Property that exist as of the respective dates of the Title Commitment and the survey entitled “*ALTA / NSPS Land Title Survey of land of the City of Concord*” prepared by Richard D. Bartlett Associates dated April 4, 2018 (the “Survey”) as the same may have been updated by Buyer (the “Title Objections”) to the extent that any such Title Objections relate to a matter that (in Buyer’s reasonable discretion) substantially and materially interferes with Buyer’s Project. The Seller shall have ten (10) business days from receipt of the Buyer’s Title Objections to notify the Buyer whether Seller will agree to cause a Title Objection to be cured, removed or corrected (“Seller’s Title Notice”). If within the time specified, the Seller fails to send the Seller’s Title Notice or sends a Seller’s Title Notice stating that the Seller will not attempt to cure, remove or correct the Title Objection(s), then the Seller shall be deemed to have elected not to cause any Title Objection to be cured, removed or corrected as aforesaid. If the Seller does not send the Seller’s Title Notice electing to cure, remove or correct the Title Objection(s), the Buyer may then, at its option, to be exercised on or before the date which is twelve (12) business days following the Seller’s receipt of the Buyer’s Title Objections either: (a) terminate this Agreement by delivering written notice thereof to Seller (a “Termination Notice”) and immediately receive from the Escrow Agent the

Deposit, in which event this Agreement, without further action of the Parties, shall become null and void, and neither party shall have any further rights or obligations under this Agreement, or (b) elect to accept title to the Property as it then is, without any reduction in the Purchase Price. If the Buyer fails to make either such election, the Buyer shall be deemed to have elected option (a). It shall be conclusively presumed for purposes hereof that the availability of a policy of title insurance without exception for any claimed defect in title shall satisfy the Seller's obligation to deliver marketable title, it being understood that the Buyer shall not be obligated to accept affirmative coverage over a known defect.

- 6.3. **New Title and Survey Matters.** If any new title or survey matter arises after the initial effective date of the Title Commitment or the initial date of the Survey, but before the Closing, the Buyer and the Seller shall have the same rights and obligations and time frames after the expiration of the Title Review Period with respect to any such new title or survey matter as they have in Section 6.2.
- 6.4. **Monetary Liens.** Notwithstanding anything to the contrary contained in this Agreement, Seller shall be obligated to pay off and discharge at or prior to the Closing all Monetary Liens encumbering the Property whether or not any such Monetary Lien is the subject of a Title Objection, or (b) to cure any matters that the Seller agrees to cure, remove or correct in Seller's Title Notice.
- 6.5. **Use of Purchase Price to Clear Title.** To enable the Seller to make conveyance as herein provided, the Seller may (and the Seller shall, with respect to Monetary Liens or other matters which Seller may elect to cure), at the time of Closing, use the Purchase Price, or any part thereof, to cure the title of any or all matters which are either: (a) Monetary Liens, or (b) Title Objections that Seller has elected or has been deemed to have elected to cure, provided that all instruments so procured shall be delivered at Closing, except releases from banks or other institutional lenders for which written payoffs have been issued.
- 6.6. **Review and Permitting Periods.**
 - 6.6.1. **Review Period.** Within ten (10) business days after the Effective Date, the Seller shall provide the Buyer with copies of the Seller's title insurance policy, property boundary surveys, architectural plans for the existing building at the Property, and other similar documents as set forth in Exhibit B (the "Review Materials"). The Buyer shall have until September 30, 2021 (the "Review Period" or "Due Diligence Period") to inspect and review the Property, conduct such tests as the Buyer determines are appropriate, including environmental, soil and seismic testing, review the status of utilities; determine the permits, licenses and similar governmental approvals that are necessary for the Buyer to construct, develop and operate the Property for the Buyer's Project. If the Buyer does not approve or waive the contingencies in writing prior to the expiration of the Review Period, this Agreement shall be deemed terminated and without further notice, instruction or delay, the Deposit, together with accrued interest thereon, shall be refunded to the Buyer within five (5) business days of the expiration

of the Review Period and neither the Seller nor the Buyer shall have any further right or obligation under this Agreement, except those arising under provisions of this Agreement that expressly survive the termination hereof.

- 6.6.2. Permitting Period. The Buyer shall make commercially reasonable efforts to secure all development permits and approvals for the Buyer's Project (the "Permits") on or before September 30, 2021 (the "Permitting Period") and to apply for and seek the Permits, including making application to the Permit granting authorities for any such Permits. The Seller and the Buyer agree that the Buyer shall not be deemed to have received the Permits unless all appeal periods have expired without the filing of an appeal, or one is filed, that it is dismissed without opportunity for further appeal. The Seller agrees to cooperate with the Buyer in the Buyer's application for the Permits, including without limitation, by promptly executing any applications or permissions that the Buyer may require, without cost or liability to the Seller.

Prior to the Buyer applying for the Permits, the Buyer shall provide the Seller with a copy of all Permit applications, including plans and renderings, for the Seller's review and comment. The Seller shall have five (5) business days to review and comment on said documents. The Buyer shall endeavor to incorporate the Seller's comments, if any, into said Permit applications to the extent that they are consistent with Exhibit F and will not result in delays in permitting or a material increase in the cost of constructing Buyer's Project.

- 6.6.3. Design of Buyer's Project and Seller's Consent. The Buyer's Project shall be materially similar to the designs and renderings included in Exhibit F of this Agreement. The Parties agree that the design for the Buyer's Project set forth in Exhibit F is conceptual and is subject to revisions and changes as conditions may require, subject to the consent of Seller, which consent (except as generally required by municipal rules, regulations or ordinances for a similar development during the development permitting process) shall not be unreasonably withheld, conditioned or delayed.
- 6.6.4. Intentionally Omitted.
- 6.6.5. The Review Period, the Permitting Period and all dates for performance shall be extended in the event of Force Majeure and Excusable delays as set forth in Section 17.13.2 of this Agreement.
- 6.6.6. The Buyer shall provide the Seller with copies of all reports, data, and tests in the nature of due diligence commissioned by the Buyer for the Property within ten (10) business days of receipt of said materials by the Buyer. If the Buyer elects not to close on the acquisition of the Property, then the Buyer shall promptly, at the Seller's request, execute any supplemental agreements to transfer ownership of the reports, tests, data, as well as design plans and development permits for the Property commissioned by the Buyer, without any warranties or representations.

7. **OPERATION OF PROPERTY THROUGH CLOSING.**

- 7.1. **Encumbrances.** The Seller shall not sell, mortgage, pledge, hypothecate, or otherwise transfer or dispose of all or any part of the Property or any interest therein prior to Closing, unless otherwise approved by the Buyer in writing.
- 7.2. **Changes in Representations and Warranties.** The Seller shall promptly give written notice to Buyer after obtaining actual knowledge of the occurrence of any event which affects, in any material respect, the truth or accuracy of any representations or warranties made by the Seller under or pursuant to this Agreement.
- 7.3. **Leases.** The Seller shall not execute any leases, licenses, or other occupancy agreements with respect to the Property, except for parking leases or parking permits, which shall be terminated prior to date of Closing.
- 7.4. **Service Contracts.** The Seller shall not enter into any service, maintenance, supply or other contract or equipment lease relating to the operation of the Property or in any way affecting the Property, except as follows:
 - 7.4.1. Contracts related to Hazardous Building Materials Abatement to be completed by the Seller prior to Closing;
 - 7.4.2. Groundskeeping and snow removal contracts, which the Seller shall terminate prior to Closing; and,
 - 7.4.3. Any other contract the Seller deems prudent concerning the management, maintenance, or operation of the property prior to Closing, all of which the Seller shall terminate prior to Closing.
- 7.5. **Notices.** Within five (5) business day after receipt, the Seller shall provide the Buyer with true and complete copies of any written notices that the Seller receives from any governmental authority with respect to: (a) any special assessments (b) any condemnation or eminent domain proceedings affecting the Property or any portion thereof; or (c) any violation of any environmental law or any zoning, health, fire, safety or other law, regulation or code applicable to the Property.
- 7.6. **Litigation.** The Seller shall advise the Buyer of the institution or threat of any litigation, arbitration proceeding or administrative hearing which concerns or affects the Seller or the Property within five (5) business day after receipt of notice thereof.

8. **SELLER'S DELIVERIES AT CLOSING.**

- 8.1. **Deed.** The Seller shall execute, acknowledge and deliver to the Buyer, a recordable warranty deed (the "Deed") sufficient to transfer and convey to the Buyer fee simple title to the Property in accordance with this Agreement.

- 8.2. **Assignment of General Intangibles.** If applicable, the Seller shall execute and deliver an assignment of General Intangibles in the form attached hereto as Exhibit D; however, the Buyer may not rely upon such items without the express written consent of the parties who authored such General Intangibles.
 - 8.3. **Authority and Entity Documentation.** The Seller shall, within its possession, deliver all documents, certificates, resolutions, and other evidence of authority as may be required by the Title Company concerning this transaction.
 - 8.4. **Affidavits.** The Seller shall, subject to its agreement, execute and deliver such affidavits as the Title Company shall reasonably require in order to delete from any title insurance policy or endorsement thereto obtained by the Buyer at the Closing those exceptions relating to mechanic's and materialman's liens or parties in possession on the Property.
 - 8.5. **Possession.** The Seller shall deliver possession of the Property free of occupants and otherwise in the condition as required by this Agreement. If the Buyer proceeds to Closing, the Buyer shall accept full responsibility for the Property in its "as is, where is" including but not limited to all environmental conditions with respect to the potential presence of hazardous waste or other patent or latent materials regardless whether such waste or other materials were identified by said due diligence, tests, studies, or investigations.
 - 8.6. **Title Documents.** Seller shall cure Title Objections in accordance with this Agreement and to the extent necessary shall deliver the documents necessary to effect such cure at Closing.
 - 8.7. **Seller's Closing Certificate.** The Seller shall execute and deliver to the Buyer a certificate executed confirming that the Seller's representations and warranties contained herein are true and correct in all material respects in accordance with Seller's knowledge, information and belief, on the Closing Date
 - 8.8. **Closing Statement.** The Seller shall execute and deliver to the Buyer a closing statement in customary form.
 - 8.9. **Other Documents.** The Seller, in accordance with this Agreement, shall execute and deliver such other instruments and documents and do such other acts as may be reasonably necessary for the consummation of the transactions provided for in this Agreement.
9. **BUYER'S DELIVERIES AT CLOSING.** At Closing, the Buyer shall do, deliver or cause the following:
- 9.1. **Balance of the Purchase Price.** The Buyer shall deliver to the Escrow Agent the balance of the Purchase Price, as adjusted in accordance with Section 10 hereof (if applicable).

- 9.2. **Assignment of General Intangibles and other Reports.** If applicable, the Buyer shall execute and deliver a counterpart of the assignment of General Intangibles described in Section 8.2 above.
- 9.3. **Authority and Entity Documentation.** The Buyer shall deliver such entity documents, resolutions and legal existence and good standing certificates as may be required by the Title Company.
- 9.4. **Closing Statement.** The Buyer shall execute and deliver to the Seller a closing statement in customary form.
- 9.5. **Permits and Approvals.**
- 9.5.1. **Zoning Board of Adjustment Approvals:** In the event any variances or special exceptions are required for the Buyer's Project, the Buyer shall secure final, unappealable approvals for said items from the City of Concord Zoning Board of Adjustment prior to Closing.
- 9.5.2. **Planning Board Permits and Approvals:** Prior to Closing, the Buyer shall secure final, unappealable voluntary lot merger and site plan approvals from the City of Concord Planning Board for the Buyer's Project at the Buyer's sole expense. The lot merger shall be recorded simultaneously with the Deed conveying the property from the Seller to the Buyer.
- 9.6. **Financing Commitment.** Prior to Closing, the Buyer shall secure a financing commitment for the Buyer's Project and shall provide evidence of said commitment at time of Closing. In the event the Buyer elects to self-finance the Buyer's Project, the Buyer shall provide Buyer's written statement affirming the Buyer's estimated total cost of the Buyer's Project and that the Buyer has sufficient financial resources on hand to self-finance the Buyer's Project.
- 9.7. **Intentionally Omitted.**
- 9.8. **Other Documents.** The Buyer shall execute and deliver such other instruments and documents and do such other acts as may be reasonably necessary for the consummation of the transactions provided for in this Agreement.

10. **ADJUSTMENTS; CLOSING COSTS.**

- 10.1. **Adjustments.** The Parties acknowledge and agree that the Property shall be exempt from the payment of real estate taxes as of the Closing Date, as the property is currently tax exempt due to municipal ownership. Therefore, no adjustment or proration will be required at Closing.
- 10.2. **Closing Costs.** The Seller shall pay the Seller's attorneys' fees, recording fees required to cure a Title Objection, and all other costs customarily paid for by a seller in a commercial real estate transaction in the Concord, New Hampshire area. The Buyer shall pay for one-half of transfer taxes on the sale the Property, as the Seller is exempt from the payment of the tax. The Buyer shall pay all costs of the Buyer's

due diligence investigations, the costs of title insurance, including the examination fees and the premium for the Buyer's and, if applicable, Buyer's lender's title insurance policy or endorsements, all costs of the Survey, all other recording fees, the Buyer's attorneys' fees, and all other costs customarily paid for by a buyer in a commercial real estate transaction in Concord, New Hampshire.

- 10.3. **Brokers' Commissions.** The Seller hereby affirms that it is represented by the NAI Norwood Group for this transaction (the "Seller's Broker"). The Seller's Broker shall be compensated from the proceeds of this sale at the time of Closing in accordance with contracts between the Seller and the Seller's Broker. The Buyer hereby affirms that it is represented by Premiere Properties (the "Buyer's Broker"). The Buyer's Broker shall be compensated directly by the Buyer separately and independently from this transaction in accordance with contracts between the Buyer and the Buyer's Broker.

11. **REPRESENTATIONS AND WARRANTIES.**

- 11.1. **Seller's Representations and Warranties.** As a material inducement to the Buyer to execute this Agreement and to consummate this transaction, the Seller represents and warrants to Buyer that:

11.1.1. **Authority and Standing.** The City Council, by passage of Resolution # _____ on May 10, 2021, authorized the City Manager to execute this Purchase and Sales Agreement. The execution and delivery of this Agreement will not conflict with or result in the breach of any contract, agreement, law, rule or regulation to which the Seller is a party or by which the Seller or the Property is bound. This Agreement is valid and enforceable against the Seller in accordance with its terms and each instrument to be executed by the Seller pursuant to this Agreement or in connection herewith shall, when executed and delivered, be valid and enforceable against the Seller in accordance with its terms.

11.1.2. **Documents and Records.** The Seller shall provide the Buyer with the opportunity to review, or receive copies of, architectural and engineering plans, boundary surveys, environmental assessments, parking leases, and other similar materials reports, relating to or concerning the Property which Seller has in its possession.

11.1.3. **Actions.** The Seller has received no written notice of a suit, action or administrative proceeding pending nor to the Seller's knowledge are any threatened against the Seller or the Property before or by any federal or state court, commission, regulatory body, administrative agency or other governmental body, domestic or foreign, nor is there any action or proceeding pending which challenges or impairs the Buyer's ability to execute, deliver or perform its obligations under, this Agreement.

11.1.4. **Zoning Amendments.** The Seller hereby agrees that it shall not initiate, or otherwise post notice of the initial public hearing for any zoning ordinance amendments that may materially affect design standards or permitted uses

for the Property or the Buyer's Project until after September 1, 2021, subject to extensions set forth in Sections 17.13.2 or 17.13.3 of this Agreement.

- 11.1.5. Utility Encumbrance Disclosure. The Seller discloses that there are poles and wires located at the Property, without the benefit of easements, which provide electric, cable television, telecommunication, and fire alarm service to real estate located at 36 South Main Street (known as the "Eagles Club"). These utilities are shown on the boundary survey for the Property included in Exhibit A. These utilities shall be relocated by the Buyer at its sole cost as part of the Buyer's Project.
- 11.1.6. Contracts. The Seller has received no written notice from any third party, alleging any violation or default by the Seller under any contract or other agreement affecting the Property, including, without limitation, any recorded documents.
- 11.1.7. Agreements to Lease, Sell, Etc. Except for certain parking leases which will be terminated prior to Closing, as well as aforementioned utility encumbrances for #36 South Main Street, the Seller has not entered into any agreement to lease, sell, mortgage or otherwise encumber or dispose of its interest in the Property or any part thereof.
- 11.1.8. Withholding Obligation. The Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code. The Seller is exempt from withholding under the State of New Hampshire Department of Administrative and Financial Services regulations.
- 11.1.9. Condemnation. The Seller has received no written notice of any existing, proposed or contemplated eminent domain proceeding or plan to widen, modify or realign the streets abutting or providing access to the Premises.
- 11.1.10. No Leases, Tenants or Occupants. Except for certain parking leases which will be terminated prior to Closing, as well as aforementioned utility encumbrances for #36 South Main Street, there are no leases, licenses, or other occupancy agreements affecting the Premises.
- 11.1.11. Governmental Agreements. Other than the aforementioned utilities at the Property which benefit real estate located at 36 South Main Street, there are no agreements with governmental authorities, agencies, utilities or quasi-governmental entities which affect the Property or Seller or would impede or prevent Buyer's Project and which will be binding on Buyer after Closing.
- 11.1.12. Other Material Agreements. There are no agreements with any third parties which affect the Property or Seller and which will be binding on Buyer or the Property after Closing.
- 11.1.13. Environmental. The Parties hereby acknowledge that the Seller has provided by the Buyer with copies of Phase I and II Environmental Site

Assessments, including a Hazardous Building Materials Survey, for the property prepared by Nobis Engineering dated August 29, 2014. The Seller makes no representations or warranties about the environmental condition of the Property. In addition, the Seller affirms that it (a) has not engaged in the generation, use, manufacture, treatment, storage or disposal of any Hazardous Substance on the Property in violation of Applicable Environmental Laws, and (b) Seller has not received any written notice from any governmental authority having jurisdiction over the Property or any third party of any violation of Applicable Environmental Laws with respect to the Property or as result of migration of Hazardous Substances to adjacent properties. As used in this Agreement, the term “Hazardous Substance” shall mean any material or substance, including without limitation asbestos, polychlorinated biphenyls and petroleum products, that is currently listed as hazardous or toxic under Applicable Environmental Laws. As used in this Agreement, the term “Applicable Environmental Laws” shall mean any present and future Federal, State of New Hampshire or local laws, statutes, ordinances, rules, regulations, or standards including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (“CWA”), 33 U.S.C. §§ 1251 et seq.; and the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 et seq. as the foregoing have been amended from time to time to the date of this Agreement that apply to the Property and relate to Hazardous Substances.

11.2. **Buyer’s Representations and Warranties.** As a material inducement to the Seller to execute this Agreement and consummate this transaction, the Buyer represents and warrants to Seller that:

11.2.1. **Organization and Authority.** The Buyer has the full right and authority and has obtained any and all consents required therefor to enter into this Agreement, and to consummate or cause to be consummated the sale contemplated herein. The persons signing this Agreement on behalf of the Buyer are authorized to do so. This Agreement and all of the documents to be delivered by the Buyer at the Closing have been authorized and properly executed and shall constitute the valid and binding obligations of the Buyer, enforceable against the Buyer in accordance with their terms.

11.2.2. **Conflicts.** There is no agreement to which the Buyer is a party or, to the Buyer’s knowledge, binding on Buyer which is in conflict with this Agreement.

11.2.3. **Actions.** To the best of Buyer’s knowledge, there is no action or proceeding pending or threatened which challenges or impairs the Buyer’s ability to execute, deliver or perform its obligations under, this Agreement.

11.2.4. Due Diligence Documents from Seller. The Buyer acknowledges receipt of the following materials from the Seller for the Property:

11.2.4.1. A boundary survey titled “ALTA / NSPS Land Title Survey of land of the City of Concord” prepared by Richard D. Bartlett Associates dated April 4, 2018. This document was provided from the Seller to the Buyer on September 30, 2020.

11.2.4.2. Phase I and II Environmental Site Assessments (including Hazardous Building Materials Survey) completed by Nobis Engineering dated August 29, 2014. These documents were provided from the Seller to the Buyer on September 30, 2020.

11.2.4.3. Various Geographic Information Systems (GIS) files from the Seller to help the Buyer prepare its preliminary conceptual designs for the Buyer’s Project included in Exhibit F of this Agreement. The GIS files were provided to the Seller on October 6, 2020.

11.2.5. Survival of Representations and Warranties. All representations and warranties of the Seller set forth in Section 12.1 and of the Buyer in Section 12.2 above shall be continuing and deemed remade as of the Closing Date and shall survive the Closing.

12. CERTAIN CONDITIONS PRECEDENT FOR CLOSING. The obligations of the Seller and Buyer to Close under this Agreement are contingent and conditioned upon the following:

12.1. Representations and Warranties. Each and every representation and warranty of the Buyer and the Seller shall be true, correct and complete in all material respects as of Closing.

12.2. Performance. The Buyer and the Seller have not breached their obligations under this Agreement in any material respect.

12.3. No Material Adverse Change. Subject to the provisions of Section 15, no material adverse change in the condition of Property shall have occurred after the Effective Date.

12.4. Environmental Compliance. In accordance with this Agreement, the Property shall be in compliance in all material respects with all Applicable Environmental Laws.

12.5. Permits. The Buyer has secured all required development permits and approvals for the Buyer’s Project as set forth in Section 9.5 of this Agreement, and said development permits and approvals remain in full force and effect at time of Closing.

12.6. **Hazardous Building Materials Abatement of Existing Building by Seller:**

12.6.1. Overview: The Seller, at its sole expense, shall complete removal and disposal of certain hazardous building materials (“HBM Abatement”) associated with the existing 26,000SF+/- former NH Employment Security building located at the Property as described in Section 6 of a Phase II Environmental Site Assessment prepared by Nobis Engineering dated August 29, 2014 (the “HBM Survey”).

12.6.2. Materials to be Abated by Seller: Prior to Closing, the Seller shall remove and dispose of the following materials specifically associated with the existing 26,000SF building at Property, as set described within the HBM Survey:

12.6.2.1. 10,500SF of 9” X 9” tan Vinyl Asbestos Tile (“VAT”) and associated mastic location throughout first floor;

12.6.2.2. 7,500SF of 9”X 9” red speckled VAT and associated mastic located on ground level, former IT room;

12.6.2.3. 7,500SF of 9” X 9” brown speckled VAT and associated mastic located on ground level;

12.6.2.4. 10,000SF of Glue Dabs located throughout the building, upper ceiling;

12.6.2.5. 6,000SF of thermal system insulation throughout building;

12.6.2.6. 8 windows (glazing and frame) with contaminated glazing located in the former mail room; and,

12.6.2.7. 317+/- Fluorescent Light Ballasts and 628+/- Bulbs located throughout the building.

Seller shall securely board up any windows that are removed so as to maintain the security and integrity of the building.

12.6.3. Hazardous Building Materials Excluded from Seller’s Scope of Work: The Seller shall not be responsible for the removal, disposal, or abatement in place of any materials contaminated with lead paint at the Property. The Seller shall also not be responsible for removal or disposal of mercury containing thermostats, if any, located at the Property. The Buyer shall be expressly responsible for Hazardous Building Materials at the Property (if any), which are not expressly included in the Seller’s abatement responsibilities set forth in Section 12.6.2 of this Agreement.

12.6.4. Disclosure of Grant Funds: The Seller hereby discloses that it has received a Brownfields Cleanup Grant in the amount of One Hundred Seventy Two Thousand Five Hundred Dollars (\$172,500) from the New Hampshire

Department of Environmental Services to support HBM Abatement. Per the terms of the grant agreement, the Seller must be the owner of the Property at the time of HBM Abatement in order to access these grant funds.

12.6.5. **Buyer's Review of Bid Specifications:** Prior to bidding, the Seller shall provide a copy of the draft bid plans, specifications, and scope of work for HBM Abatement to the Buyer for its review. The Buyer shall have five (5) business days to review and comment on said documents. The Seller shall endeavor to incorporate the Buyer's comments, if any, into the bid documents provided the Buyer's comments do not materially expand the scope of work, or materially increase the projected cost, or materially delay the schedule of the HBM Abatement.

12.6.6. **Schedule for HMB Abatement:** The Seller shall complete this work by September 30, 2021, subject to the provisions of Sections 17.13.2 and 17.13.3 of this Agreement. If the HMB Abatement has not been completed by September 30, 2021, the Due Diligence Period shall be continued to the date that is five (5) business days following the date that the HMB Abatement has been completed.

12.7. **Termination or Extension:** If on the Closing Date any of the foregoing conditions precedent has not been satisfied, the Buyer or the Seller may either waive such condition(s) and proceed to Closing, or terminate this Agreement by written notice to the other Party. Notwithstanding the foregoing, if Buyer has promptly applied for the Permits in accordance with the timeline set forth in the Project Schedule but has not yet received all final Permits, or the appeal periods have not expired, Seller shall grant an extension of the Closing Date to the date that is thirty (30) days following the date upon which Buyer has obtained the final, unappealable Permits.

However, separately from the provisions of Section 17.13.2 and 17.13.3 of this Agreement, the Parties reserve the right to afford each other additional extensions, up to ninety (90) days, to satisfy their respective obligations relative to Conditions Precedent for Closing, which extensions shall not be unreasonably withheld or conditioned. If the Party to whom the extension was granted fails to satisfy the condition(s) by the conclusion of said extension, then the party which granted the extension may terminate this Agreement by written notice, or may elect to further extend the Closing Date for an additional period as mutually agreed by the Parties. In the event of termination, the Deposit shall be provided to the respective Party in accordance within this Agreement, and neither Party shall be liable to the other for damages or otherwise except as otherwise expressly provided herein.

13. **BUYER'S POST-CLOSING OBLIGATIONS:** The following obligations shall survive closing.

13.1. **Building Demolition:** The Buyer shall be responsible for demolition of the 26,000+/- SF building at the Property at Buyer's sole expense following acquisition of the Property from the Seller as described in Exhibit F Project Schedule.

- 13.2. **Utilities and Off-Site Improvements:** The Buyer, as part of the Buyer's Project, shall be responsible for any utility and/or offsite improvements as a result of the Buyer's Project at Buyer's sole expense following acquisition of the Property from the Seller as described in Exhibit F Project Schedule.
- 13.3. **Construction of the Buyer's Project:** The Buyer shall proceed with development of the Buyer's Project following acquisition of the Property from the Seller as described in Exhibit F Project Schedule.
14. **CONDEMNATION.** If, prior to Closing, the Property or any part thereof shall be condemned in any material respect (that is, a condemnation which prevents access to the Property or reduces the potential development of the Property), the Buyer shall have the option either to terminate this Agreement or to consummate the transaction contemplated by this Agreement notwithstanding such condemnation.

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.

If Buyer elects to terminate this Agreement, the Deposit shall be returned to the Buyer by Escrow Agent, in which event this Agreement shall, without further action of the Parties, become null and void and neither Party shall have any rights or obligations under this Agreement, except for the obligations of the Buyer that expressly survive termination of this Agreement.

15. **ACCEPTANCE OF DEED.** The acceptance of the Deed by Buyer shall be deemed to be a full performance and discharge of every agreement and obligation hereof, except such agreements or obligations which are, under or by the terms of this Agreement, specifically to survive or be performed after the Closing.

16. **DEFAULT AND DAMAGES.**

16.1. **Default by Buyer.**

- 16.1.1. Pre-Closing Default: If Buyer shall default in the performance of its closing obligations under this Agreement (through no fault or breach by Seller), and such failure continues for thirty (30) days after written notice from the Seller (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Buyer is diligently pursuing said cure), then the Seller's remedy shall be limited to receipt of the Deposit as its sole remedy at law or in equity, (except for each of the Sections which expressly survive termination of this Agreement), and Escrow Agent shall deliver the Deposit to Seller.

16.1.2. Post-Closing Default: In the event the Buyer defaults on any of its Post-Closing Obligations set forth in Section 13 of this Agreement, and such failure continues for thirty (30) days after written notice from the Seller (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Buyer is diligently pursuing said cure), then the Seller's remedy shall be limited to its right to enforce the covenant described in Section 6.1.5 requiring Buyer to reconvey the Property to Seller in the event Commencement of Construction for the Buyer's Project has not occurred within the time required in Section 6.1.5, for the Purchase Price.

16.2. Default by Seller. In the event the Seller defaults on any of its obligations set forth in this Agreement, and such failure continues for thirty (30) days after written notice from the Buyer (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that Seller is diligently pursuing said cure), then the Buyer's remedy shall be limited to its rights and remedies as set forth within this Agreement, including the right to seek specific performance of this Agreement against Seller. The remedies stated herein shall be cumulative.

17. MISCELLANEOUS PROVISIONS.

17.1. Notices. All notices, requests and other communications hereunder shall be made in writing and delivered in hand or mailed by registered or certified first-class mail, postage prepaid, return receipt requested, or sent by commercial overnight courier delivery service, charges prepaid, addressed as follows:

If to Seller: City of Concord
 Attn: City Manager
 41 Green Street
 Concord, New Hampshire 03301

with a copy to: City of Concord
 Attn: City Solicitor
 41 Green Street
 Concord, New Hampshire 03301

or at such other address for notice as Buyer shall last have furnished in writing to the person giving the notice;

If to Buyer: John J. Flatley Company
45 Dan Road, Suite 320
Canton, Massachusetts 02021
Attention: John J. Flatley
Email: jf@johnflatleyco.com

with a copy to: Marsh, Moriarty, Ontell & Golder, P.C.
99 Rosewood Drive, Suite 220
Danvers, Massachusetts 01923
Attention: Robert J. Moriarty, Jr.
Email: rmoriarty@mmoglaw.com

If to Escrow Agent: Cleveland Waters Bass P.A.
Two Capitol Plaza
P.O. Box 1137
Concord NH 03300-1137
Attention: Timothy Britain
Email: britaint@cwbp.com

or at such other address for notice as Seller shall last have furnished in writing to the person giving the notice. Any notice shall be deemed effective: upon receipt by email or hand delivery; the next day after sending if sent by overnight courier; or three (3) days after sending if sent by postal service.

- 17.2. **Relationship of the 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.
- 17.3. **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.
- 17.4. **Confidentiality.** Deleted.
- 17.5. **Section Headings.** The Section headings herein are for convenience and reference only, and in no way define or limit the scope and contents of this Agreement, or in any way affect its provisions.
- 17.6. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.
- 17.7. **Governing Law, Etc.** The Buyer and the 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.

- 17.8. **Entire Agreement; Binding Effect**: This Agreement constitutes the entire agreement and final expression between parties for the matters covered herein. All prior writings or oral communications are merged herein and superseded hereby, whether or not the same purport to be an agreement of the parties. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns and nominees. This Agreement may be canceled, modified or amended only by written instrument executed by both the Seller and the Buyer.
- 17.9. **Partial Invalidity**. 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 affected thereby shall remain in full force and effect, provided, however, that any invalidity regarding payment to the Seller of the Purchase Price shall void the entire Agreement.
- 17.10. **Time of Essence**. Time is of the essence of this Agreement, and failure by either party to comply with this Section 17.10 shall be a material default of this Agreement by such party. If any date herein provided for falls on a Saturday, Sunday, or legal holiday, the applicable date shall be the next business day.
- 17.11. **Assignment**. The Buyer shall not, without the prior written consent of the Seller, which consent shall not be unreasonably withheld or delayed, assign, pledge or transfer (collectively “Assignment” or “Assign”) all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment without such consent will be null and void, provided however that Buyer may assign this Agreement to any wholly owned affiliate or subsidiary of Buyer without the consent of Seller but upon notice to Seller not later than five (5) days prior to Closing. Any such assignee shall be registered as “Active” and in “Good Standing” with the Corporate Division of the New Hampshire Secretary of State, and such Assignee, shall agree in writing to assume all of Seller's obligations assigned under this Agreement, and the Buyer shall represent and warrant in writing that, to the Buyer's knowledge based upon Buyer's reasonable investigation, the assignee has or has access to the financial and technical ability to fulfill all of the then remaining obligations of Buyer under this Agreement.
- 17.12. **Submission Not An Offer**. The submission of a draft of this Agreement or a summary of some or all of its provisions, or the acceptance of a letter of intent to an agreement, does not constitute an offer to sell the Property or bind the Seller and the Buyer, it being understood and agreed that neither the Seller nor the Buyer shall be legally bound with respect to the sale or purchase of the Property unless and

until this Agreement has been executed by both the Seller and the Buyer and a fully executed copy has been delivered to each of them.

17.13. **Development Schedule, Force Majeure / Excusable Delays, and Winter Conditions.**

17.13.1. Development Schedule.

17.13.1.1. General. Attached to this Agreement is a Development Schedule (Exhibit E) which details the anticipated date and sequence of various activities to be completed by the Buyer and Seller associated with this transaction.

The Parties acknowledge that the Development Schedule is a complex schedule requiring the coordinated efforts of multiple parties and dependent in many instances on the actions or approvals of third parties.

The Parties agree to use diligent efforts and to cooperate with each other in undertaking their respective responsibilities under this Agreement, including, but not limited to, those events listed.

The Parties agree that time is of the essence in performance of their respective obligations under this Agreement. The Buyer and the Seller acknowledge that the completion of the Development Schedule is dependent on events to be determined following the approval of this Purchase and Sales Agreement by the City Council.

17.13.1.2. Milestones and Deadlines. Unless expressly stated otherwise in this Agreement, milestones and deadlines set forth in this Agreement, including, but not limited to those in the Exhibit E, shall be automatically extended for Force Majeure or Excusable Delays described in Section 17.13.2 and 17.3.3 of this Agreement.

17.13.2. Force Majeure / Excusable Delays: For the purposes of any of the provisions of this Agreement, neither the Buyer or the Seller, as the case may be, shall be considered in breach of or default in its obligations hereunder in the event of unavoidable delay in the performance of such obligations due to causes beyond its control and without its fault or negligence, including but not limited to, acts of God, or of the public enemy, acts of the other party, fires, floods, or other casualties, epidemics, pandemics (including, but not limited

to, Covid-19), quarantine restrictions, labor disputes, litigations (including, without limitation, appropriation votes by the City Council related thereto, any development permit or approval needed for the Buyer's Project), unexpected delays in the development permitting or approval process, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during Hazardous Building Materials Abatement or construction of the Buyer's Project, or delays of utility companies, contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such Party shall be extended for the period of the enforced delay, provided, that the Party seeking the benefit of the provisions of this Section shall, within thirty (30) days after the beginning of any such enforced delay, have first notified the other Party thereof in writing stating the cause or causes thereof and requesting an extension for the period of the enforced delay. In calculating the length of the delay, the Buyer and Seller shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

17.13.3. Winter Conditions: Provisions in this Agreement relating to the time period for completion of the Hazardous Building Materials Abatement by the Seller, or completion of the Buyer's Project shall be deemed to be reasonably extended when seasonal weather conditions prevent a Party from proceeding under normal construction conditions. It is expressly agreed that neither Party will be obligated to undertake site work or exterior construction activities during the Winter Season, which typically commences on or about November 15th and continues to approximately April 15th, subject to weather conditions (freezing temperatures, frozen precipitation, frost, and similar matters. All time periods and deadlines set forth in this Agreement and in Exhibit E shall be reasonably extended to accommodate Winter Conditions.

17.14. 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 Buyer, the Seller, or their representatives, agents, and consultants, whether or not explicitly set forth herein as may be necessary in connection with Buyer's Project and/or the implementation of the goals and objectives of this Agreement. Furthermore, no party shall be considered in default under this Agreement and neither party shall exercise any rights and remedies granted to it hereunder until the other party has received written notice of the alleged default and has had a reasonable time (as is appropriate under the conditions existing at that time).

- 17.15. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 17.16. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement.
- 17.17. **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, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 17.18. **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.
- 17.19. **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.
- 17.20. **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 governmental boards, committees, commissions or departments.
- 17.21. **Warranties and Representation.** The Buyer and the 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.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the date and year first above written.

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 _____, 2021, 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

JOHN J. FLATLEY COMPANY

By: _____ Date: _____
John J. Flatley, President
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

In _____, on the _____ day of _____, 2021, before me,
personally appeared **JOHN J. FLATLEY**, President of the John J. Flatley Company, 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

ESCROW AGENT

COMPANY NAME

By: _____ Date: _____

Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In _____, on the _____ day of _____, 2021, before me,
personally appeared _____ of the _____,
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

LIST OF EXHIBITS

Exhibit A	Description of Land
Exhibit B	Review Materials
Exhibit C	Form of Deed (Deleted)
Exhibit D	Form of Assignment of General Intangibles
Exhibit E	Project Schedule
Exhibit F	Conceptual Design for Buyer's Project

EXHIBIT A - DESCRIPTION OF LAND

201400018604 Recorded in Merrimack County, NH In the Records of Kathi L. Guay, CPO, Register
BK: 3460 PG: 218, 10/31/2014 8:20 AM RECORDING \$26.00 SURCHARGE \$2.00

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

Mark Dunn

26-
2-

WARRANTY DEED

THE STATE OF NEW HAMPSHIRE, acting by and through its DEPARTMENT OF EMPLOYMENT SECURITY DEPARTMENT, with an address of 45 South Fruit Street, Concord, NH 03301, for consideration paid, grant to the CITY OF CONCORD, a New Hampshire municipal corporation in good standing with a principal place of business of 41 Green Street, Concord, NH 03301, with **WARRANTY COVENANTS:**

Three (3) certain tracts or parcels of land with improvements thereon, situate on the west side of South Main Street, the south side of Fayette Street and the east side of South State Street all in the City of Concord, County of Merrimack and State of New Hampshire commonly known as 32-34 South Main Street, being Concord Tax Lots 34-3-3 and 34-3-2 and more particularly bounded and described in Exhibit A attached herewith.

Witness my hand this 30th day of October, 2014.

STATE OF NEW HAMPSHIRE

Mark Dunn BY: *George Copadis*
Witness Name: George Copadis George Copadis
Title: Mayor
Duly Authorized

-2-

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS

On this the 30th day of October, 2014, before me, the undersigned officer, personally appeared George Capadis, in his/~~her~~ capacity as Commissioner A NH DES of the State of New Hampshire, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same, in his/~~her~~ capacity as Commissioner of NH DES of the State of New Hampshire, for the purposes therein contained.

Before me,



Notary Public/Justice of the Peace
Printed Name: Mark R. Dunn/Mark R. Dunn
My Commission Expires: 11/18/2014

EXHIBIT A
W/S SOUTH MAIN ST., S/S FAYETTE ST. & E/S SOUTH STATE ST.
TAX LOTS 34-3-2 & 34-3-3
32-34 SOUTH MAIN STREET
CONCORD, NH

Three certain tracts or parcels of land with buildings and improvements there on situate on the W/S South Main Street in the City of Concord, County of Merrimack and State of New Hampshire bounded and described as follows:

TRACT I:

Beginning at the northwest corner of the premises hereby conveyed at the southeast corner of the intersection of Fayette Street and South State Street;

Thence running southerly along the easterly sideline of South State Street a distance of 100 feet to a point;

Thence turning and running easterly along a line parallel to the southerly sideline of Fayette Street a distance of 50 feet to a point;

Thence turning and running northerly along a line parallel to the easterly sideline of South State Street a distance of 100 feet to a point on the southerly sideline of Fayette Street;

Thence turning and running westerly along the southerly sideline of Fayette Street a distance of 50 feet to the point of beginning.

TRACT II:

Beginning at a point marked by an iron bolt on the southerly side of Fayette Street, at the northeast corner of Tract I, described above;

Thence running S 14° 20' E diagonally across a passway 10 feet in width, now or formerly belonging to St. Mary's School for Girls, formerly St. Mary's School, a distance of 99 feet to a point marked by a gas pipe at the southeast corner of said passway;

Thence turning and running S 72° 45' W by the southerly end of said passway a distance of 10 feet to a point marked by a gas pipe at the southeast corner of Tract I, described above;

Thence turning and running N 08° 36' W by said Tract I a distance of 100 feet to the point of beginning.

-2-

TRACT III:

Beginning at a point in the southerly sideline of Fayette Street 50 feet easterly from the intersection of the easterly line of South State Street and the southerly line of Fayette Street;

Thence turning and running easterly by said Fayette Street to the intersection of the southerly line of Fayette Street with the westerly line of South Main Street;

Thence turning and running southerly along said South Main Street a distance of 7.5 rods (123.75 feet), more or less, to a curb post at land now or formerly of Edward F. Donovan, Trustee;

Thence turning and running approximately S 73° 45' W along land now or formerly of said Donovan, as Trustee, a distance of 146.3 feet, more or less, to a point at the northwesterly corner of land now or formerly of said Donovan, Trustee;

Thence turning and running approximately S 04° 53' E along land now or formerly of said Donovan, Trustee, a distance of 31.7 feet, more or less, to a point;

Thence turning and running S 72° 41' W along land now or formerly of said Donovan, Trustee, a distance of 114.25 feet, more or less, to a point on the easterly side line of South State Street 10 feet north of a stone post marking the northwest corner of land now or formerly of Ada L. Virgin;

Thence turning and running north along South State Street to a point located 100 feet south of the intersection of the southerly line of Fayette Street and the easterly line of South State Street, the same marking the southwest corner of premises now or formerly of Shell Oil Company, Inc.;

Thence turning and running easterly along land now or formerly of said Shell Oil Company, Inc., a distance of 50 feet to a point;

Thence turning and running still along land now or formerly of said Shell Oil Company, Inc., a distance of 10 feet to a point;

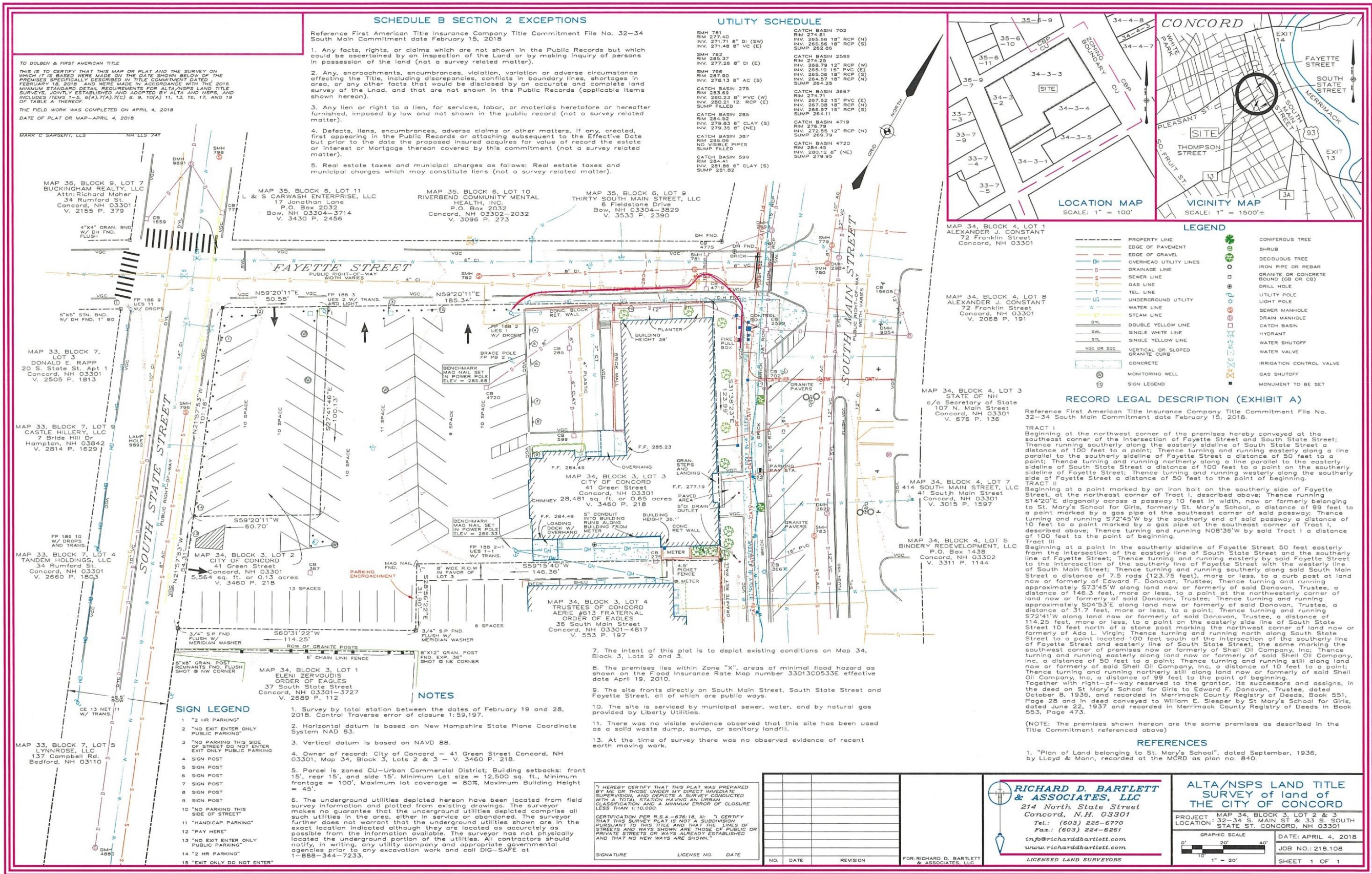
Thence turning and running northerly still along land now or formerly of said Shell Oil Company, Inc., a distance of 99 feet to the point of beginning, together with the rights of way reserved to the grantor, its successors and assigns, in the deed of St. Mary's School for Girls to Edward F. Donovan, Trustee, dated October 8, 1936, and recorded in Merrimack County Registry of Deeds, Book 551,

-3-

Page 28, and subject to the right of way conveyed to William E. Sleeper by St. Mary's Schools for Girls, dated June 22, 1937, and recorded in Merrimack County Registry of Deeds in Book 553, Page 473.

Meaning and intending to describe and convey the same premises as described in the Warranty Deed of George P. Barton to the State of New Hampshire dated January 5, 1998 and recorded at Book 2083, Page 59 in the Merrimack County Registry of Deeds as to Tracts I and II described herein and by virtue of the Warranty Deed of Fayette Street Realty, Inc. and the Quitclaim Deed of J. Slotnik, Co. to the State of New Hampshire, both dated January 2, 1979 and recorded at Book 1342, Page 343 and Book 1342, Page 342, respectively, as to Tract III again in the Merrimack County Registry of Deeds.

EXHIBIT A CONTINUED - ALTA / NSPS Land Title Survey of land of the City of Concord dated April 4, 2018 prepared by Richard D. Bartlett & Associates L.L.C.



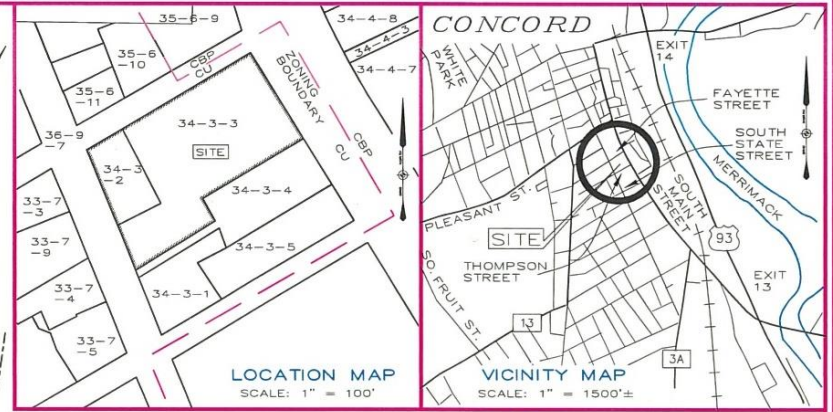
SCHEDULE B SECTION 2 EXCEPTIONS

Reference First American Title Insurance Company Title Commitment File No. 32-34 South Main Commitment date February 15, 2018

- Any facts, rights, or claims which are not shown in the Public Records but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession of the land (not a survey related matter).
- Any encroachments, encumbrances, violation, variation or adverse circumstance affecting the Title, including discrepancies, conflicts in boundary lines, shortages in area, or any other facts that would be disclosed by an accurate and complete land survey of the Land, and that are not shown in the Public Records (applicable items shown hereon).
- Any lien or right to a lien, for services, labor, or materials heretofore or hereafter furnished, imposed by law and not shown in the public record (not a survey related matter).
- Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the Effective Date but prior to the date the proposed insured acquires for value of record the estate or interest or Mortgage thereon covered by this commitment (not a survey related matter).
- Real estate taxes and municipal charges as follows: Real estate taxes and municipal charges which may constitute liens (not a survey related matter).

UTILITY SCHEDULE

SMH 781 RIM 274.40 INV. 271.71 8" DI (SW) INV. 271.48 8" VC (E)	SMH 782 RIM 265.37 INV. 277.28 8" DI (E)	SMH 783 RIM 267.90 INV. 279.83 8" AC (S)	CATCH BASIN 275 RIM 263.69 INV. 280.21 12" RCP (E) SUMP FILLED	CATCH BASIN 285 RIM 264.52 INV. 279.35 8" (NE)	CATCH BASIN 387 RIM 264.41 INV. 281.86 8" CLAY (S) SUMP FILLED	CATCH BASIN 599 RIM 264.41 INV. 281.86 8" CLAY (S) SUMP FILLED	CATCH BASIN 702 RIM 274.81 INV. 265.66 18" RCP (W) INV. 265.66 18" RCP (S) SUMP 262.86	CATCH BASIN 2599 RIM 274.25 INV. 268.79 12" RCP (W) INV. 265.19 15" PVC (S) INV. 264.57 15" RCP (S) SUMP 264.25	CATCH BASIN 3667 RIM 274.71 INV. 267.02 15" PVC (E) INV. 267.08 18" RCP (S) INV. 266.97 15" RCP (S) SUMP 264.41	CATCH BASIN 4719 RIM 276.79 INV. 272.95 12" RCP (S) SUMP 269.79	CATCH BASIN 4720 RIM 280.12 8" (NE) SUMP 279.95
--------------------------------------------------------------------------	------------------------------------------------	------------------------------------------------	-------------------------------------------------------------------------	------------------------------------------------------	-------------------------------------------------------------------------	-------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------	-------------------------------------------------------



RECORD LEGAL DESCRIPTION (EXHIBIT A)

Reference First American Title Insurance Company Title Commitment File No. 32-34 South Main Commitment date February 15, 2018.

TRACT I
Beginning at the northwest corner of the premises hereby conveyed at the southeast corner of the intersection of Fayette Street and South State Street; Thence running southerly along the easterly side line of South State Street a distance of 100 feet to a point; Thence turning and running easterly along a line parallel to the southerly side line of Fayette Street a distance of 50 feet to a point; Thence turning and running northerly along a line parallel to the easterly side line of South State Street a distance of 100 feet to a point on the southerly side line of Fayette Street; Thence turning and running westerly along the southerly side of Fayette Street a distance of 50 feet to the point of beginning.

TRACT II
Beginning at a point marked by an iron bolt on the southerly side of Fayette Street, at the northeast corner of Tract I, described above; Thence running S14°20'E diagonally across a passway 10 feet in width, now or formerly belonging to St. Mary's School for Girls, formerly St. Mary's School, a distance of 99 feet to a point marked by a gas pipe at the southeast corner of said passway; Thence turning and running S72°45'W by the southerly end of said passway a distance of 10 feet to a point marked by a gas pipe at the southwestern corner of Tract I, described above; Thence turning and running N08°36'W by said Tract I a distance of 100 feet to the point of beginning.

TRACT III
Beginning at a point in the southerly side line of Fayette Street 50 feet easterly from the intersection of the easterly line of South State Street and the southerly line of Fayette Street; Thence turning and running easterly by said Fayette Street to the intersection of the southerly line of Fayette Street with the westerly line of South State Street; Thence turning and running southerly along said South State Street a distance of 7.5 rods (123.75 feet), more or less, to a curb post at land now or formerly of Edward F. Donovan, Trustee; Thence turning and running approximately S73°45'W along land now or formerly of said Donovan, Trustee, a distance of 146.3 feet, more or less, to a point at the northwesterly corner of land now or formerly of said Donovan, Trustee; Thence turning and running approximately S04°53'E along land now or formerly of said Donovan, Trustee, a distance of 31.7 feet, more or less, to a point; Thence turning and running S72°41'W along land now or formerly of said Donovan, Trustee, a distance of 114.25 feet, more or less, to a point on the easterly side line of South State Street 10 feet north of a stone post marking the northwest corner of land now or formerly of Ada L. Virgin; Thence turning and running north along South State Street to a point located 100 feet south of the intersection of the southerly line of Fayette Street and easterly line of South State Street, the same marking the southwest corner of premises now or formerly of Shell Oil Company, Inc.; Thence turning and running easterly along land now or formerly of said Shell Oil Company, Inc. a distance of 50 feet to a point; Thence turning and running still along land now or formerly of said Shell Oil Company, Inc. a distance of 10 feet to a point; Thence turning and running northerly still along land now or formerly of said Shell Oil Company, Inc. a distance of 99 feet to the point of beginning. Together with right-of-way reserved to the grantor, its successors and assigns, in the deed on St. Mary's School for Girls to Edward F. Donovan, Trustee, dated October 8, 1936, and recorded in Merrimack County Registry of Deeds, Book 551, Page 28 and in deed conveyed to William E. Sleeper by St. Mary's School for Girls, dated June 22, 1937 and recorded in Merrimack County Registry of Deeds in Book 553, Page 473.

(NOTE: The premises shown hereon are the same premises as described in the Title Commitment referenced above)

TO SOLBEN & FIRST AMERICAN TITLE
THIS IS TO CERTIFY THAT THIS MAP OR PLAN AND THE SURVEY ON WHICH IT IS BASED WERE MADE ON THE DATE SHOWN BELOW OF THE PREMISES SPECIFICALLY DESCRIBED IN TITLE COMMITMENT DATED FEBRUARY 15, 2018 AND WERE MADE IN ACCORDANCE WITH THE 2018 MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/NSPS LAND TITLE SURVEYS, JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS, AND INCLUDES ITEMS 1-5, 6(A), 7(A), 7(C), 8, 9, 10(A), 11, 13, 16, 17, AND 19 OF TABLE A THEREOF.
THE FIELD WORK WAS COMPLETED ON APRIL 4, 2018
DATE OF PLAN OR MAP-APRIL 4, 2018

MAP 36, BLOCK 9, LOT 7
BUCKINGHAM REALTY, LLC
Attn: Richard Maher
34 Rumford St.
Concord, NH 03301
V. 2155 P. 379

MAP 35, BLOCK 6, LOT 11
L & S CARWASH ENTERPRISE, LLC
17 Jonathan Lane
P.O. Box 2032
Bow, NH 03304-3714
V. 3430 P. 2456

MAP 35, BLOCK 6, LOT 10
RIVERBEND COMMUNITY MENTAL HEALTH, INC.
P.O. Box 2032
Concord, NH 03302-2032
V. 3096 P. 273

MAP 35, BLOCK 6, LOT 9
THIRTY SOUTH MAIN STREET, LLC
6 Fieldstone Drive
Bow, NH 03304-3829
V. 3533 P. 2390

MAP 33, BLOCK 7, LOT 3
DONALD E. RAPP
20 S. State St. Apt 1
Concord, NH 03301
V. 2505 P. 1813

MAP 33, BLOCK 7, LOT 4
TANDEM HOLDINGS, LLC
34 Rumford St.
Concord, NH 03301
V. 2660 P. 1803

MAP 33, BLOCK 7, LOT 5
LYNNROSE, LLC
137 Campbell Rd.
Bedford, NH 03110

MAP 34, BLOCK 3, LOT 2
CITY OF CONCORD
41 Green Street
Concord, NH 03301
5,564 sq. ft. or 0.13 acres
V. 3460 P. 218

MAP 34, BLOCK 3, LOT 1
ELENI ZERVOUDIS
ORDER OF EAGLES
37 South State Street
Concord, NH 03301-3727
V. 2689 P. 112

MAP 34, BLOCK 4, LOT 3
STATE OF NH
c/o Secretary of State
107 N. Main Street
Concord, NH 03301
V. 676 P. 136

MAP 34, BLOCK 4, LOT 7
414 SOUTH MAIN STREET, LLC
41 South Main Street
Concord, NH 03301
V. 3015 P. 1597

MAP 34, BLOCK 4, LOT 5
BINDERY REDEVELOPMENT, LLC
P.O. Box 1438
Concord, NH 03302
V. 3311 P. 1144

MAP 34, BLOCK 3, LOT 4
TRUSTEES OF CONCORD AERIE #613 FRATERNAL ORDER OF EAGLES
35 South Main Street
Concord, NH 03301-4817
V. 553 P. 197

SIGN LEGEND

- "2 HR PARKING"
- "NO EXIT ENTER ONLY PUBLIC PARKING"
- "NO PARKING THIS SIDE OF STREET DO NOT ENTER EXIT ONLY PUBLIC PARKING"
- SIGN POST
- SIGN POST
- SIGN POST
- SIGN POST
- SIGN POST
- SIGN POST
- SIGN POST
- "HANDICAP PARKING"
- "PAY HERE"
- "NO EXIT ENTER ONLY PUBLIC PARKING"
- "2 HR PARKING"
- "EXIT ONLY DO NOT ENTER"

NOTES

- Survey by total station between the dates of February 19 and 28, 2018. Control Traverse error of closure 1:59,197.
- Horizontal datum is based on New Hampshire State Plane Coordinate System NAD 83.
- Vertical datum is based on NAVD 88.
- Owner of record: City of Concord - 41 Green Street Concord, NH 03301, Map 34, Block 3, Lots 2 & 3 - V. 3460 P. 218.
- Parcel is zoned CU-Urban Commercial District; Building setbacks: front 15', rear 15', and side 15'. Minimum Lot size = 12,500 sq ft; Minimum frontage = 100', Maximum lot coverage = 80%, Maximum Building Height = 45'.
- The underground utilities depicted hereon have been located from field survey information and plotted from existing drawings. The surveyor makes no guarantee that the underground utilities depicted comprise all such utilities in the area, either in service or abandoned. The surveyor further does not warrant that the underground utilities shown are in the exact location indicated although they are located as accurately as possible from the information available. The surveyor has not physically located the underground portion of the utilities. All contractors should notify, in writing, any utility company and appropriate governmental agencies prior to any excavation work and call DIG-SAFE at 1-888-344-7233.
- The intent of this plat is to depict existing conditions on Map 34, Block 3, Lots 2 and 3.
- The premises lies within Zone "X", areas of minimal flood hazard as shown on the Flood Insurance Rate Map number 33013C0533E effective date April 19, 2010.
- The site fronts directly on South Main Street, South State Street and Fayette Street, all of which are public ways.
- The site is serviced by municipal sewer, water, and by natural gas provided by Liberty Utilities.
- There was no visible evidence observed that this site has been used as a solid waste dump, sump, or sanitary landfill.
- At the time of survey there was no observed evidence of recent earth moving work.

I, HEREBY CERTIFY THAT THIS PLAN WAS PREPARED BY ME OR THOSE UNDER MY DIRECT IMMEDIATE SUPERVISION, AND DEPICTS A SURVEY CONDUCTED WITH A TOTAL STATION HAVING AN URBAN CLASSIFICATION AND A MINIMUM ERROR OF CLOSURE LESS THAN 1:10,000.

CERTIFICATION PER R.S.A. - 676:18, III: "I CERTIFY THAT THIS SURVEY PLAN IS NOT A SUBDIVISION SUBJECT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."

SIGNATURE _____ LICENSE NO. _____ DATE _____

NO.	DATE	REVISION	FOR RICHARD D. BARTLETT & ASSOCIATES, LLC

RICHARD D. BARTLETT & ASSOCIATES, LLC
214 North State Street
Concord, N.H. 03301
Tel.: (603) 225-6770
Fax.: (603) 224-6261
info@richarddbartlett.com
www.richarddbartlett.com
LICENSED LAND SURVEYORS

ALTA/NSPS LAND TITLE SURVEY of land of THE CITY OF CONCORD

PROJECT: MAP 34, BLOCK 3, LOT 2 & 3
LOCATION: 32-34 S. MAIN ST. & 33 S. SOUTH STATE ST., CONCORD, NH 03301

GRAPHIC SCALE
0' 20' 40'
1" = 20'

DATE: APRIL 4, 2018
JOB NO.: 218.108
SHEET 1 OF 1

EXHIBIT B

Review Materials

To the extent that the following are in the custody or control of the Seller and can be prepared or obtained without unreasonable effort or expense, and subject to the limitations set forth in Section 6.6.1 of this Agreement, the Seller shall deliver the following Review Items to the Buyer and the Seller shall allow the Buyer and the Buyer's consultants to review, examine and obtain copies of the following in the Seller's Representative offices during the Review Period:

1. Abstracts of title, title opinions, title insurance policies and all other title documents in Seller's possession, if any;
2. Any site plans, plat maps, subdivision plats, rendering, and surveys;
3. Architectural and engineering plans for the Property in the Seller's possession;
4. Leases for parking spaces in effect at the time of execution of this Agreement;
5. Landscaping / grounds keeping contracts for the Property in effect at the time of execution of this Agreement;
6. Environmental Assessments for the Property, including Hazardous Building Material Surveys;
7. Any and all environmental tests, reports or filings with governmental agencies;
8. Preliminary utility relocation plans for the Property as previously prepared for past, never constructed, development plans for the Property; and,
9. Any correspondence or documents related to any governmental agency or adjacent property owner or association related to compliance with any laws or regulations or any other matter related to compliance with any laws or regulations, including without limitation, all recent health, safety, fire and environmental reports, statements of compliance, violations, or citations for the Property if in Seller's possession.

EXHIBIT C – FORM OF DEED

DELETED

EXHIBIT D

Form of Assignment of General Intangibles

ASSIGNMENT OF GENERAL INTANGIBLES

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **City of Concord** (“**Seller**”), hereby assigns and delegates to **John J. Flatley Company** or nominee (“**Buyer**”), and Buyer hereby assumes and accepts the assignment and delegation of, all of Seller’s right, title and interest in the following, to the extent the Seller can provide right, title, and interest to said materials, and subject to contracts between the Seller and the parties that specifically prepared or authored said materials associated with the Property:

1. Architectural and engineering plans for the Property as acquired by the Seller from the State of New Hampshire on October 31, 2014.
2. Phase I and II Environmental Assessments for the Property, including a Hazardous Building Material Survey, prepared by Nobis Engineering dated August 29, 2014.

This Assignment and Assumption of General Intangibles is delivered pursuant to that certain Purchase and Sale Agreement dated as of May __, 2021 (the “**Agreement**”).

Capitalized, undefined terms in this Assignment and Assumption of General Intangibles shall have the same meaning as in the Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, Seller and Buyer have executed this assignment and assumption effective as of this ___ day of _____, 2021.

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 _____, 2021, 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

JOHN J. FLATLEY COMPANY

By: _____ Date: _____
John J. Flatley, President
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

In _____, on the _____ day of _____, 2021, before me, personally appeared John J. Flatley, President of the John J. Flatley Company, 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 E – Project Schedule

I. 2021:

- i. April 12, 2021: Purchase and Sales Agreement submitted to City Council together with resolution to accept and appropriate the NH Department of Environmental Services Brownfields Grant, and City matching funds related thereto, for Hazardous Building Materials Abatement. All items are set for public hearing and vote on May 10, 2021.
- ii. May 10, 2021: City Council public hearing and vote on Purchase and Sales Agreement and related items.
- iii. May 11, 2021: Purchase and Sales Agreement is executed. Start of Buyer's Review Period and Permitting Period.
- iv. June 7, 2021: If determined to be required for Buyer's Project, Buyer files applications for variances and/or special exceptions for Buyer's Project with Zoning Board of Adjustment.
- v. June 2021: Seller bids Hazardous Building Materials Abatement.
- vi. July 7, 2021: Zoning Board of Adjustment public hearings on variance and/or special exception applications (if required).
- vii. July 20, 2021: Buyer files Lot Merger and Site Plan Approval applications with Planning Board, as well as architectural rendering for Architectural Design Review Committee.
- viii. July 2021: Seller receives bids for Hazardous Building Materials Abatement.
- ix. August 3, 2021: Initial Architectural Design Review Committee meeting for Buyer's Project.
- x. August 18, 2021: Planning Board accepts Buyer's Lot Merger and Site Plan applications and determines them to be complete; sets applications for public hearing on September 15, 2021.
- xi. August 31, 2021: Second Architectural Design Review Committee meeting for the Buyer's Project (if needed).
- xii. August 2021: Seller commences Hazardous Building Materials abatement.
- xiii. September 1, 2021: Expiration date for Seller's commitment concerning delay of posting notice of the initial hearing public hearing for any potential zoning ordinance amendments affecting the Property.
- xiv. September 15, 2021: Buyer's site plan application receives conditional approval of Planning Board approvals.
- xv. September 2021: Seller completes Hazardous Building Materials abatement.

- xvi. September 30, 2021: End of Buyer's Review and Permitting Period.
- xvii. October 15, 2021: End of thirty (30) day appeal period for Buyer's Planning Board approvals (NH RSA 677:15).
- xviii. October 29, 2021: Closing; Buyer acquires property from Seller.
- xix. November 15, 2021: Customary beginning of winter shut down period. No demolition or construction at Buyer's option.

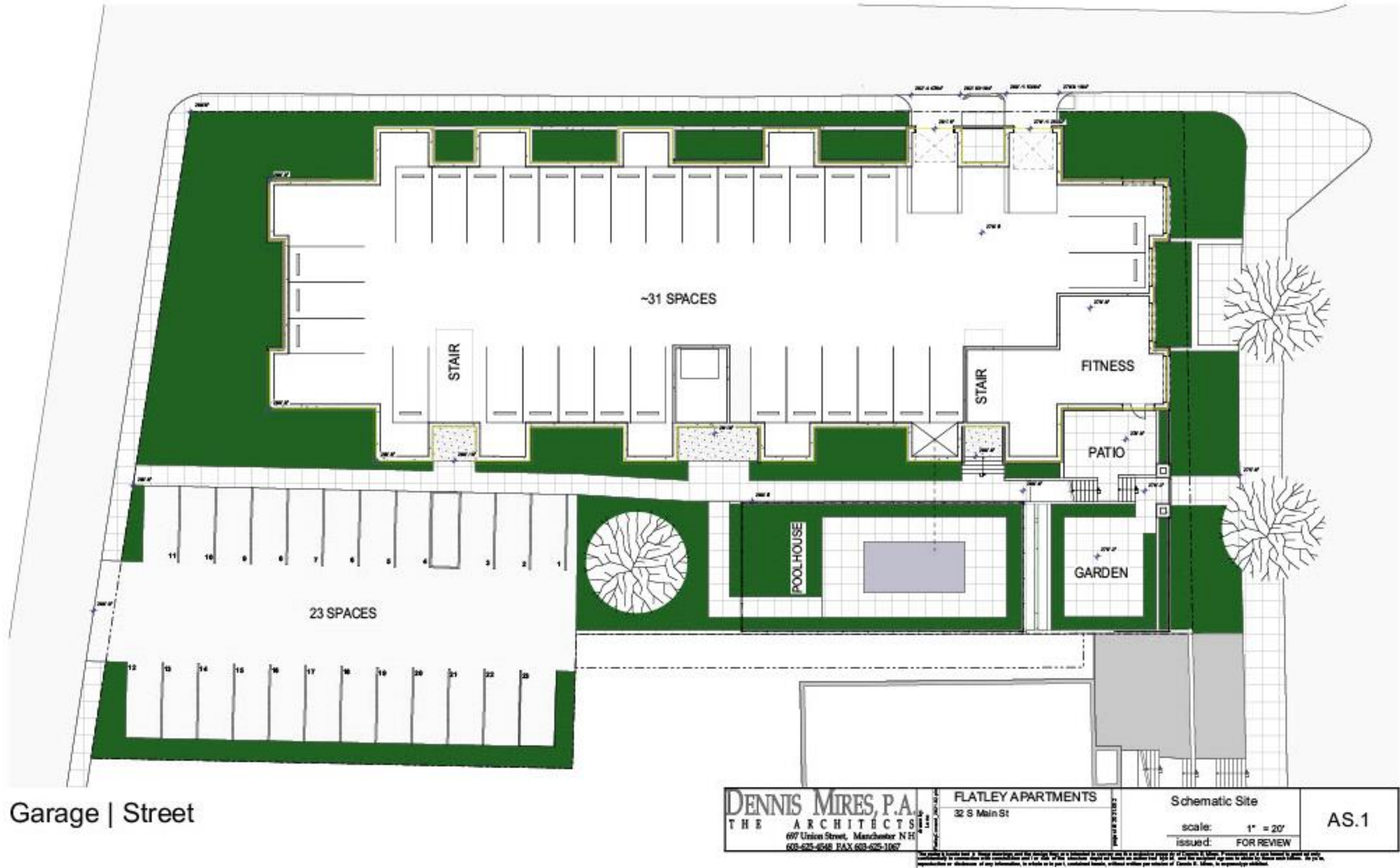
II. 2022:

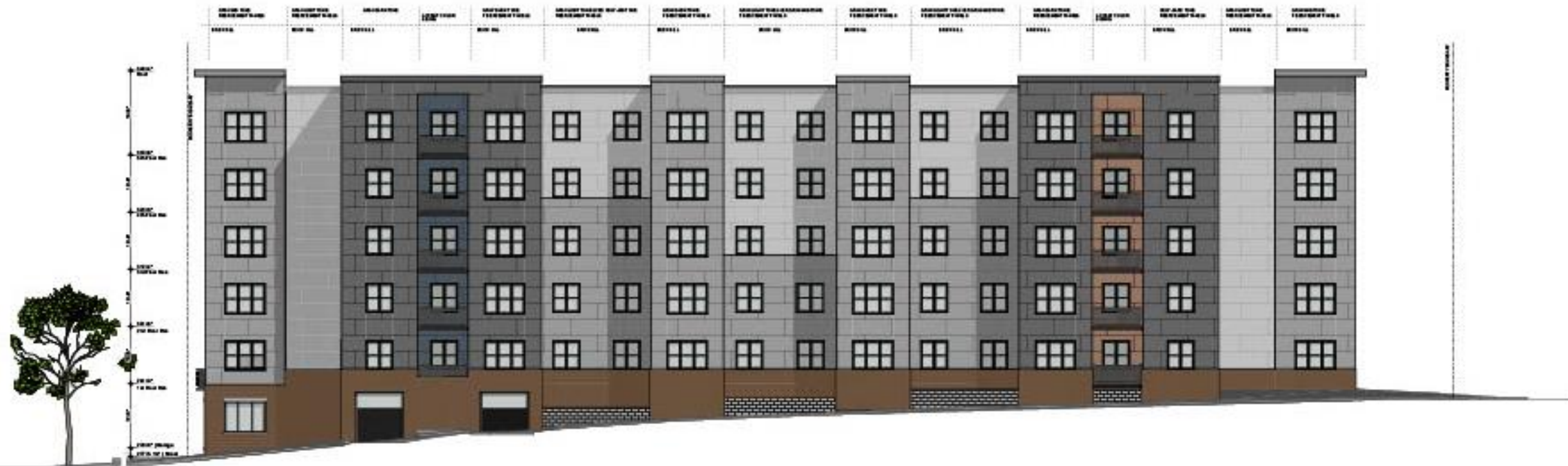
- i. April 15, 2022: Customary end of winter shut down period. Buyer commences demolition of existing building and construction of the Buyer's Project.

III. 2023:

- i. June 2023: Buyer receives Certificate of Occupancy for Buyer's Project. Project complete.

Exhibit F – Conceptual Design for Buyer’s Project





North Elevation
SCALE: 1" = 20'



East Elevation
SCALE: 1" = 20'

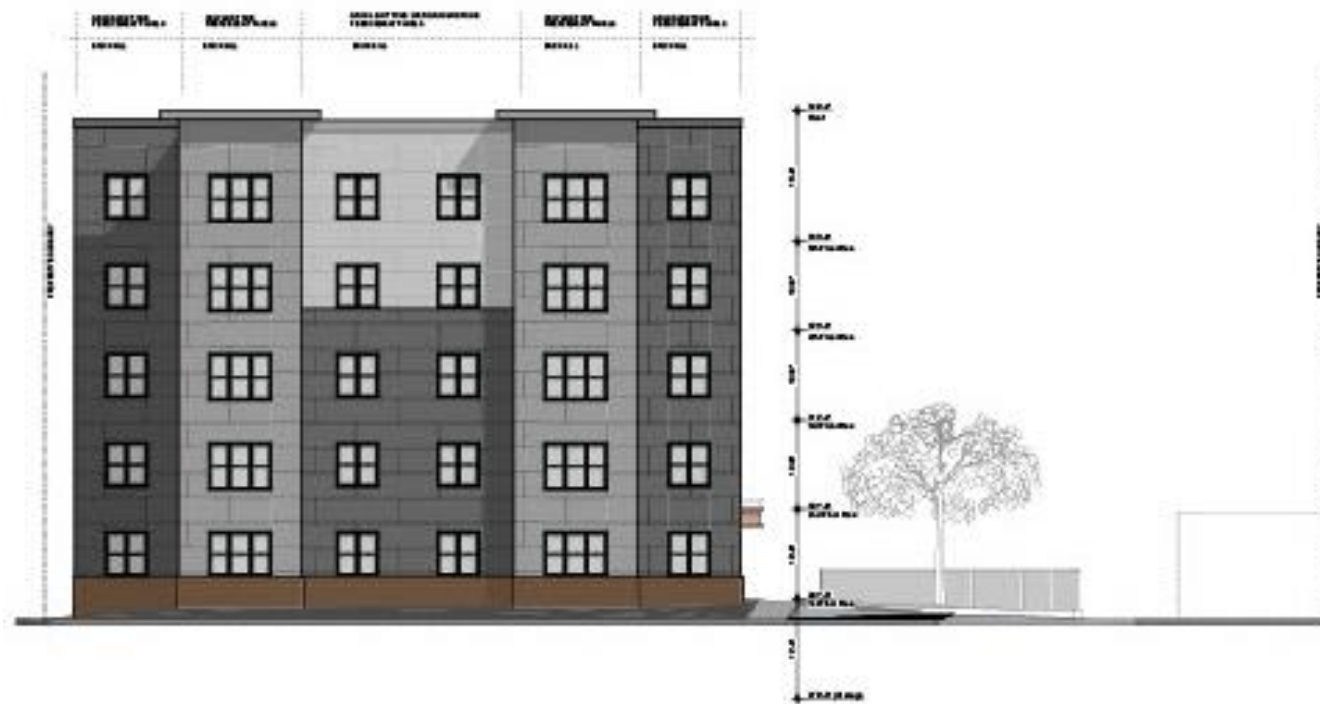
DENNIS MIRES, P.A. THE ARCHITECTS 697 Union Street, Manchester NH 603-625-9548 FAX 603-625-1067	FLATLEY APARTMENTS 32 S Main St	Elevations		A2.1
		scale: 1" = 20'	issued: FOR REVIEW	

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South Elevation

SCALE: 1" = 20'



West Elevation

SCALE: 1" = 20'

DENNIS MIRES, P.A. THE ARCHITECTS 607 Union Street, Manchester NH 603-625-4548 FAX 603-625-1067	FLATLEY APARTMENTS 32 S Main St	Elevations scale: 1" = 20' issued: FOR REVIEW	A2.2
	<small>THIS DRAWING IS THE PROPERTY OF DENNIS MIRES, P.A. AND IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT THE WRITTEN PERMISSION OF DENNIS MIRES, P.A. THE USER OF THIS DRAWING AGREES TO HOLD DENNIS MIRES, P.A. HARMLESS FROM ANY AND ALL LIABILITY, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM ANY SUCH REPRODUCTION, COPIING, OR TRANSMISSION.</small>		
	<small>DATE PLOTTED: 11/11/2014 10:58:10 AM</small>		



SE Corner



NE Corner

DENNIS MIRES, P.A. THE ARCHITECTS 697 Union Street, Manchester NH 603-625-8248 FAX 603-625-1067	FLATLEY APARTMENTS 32 S Main St	Schematic	A3D.1
		scale: 1:80, 1:68.83 issued: FOR REVIEW	

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NW Corner



SW Corner

DENNIS MIRES, P.A. THE ARCHITECTS 697 Union Street, Manchester NH 603-675-6548 FAX 603-675-1067	FLATLEY APARTMENTS 32 S Main St	Schematic scale: 1:68.57, 1:72.78 issued: FOR REVIEW	A3D.2
	<small> The Architect warrants that the design and construction documents prepared by the Architect are a substantial part of the work of the Architect. The Architect does not warrant that the design and construction documents are free from errors or omissions. The Architect shall not be responsible for the design or construction of any portion of the project, including but not limited to, site work, foundation, utility, or other work not shown on the drawings. The Architect shall not be responsible for the design or construction of any portion of the project, including but not limited to, site work, foundation, utility, or other work not shown on the drawings. </small>		