

OPTION TO PURCHASE AGREEMENT AMENDMENT #1

This **OPTION TO PURCHASE AMENDMENT #1** (“Agreement” or “Amendment #1”) is made as of the ____ day of **November**, 2017 by and between the City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (referred to the “Seller” or “the City”) and the Caleb Development Corporation, a Massachusetts non-profit corporation, with a principal place of business at 491 Humphrey Street, Swampscott, Massachusetts 01907, its successors and assigns (referred to as the “Buyer” or “the Developer”), and Seller and Buyer referred to collectively as the “Parties”.

RECITALS

This Agreement relates to a certain Option to Purchase Agreement by and between the Seller and the Buyer dated May 18, 2017 (the “Option to Purchase Agreement”) for the real estate known as “Penacook Landing” or the “Former Allied Leather Tannery” located at 11-35 Canal Street, Penacook (Concord), New Hampshire 03303 (the “Property”), City Assessing Department Parcel 0543-P-18.

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

- I. The Seller owns certain real estate located at 11-35 Canal Street, Penacook (Concord), New Hampshire 03303, City Assessing Department Parcel 0543-P-18.
- II. The Seller, subject to the contingencies set forth within the Option to Purchase Agreement, desires to convey to the Buyer approximately 2 to 2.5+/- acres of the Property for the purpose of constructing an affordable housing project featuring up to 54 garden-style dwelling units, together with parking lots, landscaping, and related infrastructure.
- III. During the course of the development permitting process, the Parties determined that an amendment to the Option to Purchase Agreement is warranted as the desired configuration of the proposed subdivision of the Property in relation to the former warehouse building located on the northwesterly side of the Property would not be permissible in accordance with the City Zoning Ordinance.
- IV. In addition, on or about August 7, 2017, the Developer filed a preliminary application for Low Income Housing Tax Credits with the New Hampshire Housing Finance Authority (NHHFA) to partially finance the Developer’s Project. Based upon input provided by NHHFA, the Buyer and Seller desire to make additional modifications to the Option to Purchase Agreement including deletion of all provisions concerning a “senior preference” for the development, certain

modifications to Exhibit 5 "Schedule for Buyer's Project", as well as clarifications to Section 2.1.3 regarding demolition of the former warehouse building.

- V. All Parties signatory to this Agreement agree to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. **Initial Subdivision of Property and Future Lot Line Adjustment Upon Completion of Demolition of Former Warehouse Building:** The Parties hereby recognize that the City of Concord's Zoning Ordinance prohibits the subdivision of the Property in accordance with the conceptual subdivision plan set forth in Exhibit 4 of the Option to Purchase Agreement, as such a configuration bisects the existing former warehouse building. As a result of this circumstance, the Parties hereby agree to the following:
 - 1.1. The Parties shall initially subdivide the Property so that the former warehouse building shall be completely located upon that portion of the lot to be acquired by the Buyer, as shown on plan included in Exhibit 6 titled "Subdivision Plat of the land of the City of Concord" prepared by Richard D. Bartlett and Associates L.L.C. dated July 2017, with revision date of September 18, 2017. This shall be known as the "Interim Subdivision Plan".
 - 1.2. Upon demolition of the warehouse building by the Buyer, as further described in Section 2.1.3 of the Option to Purchase Agreement, the Parties shall modify the boundary of the Seller's Parcel and Buyer's Parcel *via* a Lot Line Adjustment so that the boundary between the Buyer's Parcel and Seller's Parcel conforms to the subdivision plan attached hereto as Exhibit 7. This shall be known as the "Post Demolition Lot Line Adjustment Plan". The Buyer shall be responsible for all costs associated with preparation of the Lot Line Adjustment application without limitation. The application for the lot line adjustment shall be filed no later than 45 calendar days after completion of the demolition of the former warehouse building.
 - 1.3. The Buyer hereby covenants that it shall complete demolition of the former warehouse building as part of Phase I of the Buyer's Project. The Buyer further covenants that the demolition shall be completed not more than 180 calendar days after the Buyer closes on acquisition of the Buyer's Parcel. Demolition shall include, without limitation, removal of all building materials including the superstructure, floors (including slabs on grade), utility services and connections, as well as proper and lawful handling and disposal of hazardous building materials, such as asbestos, which might be present within structural or cosmetic components of the building. Notwithstanding the preceding, the Developer shall be permitted to leave in place and back fill all foundation frost walls and footings located two feet below finished grade; however the developer shall insure that appropriate measures are taken to

encourage drainage through buried foundations. The Buyer shall notify the Seller prior to back filling so the Seller may document the condition of the foundation. Demolition shall be done in good and workman like manner and in compliance with all applicable laws, rules, regulations and ordinances, leaving the Property in a safe condition. Back fill shall consist of clean common borrow and shall be graded to match undisturbed surrounding topography and compacted to 95%. Upon completion of backfill, all areas disturbed by demolition activities shall be loamed and seeded. Backfill, loam, and seed shall comply with City of Concord Construction Regulations. The Buyer shall routinely water loam in seed as needed in order to establish viable turf at the Property.

2. **Removal of Senior Preference:** The Parties hereby agree to delete all provisions regarding a “senior preference” for the Buyer’s Project, without limitation, including those included in Section 2.1.1 of the Option to Purchase Agreement. The Parties further agree that the Buyer’s project shall be a multigenerational affordable housing development.
3. **List of Exhibits:** The list of Exhibits is hereby amended to include revisions to Exhibit 5, as well as establish new Exhibits 5 and 6, respectively:
 - Exhibit 5 “Schedule for Buyer’s Project” shall be replaced in its entirety by the attached exhibit.
 - Exhibit 6 Interim subdivision plan titled “Subdivision Plat of the land of the City of Concord” Activity and Use Restriction Plat on the Land of the City of Concord” prepared by Richard D. Bartlett and Associates LLC., dated July 2017, with revision date of September 18, 2017
 - Exhibit 7 Post-demolition lot line adjustment plan titled “Subdivision Plat of the land of the City of Concord” Activity and Use Restriction Plat on the Land of the City of Concord” prepared by Richard D. Bartlett and Associates LLC., dated July 2017
4. **No Other Terms and Conditions Modified by Amendment #1:** All other terms and conditions set forth within the original Option to Purchase Agreement, except those specifically addressed by this Amendment, shall remain unaltered and in full force and effect.

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Executed as a sealed instrument this _____ day of November, 2017.

SELLER

CITY OF CONCORD

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

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

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

Justice of the Peace/Notary Public

BUYER

CALEB DEVELOPMENT CORPORATION

By: _____ Date: _____
Debra S. Nutter, President
Duly Authorized

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

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

Justice of the Peace/Notary Public

Exhibit 5
Revised Anticipated Schedule for Buyer's Project

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Revised Anticipated Schedule for Buyer's Project

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

Exhibit 6

Interim subdivision plan titled “Subdivision Plat of the land of the City of Concord” Activity and Use Restriction Plat on the Land of the City of Concord” prepared by Richard D. Bartlett and Associates LLC., dated July 2017, with revision date of September 18, 2017

Exhibit 7

Post-demolition lot line adjustment plan titled “Subdivision Plat of the land of the City of Concord” Activity and Use Restriction Plat on the Land of the City of Concord” prepared by Richard D. Bartlett and Associates LLC., dated July 2017

