

## PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (“Agreement”) is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “Effective Date”) by and between the Boys and Girls Club of Central New Hampshire, a New Hampshire non-profit corporation with a principal place of business at 55 Bradley Street, Concord, New Hampshire 03301 (referred to herein as “Seller”) and 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 herein as the “City” or the “Buyer”) and at times referred to individually as “Party” and collectively as the “Parties.”

### RECITALS

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

- I. Seller owns certain real estate located at #76 Community Drive, #83 High Street, and #87 High Street, Penacook (Concord), New Hampshire 03303, as set forth on the City Assessing Department Parcel Map 1424P Lots 38, 40, and 41, consisting of 41,567SF +/- (or 0.954 acres), and as described on a plan titled “Boys and Girls Club of Central New Hampshire Preliminary Site Plan Conceptual,” prepared by Wilcox and Barton dated March 30, 2022 (herein referred to as “the Site” or “the Property”), attached to this Agreement as “Exhibit 1”.
- II. Seller, subject to the contingencies set forth within this Agreement, desires to design, permit, construct, and otherwise develop a new 8,903SF +/- building at the Site, together with parking lots, landscaping, and related infrastructure, as described on the attached plan titled “Penacook Community Center: A Division of the Boys and Girls Club of Central NH Sheet A100 Proposed First Floor Plan and Sheet A200 Renderings,” prepared by Team Engineering dated October 4, 2022, attached to this Agreement as “Exhibit 2” (“Project”).
- III. In accordance with this Agreement, Seller will create a two-unit condominium:
  1. Unit 1 shall consist of approximately 7,431SF +/-, and shall be created for the purposes of establishing a new Boys and Girls Club of Central New Hampshire facility. Unit #1 shall also be referred to in this Agreement as “Seller’s Unit.”
  2. Unit 2 shall consist of approximately 1,471SF +/- and shall be created for the purposes of being sold to Buyer upon completion by Seller subject to the contingencies and provisions set forth within

this Agreement. Unit 2 is referred to in this Agreement as the “City’s Unit” or the “Buyer’s Unit.” Upon Closing, Buyer shall operate Buyer’s Unit as a community center, whereby Buyer shall provide normal and customary recreational services and programs to the community, library branch services and customary municipal government operations, or, subject to this Agreement, any other land use permitted by the City of Concord Zoning Ordinance, including uses permitted by right, special exception, or variance as granted by the Zoning Board of Adjustment (“Community Center”).

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

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

- IV. The Parties are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

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

- 1.1. **General:** Subject to the terms and conditions included within this Agreement, Seller shall develop the Project. Upon satisfactory completion thereof, and subject to the terms and conditions of this Agreement, the City shall acquire Buyer’s Unit from Seller in accordance with this Agreement. Upon acquisition of Buyer’s Unit, the Buyer shall establish and operate a Community Center therein as contemplated within this Agreement. The Recitals set forth at the beginning of this Agreement are incorporated into this Agreement as if fully set forth herein.
- 1.2. **Purchase Price:** The Purchase Price for Buyer’s Unit shall be as set forth herein.
  - 1.2.1. **Calculation:** The Purchase Price for Buyer’s Unit shall be the sum of the actual cost of the Items a-g in this Section 1.2.1 for the

development of Buyer's Unit, including Buyer's portion of the Common Area and Buyer's Limited Common Area, if any.

For the purposes of calculating the Purchase Price, Seller shall clearly segregate the costs incurred in the construction of Buyer's Unit and the Common Area. In the event costs for Buyer's Unit are comingled with Seller's Unit or other Project costs, the cost share for the Buyer's Unit shall be calculated on a prorated basis, based upon the total square footage of Buyer's Unit divided by the total square footage of the main building of the Project (i.e., the square footage of the Buyer's Unit divided by the square footage of the Buyer's Unit and Seller's Unit, combined).

The Purchase Price for Buyer's Unit is as follows:

- a) Architectural, engineering, and other design fees for Buyer's Unit and pro-rated share of Common Area;
- b) Development permitting fees for Buyer's Unit and its percentage of permitting fees required for the Common Area;
- c) The total construction cost of Buyer's Unit, including preconstruction services provided by the selected General Contractor / Construction Manager for the Project, construction change orders for Buyer's Unit, fit-up costs incurred by Seller for Buyer's Unit, as well as prorated share of off-site sidewalk improvements for the Project described Section 2.1.10 of this Agreement;
- d) The cost of construction financing secured by Seller to facilitate development of Buyer's Unit including lender application fees, closing costs, legal fees, and interest paid on the principal amount of the construction loan through date of Closing;
- e) Property taxes, if any, shall be paid by the Seller for the Buyer's Unit through the date of Closing.
- f) Property taxes due from the Buyer after date of Closing, in the event that 1) the Buyer's Unit is taxable in accordance with NH State Law; and 2) the Closing occurs after April 1<sup>st</sup>.
- g) Buyer shall pay Seller a developer fee, which shall be the sum of items Section 1.2.1 a-e, multiplied by two percent (2%); and
- h) The cost of preparation of the condominium for the Project, including condominium plans, condominium declaration, and bylaws for the condominium association (collectively, "Condominium Documents"), as well as development permitting fees and recording fees associated therewith.

- 1.2.2. **Estimated Purchase Price:** Seller hereby represents to Buyer that it has developed a detailed, comprehensive estimated Purchase Price for Buyer's Unit per Section 1.2.1 a-g above. Said estimate is included in Exhibit 4 of this Agreement. As of the effective date of this Agreement, Seller estimates that the Purchase Price of Buyer's Unit shall be One Million Ten Thousand Six Hundred Thirty Five Dollars and Zero Cents (\$1,010,635.00).

No later than thirty (30) days after the date of issuance of a Certificate of Occupancy for the Project and Buyer's Unit, Seller shall provide Buyer with a detailed, itemized tally calculating the final Purchase Price for Buyer's Unit ("Purchase Price Summary"). The Purchase Price Summary shall include a cover spreadsheet listing and tallying all costs which comprise the final Purchase Price, as described in Section 1.2.1 of this Agreement, together with invoices or other supporting documentation therewith.

Buyer shall have sixty (60) days from the date of its receipt of the Purchase Price Summary to approve or reject the Purchase Price Summary. If Buyer does not object to the Purchase Price Summary within said sixty (60) day period, then the Purchase Price Summary shall be deemed confirmed and accepted by Buyer and Seller, and the Parties shall proceed to Closing.

- 1.2.3. **Disputed Purchase Price:** In the event Buyer disputes the Purchase Price Summary, the Parties shall engage in negotiations to resolve the disputed items. If, after thirty (30) days of negotiation, the Parties are unable to resolve said dispute and establish the final Purchase Price for Buyer's Unit, the Parties shall enter into mediation, which shall begin within forty-five (45) days after the negotiations between the Parties cease. Mediation shall not go longer than forty-five (45) days from its inception. The mediator shall be a mutually acceptable third-party attorney, admitted to practice in New Hampshire, and with substantial experience in commercial real estate transactions, including construction law and contracts. The cost of the mediator shall be shared equally by the Parties. The Parties agree that the mediator's determination of the Purchase Price shall be final and binding upon the Parties. Closing shall then occur no later than thirty (30) days after the date of the Mediator's decision, unless extended by mutual agreement between the Parties.

- 1.3. **Deposit:** No deposit is required for this transaction.
- 1.4. **Payment of Purchase Price:** The Purchase Price, subject to Section 1.2.3, shall be paid in full by Buyer to Seller at Closing and conveyance of

Buyer's Unit from Seller to Buyer. Payment of the Purchase Price shall be in the form of bank treasurer's check, wire funds transfer, or other immediately available funds satisfactory to Seller.

- 1.5. **Access to Premises**: Seller grants authorization to Buyer, its employees, representatives, consultants, invitees, and agents to enter the Property during the term of this Agreement for the purposes necessary to carry out the terms of this Agreement.

Buyer and Seller shall coordinate all access to the Property by third parties working on behalf of Buyer.

Whenever possible, Buyer shall provide twenty-four (24) hours prior oral notice to the General Manager of the Project before entering the Project.

Buyer shall hold harmless Seller and its officials, agents and employees (collectively, the "*Indemnified Parties*"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "*Liabilities*") resulting from any third party actions relating to this paragraph regarding Buyer's inspection of the Property and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, Buyer (or its contractors, agents, invitees, or employees) in connection with this Section 1.5; provided, however, that nothing herein shall require Buyer to hold harmless the Indemnified Parties for any Liabilities to the extent caused by or arising out of the acts or omissions of, or the willful misconduct of Seller. Additionally, to the fullest extent permitted by law, no official, employee, agent, invitee, or representative of Seller shall be individually or personally liable for any obligation or liability of Buyer under this Section 1.5.

- 1.6. **Closing**: Unless otherwise agreed to by the Parties or provided according to the provisions of this Agreement, the purchase and sale of the Buyer's Unit shall take place at a closing ("*Closing*") to be held no later than one hundred twenty (120) days after the issuance of a Certificate of Occupancy by the City of Concord for the Project and Buyer's Unit. The day on which the Closing occurs is the "*Closing Date*".
- 1.7. **Title and Deed Restrictions**: Seller shall convey Buyer's Unit by Warranty Deed ("*Deed*"). In addition to the terms and conditions set forth within this Agreement, Seller shall provide Buyer with good, marketable, and insurable title to Buyer's Unit. Prior to Closing, Buyer may conduct a title search to determine whether title to Buyer's Unit is good, marketable and insurable, so that Buyer may acquire, for the benefit of Buyer by a title insurer licensed in the State of New Hampshire and acceptable to Buyer, an American Land Title Association ALTA standard form title insurance

policy in an amount equal to the Purchase Price, insuring that Buyer holds marketable fee simple title to the Premises, at Buyer's expense and subject to the following:

- a) Existing matters of record accepted and approved by Buyer.
- b) A reservation all easements necessary or desirable for the maintenance, repair, and operation of the proposed condominium, which are acceptable to Buyer.
- c) Any other easements or right-of-way dedications as identified by the Buyer during the development permitting process, as incorporated into the Condominium Documents, which are acceptable to Buyer.
- d) The Condominium Documents shall provide that the Buyer shall be prohibited from using Buyer's Unit for any use other than a Community Center. Notwithstanding the preceding, the Parties agree that said use restriction shall expressly prohibit the Buyer from operating a substance misuse treatment center for persons addicted to legal or illicit substances (such as drugs and alcohol), a homeless shelter or homeless resource center, a so-called "halfway house" for previously incarcerated persons on supervised release or probation, or any other use which would inhibit Seller's ability to safely or lawfully operate a childcare center at Seller's Unit.
- e) A right of first refusal (referred to herein as "ROFR") providing Seller the ability to purchase Buyer's Unit in the event Buyer elects to sell Buyer's Unit in the future. Specifically, in accordance with the ROFR, Buyer shall provide written notice to Seller of its intentions to sell the Buyer's Unit ninety (90) days before listing the Buyer's Unit on the open market. The Buyer's notice shall include the Buyer's asking price for the Buyer's Unit. Seller shall have the exclusive right to negotiate a purchase and sales agreement for the Buyer's Unit during said 90-day time period. In the event a purchase and sales agreement is executed, closing shall occur no later than ninety (90) days after execution of the purchase and sales agreement, or as otherwise agreed by the Parties in writing. In the event the Parties are unable to negotiate a mutually acceptable purchase and sales agreement within the 90-day period allotted, the Buyer shall have the right, at its sole discretion, to list the Buyer's Unit on the open market and sell the Buyer's Unit to a third party selected by the Buyer at its sole discretion, subject to the applicable restrictions in the Condominium Documents.

- 1.8. **Seller's Affidavits and Certificates:** To the extent applicable and if requested to do so by Buyer, Seller, at the Closing, shall deliver such affidavits (in customary form) as may be required by Buyer or Buyer's title

insurance company with respect to: (1) parties in possession of the Property and/or the Buyer's Unit, (2) rights of third parties and title claims in or to the Property and/or the Buyer's Unit, and (3) mechanic's and materialmen's liens affecting the Property and/or the Buyer's Unit. All such requested affidavits and certificates shall be provided to Seller at least five (5) business days in advance of the Closing.

- 1.9. **Deed Preparation; Recording Fees**: Seller shall prepare the Deed and any other conveyance documents to Buyer at its expense. The form and content of the Deed shall be satisfactory to Buyer. Seller shall deliver the draft Deed to Buyer as soon as practical, but no later than fifteen (15) days prior to the Closing Date. Buyer shall review the Deed and other documents, if any, and provide comments to Seller (if any) no later than seven (7) days after receipt of the draft Deed from Seller. Seller shall address the comments and respond in a timely manner.
- 1.10. **Transfer Taxes and Recording Fees**: The Parties shall pay their respective shares of normal and customary recording fees and transfer taxes customarily associated with real estate transactions. The Parties acknowledge that Buyer is exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I. To the extent Seller is not exempt from the real estate transfer tax; Seller hereby agrees to pay its respective half of the transfer tax in the customary fashion.
- 1.11. **Discharge of Liens**: Seller shall, at its expense, pay or discharge all liens, mechanics liens, encumbrances, and attachments, if any (the "Liens"), which may exist on Buyer's Unit through the date of Closing or filed after recording of the Deed due to an action by Seller prior to recording of the Deed, except those which the Parties agree will not be discharged in accordance with Section 1.7 above. To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed, use the Purchase Price or any portion thereof to clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded contemporaneously with the recording of the Deed. Seller shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances and receive therefrom a discharge(s) to be recorded in the ordinary course of business.

If Seller is unable or otherwise unwilling to pay or discharge all liens, mechanics liens, encumbrance and attachments which exist before the date of Closing, Buyer may proceed with any of the following options:

- i. Afford Seller additional time in which Buyer deems it reasonable to cure said Liens; or,

- ii. Terminate this Agreement, following which this Agreement shall be null and void, and of no further force or effect; or,
- iii. The Parties may renegotiate the Purchase Price to appropriately account for said Liens and then proceed to Closing.

1.12. **Intentionally Omitted.**

1.13. **Delivery of Buyer's Unit, Removal of Tenants, and Property to be Retained by Seller:** Seller shall deliver possession of Buyer's Unit to Buyer in fully complete condition, free and clear of all tenants and third parties, and ready for immediate occupancy by the Buyer for its intended use.

1.14. **Title Insurance:** If applicable and in accordance with Section 1.8, Seller shall execute all customary documents required by Buyer's Title Insurance Company.

1.15. **Real Estate Broker's Fees & Commissions:** The Parties hereby confirm they are not represented by brokers or agents in conjunction with this transaction. If either Party should become represented by a real estate broker, the represented Party shall be responsible for compensating said broker at its sole expense.

1.16. **Seller's Disclosures:** The New Hampshire statutory disclosures are attached to this Agreement as Schedule 1.6.

1.17. **Casualty and Condemnation:** In the event that the Property, Project, or Buyer's Unit, prior to Closing, are damaged by fire, flood, collapse, or other casualty, or is subject to an eminent domain proceeding which materially inhibits the development of the Project or Buyer's Unit, either Party may elect to terminate this Agreement by written notice within sixty (60) days of the occurrence of such damage or casualty, in which event all other obligations of the Parties hereunder shall cease, and this Agreement shall thereupon be void and of no further force or effect.

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

2. **SELLER'S RESPONSIBILITIES AND CONTINGENCIES:**

2.1. **Seller's Responsibilities:**

2.1.1. **Development of the Project:** Seller, its successors or assigns covenants that it shall proceed with the development of the Project.



The Project shall be substantially similar to the conceptual site plan, floor plans, building elevations, and condominium plan included within Exhibits 1, 2 and 3 of this Agreement. The schedule for the Project shall be substantially similar to the Project Schedule set forth within Exhibit 5 of this Agreement. Seller covenants and agrees that it shall use commercially reasonable efforts to complete Buyer's Project in a timely manner consistent with industry practices for projects of the same type and kind as the Project.

- 2.1.2. Seller's Financing for the Project: Seller shall secure all financing required to develop the Project, including Buyer's Unit.
- 2.1.3. Design of Project and Buyer's Unit: Seller shall be solely responsible for designing the Project and Buyer's Unit. The Parties hereby agree that the firms of Richard Bartlett and Associates, Wilcox and Barton, Team Design, and Terrain Planning shall provide licensed land surveying, civil engineering, as well structural engineering, architectural, landscape design, and interior design services for the Project and Buyer's Unit. Seller covenants that design of the Project and Buyer's Unit shall be completed in a professional and worker like manner. Seller also covenants that designs for the Project and Buyer's Unit shall comply with all applicable Federal, State, and Municipal laws, ordinances, codes, rules, and regulations. Seller shall obtain Buyer's consent relative to the Seller's plans, drawings, studies, documents and applications concerning the Buyer's Unit and Common Area of the Project, which consent, shall not be unreasonably withheld.
- 2.1.4. Development Permits and Approvals for Project and Buyer's Unit: Seller shall obtain all required development approvals and permits from applicable governmental agencies, upon such terms and conditions as are satisfactory to Seller in its reasonable discretion, for the Project and Buyer's Unit.
- 2.1.5. Condominium: Seller shall prepare and secure approvals to submit the Project to a condominium form of ownership. The Condominium Documents shall establish Seller's Unit and Buyer's Unit, which shall be separate and distinct condominium units. The configuration of the condominium, together with Condominium Documents, shall be satisfactory to Buyer in its reasonable discretion.

In conjunction with the creation of the condominium, the Parties hereby agree that the proposed playground and the storage shed on the northeasterly side of the Property, including all fixtures, equipment, and utilities related thereto, shall be limited common area included as part of Seller's Unit. As limited common area,

Seller shall be solely responsible for the maintenance, repair, and replacement of the playground and shed, including related infrastructure, in perpetuity.

The Parties also agree that an exterior book bin / drop off facility for Buyer's proposed library services shall be limited common area included as part of Buyer's Unit. As limited common area, Buyer shall be solely responsible for the maintenance, repair, and replacement of the book bin and related infrastructure in perpetuity.

The Parties further agree that all other exterior improvements of the Project, including parking areas, sidewalks, exterior lighting, lawns, landscaping, and similar improvements shall be designated as Common Area benefiting Buyer's Unit and Seller's Unit and shall be managed by the condominium association created for the Project.

In addition, the Parties agree that the Condominium Documents shall stipulate:

- a) The costs of operating the condominium, as well as the costs of maintaining, repairing, replacing the Common Area shall be prorated between by Buyer's Unit and Seller's Unit based upon the square footage of each unit divided by the total square footage of both units, combined.
- b) As long as the Seller is the Owner of Unit 1, Seller shall be responsible for bidding, securing, and managing all contracts with third party contractors and vendors for all goods and services required to operate the condominium association, such as insurances, legal, and accounting services, as well as to maintain, repair, and replace the Common Area.

Seller shall provide Buyer with copies of proposed Condominium Documents, as well as any permit applications required to establish the condominium, for Buyer's review and approval. Buyer shall have sixty (60) days to review and consent to the Condominium Documents. If Buyer does not respond to Seller's request to approve any plans or applications within the sixty (60) day period, then said plan or application shall be deemed approved by Buyer and Seller may proceed with development permitting applications related thereto.

The Parties hereby agree that vendors engaged to design the Project and Buyer's Unit, as well as the law firm Orr and Reno, are acceptable for preparing Condominium Documents required for this transaction.

2.1.6. Condominium Association Operating Budget: Seller, at its sole cost and expense, shall prepare a detailed estimate of annual operating costs for the condominium association, as well as an estimate of annual fees and dues to be paid by Seller's Unit and Buyer's Unit in the initial year of operation related thereto. Annual operating costs shall include lawn care (mowing, fertilizing, irrigation, etc.), landscaping (pruning, mulching, periodic replacement of dead / dying / diseased vegetation, etc.), rubbish / dumpster service (to be shared by Seller's Unit and Buyer's Unit), parking lot maintenance (line striping, snow removal, repairs), as well as exterior lighting. As set forth above, the costs of operating the condominium, as well as the costs of maintaining, repairing, and replacing the Common Area shall be prorated between the Buyer's Unit and Seller's Unit based upon the square footage of each unit divided by the total square footage of both units, combined.

2.1.7. Construction of Project and Buyer's Unit: Seller shall be solely responsible for construction of the Project and Buyer's Unit.

Seller shall engage a qualified General Contractor / Construction Management firm (referred to herein as the GC/CM) to provide all normal and customary preconstruction and construction related services the Project and Buyer's Unit. The GC/CM shall be mutually acceptable to Seller and Buyer in their reasonable discretion. The Parties agree that Milestone Engineering and Construction of Concord, New Hampshire shall be the General Contractor / Construction Manager for the Project and Buyer's Unit.

As part of its responsibilities, Seller covenants that its contract with the GC/CM shall require the GC/CM to prepare a separate schedule of values for Buyer's Unit as well as Seller's Unit. Said schedule of values shall include all normal and customary cost divisions for each component of construction, and shall be consistent with American Institute of Architects ("AIA") Form 133-Exhibit A.

Seller shall provide Buyer with copies of proposed construction contracts, and related exhibits / attachments thereto, for Buyer's Unit and Seller's Unit for Buyer's review and approval. Buyer shall have thirty (30) days to review and consent to said documents. If Buyer does not respond to Seller's request to approve any plans or applications within the thirty (30) day period, then said plan or application shall be deemed approved by Buyer and Seller may proceed with execution of said contracts.

2.1.8. Separate Utility Services and Building Systems for Condominium Units: Seller covenants that the Project shall include separately metered water, gas, electrical, telephone / data, and cable television services for Buyer's Unit and Seller's Unit. The security system (including intruder alarms and security cameras) for each unit shall be separate. The Units will be designed so that they have separate HVAC systems. The fire-suppression system will operate independently within each Unit, but the electrical panel and other support will be located in Unit 1.

2.1.9. Fit-Up of Buyer's Unit by Seller; Fixtures / Furnishings / Equipment: As part of its construction of the Project, Seller shall also be responsible for all interior fit-up of Buyer's Unit, including, but not limited to fixtures and equipment, walls, ceilings, doors, trim and millwork, code required signage on interior of Buyer's Unit (such as restrooms and egresses, etc., in English and Braille), exterior signage adjacent to entry of Buyer's Unit, smoke / fire / carbon monoxide alarms, fire suppression systems, security systems (including interior and exterior cameras), paint, flooring, window treatments, cabinets, countertops, lighting / electrical (wiring / outlets / fixtures), telephone / internet / data / cable television (wiring / sockets), HVAC, plumbing (piping and fixtures), as well as all appliances for Buyer's kitchen.

Seller hereby acknowledges that Buyer has a standard pallet of paint colors for walls / doors / trim, as well as flooring materials. Seller covenants that it shall ensure that plans and specifications for the Buyer's Unit are consistent with the City's organizational standards for such items.

Concerning exterior signage, the Parties agree that Seller shall commission a comprehensive signage package for the Project. Exterior signage for Buyer's Unit, Seller's Unit, as well as the Common Area, shall have a common theme and use identical design vocabulary (i.e., fonts, colors, and shapes) which shall comply with applicable laws, rules, and regulations.

Regarding door locks/hardware and security cameras for Buyer's Unit, Seller shall direct the CG/CM to negotiate and enter a contract with Minuteman Security Technologies (referred to herein as "MST") on terms acceptable to the Parties, the GC/CM, and MST for installation of required conduit, wiring, and fixtures related thereto. The CG/CM shall insure that MST's scope is fully coordinated with the GC/CM's electrical subcontractor, door and hardware suppliers for the Project and Buyer's Unit.

Notwithstanding the preceding, the Parties expressly agree that Buyer shall be solely responsible for the following fit-up items:

- Tables, chairs, desks, and similar furnishings; and,
- Telephones, televisions, computers, tablets, and internet routers.

Seller shall provide Buyer with copies of all plans, drawings, specifications, samples, and related submittals from its design professionals, GC/CM, the GC/CM's subcontractors, vendors, and suppliers, for all fit-up items for Buyer's Unit for Buyer's review and approval. During construction, Buyer shall have ten (10) days to review and consent to fit-up items. If Buyer does not respond to Seller's request to approve any plans, drawings, specifications, samples, and related submittals within the ten (10) day period, then said item shall be deemed approved by Buyer and Seller may proceed with execution of said contracts, or prosecution of work, related thereto.

2.1.10. Seller Responsible for Infrastructure Improvements and Demolition of Existing Buildings: Seller hereby covenants, represents, and warranties that it shall be solely responsible for the designing, permitting, and constructing all improvements to utilities, roadways, sidewalks, and other infrastructure, without limitation, which might be required by the Project. The prorated cost of such items shall be part of the Purchase Price and allocated as set forth in Section 1.2.1. Infrastructure improvements shall include construction of a sidewalk and related improvements within the northerly side of the Dolphin Street rights-of-way immediately along the frontage of the Site in accordance with the City's construction standards and related regulations. Seller shall also be responsible for demolition of all existing buildings located at the Site that were previously operated by the Penacook Community Center.

2.1.11. Copies of Contracts, Change Orders, Invoices, Etc.: Seller shall provide Buyer with copies of all contracts, contract amendments, change orders, and invoices with all vendors, contractors, and suppliers for the Project and Buyer's Unit without limitation.

2.1.12. Job Meetings: Seller covenants that it shall invite Buyer's representative(s) to attend all meetings with the design team, legal counsel preparing Condominium Documents, and General Contractor / Construction Manager for the Project and the Buyer's Unit.

2.1.13. *Right of First Refusal to Buyer for Seller's Unit:* At Closing, Seller shall provide Buyer with a Covenant on Seller's Unit providing Buyer the ability to acquire Seller's Unit in the event Seller elects to divest of Seller's Unit in the future. Specifically, in accordance with the ROFR, the Seller shall provide written notice to the Buyer of its intentions to divest of the Seller's Unit ninety (90) days before listing the Seller's Unit on the open market. The Seller's notice shall include the Seller's asking price for its Unit. The Buyer shall have the exclusive right to negotiate a purchase and sales agreement for the Seller's Unit during said ninety (90) daytime period. In the event a purchase and sales agreement is executed, closing shall occur no later than ninety (90) days after execution of the purchase and sales agreement, or as otherwise agreed by the Parties in writing. In the event the Parties are unable to negotiate a mutually acceptable purchase and sales agreement within the 180-day period allotted, the Seller shall have the right, at its sole discretion, to list the Seller's Unit on the open market and sell its Unit to a third party selected by the Seller.

2.1.14. *Covenant on Seller's Unit to Benefit of Buyer.* The Condominium Documents shall restrict the use of the Seller's Unit to a childcare center for infants, toddlers, and young adults who attend high school (or its equivalent). Childcare center services may include after school programming, or programming during school vacations. The covenant shall also permit Seller's Unit to be used for any other land use permitted by the City of Concord Zoning Ordinance (including uses permitted by right, special exception, or variance as granted by the Zoning Board of Adjustment). Notwithstanding the preceding, the Parties agree that said restricted use shall expressly prohibit the Seller from operating a substance misuse treatment center for persons addicted to legal or illicit substances (such as drugs and alcohol), a homeless shelter or homeless resource center, a so-called "halfway house" for previously incarcerated persons on supervised release or probation, or any other use which would inhibit Buyer's ability to safely or lawfully operate a Community Center at Buyer's unit.

2.2. **Seller's Contingencies:** Seller's obligation to proceed with development of the Project, including Buyer's Unit, shall be subject to the following contingencies, the failure to satisfy any one of which shall give Seller any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which Seller shall have no further obligation to Buyer unless otherwise specifically provided in this Agreement.

- 2.2.1. Buyer's Appropriation of Funds for Transaction: This Agreement is contingent upon the Concord City Council appropriating sufficient funds to complete this transaction on or before January 31, 2023.
- 2.2.2. Seller's Financing: This Agreement is specifically contingent upon Seller securing a financing package, upon terms acceptable to Seller in its sole discretion, for the development of the Project, including construction of Buyer's Unit. Financing may include a mixture of loans, grants, and donations. In the event Seller is unable to compile a satisfactory financing package for the Project within ninety ((90) days of the effective date of this Agreement, Seller may elect to terminate this Agreement.
- 2.2.3. Seller's Contracts: This Agreement is specifically contingent upon Seller entering into contracts with design professionals, legal counsel for preparation of the condominium documents, as well as the GC/CM for the Project, including Buyer's Unit, upon terms acceptable to Seller in its sole discretion. In the event Seller is unable to enter said contracts within ninety (90) days of the effective date of this Agreement, Seller may elect to terminate this Agreement.
- 2.2.4. Development Permits and Approvals for Project: This Agreement is specifically contingent upon Seller securing all required development permits and approvals for the Project and Buyer's Unit, without limitation. In the event Seller is unable to secure required development permits and approvals within ninety (90) days of the effective date of this Agreement, Seller may elect to terminate this Agreement.

### **3. BUYER'S RESPONSIBILITIES AND CONTINGENCIES:**

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

- 3.1.1. Community Development Block Grant: The Parties hereby acknowledge the City, at the Seller's request, has applied for a Community Development Block Grant ("CDBG") to support the Project. Should the City's application be successful, the City shall subgrant said funds to the Seller, less administrative fees to be retained by the City, to support development of Seller's Unit. Due to certain rules and regulations governing CDBG funds, the Parties hereby agree that CDBG shall not be used to fund construction of Buyer's Unit or any Common Area benefiting Buyer's Unit. Seller hereby acknowledges that misuse of CDBG funds may result in forfeiture of said CDBG funds and other penalties.

- 3.1.2. Prompt Review of Seller's Submittals to Buyer: Given the tight Project Schedule, Buyer hereby covenants that it shall diligently process items submitted by Seller to Buyer for review and approval within the timeframes set forth within this Agreement and, whenever possible, before the end of the timeframes.
- 3.1.3. Attendance of Public Hearings for the Project: The Buyer covenants that the City Manager's designee shall attend public hearings of those governmental boards and commissions which are part of the development permitting process for the purposes of providing testimony to said boards and commissions in support of the Project.
- 3.1.4. Job Meetings: Buyer covenants that it shall attend, and be an active participant, in all preconstruction and construction meetings with Seller, Seller's design team, Seller's condominium legal counsel, and Seller's General Contractor / Construction Manager for the Project and Buyer's Unit. If Buyer does not attend, then the meeting shall continue as scheduled and will not be postponed.
- 3.1.5. Acquisition of Buyer's Unit: Subject to the terms and conditions set forth in this Agreement, Buyer, upon satisfactory completion of the Project and Buyer's Unit and issuance of Certificates of Occupancy related thereto, shall acquire Buyer's Unit from Seller for the Purchase Price, as calculated in Article 1.2 of this Agreement.

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

- 3.2.1. Environmental Review, Right to Rely on Seller's Environmental Assessments, Studies and Reports: Seller, no later than ten (10) days after the effective date of this Agreement and at no cost to Buyer, shall provide Buyer with copies of all environmental assessments, studies, and reports, including hazardous building materials reports for structures located at the Site, commissioned by Seller, or otherwise in Seller's possession, documenting the environmental condition of the Site relative to environmental contamination and hazardous materials.

Simultaneously with the transmission of the environmental assessments, studies, and reports, Seller shall also provide Buyer



with letters from the authors of said assessments, studies, and reports granting the Buyer the right to rely upon the representations, certifications, and statements contained therein.

Buyer shall have until the sixtieth (60<sup>th</sup>) day after the effective date of this Agreement to review said documents and object to the environmental condition of the Site.

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

- i. Negotiate and execute an amendment to this Agreement with Seller pertaining to environmental cleanup and remediation of the Site; or,
- ii. Terminate this Agreement and receive a return of the Deposit Payment (if any); or,
- iii. Accept the Premises in its “as is condition.”

3.2.2. Appropriation by City Council: This Agreement is expressly contingent upon the City Council appropriating sufficient funds to finance Buyer’s activities and obligations set forth herein. If Buyer elects to not appropriate funds to finance its purchase of Buyer’s Unit on or before January 31, 2023, Buyer may, in its sole discretion, terminate this Agreement.

3.2.3. Seller’s Financing: This Agreement is specifically contingent upon Seller obtaining financing in sufficient amounts at such prices, rates and terms that are satisfactory to Seller, in its sole discretion, for the development of the Project. Seller shall provide proof, in writing, of preliminary commitments for such financing arrangements within ninety (90) days of the effective date of this Agreement. If Seller is not able to obtain an acceptable financing package for the development of the Project prior to securing a building permit for Buyer’s Unit, Buyer may, in its sole discretion, terminate this Agreement.

3.2.4. Development Approvals and Permits: This Agreement is contingent upon Seller obtaining all material development permits and approvals from the applicable governmental agencies, upon such terms and conditions as are satisfactory to Buyer and Seller in their reasonable discretion, for the Project and Buyer’s Unit. If Seller is unable to secure said approvals and permits within ninety

(90) days of the effective date of this Agreement, Buyer may, in its sole discretion, terminate this Agreement. Provided, however, that if Seller is diligently pursuing such permits and approvals, then Seller shall have an additional thirty (30) days to obtain such permits and approvals.

- 3.2.5. Condominium: This Agreement is specifically contingent upon Seller creating a two-unit condominium of the Project as required under this Agreement. The Condominium Documents shall be satisfactory to Buyer in its reasonable discretion. In the event, Seller is unable to secure condominium approvals prior to Closing, Buyer may, in its sole discretion, terminate this Agreement.
- 3.2.6. Construction of Buyer's Unit by Seller in Accordance with Buyer's Approved Plans and Specifications: This Agreement is specifically contingent upon Seller completing construction of the Project and Buyer's Unit.
- 3.2.7. Final Inspection and Certificate of Occupancy: This Agreement is specifically contingent upon Buyer's final inspection of the Project and Buyer's Unit, and Seller securing a Certificate of Occupancy for the Project and Buyer's Unit.
- 3.2.8. Title: At least ninety (90) days prior to Closing, Buyer shall perform a title examination of the Property and/or Buyer's Unit, and must be reasonably satisfied that title to the Property and/or Buyer's Unit is good, marketable, and insurable, and not otherwise subject to any Liens, encumbrances, covenants or other restrictions which would prevent Buyer from using the Property and/or Buyer's Unit for Buyer's intended use ("Title Defects"). If the title to the Property and/or Buyer's Unit is not good, marketable, and insurable, or is otherwise subject to any Title Defects, Seller shall be provided a reasonable period, no less than sixty (60) days, within which to resolve such title defects. If Seller is unable or otherwise unwilling to provide good, marketable, and insurable title, or to remove the Title Defects within the sixty (60) day period, Buyer, at its sole option, may proceed with any of the following options:
- i. Afford Seller additional time to cure said title defects; or,
  - ii. Terminate this Agreement; or,
  - iii. The Parties may renegotiate the Purchase Price to appropriately account for the condition of title to the and/or Buyer's Unit, and then proceed to Closing.

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

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

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

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

4.1.3. The City Council, by its approval of Resolution # \_\_\_\_\_ on \_\_\_\_\_, 2022, authorized the City Manager to execute this Agreement.

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

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

4.2.1. Seller has the power and authority to execute, deliver and conduct the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery, and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof by Seller, constitute valid, legal, and binding obligations of

Seller enforceable against Seller in accordance with the respective terms thereof.

- 4.2.2. Neither the execution or delivery by Seller of this Agreement, the performance by Seller of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by Seller of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to Seller, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which Seller are a party or by which Seller or any of its properties or assets are bound, or constitutes a default there under.
- 4.2.3. No approval, authorization, order, or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by Seller, except such as have been duly obtained or made.
- 4.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against Seller, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by Seller of their obligations hereunder or the performance by Seller of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by Seller in connection with the transactions contemplated hereby.

## **5. DEFAULT**

- 5.1. **Default by Seller.** In the event Seller shall fail to fulfill any other of its obligations hereunder and such failure continues for thirty (30) days after written notice from 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 Buyer's remedy shall be limited to its rights and remedies as set forth within the specific Article, Section, or Sub-Section of this Agreement for which default has occurred. However, if no rights or remedies are expressly defined within the specific Article, Section, or Sub-Section in which the default occurred, then Buyer shall have the right to pursue all rights it may have at law and in equity to address any such breach including, without limitation, a suit for specific performance. The remedies stated herein shall be cumulative. The provisions of this Sub-Section are subject to the rights in any Mortgagee to notice, to cure, or as otherwise provided for any Mortgagee under this Agreement. In

no event shall Buyer be entitled to consequential, incidental, indirect, punitive damages because of Seller's default.

5.2. **Default by Buyer.** If Buyer shall fail to fulfill its obligations hereunder, and such failure continues for thirty (30) days after written notice from Seller (or such additional time as may be reasonable required if such failure cannot be cured within said thirty (30) day period provided that Buyer is diligently pursuing said cure) then Seller's remedy shall be limited to its rights and remedies as set forth within the specific Article, Section, or Sub-Section of this Agreement for which default has occurred. However, if no rights or remedies are expressly defined within the specific Article, Section, or Sub-Section in which default occurred, then Seller shall have the right to terminate this Agreement, upon which neither party shall have any further rights against the other under this Agreement; and/or pursue any and all rights it may have at law and in equity to address any such breach including, without limitation, suit for specific performance. The remedies stated herein shall be cumulative. In no event shall Seller be entitled to consequential, incidental, indirect, punitive damages because of Buyer's default.

## 6. **DEVELOPMENT SCHEDULE**

6.1. **General:** Attached to this Agreement is the Project Schedule (Exhibit 5) which details the anticipated date and sequence of various elements of the Project to be completed by Buyer and Seller.

The Parties acknowledge that the Project 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. Buyer and Seller acknowledge that the completion of the Development Schedule is dependent on events to be determined following the approval of this Agreement by the City Council.

6.2. **Milestones and Deadlines.** The Milestones in the Exhibit 5 Project Schedule shall be automatically extended for Force Majeure or Excusable Delays described in Section 7.1 and 7.2 of this Agreement.

## 7. FORCE MAJEURE OR EXCUSABLE DELAYS

7.1. **General:** For the purposes of any of the provisions of this Agreement, neither Buyer nor 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, quarantine restrictions, labor disputes, litigations, any permit or approval needed for the Project, unexpected delays in the approval processes for the Project, freight embargoes, delays stemming from unusually severe weather, unforeseen conditions or delays encountered during construction of the Project and Buyer's Unit, 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, Buyer and Seller shall consider not only actual work stoppages, but also any consequential delays resulting from such stoppage as well.

7.2. **Winter Conditions:** Provisions in this Agreement relating to the period for completion of the Project and Buyer's Unit by Seller 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 Seller shall not 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 5 shall be reasonably extended to accommodate Winter Conditions.

## 8. GENERAL PROVISIONS

8.1. **Cooperation.** Buyer and 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 Buyer, Seller, or their representatives, agents, and consultants, whether or not explicitly set forth herein as may be necessary in connection with the 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).

- 8.2. **Entire Agreement; Amendments.** This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification, or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.
- 8.3. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit, or expand the express provisions of this Agreement.
- 8.4. **Exhibits.** All exhibits referred to in this Agreement are incorporated by reference and expressly made a part hereof.
- 8.5. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 8.6. **Enforceability and Severability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.
- 8.7. **Consent to Jurisdiction and Venue.** Buyer and Seller submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. The Parties hereby waive their right to a jury trial.
- 8.8. **Independent Parties.** 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.

- 8.9. **Assignment; Binding Effect.** This Agreement binds the Parties and inures to the benefit of the Parties and each Party's respective successors and assigns. The Parties shall not, however, without the prior written consent of the other Party, assign, pledge, or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law (collectively, "Assignment"), and any such Assignment without such consent will be null and void. Provided, however that, 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 the assignor's obligations assigned under this Agreement, and assignor shall represent and warrant in writing that, to the best of assignor's knowledge and belief based upon assignor's reasonable investigation, the assignee has or has access to the financial and technical ability to fulfill all of the then remaining obligations of assignor under the Agreement. The provisions of this Sub-Section does not limit the rights of either Party to assign its contracts, rights, and obligations regarding the Project to a mortgagee or construction lender as collateral for the financing of the Project.
- 8.10. **Survival of Agreement.** All the covenants and obligations of the Parties to this Agreement, which by their terms are to be performed or will become effective after the Closing, shall survive the Closing.
- 8.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 8.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization, or government, other than the Parties hereto, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 8.13. **Preservation of Rights.** Nothing herein or in any related agreement shall limit or be construed to limit in any way rights or remedies the Buyer may have for the collection of real property taxes under law, unless expressly set forth herein.
- 8.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.



- 8.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a Party's consent or approval is required under this Agreement, or whenever a Party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a Party must act or perform before another Party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done in good faith, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 8.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any municipal 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.
- 8.17. **Warranties and Representations:** Buyer and Seller each acknowledge that they have not been influenced to enter this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.
- 8.18. **Saving Clause.** If 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.

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

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 2022

**BUYER**

**CITY OF CONCORD**

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

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

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, 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

**SELLER**

**BOYS AND GIRLS CLUB OF CENTRAL NEW HAMPSHIRE**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Christopher Emond, Chief Executive Officer  
Duly Authorized

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

In \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2022, before me, personally appeared **CHRISTOPHER EMOND** 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.

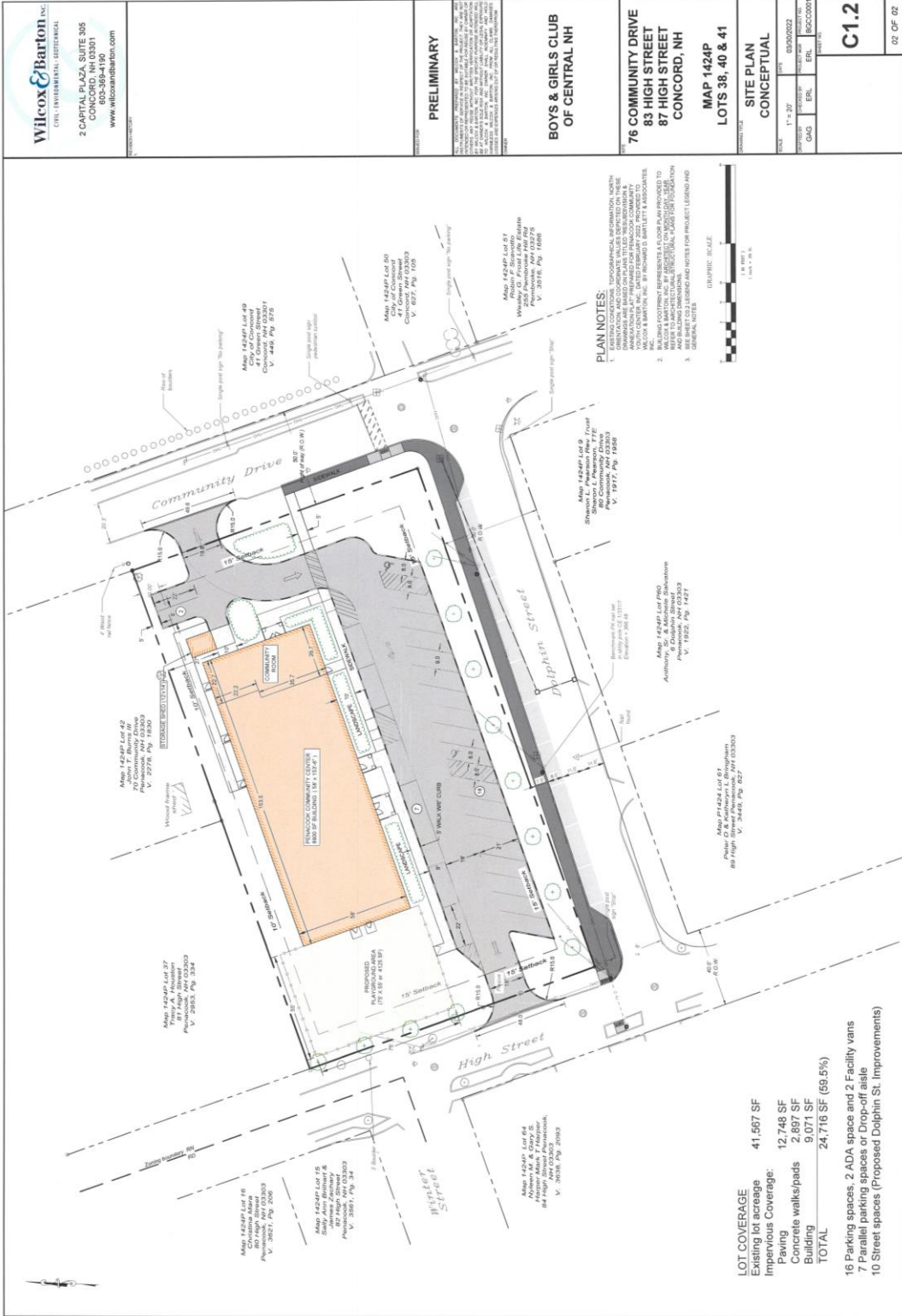
\_\_\_\_\_  
Justice of the Peace/Notary Public

## **LIST OF EXHIBITS**

- Exhibit 1      Plan titled “Boys and Girls Club of Central New Hampshire Preliminary Site Plan Conceptual” prepared by Wilcox and Barton dated March 30, 2022
  
- Exhibit 2      Plan titled “Penacook Community Center: A Division of the Boys and Girls Club of Central NH Sheet A100 Proposed First Floor Plan and Sheet A200 Renderings” prepared by Team Engineering dated October 4 2022, as amended and updated
  
- Exhibit 3      Conceptual Condominium Plan
  
- Exhibit 4      Estimated Purchase Price of Buyer’s Unit
  
- Exhibit 5      Project Schedule

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**Exhibit 1**  
**Plan titled “Boys and Girls Club of Central New Hampshire Preliminary Site Plan  
Conceptual” prepared by Wilcox and Barton dated March 30, 2022**



**Wilcox & Barton**  
 CIVIL, ENVIRONMENTAL, GEOTECHNICAL  
 2 CAPITAL PLAZA, SUITE 305  
 CONCORD, NH 03301  
 603-368-1190  
 WWW.WILCOXANDBARTON.COM

**PRELIMINARY**

**BOYS & GIRLS CLUB OF CENTRAL NH**

**76 COMMUNITY DRIVE  
 83 HIGH STREET  
 87 HIGH STREET  
 CONCORD, NH**

**MAP 1424P LOTS 38, 40 & 41**

**SITE PLAN  
 CONCEPTUAL**

DATE: 11-20-22  
 SHEET: 03/00/0022  
 SCALE: 1" = 30'  
 DRAWN BY: ERL  
 CHECKED BY: ERL  
 PROJECT NO: BCC00001

**C1.2**

02 OF 02

**Exhibit 2**

**Plan titled “Penacook Community Center: A Division of the Boys and Girls Club of Central NH Sheet A100 Proposed First Floor Plan and Sheet A200 Renderings” prepared by Team Engineering dated October 4, 2022**

**TEAM ENGINEERING**  
827 Park Lane  
Bedford, NH 03110-6446  
www.team-engineering.com

**REVISIONS:**

NO.	DATE	DESCRIPTION

DRAFT  
 APPROVAL  
 PRINTED  
 CONSTRUCTION  
 STAMP

**NOT FOR CONSTRUCTION**

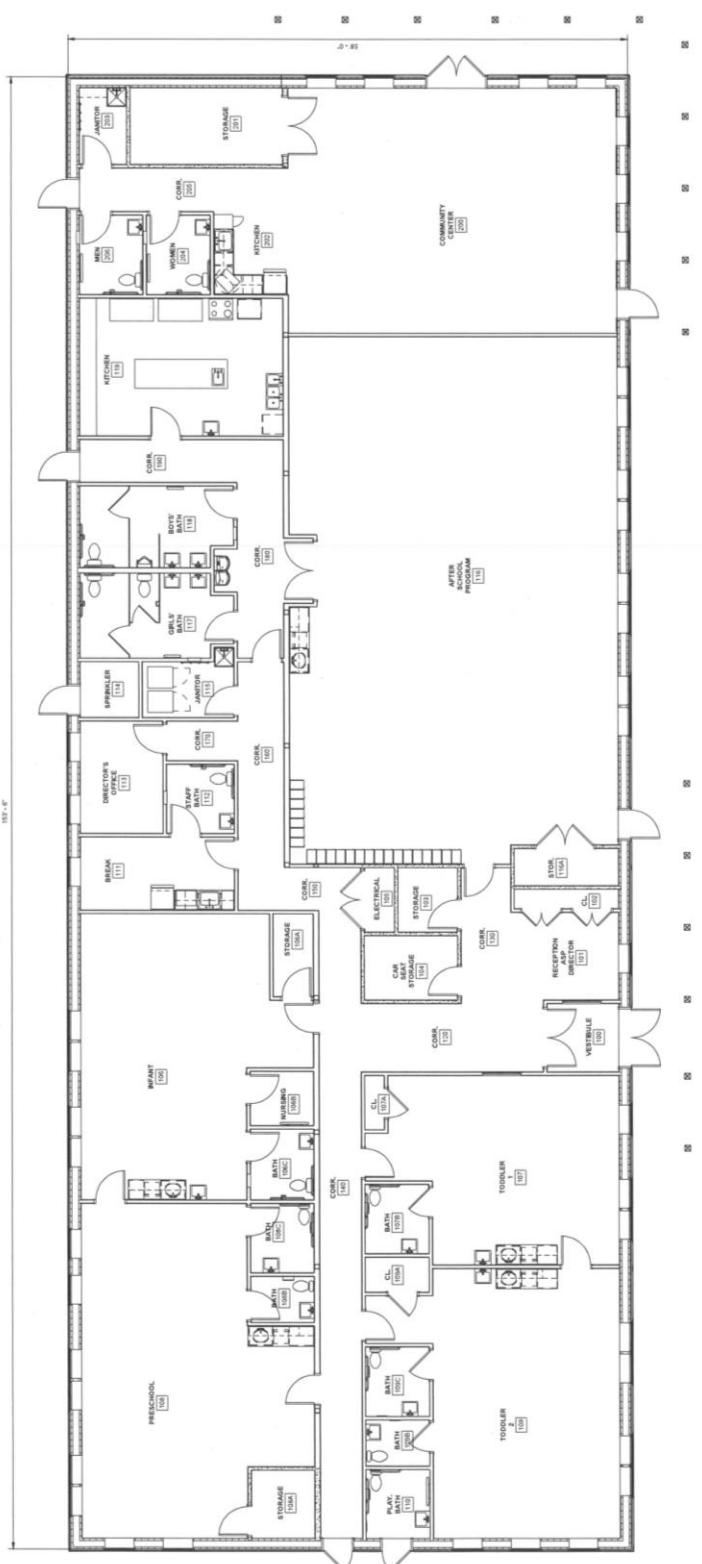
SEVEN & GIRLS CLUB OF CENTRAL NH  
c/o Christopher Edward  
1000 JUDITH DRIVE, CENTRAL NH

**PROJECT:** 76 Community Drive, Concord, NH 03305

**TITLE:** FIRST FLOOR PLAN

**A-100**

SHEET NO. 21-208  
PROJECT NO. 21-208  
DATE: 11/07/2022



**PROPOSED FIRST FLOOR PLAN**  
SCALE: 3/8" = 1'-0"

Key and Club Code: 7-431.03.0P  
Community Center: 1-471.01.0P  
Total Building Square Footage: 8,953 SF



**TEAM ENGINEERING**  
100 Main Street  
Suite 503  
Bedford, NH 03110-6448  
Tel: 603.882.1111  
www.TeamEngineering.com

REVISION	DATE

- DRAFT
  - APPROVAL
  - PERMIT
  - CONSTRUCTION
- STAMP

**NOT FOR CONSTRUCTION**

CUSTOMER:

Boys & Girls Club of  
Central NH  
c/o Christopher Emund  
amund@bgnh.org

**RENDERINGS**  
PROPERTY: 78 Community Drive, Concord, NH 03303  
**Penacook Community Center: A Division  
of the Boys & Girls Club of Central NH**

**A200**  
SHEET: 11 of 31  
PROJECT NO.: 22-046  
DATE: 08/01/2022



**Exhibit 3**  
**Conceptual Condominium Plan**



**Exhibit 4**  
**Estimated Purchase Price of Buyer's Unit**

<u>Item</u>	<u>Amount</u>	<u>Notes</u>
<b>Purchase Price</b>		
Professional Fees		
Architect (Team Design)	\$ 34,000	\$200,000 Estimate; City's Share = 17%
Civil Engineer (Wilcox & Barton)	\$ 17,595	\$103,500 Estimate; City's Share = 17%
Landscape Architect (Terrain)	\$ 1,173	\$6,900 Estimate; City's Share = 17%
Legal	\$ 14,790	\$87,000 Estimate (Excludes Condo); City's Share = 17%
Condominium		
Legal	\$ 20,000	Estimate from Orr & Reno
Plans & Drawings	Incl. in A&E Fees	
Application Fees		
Zoning Board of Adjustment	\$ 78	\$460 Fee (Actual); City's Share = 17%
Planning Board		
Lot Merger	\$ 13	\$75 Fee (Actual); City's Share = 17%
Site Plan / CUP / Abutters	\$ 335	\$1,970 Fee (Actual); City's Share = 17%
Condominium	\$ 1,240	\$100 per 1,000SF; \$300 App Fee, \$50 Abutters (100% City Cost)
Construction Cost	\$ 789,889	Milestone Construction Estimate 10/28/2022; Includes 10% CM Contingency
<b>Subtotal</b>	<b>\$ 879,113</b>	
Construction Financing / Carried Interest	\$ 99,000	Placeholder if B&GC requires construction financing for City's Unit. (Presumes \$880,000 @ 7.5% for 18 Months)
<b>Subtotal</b>	<b>\$ 978,113</b>	
Developer Fee (2%)	\$ 19,562	
Property Taxes @ Closing	\$ 12,960	Placeholder if Property is Taxable.
<b>Total</b>	<b>\$ 1,010,635</b>	

## **Exhibit 5 Project Schedule**

- October 19, 2022: Application for Site Plan Approval submitted to the Concord Planning Board.
- November 1, 2022: Architectural Design Review Committee
- November 4, 2022: Purchase & Sale Agreement and appropriation resolution provided to City Council and, subject to their consent, is set for public hearing on December 12, 2022.
- November 16, 2022: First Hearing before Concord Planning Board where Application is accepted
- November 2023: Demolition of Existing Buildings
- December 6, 2022: Architectural Design Review Committee
- December 12, 2022: City Council public hearing on Purchase and Sale Agreement and related resolutions.
- December 13, 2022: Purchase and Sales Agreement fully executed by the Parties; Effective date of Agreement.
- December 21, 2022: Second Hearing (Public Hearing) before the Concord Planning Board
- March 13, 2023: Expiration of ninety (90) day period after effective date of Agreement for various obligations pertaining to Buyer and Seller.
- Spring 2023: Seller's General Contractor / Construction Manager secures building permit for the Project, including Buyer's Unit. Start of construction.
- Fall 2023: Submission of Subdivision Application for Condominium
- May 1, 2024: Substantial Completion of the Project and Buyer's Unit. Issuance of Certificate of Occupancy.
- September 1, 2024: Projected expiration date of one hundred twenty (120) day period after issuance of Certificate of Occupancy to Close on sale of Buyer's Unit from Seller to Buyer.