



## **PURCHASE AND SALES AGREEMENT AND DEPOSIT RECEIPT**

This agreement made this \_\_ day of July, 2022 between: **The City of Manchester, 1 City Hall Plaza, Manchester, NH 03101** (hereinafter referred to as SELLER) and **Mark Stebbins Community Center of Manchester, NH** (hereinafter referred to as BUYER).

**WITNESSETH:** That the SELLER agrees to sell and convey and the BUYER agrees to purchase unimproved Real Estate located in Manchester, NH known or more particularly described as **Tax Map 318 Lot 3 approximately 4.15 acres off of Parkside Avenue, Manchester, NH. Land only; SEE Exhibit A** attached Book 947 Page 555, dated August 25, 1925.

**PURCHASE PRICE:** Six Hundred Thousand (\$ 600,000.00) Dollars.

### **DEPOSITS:**

a. Initial Deposit: An initial deposit, receipt of which is hereby acknowledged, in the amount of **Ten Thousand Dollars (\$10,000.00)** is to be applied first toward the purchase price, and is to be held in an escrow account by: Attorney Bradford Cook of Sheehan Phinney Bass & Green, 1000 Elm Street, Manchester, NH 03101 (the “**Escrow Agent**”).

b. Additional Deposit: An additional deposit, to be applied to the Purchase Price in the amount of **Ten Thousand Dollars (\$10,000.00)** is to be paid on or before November 1, 2022 and is to be held in an escrow account by **Escrow Agent**.

c. The Deposits shall be held and disbursed by Escrow Agent in strict accordance with the terms and provisions of this Agreement. The Deposits shall be returned to Purchaser at the earliest of the following occurrences: (i) if Purchaser timely notifies Seller in writing pursuant to Section 1.4 (b) hereof that Purchaser is electing to terminate this Agreement, or (ii) as otherwise provided herein. The Deposits shall be credited against the Purchase Price at Closing.

**TRANSFER OF TITLE:** SELLER agrees to:

a. Convey good clear title to the real property to the BUYER, free and clear of all encumbrances, except as noted herein and those set forth on **Exhibit B**.

b. Closing to be held on or before 30 days following the expiration of the due diligence period or any extension thereof or the date on which the last of the conditions precedent to BUYER’s obligation to close is satisfied or waived by BUYER.

**POSSESSION:** Possession of land only to be transferred except as provided herein on or before the **Closing**.

**MAINTENANCE:** Until possession is delivered, SELLER agrees to maintain the real property in good condition.

**INSPECTIONS:** The BUYER is encouraged to seek information from professionals normally

engaged in the business regarding any specific areas of concern. The Agent makes no warranties or representations regarding the condition, permitted use or value of the SELLER's real or personal property. This contract is subject to the following inspections, with results being satisfactory to the BUYER:

<b>TYPE OF INSPECTION:</b>	<b>RESULTS TO SELLER</b>
a. Approvals & Permits	within <u>180</u> Days or any extension thereof
b. Environmental	within <u>180</u> Days or any extension thereof
c. Title	within <u>180</u> Days or any extension thereof
d. Creation of buyer 501c3	within <u>180</u> Days or any extension thereof

The use of days is intended to mean calendar days from the effective date of the contract. All inspections will be done by professionals normally engaged in the business, to be chosen and paid for by the BUYER. If the results of any inspection or other condition specified herein reveal significant defects which, were not disclosed or previously known to the BUYER, the SELLER shall have the option of repairing the unsatisfactory condition(s) prior to transfer of title if the BUYER and SELLER both agree, failing which the BUYER may terminate the contract and all deposits shall be returned to the BUYER. Notification in writing of intent to so repair should be delivered to the BUYER or BUYER's Agent within five (5) *days* of receipt by the SELLER of notification of unsatisfactory condition(s). Should the SELLER elect not to repair such unsatisfactory condition(s), the BUYER may declare the contract null and void by notifying the SELLER in writing within five (5) days of receipt of SELLER's election not to repair, and any earnest money shall be returned to the BUYER. If the BUYER does not notify the SELLER that an inspection is unsatisfactory within the time period set forth above, this contingency is waived by the BUYER. In the absence of the inspection(s) mentioned above, the BUYER is relying completely upon the BUYER's own opinion as to the condition of the property.

**PRORATIONS:** All income earned but not received, all expense incurred but not paid out, all income received but not earned, and all expenses paid out but not incurred as of the date of transfer of title shall be apportioned, as appropriate, between the SELLER and the BUYER as of the date of transfer of title.

**LIQUIDATED DAMAGES AND INTERPLEADER PROVISIONS:** If the BUYER shall default in the performance under this agreement, the amount of the deposit may, at the option of the SELLER, become the property of the SELLER as reasonable liquidated damages. In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay said deposit monies into the Clerk of Court of proper jurisdiction in an Action of Interpleader, providing each party with notice thereof shall be discharged from its obligations as recited herein, and each party to this agreement shall thereafter hold the Escrow Agent harmless in such capacity. Each party hereto agrees that the Escrow Agent may deduct the cost of bringing up such Interpleader Action from the monies held in escrow prior to the forwarding of same to the Clerk of such Court.

**FINANCING:** This agreement is or X is not contingent upon BUYER obtaining financing

**AGENT:** The undersigned SELLER and BUYER understand that **No Agency** represents the SELLER or BUYER in this transaction.

**ADDITIONAL PROVISIONS:**

- 1. Seller's Deliverables.** Within ten (10) business days following the full execution of the Sales Agreement (the "**Execution Date**"), Seller shall deliver to Buyer: (a) any agreement that grants a possessory interest in and to the land or that otherwise relate to rights with regard to the use of the Property (collectively, the "**Business Agreements**"), and (b) any and all environmental reports,

geotechnical reports, topo studies, ingress and egress studies, architectural and/or deed restrictions, all civil engineering data, title policies and commitments, surveys, leases, service agreements, and any other due diligence information in Seller's possession (collectively, the "**Due Diligence Information**").

2. (a) BUYER shall have 180 days following the Execution Date to conduct tests, investigations, and analyses of the Property to determine its suitability for BUYER's intended uses (as such period may be extended pursuant to Section 2(b) below, the ("**Due Diligence Period**"). During the Due Diligence Period, BUYER (and its agents and representatives) may enter upon the Property during normal business hours, with twenty-four (24) hours' prior notice to SELLER, to make such tests and inspections. During the Due Diligence Period, BUYER shall have the right to elect not to purchase the Property and to terminate the Sales Agreement at its sole discretion for any reason or no reason at all by delivering written notice of termination to SELLER prior to the expiration of the Due Diligence Period or any extension thereof.

(b) BUYER shall have the right to extend the Due Diligence Period for up to one (1) sixty (60) day period ("**Due Diligence Period Extension**"), through and including the date that is sixty (60) days following the expiration of the original 180 day Due Diligence Period, by (i) delivering written notice to SELLER of BUYER's election to extend the Due Diligence Period on or before the expiration of, as applicable, the original 180 day Due Diligence Period or any Due Diligence Period Extension.

(c) In the event BUYER terminates the Sales Agreement pursuant to Section 2(a) above before the expiration of the original 180-day Due Diligence Period or any extension thereof, the Earnest Money shall be returned to BUYER by the Escrow Agent. If BUYER closes on the purchase of the Property, the Earnest Money deposited with the Escrow Agent shall be applied to the Purchase Price at Closing.

### 3. **COVENANTS, REPRESENTATIONS AND WARRANTIES**

3.1 **Seller's Covenants, Representations and Warranties.** SELLER hereby represents, warrants and covenants to BUYER as of the Effective Date and the Closing Date as follows:

(a) **Authorization and Execution.** This Agreement has been duly authorized by all necessary action on the part of SELLER, has been duly executed and delivered by SELLER, constitutes the valid and binding agreement of SELLER and is enforceable in accordance with its terms. There is no other Person whose consent is required in connection with SELLER's performance of its obligations hereunder. The person executing this Agreement on behalf of SELLER has the authority to do so.

(b) **Title.** SELLER has, and will have as of the Closing Date, good and clear record and insurable, and marketable title to the Property insurable by the Title Company at regular rates free from all encumbrances, defects, easements, rights, encroachments, restrictions, and liens of any and every nature whatsoever, subject only to the Permitted Title Exceptions.

(c) **Conduct Pending Closing.** Except in the ordinary course of business, from and after the Effective Date, SELLER shall (i) not sell, lease, alienate, disturb, alter or further encumber the Property without BUYER's prior written consent, which shall not be unreasonably conditioned, withheld, or delayed; (ii) not permit any waste of the Property; and (iii) shall operate the Property in substantially the same manner as in the past year prior to the Effective Date.

(d) Environmental Matters. The SELLER has no actual knowledge of the presence or release of Hazardous Substances, nor has SELLER received notice from any applicable Governmental Authority nor does SELLER have any actual knowledge that the Property is not in compliance with applicable Environmental Laws.

(e) Due Diligence Information. To the best of SELLER's knowledge and belief, the Due Diligence Information is true, accurate, and complete.

Each of the foregoing covenants, representations, and warranties contained in this Section 3.1 shall survive the Closing.

3.2 BUYER's Covenants, Representations and Warranties. BUYER hereby represents, warrants and covenants to SELLER as of the Effective Date and the Closing Date as follows:

(a) Organization and Power. BUYER has been duly formed and is validly existing and in good standing under the laws of New Hampshire and has all requisite powers and all governmental licenses, authorizations, consents and approvals to carry on its business as now conducted and to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered on behalf of BUYER hereunder.

(b) Authorization and Execution. This Agreement has been duly authorized by all necessary action on the part of BUYER, has been duly executed and delivered by BUYER, constitutes the valid and binding agreement of BUYER and is enforceable in accordance with its terms. There is no other Person whose consent is required in connection with BUYER's performance of its obligations hereunder. The person executing this Agreement on behalf of BUYER has the authority to do so.

(c) Non-contravention. The execution and delivery of, and the performance by BUYER of its obligations under this Agreement do not and will not contravene, or constitute a default under, any provision of Applicable Law, BUYER's organizational documents or any agreement, judgment, injunction, order, decree or other instrument binding upon BUYER or to which the Property is subject to, or result in, the creation of any lien or other encumbrance on any asset of BUYER.

(d) Bankruptcy. There is no bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, pending, or threatened against BUYER.

(e) Litigation. There are no actions, suits or proceedings pending or, to BUYER's actual knowledge, threatened that could have a material adverse effect against the BUYER's ability to perform its obligations hereunder.

- 4. Title Insurance.** BUYER shall pay the costs of the owner's policy of title insurance to be issued to it.
- 5. Property Improvement.** The sale of the subject property to BUYER is intended to facilitate the construction of The Mark Stebbins Community Center. The structure shall be approximately 40,000 S.F.. Anticipated construction start date shall be in 2023.
- 6. (a)** To the extent the Property is subject to real property taxes, real property taxes shall be prorated for the tax year in which the Closing occurs based on the prior year's taxes (and subject to customary re-proration), with SELLER to be responsible for all taxes in respect of prior years. SELLER shall pay in full all special assessments against the Property to the date of Closing, whether any or all installments of such assessments are matured or unmatured.



(b) Other expenses that are typically prorated in commercial real estate transactions (rents, utilities, etc.) shall be prorated as of the date of Closing.

**7. Closing Costs.** BUYER shall pay the costs of its due diligence, the costs of its Title Insurance Policy, fees for recording the deed, and its own attorneys' fees. Each party shall pay its portion of any transfer tax assessed. All other costs of the Closing shall be paid by the party for whose benefit such costs were incurred or as otherwise customary in the jurisdiction in which the Property is located. The parties shall split evenly any escrow charges, if any, charged by the Escrow Agent relating to the Closing. All other costs of the Closing shall be paid by the party for whose benefit such costs were incurred or as otherwise customary in the jurisdiction in which the Property is located.

**8. BUYER's Closing Conditions.** The Sales Agreement shall provide that BUYER shall not be obligated to close on the purchase of the Property until each of the following conditions precedent is satisfied or waived by BUYER:

(a) BUYER shall have received all governmental certifications and approvals from state & local governmental agencies including the Committee on Land and Buildings and approval from the Board of Mayor & Alderman, receive permits for the construction and operation of the Property for BUYER's intended uses, including without limitation, receipt of all permits and approvals from the City of Manchester to construct a Free Standing Community Center, along with all other approvals from the State of New Hampshire and any other appropriate governmental or quasi-governmental entity.

(b) BUYER shall have obtained all zoning approvals (including, without limitation, all rezonings, special exceptions, etc.) necessary or desirable to operate the Property for BUYER's intended uses.

(c) Customary commercial real estate conditions of closing, including, without limitation, clear title, environmental Phase I or II study, soil studies, etc. satisfactory to BUYER.

(d) BUYER shall have obtained all necessary utility and access agreements for BUYER to develop the Property for BUYER's intended uses, which agreements shall be finalized, including all releases from lenders, prior to the expiration of the Due Diligence Period or any extension thereafter.

(e) BUYER will have satisfied itself in its sole and absolute discretion that the transactions contemplated in the Sales Agreement to be carried out with SELLER will not result in a violation of any applicable laws and regulations, including without limitation, local, federal and state laws and regulations.

(f) BUYER will have received approval for its purchase of the Property from its Board of Directors.

**9. Exclusivity.** During the period beginning upon SELLER's execution of this PURCHASE AND SALES AGREEMENT AND DEPOSIT RECEIPT and ending upon the Execution Date, SELLER will not sell, restrict or lease all or substantially all, or solicit, entertain or accept any offers to sell, restrict, lease all or substantially all, of the Property.

**10. Escrow Agent.** Escrow Agent shall be a party to this Agreement only to the extent that it has the obligation to accept and deal with the Deposits as provided herein. SELLER and BUTER each hereby agrees to indemnify Escrow Agent and hold Escrow Agent harmless against any loss, liability or damage (including the cost of litigation and reasonable counsel fees) incurred in connection with the performance of Escrow Agent's duties hereunder except as a result of Escrow Agent's willful misconduct or gross negligence. Escrow Agent may act upon any instrument or other writing believed by it in good faith to be genuine and to have been signed or presented by the proper person and shall not be liable to any party hereto in connection with the performance of its duties hereunder, except for its own gross negligence or willful misconduct. Escrow Agent's duties shall be determined only with reference to this Agreement and applicable laws, and Escrow Agent is not charged with knowledge of or any duties or responsibilities in connection with any other document or agreement. If in doubt as to its duties and responsibilities hereunder, Escrow Agent may (a) consult with counsel of its choice and (b) transfer to the court the Deposit, whereupon Escrow Agent shall be relieved of any further obligations hereunder. Escrow Agent may execute any of its powers or responsibilities hereunder and exercise any rights hereunder either directly or by or through its agents or attorneys. Nothing in this Agreement shall be deemed to impose upon Escrow Agent any duty to qualify to do business or to act as fiduciary or otherwise in any jurisdiction other than the State of New Hampshire. Escrow Agent shall not be responsible for and shall not be under a duty to examine into or pass upon the validity, binding effect, execution or sufficiency of this Agreement or of any agreement amendatory or supplemental hereto, or any notice given hereunder.

**11. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

**ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties relating to the subject thereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.

THIS IS A LEGAL INSTRUMENT. IF NOT UNDERSTOOD, LEGAL, TAX OR OTHER COUNSEL SHOULD BE CONSULTED BEFORE SIGNING.

**BUYER**

**MARK STEBBINS COMMUNITY CENTER**

By: \_\_\_\_\_  
Its President

**SELLER**

**CITY OF MANCHESTER, NH**

By: \_\_\_\_\_  
Its Mayor

**EXHIBIT A**

## EXHIBIT B

### CONDITIONS OF SALE (TO BE INCLUDED IN DEED)

#### I

**Seller's Repurchase Right For Construction Start Delay.** Buyer acknowledges that the construction the Mark Stebbins Community Center (the "Center") is an important consideration for Seller's conveying the Property to Buyer. If construction of the Center is not commenced within five (5) years of Closing, then the Seller shall have the right, upon forty-five (60) days written notice to Buyer, to repurchase the Property for the Purchase Price on or before the sixth (6) anniversary of the date of Closing. The time period for commencement of construction shall be extended by the amount of time that is lost as a result of (x) Seller's actions or inaction or (y) war or other civil emergency, strikes, lockouts, inability to obtain necessary labor or materials that cannot be cured in the exercise of commercially reasonable diligence, other causes similarly beyond the control of Buyer or fire, flood, earthquake, storm, hurricane or other natural disaster. Provided, however, that (i) lack of available funding to Buyer or mere failure of Buyer to pay for labor, material or other charges shall not constitute a cause that is beyond Buyer's control, (ii) no lost time shall be recognized except following delivery of a written notice from Buyer to Seller specifying, in reasonable detail given the nature of the cause, the cause or nature of the cause of the anticipated lost time, and the time that is estimated will be lost, and (iii) time lost from a particular cause shall not be recognized to the extent that the same lost time period is recognized on account of another cause. The rights of Seller under this subsection shall expire on the sixth anniversary of the date of Closing. If Seller is forced to bring legal proceedings to enforce the provisions of this section, Seller shall be entitled to recover its costs of enforcement, including, reasonable attorney's fees, if Seller is successful in such enforcement action.

#### II

**Seller's Repurchase Right For Change of Use.** Purchaser acknowledges that the operation of the Center as a facility for provision of not-for-profit social and health services focused on youth and families to the West Side of Manchester ("Proposed Use") is an important consideration for Seller's conveying the Property to Purchaser. In the event that the use of the Center should become inconsistent with such purpose (the "Failure to Perform") Seller may give Buyer one hundred and eighty (180) days written notice of its Failure to Perform in which notice the basis for the allegation shall be clearly set forth in reasonable detail. If Buyer does not correct its Failure to Perform within such one hundred and eighty (180) days Seller may deliver to Buyer written notice of its intent to repurchase the Property for the Purchase Price forty (40) days following Buyer's receipt of such notice and Buyer shall convey the Property to Seller in accordance with such notice. The time period for correction of any Failure to Perform shall be extended by the amount of time that is lost as a result of (x) Seller's actions or inaction or (y) war or other civil emergency, strikes, lockouts, inability to obtain necessary labor or materials that cannot be cured in the exercise of commercially reasonable diligence, other causes similarly beyond the control of Purchaser or fire, flood, earthquake, storm, hurricane or other natural disaster. If Seller is forced to bring legal proceedings to enforce the provisions of this section,



Seller shall be entitled to recover its costs of enforcement, including, reasonable attorney's fees, if Seller is successful in such enforcement action.

### III

**Grant of Right of First Refusal.** If at any time after the Closing Date Buyer shall receive, and wish to accept, a bona fide offer (the "*Purchase Offer*") for the purchase of the Property, Buyer shall notify Seller in writing of the name of the proposed purchaser and the terms of the Purchase Offer, including the identity of the proposed purchaser, the proposed purchase price, and the proposed Closing Date (the "*ROFR Notice*"), and Buyer hereby gives and grants unto Seller the exclusive and irrevocable option and right (the "*ROFR*") to purchase the Property, at the same price as is stated in the Purchase Offer (the "*ROFR Price*") and on the terms and conditions set forth herein.

**Exercise of Right of First Refusal.** If Seller wishes to exercise the ROFR, it shall notify Buyer of its intent so to do within sixty (60) days following the receipt of the ROFR Notice. Should the Grantee so exercise the ROFR, Buyer shall be obligated to sell and convey the ROFR Property and Seller shall be obligated to purchase the ROFR Property from Buyer, for the ROFR Price, and on and subject to the terms and conditions set forth herein, and if not expressly set forth herein, then on the same terms as set forth in the Purchase Offer, provided that in the event of a conflict between the Purchase Offer and this Agreement, this Agreement shall control.

**Failure to Exercise.** Should the Seller fail to so notify Buyer within the prescribed sixty (60) day period that it is electing to exercise its ROFR, Buyer shall be free to sell and convey the ROFR Property, free and clear of all restrictions otherwise imposed by this Agreement, but only to the purchaser identified in, on the same terms and conditions, and at no less a price than stated in the ROFR Notice.