

**ORDINANCE NO. 3772**

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, ENTITLED "AN ORDINANCE TO AUTHORIZE THE EXECUTION OF A DEED FOR THE PURPOSE OF CONVEYING TO DAVID MCCAGH CERTAIN PROPERTY LOCATED ON THE EAST SIDE OF CENTRE STREET AT THE SITE OF ITS FORMER INTERSECTION WITH BEDFORD STREET CONSISTING OF 1180.08 SQUARE FEET, MORE OR LESS, CONSTITUTING A PART OF THE SECTION OF BEDFORD STREET CLOSED UNDER ORDINANCE NO. 3759."

**WHEREAS**, Mayor and City Council of Cumberland is the record owner of a certain parcel of real property which consists of a portion of the parcel that was conveyed to Mayor and City Council of Cumberland pursuant to Ordinance No. 3759 (passed May 20, 2014), the Ordinance that effected the closure of a section of Bedford Street at its intersection with Centre Street (hereinafter referred to as the "Property");

**WHEREAS**, the Property was declared to be surplus property under the terms of Order No. 25,754; passed by the Mayor and City Council on November 18, 2014;

**WHEREAS**, Mr. McCagh and his predecessor-in-interest had been leasing a parcel, which included the Property and the half of the closed section of Bedford Street conveyed to him pursuant to Ordinance No. 3759, for the sum of \$35.00 per month from the date of the Lease Agreement through June of 2002 and \$42.00 per month thereafter.

**WHEREAS**, in leasing the parcel described in the preceding paragraph, Mr. McCagh and his predecessor-in-interest have paid rent to the City far in excess of the value of that parcel.

**JAN - 6 2015**

**WHEREAS,** the Mayor and City Council of Cumberland deem it to be in the interest of the City to convey the Property to Mr. McCagh as it has no use for the same and, in transferring ownership to Mr. McCagh, he shall bear responsibility for its repair and maintenance and shall assume all incidents of ownership with respect to it.

**WHEREAS,** since the Property is part of the section of the former road bed of Bedford Street closed pursuant to Ordinance No. 3759, the northern half of said section having been transferred to Mr. McCagh by deed from the Mayor and City Council of Cumberland recorded among the Land Records of Allegany County, Maryland in Book 2088, Page 444, the deed transferring ownership of the Property to Mr. McCagh shall include the same covenants and restrictions as were set forth in the deed recorded in Book 2088, Page 444 as well as such additional covenants as are set forth in the deed attached hereto as Exhibit 1.

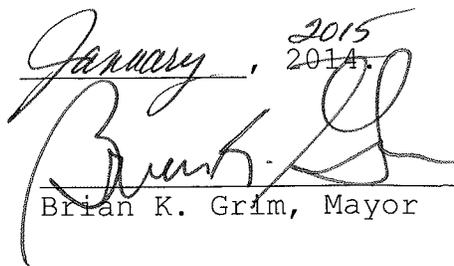
**NOW, THEREFORE**

**SECTION 1:** BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND, MARYLAND, that the Mayor and the City Clerk be and they are hereby authorized to execute the deed attached hereto as Exhibit 1;

**SECTION 2:** AND BE IT FURTHER ORDAINED, that the Lease Agreement between the Cumberland Municipal Parking Authority and Interface dated February 1, 1988, as amended by the Amendment to Lease Agreement dated August 7, 2002, is terminated effective the date of this Ordinance;

**SECTION 3:** AND BE IT FURTHER ORDAINED, that this Ordinance shall take effect from the date of its passage.

Passed this 16<sup>th</sup> day of January, <sup>2015</sup>~~2014~~.

  
\_\_\_\_\_  
Brian K. Grim, Mayor

ATTEST:

  
\_\_\_\_\_  
Marjorie A. Woodring, City Clerk

**1st reading: 12/16/14**  
**2nd reading: 1/6/15**  
**3rd reading: 1/6/15**  
**Passed: 5-0**

# **EXHIBIT 1**

**NO TITLE SEARCH PERFORMED**

**THIS QUITCLAIM DEED**, made this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the **MAYOR AND CITY COUNCIL OF CUMBERLAND**, a Maryland municipal corporation, party of the first part, and **DAVID MCCAGH**, party of the second part.

**WITNESSETH:**

That for and in consideration of the sum of Zero Dollars (\$0.00) and for other good and valuable considerations, the receipt of all of which is hereby acknowledged, the party of the first part does hereby quitclaim to the party of the second part, his personal representatives, heirs and assigns, all of its right, title, interest and estate in and to the following described piece or parcel of real estate lying and being in the City of Cumberland, Allegany County, Maryland, which real property is more fully described in the metes and bounds description attached hereto and incorporated by reference herein as Exhibit A and is depicted in the plat attached hereto and incorporated by reference herein as Exhibit B.

**IT BEING** a part of the property conveyed from the Mayor and City Council of Cumberland to itself by quitclaim deed dated September 30, 2014 and recorded among the Land Records of Allegany County, Maryland in Book 2088, Page 453. The property which is the subject of this conveyance is identified as "Area-South 'A' to McCagh" in the plat attached hereto as Exhibit B. The conveyance of this parcel constitutes a lot line adjustment under the Subdivision Regulations of the City of Cumberland, the same having been approved by the Zoning Administrator for the City of Cumberland, as indicated in the plat attached hereto and incorporated by reference herein as Exhibit C. A metes and bounds description describing the portion of the property described in the deed recorded in Book 2088, Page 453 which shall be retained by the Mayor and City Council of Cumberland, being described as "Area-South 'B' Retained by City" in the plat attached hereto as Exhibit B, is attached hereto and incorporated by reference herein as Exhibit D.

**TOGETHER** with the buildings and improvements thereon, and the rights, roads, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining.

**TOGETHER** with and subject to any restrictions, reservations, covenants, rights of way, etc. as of record or as shown on the aforementioned plat.

**SUBJECT, HOWEVER,** to the easements, reservations, covenants and restrictions set forth in the Exhibit E attached hereto and made a part hereof.

**TO HAVE AND TO HOLD** the above-described property unto the party of the second part, his personal representatives, heirs and assigns in fee simple forever.

**IN WITNESS WHEREOF,** the party of the first part has caused these presents to be executed in its name and under its seal and duly attested all on the day and date first above written.

**WITNESS/ATTEST:**

\_\_\_\_\_  
**Marjorie A. Woodring, City Clerk**

**MAYOR AND CITY COUNCIL OF  
CUMBERLAND**

By: \_\_\_\_\_ (SEAL)  
**Brian K. Grim, Mayor**

**STATE OF MARYLAND,  
ALLEGANY COUNTY, TO WIT:**

**I HEREBY CERTIFY**, that on this \_\_\_\_ day of \_\_\_\_\_, 2014, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared **Brian K. Grim**, known to me or satisfactorily identified to be the person whose name is subscribed to the within instrument, the Mayor of the Mayor and City Council of Cumberland, a municipal corporation of the State of Maryland, and acknowledged the foregoing to be the act and deed of the said Mayor and City Council of Cumberland; and at the same time made oath he is duly authorized by it to make this acknowledgment; and he further certified under the penalties of perjury that the actual consideration for the foregoing conveyance is \$0.00 and that the total payment made to the grantor was \$0.00 and he further made oath in due form of law that this transaction is not subject to the provisions of Section 10-912 of the Tax General Article of the Maryland Annotated Code as the grantor is a resident of the State of Maryland.

**WITNESS** my hand and Notarial Seal.

\_\_\_\_\_  
**NOTARY PUBLIC**

**My Commission Expires:** \_\_\_\_\_

**I HEREBY CERTIFY** that the within and foregoing document was prepared by, or under the supervision of, the undersigned, a Maryland attorney, and that no title search was performed in connection with its preparation.

\_\_\_\_\_  
**MICHAEL SCOTT COHEN**

## EXHIBIT A

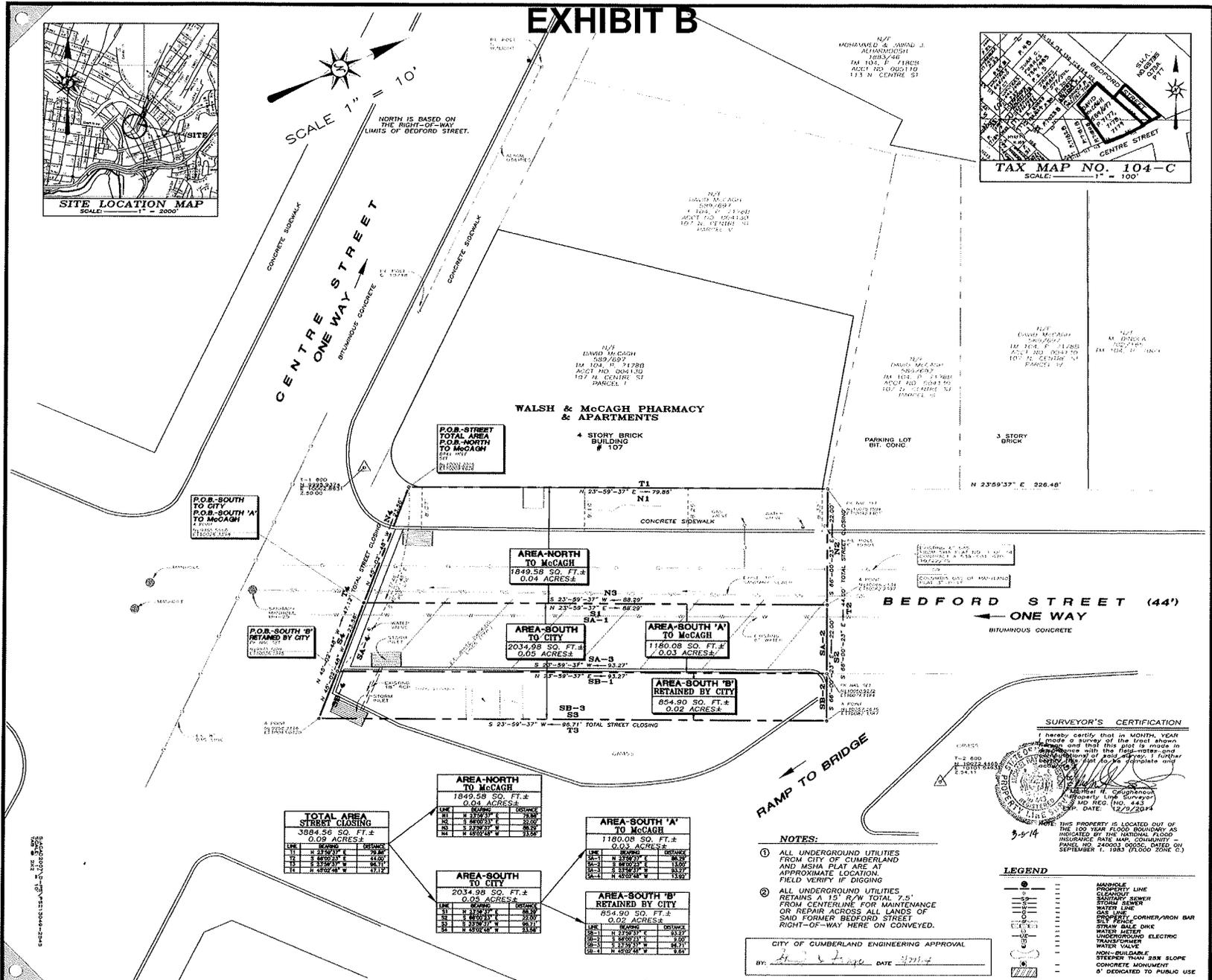
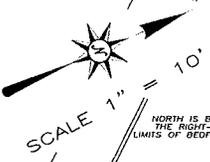
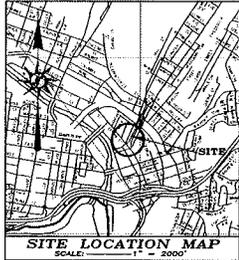
### AREA SOUTH 'A' TO McCAGH

**BEGINNING** for the same at a pk nail set at the end of a reference line South 45 degrees 02 minutes 48 seconds East 23.56 feet from a drill hole set on or near the Northwesterly right-of-way limits of Bedford Street and near said street's intersection with North Centre Street in Cumberland, Maryland, said line is found on MSHA Plat of John J. McMullen Memorial Bridge Plat 8 & 9 of 74 State of Maryland State Road Commission Contract No. A -539-001-670 dated and revised 1975; thence creating a new division line on or near the centerline of said Bedford Street

- 1) North 23 degrees 59 minutes 37 seconds East 88.29 feet to a point; thence
- 2) South 66 degrees 00 minutes 23 seconds East 13.00 feet to a pk nail set; thence with the rear edge of existing concrete curb near limits of an existing parking area
- 3) South 23 degrees 59 minutes 37 seconds West 93.27 feet to a pk nail set on or near new right-of-way limits of North Centre Street; thence with said limits
- 4) North 45 degrees 02 minutes 48 seconds West 13.92 feet to the point of beginning

Containing 1180.08 square feet± or 0.03 acres± as surveyed by Coughenour Surveying August, 2013.

# EXHIBIT B



**WALSH & McCAGH PHARMACY & APARTMENTS**  
4 STORY BRICK BUILDING # 107

**BEDFORD STREET (44')**  
BITUMINOUS CONCRETE

**SURVEYOR'S CERTIFICATION**

I hereby certify that in MONTH, YEAR I made a survey of the tract shown hereon and that this plot is made in accordance with the laws, rules and regulations of said State. I further certify that this is a complete and correct copy of the original.

DAVID McCAGH  
Professional Surveyor  
No. 10000  
CUMBERLAND REGISTERED PROFESSIONAL SURVEYOR  
REG. NO. 10000  
EXPIRES 12/31/2014  
DATE: 12/2/2013

NOTE: THIS PROPERTY IS LOCATED OUT OF THE 100 YEAR FLOOD INSURANCE AS INDICATED BY THE NATIONAL FLOOD INSURANCE RATE MAP, COMMUNITY PANEL NO. 24003 0000, DATED ON SEPTEMBER 1, 1987 (FLOOD ZONE C).

- NOTES:**
- ALL UNDERGROUND UTILITIES FROM CITY OF CUMBERLAND AND MSIA PLAT ARE AT APPROXIMATE LOCATION. FIELD VERIFY IF DIGGING.
  - ALL UNDERGROUND UTILITIES RETAINS A 12" R/W TOTAL 7.5' FROM CENTERLINE FOR MAINTENANCE OR REPAIR ACROSS ALL LANDS OF SAID FORMER BEDFORD STREET RIGHT-OF-WAY HERE ON CONVEYED.

CITY OF CUMBERLAND ENGINEERING APPROVAL  
BY: \_\_\_\_\_ DATE: 12/1/13

**LEGEND**

⊙	MANHOLE
⊕	PROPERTY LINE
⊖	CLEANOUT
⊗	SEWER
⊘	SEWER
⊙	SEWER
⊕	WATER LINE
⊖	WATER LINE
⊗	WATER LINE
⊘	WATER LINE
⊙	STRAIN BALE DOME
⊕	UNDERGROUND ELECTRIC
⊖	UNDERGROUND ELECTRIC
⊗	NON-BUILDABLE
⊘	STEEPER THAN 25% SLOPE
⊙	CONCRETE MONUMENT
⊕	DEDICATED TO PUBLIC USE

**TOTAL AREA STREET CLOSING**

LINK	BEARING	DISTANCE
TL	S 23°-59'-37" W	86.71
TR	S 89°-50' E	44.00
BL	S 23°-59'-37" E	22.00
TL	N 89°-50' W	44.00
BL	N 89°-50' W	44.00
TL	N 23°-59'-37" E	86.71

**AREA-NORTH TO McCAGH**

LINK	BEARING	DISTANCE
TL	S 23°-59'-37" W	86.71
TR	S 89°-50' E	44.00
BL	S 23°-59'-37" E	22.00
TL	N 89°-50' W	44.00

**AREA-SOUTH 'A' TO McCAGH**

LINK	BEARING	DISTANCE
SA-1	N 23°-59'-37" E	86.71
SA-2	S 89°-50' W	44.00
SA-3	S 23°-59'-37" E	22.00
SA-4	N 89°-50' W	44.00

**AREA-SOUTH 'B' RETAINED BY CITY**

LINK	BEARING	DISTANCE
SB-1	S 23°-59'-37" W	86.71
SB-2	S 89°-50' E	44.00
SB-3	S 23°-59'-37" E	22.00
SB-4	N 89°-50' W	44.00

**AREA-SOUTH TO CITY**

LINK	BEARING	DISTANCE
TL	S 23°-59'-37" W	86.71
TR	S 89°-50' E	44.00
BL	S 23°-59'-37" E	22.00
TL	N 89°-50' W	44.00

213049-2545

DRAWING NUMBER  
1 OF 1

**PROPERTY SURVEY**  
FOR  
**DAVID McCAGH**  
LOCATED AT  
**101 N. CENTRE STREET**  
ALLEGANY COUNTY ELECTION DISTRICT NO. 14  
CUMBERLAND MARYLAND

**COUGHENOUR SURVEYING**  
115 SOUTH CENTRE STREET, SUITE III • CUMBERLAND, MD  
TELEPHONE NO. 301-771-1222 • FAX NO. 301-771-9405  
PREPARED FOR:  
DAVID McCAGH  
101 N. CENTRE STREET  
CUMBERLAND, MARYLAND 20502  
TELEPHONE:

DATE: OCTOBER, 2013  
SCALE: 1" = 10'  
FIELD BOOK: 2545.CRD

DATE	REVISIONS

DRAWN BY: D.L.C.  
CHECKED BY: G. KERR  
APPROVED BY: M.R. COUGHENOUR

Lot split of Area-South to City into (1) Area-South 'A' to McCagh and (2) Area-South 'B' Retained by City approved by the City of Cumberland Zoning Administrator.

*David Umling*  
 David Umling, Zoning Administrator

11/21/14  
 date

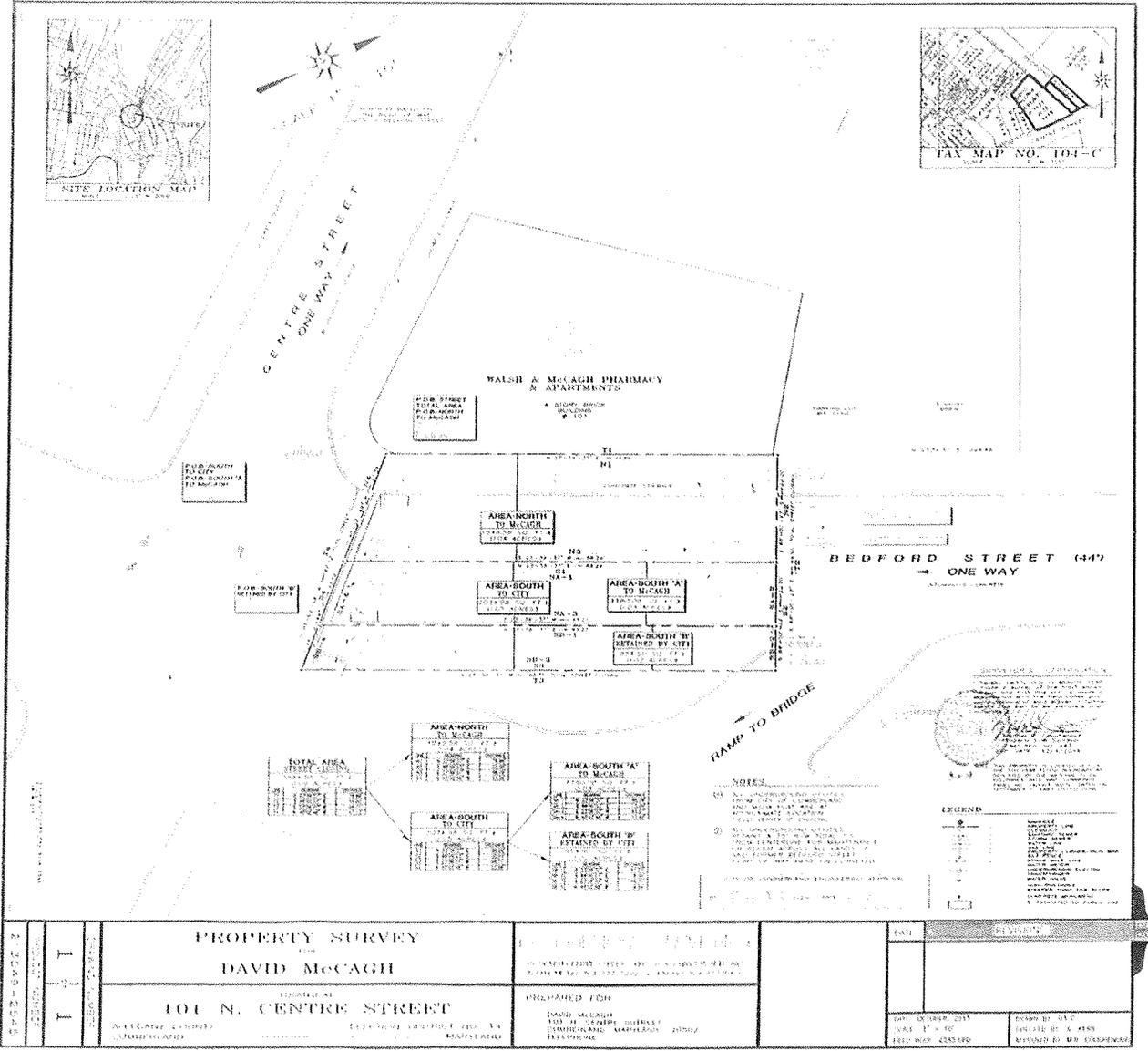


Exhibit C

## EXHIBIT D

### AREA SOUTH 'B' RETAIN BY CITY

**BEGINNING** for the same at a pk nail set at the end of a reference line South 45 degrees 02 minutes 48 seconds East 37.48 feet from a drill hole set on or near the Northwesterly right-of-way limits of Bedford Street and near said street intersection with North Centre Street in Cumberland, Maryland, said line is found on MSHA Plat of John J. McMullen Memorial Bridge Plat 8 & 9 of 74 State of Maryland State Road Commission Contract No. A -539-001-670 dated and revised 1975; thence binding with the rear edge of existing concrete curb

- 1) North 23 degrees 59 minutes 37 seconds East 93.27 feet to a pk nail set; thence
- 2) South 66 degrees 00 minutes 23 seconds East 9.00 feet to a point; thence
- 3) South 23 degrees 59 minutes 37 seconds West 96.71 feet to a point on or near new right-of-way limits of North Centre Street; thence with said limits
- 4) North 45 degrees 02 minutes 48 seconds West 9.64 feet to the point of beginning

Containing 854.90 square feet± or 0.02 acres± as surveyed by Coughenour Surveying August, 2013.

## EXHIBIT E

**SUBJECT, HOWEVER,** to an easement in favor of the party of the first part and public and private utilities, including, but not limited to, gas, electric and telephone service providers, for the full length and width of the right-of-way being closed for any existing utility lines, for stormwater and surface drainage (including, but not limited to, drainage from Bedford Street) and for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of any needed utility lines and stormwater management and sediment and erosion control devices and improvements.

**FURTHER SUBJECT, HOWEVER,** to the reservation of an easement for the benefit of the public over, across and through the sidewalk abutting the east side of the building located at 107 N. Centre Street, running from its northeast corner south to N. Centre Street. As required by Article III of Chapter 22 of the City of Cumberland Code, the party of the second part shall be responsible for all repairs and maintenance of the aforesaid sidewalk. In the event the sidewalk is repaired or replaced, all work relative thereto shall be performed in accordance with applicable law, including, but not limited to, the Americans with Disabilities Act.

**FURTHERMORE,** it is a condition of the conveyance effected by this deed that the party of the second part, its successors, and assigns, or other to whom this and the adjacent property shall be conveyed, shall be allowed to use the surface of the land hereby conveyed; however, he shall not be permitted to place or erect structures thereon without the written consent of the party of the first part, which consent may be granted or denied for any reason or no reason at all. The party of the second part's use of the property conveyed by this deed shall not interfere with the ingress, egress or other actions of the party of the first part and public and private utilities, as necessary for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of the aforesaid utilities and improvements related thereto. Furthermore, no such structures shall be located or constructed upon the land conveyed by this deed until plans therefore have been submitted to and approved by the party of the first part's Engineering Division, and no work in the construction of such enclosure or buildings or in the use of the surface

shall injure or disturb the aforesaid utilities and improvements related thereto or in any way interfere with or adversely impact their operation or maintenance.

**FURTHERMORE**, the party of the second part shall not be permitted to grade the property conveyed under the terms of this deed nor shall he be permitted to alter the surface of the land hereby conveyed, aside from filling potholes, except upon the written consent of the party of the first part, said consent not to be unreasonably withheld.

**FURTHERMORE**, the party of the second part shall not be permitted to use the property hereby conveyed for the purpose of constructing or creating an entrance from N. Centre Street into the parcel of land and the improvements thereon commonly known as 107 N. Centre Street. The party of the second part shall be responsible for keeping the parking area closed off from traffic on N. Centre Street by means of concrete curbing on the property hereby conveyed, such as that which presently exists at the property, or by such other barriers as may be approved by the party of the first part. The party of the second part shall maintain the concrete curbing or other barriers and keep them in good repair.

**FURTHERMORE**, in the event the party of the second part alters the surface of the land hereby conveyed or the subsurface thereof and said alterations result in the need to relocate public or private utilities' lines and/or other improvements related thereto, the party of the second part shall be liable for all costs associated with the relocation.

**FURTHERMORE**, the party of the first part, and public and private utilities, shall also have the right to remove, where necessary, such trees and other growths as may be required for the installation, inspection, operation, maintenance, repair, replacement and/or relocation of the aforesaid utility lines and stormwater management and sediment and erosion control devices and improvements related to the foregoing.

**FURTHERMORE**, the property conveyed under the terms of this deed shall be used solely as a vehicular parking area. Any other use shall be subject to the written consent of the party of the first part.

**FURTHERMORE**, the property conveyed under the terms of this deed (Area-South 'A' to McCagh on the plat attached hereto as Exhibit B) together with the property described in the deed from Mayor and City Council of Cumberland to David McCagh dated September 30, 2014 and recorded among the Land Records of Allegany County,

Maryland in Book 2088, Page 444 deed (Area-North to McCagh on the plat attached hereto as Exhibit B) shall not be deemed to be independent lots of record but shall be deemed to be appended to and a part of the lot of record which is owned by the party of the second part which is described as Parcel I in the deed from Brian E. McCagh, Successor Trustee under the Will of Frank L. McCagh and Catherine McCagh to David McCagh dated March 9, 1990 and recorded among the aforesaid Land Records in Deed Liber 589, folio 697.

**IT IS UNDERSTOOD**, that the foregoing easements, covenants and restrictions shall be deemed to touch and concern the land, shall run with the title to the land, shall inure to the benefit of the party of the first part and the other parties thereby benefited, and shall be binding upon the party of the second part and all future owners or possessors of all or any of the land hereby conveyed as well as their personal representatives, heirs, successors and assigns, and any and all persons and entities claiming through them.