

**GUARANTY OF
COMPLETION OF IMPROVEMENTS**

THIS GUARANTY OF COMPLETION OF IMPROVEMENTS (this "**Guaranty**") is made as of the _____ day of _____, 2021, by DEMOULAS SUPER MARKETS, INC., a Massachusetts corporation with an address of 875 East Street, Tewksbury, Massachusetts 01876 ("**DSM**"), for the benefit of the CITY OF CONCORD, a New Hampshire municipal corporation (the "**City**"), with an address of 41 Green Street, Concord, New Hampshire 03301, with respect to certain obligations of DSM that are related to the Development Agreement, dated as of _____, 2021 (the "**Development Agreement**") and executed by and between the City and Interchange Development L.L.C. as Developer ("**Interchange**").

WITNESSETH:

WHEREAS, as of the date hereof, DSM has purchased Unit 3 from Interchange ("**Unit 3**"), which Unit 3 is shown on the plan of land titled "Condominium Site Plan" prepared by FWS Land Surveying P.L.L.C. dated November 20, 2020 (the "**DSM Property**");

WHEREAS, DSM, as owner of Unit 3 and successor to Interchange's obligations, as set forth in the Development Agreement, to construct the Grocery Store (as defined below) within Unit 3, agrees that it shall use commercially reasonable efforts to complete construction of an 80,750+/- square foot grocery store (which building size may be adjusted upward or downward based upon permitting requirements, market conditions, operational requirements, and other factors) (the "**Grocery Store**"), in accordance with all applicable plans and approvals, within a defined period of time as set forth herein;

WHEREAS, in accordance with the Development Agreement, the City is obligated to fund the design and construction of the public improvements required for the Project in accordance with the plans and schedule approved by Interchange and DSM (the "**Public Improvements**"); and

WHEREAS, DSM, in exchange for the City's commitment to fund the Public Improvements required for the Project, has agreed to execute and deliver this Guaranty for the benefit of the City.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and further acknowledging that the City intends to rely on this Guaranty, DSM hereby agrees as follows:

1. Obligation Guaranteed. DSM hereby irrevocably and absolutely warrants and guarantees to the City the following:
 - a. DSM will use commercially reasonable efforts to complete of construction of the Grocery Store and obtain either a temporary or final certificate of occupancy for the Grocery Store within two (2) years of the date of issuance

of a building permit (the “**Target Completion Date**”). DSM shall use commercially reasonable efforts to apply for the building permit on or before March 31, 2021 (the “**Permit Application Date**”), which Permit Application Date shall be extended to the mutual satisfaction of the parties in the event of any delays in the Project or the on-site and Public Improvements development schedule and milestones as set forth in Exhibit 6 to the Development Agreement. The Target Completion Date shall be deemed extended for the period of any delays with respect to: (a) the construction of the Grocery Store building; (b) Interchange’s construction of those portions of the Project that DSM requires for the Grocery Store to open and operate (including, for example, all access roads and parking areas); or (c) the City’s design and construction of the Public Improvements. Provided, however, that any extension of the Target Completion Date due to delays with respect to construction of the Grocery Store building shall be limited to no more than an additional twelve (12) months, and shall be conditioned on DSM continuing to use commercially reasonable efforts to complete the Grocery Store building. For clarity and avoidance of doubt, extensions of the Target Completion Date due to delays in the Project and Public Improvements shall be unlimited as to time. The foregoing construction completion obligation as set forth in this Section 1(a) shall be referred to the “**Guaranteed Obligation**.”

Notwithstanding anything to the contrary in this Guaranty, DSM does not waive, and reserves and may assert, any claim or defense Interchange could validly assert against the City under Interchange’s agreements with the City.

2. **Obligations of DSM Upon Default.** If DSM shall fail to perform the Guaranteed Obligation, DSM shall, within thirty (30) days after receipt of written notice from the City (or such additional time as may be reasonably required if such failure cannot be cured within said thirty (30) day period provided that DSM is diligently pursuing such cure), cure such failure to perform the Guaranteed Obligation at DSM's sole cost and expense. If such failure is not cured, DSM shall in all events remain liable to the City for performance of the Guaranteed Obligation, and the City may pursue any action in law or equity to enforce the performance of the Guaranteed Obligation, including specific performance.

3. **Termination.** Notwithstanding anything herein to the contrary, this Guaranty shall automatically terminate in full and be of no further force and effect upon the completion by DSM of the Guaranteed Obligation.

4. **Continuing Guaranty.** This is a continuing Guaranty, and shall apply to and cover the Guaranteed Obligation until the termination date as established pursuant to Section 3 hereof.

5. **Independent Obligation.** The obligations of DSM hereunder are independent of the obligations of Interchange, or any other party; and the City may enforce any of the City's rights hereunder independently of any other right or remedy that the City may at any time hold with respect to the Guaranteed Obligation or any security or other guaranty therefor. The City's rights

hereunder shall not be exhausted by any action taken by the City until the Guaranteed Obligation has been fully performed or until the obligations of DSM hereunder terminate pursuant to Section 3 hereof.

6. Waiver. DSM hereby expressly waives, to the extent permitted by applicable law:
 - a. Notice of the acceptance of this Guaranty by the City;
 - b. All suretyship defenses and defenses in the nature thereof;
 - c. Except as otherwise specifically provided herein, notice of the failure of DSM to perform the Guaranteed Obligation when due; and
 - d. The right to exercise any right of subrogation or any right to enforce any remedy that the City may have against Interchange, prior to the time that the Guaranteed Obligation is performed in full or the earlier termination of this Guaranty pursuant to Section 3..

7. Guaranty Unimpaired by Subsequent Events. Except as otherwise provided herein, DSM hereby agrees that its obligations under this Guaranty shall not be released, diminished, impaired, reduced, or otherwise affected by the occurrence of any of the following events (or the fact that any of such events have occurred):

- a. The release of Interchange or any other party from liability for the Guaranteed Obligation; it being acknowledged and agreed by DSM that DSM may be required to perform the Guaranteed Obligation in full without the assistance or support of any other party, and DSM has not been induced to enter into this Guaranty on the basis of any contemplation, belief, understanding, or agreement that any other party shall be liable to perform the Guaranteed Obligation or that the City shall look to other parties to perform the Guaranteed Obligation, provided that nothing herein shall affect the rights of DSM to pursue claims against Interchange or any other relevant party;
- b. The addition of any new or additional collateral as security for, or the addition of any new or additional person or entity as a party with liability for, the performance of the Guaranteed Obligation;
- c. Any action with respect to the Guaranteed Obligation or any documents evidencing, securing, or pertaining thereto, including but not limited to, any settlement or compromise of any amount due thereunder, the pursuit of any particular remedy before any other remedy or the exercise of, or waiver or failure to timely exercise, any right conferred thereunder, the exercise of such rights being wholly discretionary with the City; or
- d. Any neglect, delay, omission, failure, or refusal of the City to sue or take any

other action to enforce the performance of the Guaranteed Obligation or any right contained in any document evidencing, securing, or pertaining thereto.

8. Warranties and Representations. DSM warrants and represents to the City for the express purpose of inducing the City to accept this Guaranty that, as of the date of this Guaranty:

- a. Authority. DSM has full power and authority to enter into and perform this Guaranty. This Guaranty: (i) has been duly authorized, executed and delivered; and (ii) is legally binding on, and enforceable against, DSM in accordance with its terms except as the same may be limited by applicable bankruptcy, insolvency, reorganization, receivership and other similar laws affecting the rights and remedies of creditors generally and by general principles of equity (whether applied by a court of law or equity). Neither the execution and delivery of this Guaranty, nor the consummation of the DSM's obligations hereunder, are subject to any requirement that DSM obtain any consent, license, approval or authorization of, or make any declaration or filing with, any governmental authority or third party;
- b. No Violation. The performance by DSM of the Guaranteed Obligation does not and shall not constitute a violation of any law, order, regulation, contract or agreement to which DSM is a party or by which DSM or the DSM Property may be bound;
- c. No Litigation. There is no material litigation now pending or, to DSM's knowledge threatened in writing, against DSM which, if adversely decided would materially impair the ability of DSM to perform the Guaranteed Obligation; and
- d. Solvency. DSM hereby represents and warrants that it is solvent and is not rendered insolvent by the obligations undertaken in this Guaranty. DSM is not contemplating either the filing of a petition or proceeding under any state or federal bankruptcy or insolvency or reorganization laws or the liquidating of all or a major portion of DSM's property, and DSM does not have any knowledge of any such petition or proceeding being filed or threatened in writing against DSM.

9. Notices. All notices, demands, submissions, requests, consents, approvals and other instruments required or permitted to be given pursuant hereto shall be in writing and shall be deemed to have been duly given/received: (1) on the date delivered if delivered personally; (2) the next business day after deposit with a recognized overnight courier service when marked for delivery on the next business day; (3) three (3) days after mailing if sent by registered or certified United States mail, properly addressed and postage pre-paid; or (4) upon completion of transmission (which is confirmed by telephone or an electronic return receipt) if sent by electronic mail and addressed to the party for whom it is intended at the address hereinafter set forth:

Final

- (1) if directed to the City, addressed to:

City Manager
41 Green Street
Concord, New Hampshire 03301
Attn: Thomas J. Aspell, Jr., City Manager
Email: taspell@concordnh.gov
Telephone: (603) 225-8570

with a copy to:

City Solicitor
41 Green Street
Concord New Hampshire 03301
Attn: James W. Kennedy, III, City Solicitor
Email: jkennedy@concordnh.gov
Tel.: (603) 225-8505

City of Concord
41 Green Street
Concord New Hampshire 03301
Attn: Matthew R. Walsh, Director of Redevelopment
Email: mwalsh@concordnh.gov
Tel.: (603) 225-8570

- (2) if directed to DSM addressed to:

Demoulas Super Markets, Inc.
875 East Street
Tewksbury, Massachusetts 01876
Attn: Donald T. Mulligan, CFO
Email:
Tel.:

with a copy to:

LT Development LLC
One Stiles Road, Suite 106
Salem, NH 03079
Attn: Carmine D. Tomas, Esq.
Email:
Tel.:

or to such other party or address as may from time to time be specified in writing by any party hereto. Unless otherwise specified in writing, each party shall direct all sums payable to another party to said party's address for notice purposes.

10. Miscellaneous Provisions.

- a. Binding Effect. This Guaranty and all the terms, provisions, and conditions hereof shall be binding upon DSM and DSM's heirs, successors, assigns, and nominees, and this Guaranty shall inure to the benefit of the City.
- b. Entire Agreement. This Guaranty contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior written or oral agreements and understandings between the parties. The obligations set forth in this Guaranty may not be amended or modified except by an instrument in writing signed by all the parties hereto.
- c. Governing Law. This Guaranty, and the rights and obligations of the parties hereto, shall be governed by, and construed in accordance with, the internal laws of the State of New Hampshire.
- d. No Waiver. Any failure by the City to insist, or any election by the City not to insist, upon strict performance by DSM of any of the terms, provisions, or conditions of this Guaranty shall not be deemed to be a waiver of the same or of any other terms, provisions, or conditions thereof; and the City shall have the right at any time or times thereafter to insist upon strict performance by DSM of any and all of such terms, provisions, and conditions.

[signature on following page]

Final

Executed as an instrument under seal as of the date and year first written above.

DEMOULAS SUPER MARKETS, INC.,
a Massachusetts corporation

By: _____ Date: _____

Duly Authorized

COMMONWEALTH OF MASSACHUSETTS

In _____, on the _____ day of _____, 2021, before me,
personally appeared _____, of Demoulas Super Markets,
Inc. , 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

Final

CITY OF CONCORD

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

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In _____, on the _____ day of _____, 2021, before me,
personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person
named in and who executed the foregoing instrument, and being first duly sworn, such person
acknowledged that he executed said instrument for the purposes therein contained as his free and
voluntary act and deed.

Justice of the Peace/Notary Public