

DEVELOPMENT AGREEMENT AMENDMENT #6
(DRAFT #4 04/30/2025)

The City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire (“the City”) and Capital Commons, L.L.C., (“the Developer”) its successors and assigns, a New Hampshire limited liability company, having a principal place of business at c/o 100 Market Group, Ltd., PO Box 1257, Portsmouth, New Hampshire, 03802 hereby agree to this sixth amendment of the Development Agreement, dated August 15, 2003 (“Development Agreement”), together with prior amendments to the Development Agreement as set forth herein, for the redevelopment of the property formally known as the former Sears Block, formerly located at #7 - #23 South Main Street, Freight Street, and Storrs Street, in Concord, New Hampshire, and currently known as the Capital Commons Office Building, a.k.a., the Hotel Concord Building, located at #11 South Main Street (the “Developer’s Building”) and the City’s Storrs Street Municipal Public Parking Garage, formerly the Capital Commons Parking Garage, located at #75 Storrs Street (“Garage”). The City and the Developer may also be referred to individually as “Party” and collectively as “Parties.”

RECITALS

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

Whereas, On August 15, 2003 the Parties entered into a Development Agreement concerning the redevelopment of property known as the former Sears Block previously located at #7 - #23 South Main Street, Freight Street, and Storrs Street, in Concord, New Hampshire.

Whereas, On October 10, 2003, the Parties entered into Amendment #1 to the Development Agreement, which deleted certain tables and exhibits from the Development Agreement.

Whereas, On August 14, 2004, the Parties entered into Amendment #2 to the Development Agreement, which, among other actions, modified various provisions of the Development Agreement regarding to the Parties’ respective roles and responsibilities pertaining to the design and construction of the Garage and related public improvements. Amendment #2 also added new provisions pertaining to requirements concerning taxation and payment-in-lieu-of-taxes (PILOT) agreements for tax exempt owners which might occupy the Developer’s Building.

Whereas, On November 17, 2005, the Parties entered into Amendment #3 to the Development Agreement, which, among other actions, modified or repealed

various provisions pertaining to the City's Parking Lease with Capital Commons L.L.C. or tenants with the Developer's Building.

- Whereas, On November 1, 2011 the Parties entered into Amendment #4 to the Development Agreement, which reduced the Developer's total parking spaces for the Developer's Building from 150 to 116 spaces to support other private development projects, and stipulated that the City would maintain forty (40) hourly ("metered") parking spaces on the fifth level (roof top level) of the Garage to support Casey Family Services, a tenant within the Developer's Building.
- Whereas, On November 1, 2011, the Parties entered into a Lease Agreement for sixty-one (61) parking spaces in the Garage to support Casey Family Services, a tenant in the Developer's Building.
- Whereas, On January 13, 2015, the Parties entered into Amendment #5 to the Development Agreement for the purposes of relocating the Developer's aforementioned sixty-one (61) leased parking spaces within the Garage, as well as to grant the Developer the ability to sublease said 61 lease spaces to entities who were not tenants of the Developer's Building.
- Whereas, On December 11, 2017, the Concord City Council adopted the "Strategic Parking Plan," which included goals and objectives for the City's public parking system, including, but not limited to, a goal to transition all lease parking spaces within the City's municipal parking garages to a permit parking program.
- Whereas, in 2018, the Developer converted vacant office space at the Developer's Building into a thirty-eight (38) room boutique hotel known as the Hotel Concord (the "Hotel"). The Developer is the owner / operator of the Hotel.
- Whereas, the Parties recognize that the Hotel has unique parking needs as compared to other tenants of the Developer's Building.
- Whereas, On December 31, 2020, the Developer voluntarily released twenty-seven (27) leased parking spaces, which reduced the Developer's parking allocation within the Garage from 116 lease spaces to 89 lease spaces.
- Whereas, The Developer desires to transition its allocation of parking spaces in the Garage from leases to a municipally managed permit parking program in order to accommodate the evolving parking needs of its tenants. The Developer's tenants are defined as persons having lease agreements with the Developer for space in the Developer's Building ("Tenants" or the "Developer's Tenants").

Whereas, The City desires to transition leased parking spaces in the Garage to a permit parking program to implement the goals of the 2017 Strategic Parking Plan, expand access to public parking, as well as improve ease of management of the municipal parking system.

Whereas, The Parties desire to further amend the Development Agreement to terminate the Developer's existing parking rights associated with the Garage as set forth in the Development Agreement including Amendments #1 - #5, and provide the Developer with replacement parking rights associated with the Garage under a new standalone Master Parking Agreement, which is separate, independent and autonomous from the Development Agreement.

Whereas, The Parties desire to enter into to this Amendment to address the items set forth herein.

THEREFORE, in consideration of the recitals and the mutual covenants expressed below, the Parties agree to the following:

1. **Purpose:** The purpose of this Amendment is to further amend and modify the Development Agreement as follows:
 - 1.1. To terminate all rights and provisions pertaining to parking for the Developer's Building within the Garage, as well as the City's responsibilities to provide, operate and manage leased parking spaces in the Garage for the Developer's Building, in order to facilitate the establishment of a new standalone Master Parking Agreement between the Parties which shall be separate, independent, and autonomous from the Development Agreement.
 - 1.2. Establishes a license which permits the Developer the ability to continue to maintain a private stairway located on the 5th level of the Garage, which connects the second floor of the Developer's Building to the Garage;
 - 1.3. Revise other provisions of the Development Agreement as set forth herein.
2. **Termination of Parking Provisions for Developer's Building:**
 - 2.1. Effective June 30, 2025, all rights and provisions pertaining to parking for the Developer's Building within the Garage, as well as the City's responsibilities to provide, operate and manage leased parking spaces in the Garage for the Developer's Building, shall be terminated and become null and void, however, all other rights, obligations and privileges not associated with parking, as set forth in the following documents, shall remain valid and enforceable:
 - 2.1.1. Development Agreement dated August 15, 2003;

- 2.1.2. Development Agreement Amendment #1 dated October 10, 2003;
 - 2.1.3. Development Agreement Amendment #2 dated August 18, 2004;
 - 2.1.4. Development Agreement Amendment #3 dated November 17, 2005;
 - 2.1.5. Development Agreement Amendment #4 dated November 1, 2011;
and,
 - 2.1.6. Development Agreement Amendment #5 dated January 13, 2015; and,
 - 2.1.7. Parking Lease Agreement between Capital Commons LLC and the City of Concord for 61 parking spaces in the Storrs Street Parking Garage dated November 1, 2011, as well as amendments, extensions, or renewals thereof.
 - 2.2. Simultaneously with execution of this Amendment, the City shall invoice, and the Developer shall pay, rent owed for the current lease year through June 30, 2025, as well as any unpaid back rent as well as penalties and interest associated therewith.
 - 2.3. With respect to termination of the November 1, 2011 parking space lease, the Developer shall notify all of its parking tenants of such termination and work cooperatively with the City to transition the Developer's parking tenants to the City's permit program. As part of said efforts, the Developer shall provide the City with names and contact information of all of the Developer's parking tenants.
3. **License for Developer's Stairway in Parking Space #4085:** The Parties hereby further codify the Parties' respective rights concerning the Developer's Stairway located within the Garage, as set forth herein:
 - 3.1. **Overview:** The Parties acknowledge that in 2011, the Developer installed a private stairway (the "Developer's Stairway") within parking space #4085 of the Garage in order to access the second floor of the Developer's Building. The staircase was installed to support Casey Family Services, a former tenant at the Developer's Building.
 - 3.2. **License for Developer's Stairway:** The City hereby grants the Developer a license to maintain the Developer's Stairway in parking space #4085 of the Garage. However, nothing herein grants the Developer a permanent property right to encumber parking space #4085, or any other portion of the Garage.
 - 3.3. **Term of License:** Except as provided herein, the Developer shall have the ability to maintain the Developer's Stairway through June 30, 2045, provided

the Developer complies with all terms and conditions of the Development Agreement, as amended.

- 3.4. Fee: The Developer shall pay the following fees to the City for ability to maintain the Developer’s Stairway in parking space #4085 of the Garage. Fees shall be paid on July 1st annually, as invoiced by the City. Fee shall include property taxes in accordance with RSA 72:23.

<u>Year</u>	<u>Dates</u>	<u>Annual Fee</u>
1	July 1, 2025 - June 30 2026	\$ 2,500.00
2	July 1, 2026 - June 30 2027	\$ 2,625.00
3	July 1, 2027 - June 30, 2028	\$ 2,756.25
4	July 1, 2028 - June 30, 2029	\$ 2,894.06
5	July 1, 2029 - June 30, 2030	\$ 3,038.77
6	July 1, 2030 - June 30, 2031	\$ 3,190.70
7	July 1, 2031 - June 30, 2032	\$ 3,350.24
8	July 1, 2032 - June 30, 2033	\$ 3,517.75
9	July 1, 2033 - June 30, 2034	\$ 3,693.64
10	July 1, 2034 - June 30, 2035	\$ 3,878.32
11	July 1, 2035 - June 30, 2036	\$ 4,072.24
12	July 1, 2036 - June 30, 2037	\$ 4,275.85
13	July 1, 2037 - June 30, 2038	\$ 4,489.64
14	July 1, 2038 - June 30, 2039	\$ 4,714.12
15	July 1, 2039 - June 30, 2040	\$ 4,949.83
16	July 1, 2040 - June 30, 2041	\$ 5,197.32
17	July 1, 2041 - June 30, 2042	\$ 5,457.19
18	July 1, 2042 - June 30, 2043	\$ 5,730.05
19	July 1, 2043 - June 30, 2044	\$ 6,016.55
20	July 1, 2044 - June 30, 2045	\$ 6,317.38

- 3.5. Maintenance Obligations: The Developer shall be solely responsible to for maintaining the Developer’s Stairway so that it is aesthetically attractive, clean, structurally sound, safe to use, as well as free of ice and snow during winter months.

- 3.6. Temporary Removal of Developer’s Stairway to Facilitate Parking Garage Repairs / Maintenance:

- 3.6.1. Non-Emergency Maintenance, Repairs, Renovations: The City may, upon written notice to the Developer, require the Developer to relocate or otherwise modify the Developer’s Stairway as might be necessary to facilitate the City’s maintenance, repair, or renovation of the Garage in and around the area occupied by the Developer’s Stairway. The Developer shall relocate or otherwise modify the

Developer's Stairway within one hundred eighty (180) days of the date of notice from the City. Said relocation or modification shall be at the sole expense of the Developer.

In the event of temporary removal of the Developer's Stairway to facilitate the City's maintenance, repairs, or renovations, the Developer shall be permitted to store said stairway on the City's property at a location acceptable to the City, provided the stairway is placed on one or more flatbed trailers so it can be relocated on the City's property as needed to facilitate the City's maintenance, repair, or renovation of the Garage. The Developer shall have the ability to reinstall the Developer's Stairway upon completion of the City's maintenance, repair, or renovation activities. In the event the City is using the services of a contractor to complete maintenance, repairs, or renovations, the Developer shall have the option at the Developer's sole discretion to enter into a separate contract with the contractor engaged by the City for the City's maintenance activities to remove and reinstall the Developer's staircase at the Developer's sole expense.

In the event the Developer has failed to relocate or modify the Developer's Stairway within the one hundred eighty (180) day period, the City shall have the right to remove or modify Developer's Stairway to facilitate the City's maintenance, repairs, or renovations of the Garage. Upon completion of the City's maintenance, repairs, renovations, the City may reinstall the Developer's Stairway. The City shall have the right to seek and receive payment from the Developer in the amount of 125% of the costs incurred by the City related to said removal, modification, and reinstallation of the Developer's Stairway. The Developer shall pay the City's invoice within thirty (30) days of the date of the invoice. A penalty fee for late payment shall be assessed after then 15th calendar day the payment is due at a rate of 1.5% at the beginning of each month thereafter. Failure to make payment in full within 90 days from the date of the original invoice shall be an event of default under this Agreement.

- 3.6.2. Emergency Maintenance, Repairs, Renovations: In the event a professional structural engineer determines that portion of the Garage where the Developer's Stairway is located require immediate emergency repairs, the City, using a contractor of its choice, shall have the right to temporarily remove the Developer's Staircase. Upon completion of the emergency repairs, the City shall reinstall the staircase. The Developer, upon invoice from the City, shall reimburse the City for all costs associated with temporary removal and installation. The Developer shall pay the City's invoice within thirty

(30) days of the date of the invoice. A penalty fee for late payment shall be assessed after then 15th calendar day the payment is due at a rate of 1.5% at the beginning of each month thereafter. Failure to make payment in full within 90 days from the date of the original invoice shall be an event of default under this Agreement.

3.7. Intentionally Omitted.

3.8. Insurance:

3.8.1. While the Developer's Stairway remains located on the City's property, *i.e.*, the Garage, the Developer must furnish to the City a certificate demonstrating active general liability insurance that lists the City as an additional insured by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this Amendment with the following coverage:

Commercial General Liability:

General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

Workers Compensation:

NH Statutory including Employers Liability
Each Accident/Disease-Policy Limit/Disease-Each Employee
\$100,000/\$500,000/\$100,000

Commercial Umbrella: May be substituted for higher limits required above \$5,000,000

3.8.2. General Requirements: The following conditions apply to the insurance policies required herein:

3.8.2.1. The Developer must submit certificates of insurance for all coverage required hereunder on the effective date, on each anniversary thereof, or at the City's reasonable request, together with any other relevant insurance documentation as the City may reasonably request. All the insurance required under this Agreement must name the City as additionally insured with respect to commercial general, automobile, and umbrella liability; additionally, all insurance policies and certificates must include a provision requiring thirty (30) business days' written notice to the

City by certified mail of any cancellation, material change, or reduction in coverage.

- 3.8.2.2. All insurance carried by the Developer must be primary with respect to any insurance maintained by the City, and may not call on the City's insurance for contributions.
- 3.8.2.3. All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire with an A+ or better financial rating from a recognized insurance accreditation institution (e.g. A.M. Best Company).
- 3.8.2.4. The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.
- 3.8.2.5. The Developer's failure to obtain, procure, or maintain the required insurance shall constitute a material breach of this Agreement.
- 3.8.2.6. The Developer's obligation to hold harmless and indemnify the City will not be limited by the requirement for, or existence of, insurance coverage.
- 3.8.2.7. The City shall have the right to require the Developer to increase such limits when, during the term of this Agreement, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Developer's Stairway by responsible owners or the Association are more or less generally increased, it being the intention of this sentence to require the Developer to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to the Developer.

- 3.9. Indemnification for Developer's Stairway: While the Developer's Stairway remains on the City's property, the Developer shall defend, indemnify and save harmless the City and its officials, agents, and employees (collectively, the "Indemnified Parties") from any claims asserted against the City by any third party for demands, claims, suits, damages, equitable remedies, statutory remedies, liabilities, costs, penalties, fees, interest, and expenses, including but not limited to reasonable attorneys' fees, arising from or related to the Developer's Stairway, activities undertaken in accordance with

the Development Agreement, by, or acts or omissions of, the Developer, its employees, officers, agents, representatives, lessees, licensees, invitees and persons acting on the Association's behalf or for whom Association is responsible, with the exception of any conditions caused solely by the fault of the City, its agents, contractors or invitees. Defense counsel and any settlement must be approved by the City. In addition, the Developer shall defend, indemnify and hold harmless the City for any costs, expenses and liabilities arising out of a claim, charge or determination that Developer's officers, employees, contractors, subcontractors or agents are employees of the City, including but not limited to claims or charges for benefits, wages, fees, penalties, withholdings, damages or taxes brought in connection with laws governing workers compensation, unemployment compensation, social security, Medicare, state or federal taxation, and/or any other similar obligation associated with an employment relationship. The Developer's obligation to defend and indemnify City shall survive the term of this Amendment.

- 3.10. Mechanics Liens: Developer agrees that it shall not permit any mechanics liens or similar liens for labor and material furnished, or claimed to have been furnished, to Developer in connection with the stairwell, as set forth herein.
- 3.11. Loss to Property: Developer agrees that the City shall not be liable for any loss, damage, or destruction to any property not owned by the City located within the Garage, whether caused by the City or third parties.
- 3.12. Termination of License for Developer's Stairway by City: The City shall have the right to terminate this license permitting the Developer to maintain the Developer's Stairway in the Garage. Said termination shall be effective upon thirty (30) day Notice to the Developer.

4. **Intentionally Omitted.**

5. **Events of Default and Remedies:**

- 5.1. **Repeal and Replacement:** Section 14 of the Development Agreement is hereby terminated and replaced with Section 9 set forth herein.
- 5.2. **Events of Default Defined:** The following shall be "events of default" under this Agreement and the terms "events of default" or "default" shall mean, any one or more of the following events:

5.2.1. **Default by the Developer:**

- (1) Failure by the Developer to observe and perform any covenant, condition, or agreement on its part in the Development Agreement, and all amendments, to be observed or performed for a period of thirty (30) calendar days after notice specifying such failure and requesting that it be remedied has been given to the Developer by the City, unless the City shall agree in writing to an extension of such time prior to its expiration, or unless the Developer has, within said thirty (30) calendar days, commenced with all due diligence to cure said default, in which the time period allowed the Developer shall be extended for such time period as may reasonably be required to use default, but in any event not beyond an additional thirty (30) calendar days.
- (2) Failure by the Developer to pay property taxes for the Developer's building for a period of thirty (30) calendar days after said taxes are due. This provision shall not be construed to limit the Developer's ability to seek abatements for assessed value and property taxes as permitted by State Law.
- (3) Failure by the Developer to pay municipal water fees, sewer fees, Downtown Solid Waste District fees, or other lawful municipal assessments or fees for the Developer's Building.

5.2.2. **Default by the City:**

- (1) Failure by the City to observe and perform any covenant, condition, or agreement on its part in the Development Agreement, and all amendments thereto, to be observed or performed for a period of thirty (30) calendar days after notice specifying such failure and requesting that it be remedied has been given to the City by the Developer, unless the Developer shall agree in writing to an extension of such time prior to its expiration, or unless the City has, within said thirty (30) calendar days, commenced with all due diligence to cure said default, in which the time period allowed the City shall be extended for such time period as may reasonably be

required to use default, but in any event not beyond an additional thirty (30) calendar days.

- 5.3. Notice of Default. Notice of default or event of default shall be provided in writing in accordance with Article 10 of this Amendment.
- 5.4. Remedies on Default. Whenever any event of default referred to herein shall have occurred and shall not have been cured prior to the expiration of any applicable grace or cure period set forth therein, the aggrieved party may terminate this Agreement and pursue whatever remedies it may have under State Law.
- 5.5. Remedies Exclusive. Remedies herein are not intended to be exclusive. The City and Developer shall retain any other legally available remedy or remedies. No delay or omission by the aggrieved party to exercise any right or power accruing upon default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed by the aggrieved party to be expedient. In order to entitle the aggrieved party to exercise any remedy reserved to it in this section, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.
- 5.6. No Additional Waiver Implied by One Waiver. In the event any section of the Development Agreement, as amended, should be breached and thereafter waived by the aggrieved party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or further breaches by the party in violation hereunder.

6. **Notices:**

- 6.1. Repeal and Replacement: Section 16.4 “Notices” as set forth in the Development Agreement is hereby repealed and replaced with the provisions set forth herein.
- 6.2. Notices:
 - 6.2.1. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, to the following addresses or to such other addresses as the parties shall, by like notice, notify one another:

- i) If to the City: City of Concord
41 Green Street
Concord, NH 03301
Attn.: City Manager
Telephone: (603) 225-8570

- ii) If to Developer: Capital Commons L.L.C.
c/o 100 Market Group, Ltd.
PO Box 1257
Portsmouth, NH 03801
Telephone: (603) 422-0822

Or to such other addresses as any party shall notify the other parties of in writing.

- 6.2.2. Alternative Methods of Notice: The provision of the foregoing method of notice shall not prevent the use of any other method of delivering actual written notice, including hand delivery of delivery by courier service.

- 6.2.3. Time of Notice: Any notice shall be deemed to be given when mailed in accordance with the preceding subsection or, if delivered by any other method of notice, when received at the party's address specified above.

7. **Record of Development Agreement Amendments:**

- 7.1. The Parties hereby agree to record Development Agreement Amendment #4, dated November 1, 2011, and Development Agreement Amendment #5, dated January 13, 2015, at the Merrimack County Registry of Deeds (the Registry). The Parties agree to execute any documents required to effect recording said documents at the Registry.

- 7.2. Upon execution, the Parties also agree to record this Amendment at the Registry.

8. **No Other Terms and Conditions Modified by Development Agreement**

Amendment #6: All other terms and conditions set forth within the Development Agreement, as well as Amendments 1 – 5 thereto, except those specifically modified by this Amendment #6 as set forth herein, shall remain unaltered, and, in full force and effect.

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Executed as a sealed instrument this _ day of _____.

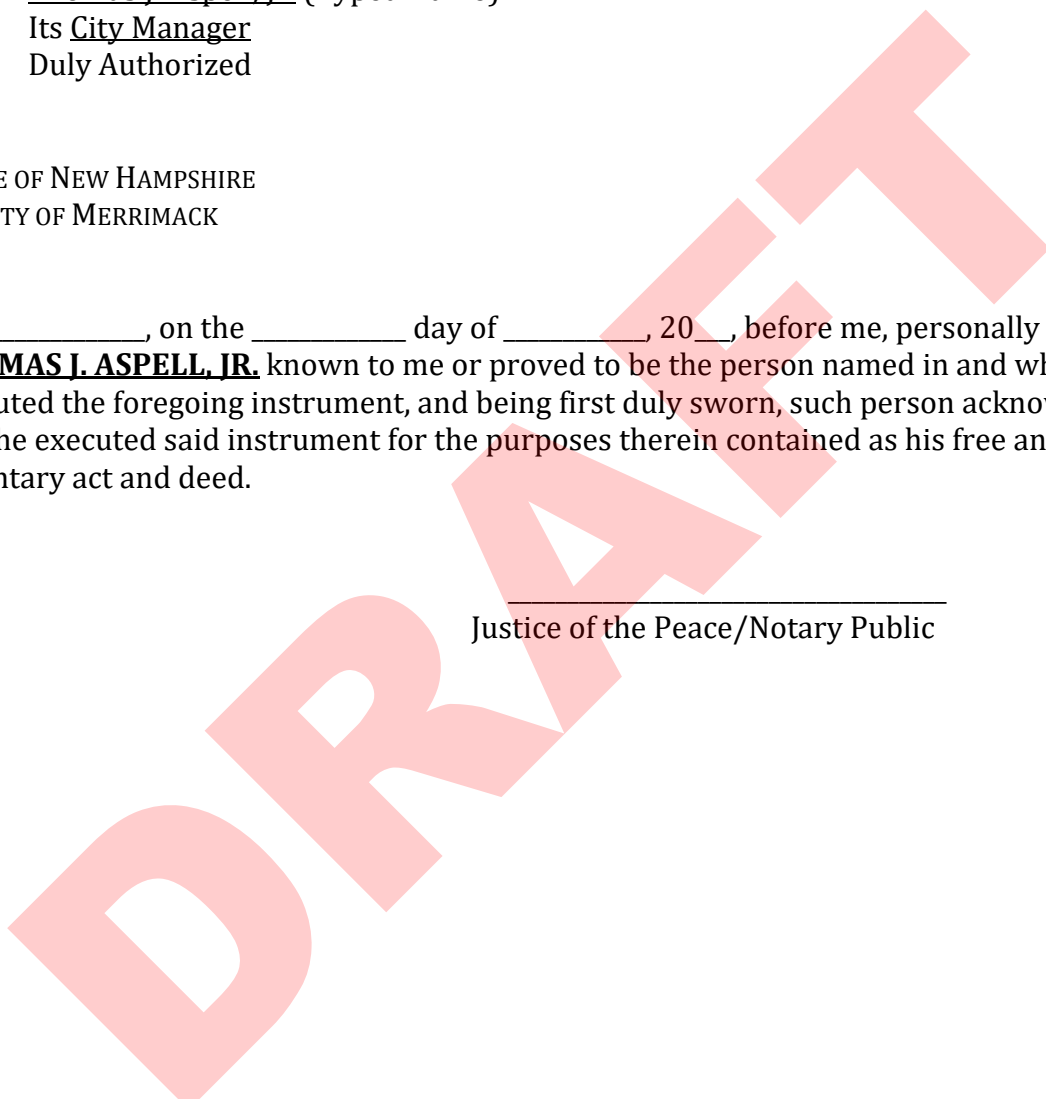
City of Concord

By: _____ Date: _____
Thomas J. Aspell, Jr. (Typed Name)
Its City Manager
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In _____, on the _____ day of _____, 20____, 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



Capital Commons, L.L.C.

By: _____ Date: _____
Michael J. Simchik (Typed Name)
Its _____
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF _____

In _____, on the _____ day of _____, 20____, before me, **MICHAEL J. SIMCHIK**, 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

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