

PURCHASE AND SALE AGREEMENT

This **PURCHASE AND SALE AGREEMENT** (the “AGREEMENT”) made as of the last date set forth below (which may hereinafter be referred to as the “Effective Date”) by and between 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 “the SELLER”) and the State of New Hampshire Adjutant General’s Department, with a principal place of business at 4 Pembroke Road, Concord, New Hampshire, 03301 (referred to the “BUYER”) and referred to collectively as the “Parties”.

RECITALS

This AGREEMENT relates to the sale of +/- 3.5 acres of real estate located at the northeast corner of the intersection of Regional Drive and Airport Road in Concord, New Hampshire identified by City of Concord address as 45 Airport Road (the “Premises”).

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

- I. The SELLER owns certain real estate at 45 Airport Road in Concord, New Hampshire “Exhibit 1” (identified as the “Premises”);
- II. The BUYER, subject to the contingencies set forth within this AGREEMENT, desires to acquire the Premises to expand the National Guard State Military Reservation located immediately adjacent to the Premises;
- III. The Premises do not include +/-25,000 s.f. of area leased by the SELLER to the NH Civil Air Patrol as identified on “Exhibit 1” (identified as “CAP Leased Area.”)
- IV. All Parties signatory to this AGREEMENT 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:** Pending the results of the BUYER’S due diligence and the other conditions in this AGREEMENT—and subject to approvals from the Concord City Council; the NH Governor and Executive Council; and the Federal Aviation Administration (FAA)—the SELLER intends to sell to the BUYER, and the BUYER intends to acquire from the SELLER, the Premises, consisting of +/- 3.5 acres of land located at 45 Airport Road, exclusive of the CAP LEASED AREA.

- 1.2. **Coordination with FAA:** The Premises are encumbered by FAA Airport sponsor obligations. Release from these obligations is dictated by FAA Order 5190.6B. The BUYER and SELLER agree to work collaboratively to secure all needed documentation and information to comply with the aforementioned FAA Order in a timely fashion. Notwithstanding, the SELLER will be responsible for making the formal request to FAA for Land Release and will be the point of contact for the required FAA Order 5190.6B checklist information.
- 1.3. **Purchase Price:** The purchase price for the Premises shall be determined by a fair market appraisal commissioned by the BUYER and subject to the approval of the BUYER, SELLER and the FAA. Should the SELLER dispute the BUYER'S appraisal's findings, the SELLER shall have the right to commission an FAA-approved appraisal at the SELLER'S cost. The higher of the two fair market values shall be deemed the Purchase Price. If the SELLER and the BUYER are unwilling accept the appraisal values, this AGREEMENT will be deemed null and void.
- 1.4. **Deposit:** No deposit is required for this transaction.
- 1.5. **Payment of Purchase Price:** The Purchase Price shall be paid in full by the BUYER to the SELLER at closing in the form of bank treasurer's check, wire funds transfer, or other immediately available funds satisfactory to the SELLER.
- 1.6. **Use of Purchase Funds:** Funds from sale of the Premises will be used by the SELLER for operations, maintenance and capital improvements at the Concord Municipal Airport.
- 1.7. **Access to Premises:** The SELLER hereby grants authorization to the BUYER, its employees, representatives, consultants, and agents to enter the Premises for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this AGREEMENT.

The BUYER and the SELLER shall coordinate all access to the Premises by third parties working on behalf of the BUYER as part of the BUYER'S due diligence.

The BUYER shall indemnify, defend, and hold harmless the SELLER from and against any and all claims, actions, damages or losses arising out the BUYER'S activities pursuant to this paragraph during its inspection and subsequent tasks related thereto which are caused solely by the BUYER'S negligence. The BUYER shall require any and all contractors who are retained for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this AGREEMENT, and who will need to access the Premises, to obtain a certificate of insurance

in the amount of \$2 million in the aggregate, \$1 million per occurrence naming the SELLER as an additional insured.

- 1.8. **Closing:** Upon final FAA approval and the BUYER'S satisfaction of Contingencies 2.1-2.5 in this AGREEMENT, closing shall occur within 30 days of New Hampshire Governor and Executive Council approval of the purchase. Should closing not occur by January 1, 2021, this AGREEMENT will be deemed null and void unless the BUYER and the SELLER agree—in writing—to extend or modify its terms.
- 1.9. **Title:** The SELLER shall convey the Premises by Quitclaim Deed. If BUYER desires an examination of title, it shall be completed within 30 days of the Parties' receipt of approval under the FAA Land Release process to secure the sale of the Property as described in Section 2.3 of this Agreement, and BUYER shall pay the cost thereof. If BUYER finds, in its sole discretion, defect(s) in the title to any of the lands which together make up the Property or encumbrances on the Property to which BUYER in good faith objects, it shall so notify SELLER of that fact promptly, specifying the defect(s) to which BUYER objects, failing which this right shall be waived. Upon receipt of such notification SELLER shall have a reasonable time, not to exceed thirty (30) days from the date of notification of defect, to remedy such defect. Should SELLER be unable to provide marketable title within said thirty (30) days, BUYER may rescind this Agreement at BUYER'S sole option, with all parties being released from any further obligations hereunder. SELLER hereby agrees to make a good faith effort to correct the title defect within the thirty (30) day period above prescribed once notification of such defect is received.
- 1.10. **Transfer Taxes and Recording Fees:** The parties acknowledge that both BUYER and SELLER are exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I.
- 1.11. **Prorating of Property Taxes and Utility Costs:** The Parties acknowledge that the BUYER is exempt from the payment of prorated property taxes for the Premises.
- 1.12. **Delivery of Premises, Removal of Tenants, Property to be Retained by SELLER:** The SELLER shall deliver possession of the Premises to the BUYER in its "AS IS, WHERE IS" condition, free and clear of all tenants and third parties.
- 1.13. **Real Estate Broker's Fees & Commissions:** The Parties hereby confirm that neither party is represented by a real estate broker for this transaction. To the extent either party may come to be represented by a real estate broker, said party shall be solely responsible for paying its broker any fees or commissions owed resulting from this transaction. Any

claims for a brokerage fee, agent's commission or other compensation shall be handled and paid by the party whose actions or alleged commitments form the basis for such claim. Each party shall indemnify and hold harmless the other party from all claims of any person claiming a brokerage fee, agent's commission or other compensation, by, through or under the indemnifying party.

1.14. **SELLER's Disclosures:** The SELLER makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Premises. Notwithstanding the foregoing, the SELLER has no actual knowledge of any environmental contamination conditions at the Premises.

1.15. **Casualty and Condemnation:** In the event that the Premises, prior to Closing, are damaged by fire, flood, collapse, or other casualty, or is subject to an eminent domain proceeding, the BUYER at any time after the occurrence of such damage or casualty may elect to terminate this AGREEMENT by written notice, 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.

2. **BUYER'S CONTINGENCIES:** The 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 the SELLER the right to withdraw from this AGREEMENT, after which the SELLER shall have no further obligation to the BUYER.

2.1. **Subdivision:** Although the Premises are physically separated from the Concord Municipal Airport airfield by Regional Drive, formal subdivision of the Premises from the Concord Municipal Airport's Master Lot (MBL 110/1/6) has yet to occur and must be completed prior to sale. The CAP Leased Area would also need to be subdivided from the Premises prior to sale. The BUYER will be responsible for commissioning the necessary survey and submitting the required Planning Board applications to carry out the aforementioned subdivisions prior to closing. All costs associated with the subdivision shall be borne by the BUYER.

2.2. **Acceptance of Costs.** Any and all fees related to the transaction will be at the BUYER'S expense. All documents prepared in conjunction with this project are subject to review and approval by the SELLER.

2.3. **Acceptance of FAA Land Release Process and On-Going Restrictions.** The Premises are encumbered by certain FAA restrictions governing land release and on-going use. The Parties are cognizant of the FAA's land

release process (FAA Order 5190.6B) and agree to enter into it in good faith to secure the sale of the Premises. The BUYER agrees to abide by all pertinent FAA restrictions governing use of the property upon sale.

2.4. **Extension of Existing Brick Columns/Wrought Iron Fence.** In the event that—after taking ownership of the Premises—the BUYER seeks to secure the Premises via an enclosure such as a fence or wall, it shall erect a fence of similar materials and scale to the existing brick and wrought iron fence installed around the State Military Reservation and depicted photographically as Exhibit 2. Under no circumstances shall the BUYER install a chain link fence.

2.5. **Environmental Baseline Study.** This AGREEMENT is contingent upon Buyer securing an environmental baseline inspection, with results being satisfactory to the BUYER and notice of the results thereof to the SELLER, within sixty (60) days of the Effective Date of this Agreement.

3. **REPRESENTATIONS AND WARRANTIES**

3.1. **Representations and Warranties of the SELLER.** The SELLER hereby represents and warrants to the best of its knowledge and belief that:

3.1.1. The execution and delivery of this AGREEMENT and the performance of the SELLER'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 City of Concord (hereinafter the "City"), enforceable against the City in accordance with its terms subject only to the conditions set out in this AGREEMENT.

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

3.1.3. Except as set forth in this AGREEMENT, no approval, authorization, order or consent of, or declaration, registration or filing with, any federal, state or local authority (a "Governmental Authority") is required for the valid execution and delivery of this AGREEMENT by

the City, except such as have been duly obtained or made or disclosed in this AGREEMENT.

- 3.1.4. 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 City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder or the performance by the City 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 City in connection with the transactions contemplated hereby.

3.2. **Representations and Warranties of the BUYER.** The BUYER hereby represents and warrants to the best of its knowledge and belief that:

- 3.2.1. The BUYER has the power and authority to execute, deliver and carry out 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 the BUYER, constitute valid, legal and binding obligations of the BUYER enforceable against the BUYER in accordance with the respective terms thereof.
- 3.2.2. Neither the execution or delivery by the BUYER of this AGREEMENT, the performance by the BUYER of their 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 result in a breach of any term or condition of any judgment or decree, or any AGREEMENT or instrument, to which the BUYER are a party or by which the BUYER or any of its properties or assets are bound, or constitutes a default there under.
- 3.2.3. 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 the BUYER, except such as have been duly obtained or made.
- 3.2.4. 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 the BUYER, 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 the BUYER of their 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. GENERAL PROVISIONS

- 4.1. **Cooperation**: The BUYER and the 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 the SELLER, the BUYER, or their representatives, agents, and consultants.
- 4.2. **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.
- 4.3. **Binding Effect; Successors and Assignors**. The terms and provisions of this AGREEMENT and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 4.4. **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.
- 4.5. **Exhibits**. All exhibits referred to in this AGREEMENT are hereby incorporated by reference and expressly made a part hereof.
- 4.6. **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.
- 4.7. **Enforceability**. 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; and the Parties agree to negotiate in good faith to amend the AGREEMENT to provide for each party to the AGREEMENT the same relative rights and obligations existing prior to such determination of illegality or unenforceability.

- 4.8. **Consent to Jurisdiction and Venue.** The 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. Both Parties hereby waive their right to a jury trial.
- 4.9. **Independent Parties.** The 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.
- 4.10. **Survival of AGREEMENT.** The AGREEMENT's, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this AGREEMENT and Closing.
- 4.11. **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.
- 4.12. **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, their successors and permitted assigns, any right, remedy or claim under or in respect of this AGREEMENT or any provision hereof.
- 4.13. **Preservation of Rights.** Nothing herein or in any related AGREEMENT shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.

- 4.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this AGREEMENT.
- 4.15. **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, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 4.16. **Municipal Approvals.** Concord City Council authorized the City Manager to enter into this AGREEMENT on XXX, 2019. The execution of this AGREEMENT does not preempt or supersede the review process or powers of any City 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 City or other governmental Boards, Committees, Commissions, or Departments.
- 4.17. **Warranties and Representations:** The BUYER and SELLER each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this AGREEMENT.
- 4.18. **Saving Clause:** In the event that 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 effected thereby shall remain in full force and effect.
- 5.19 **Default by BUYER.** If the BUYER shall fail to fulfill its obligations hereunder, then the SELLER shall have the right to terminate this AGREEMENT whereupon neither party shall have any further rights against the other under this AGREEMENT.
- 5.20 **Default by SELLER.** If the SELLER shall fail to fulfill its obligations hereunder, then the BUYER shall have the option to (a) give notice that it is terminating this AGREEMENT, and neither party shall have any further rights against the other under this AGREEMENT; or (b) pursue its rights at law and in equity to address any such breach, including, but not limited to, the remedy of specific performance.

[The remainder of this page left blank intentionally]

LIST OF EXHIBITS

- Exhibit 1 Aerial photo map depicting 45 Airport Road, shown on the City of Concord Tax Map as Map 110, Block 1 Lot 3 (the "PREMISES") (*Source: City of Concord Geographic Information System*)
- Exhibit 2 Photo of existing brick and wrought iron fence securing NH National Guard State Military Reservation in Concord

[The remainder of this page left blank intentionally]

SELLER

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 _____, 2019, before me, personally appeared **THOMAS J. ASPELL, JR.**, duly authorized City Manager of the City of Concord 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

BUYERS

NEW HAMPSHIRE STATE ADJUTANT GENERAL'S DEPARTMENT

By: _____ Date: _____
Major General David J. Mikolaities
The Adjutant General, New Hampshire
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK

In _____, on the _____ day of _____, 2019, before me, personally appeared **MAJOR GENERAL DAVID J. MIKOLAITIES**, duly authorized officer of the New Hampshire State Adjutant General's Department, 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

4822-2236-6615, v. 1 12005 7