

CHARITABLE CONTRIBUTION AGREEMENT

This Charitable Contribution Agreement (this "Agreement") is made and entered into as of June __, 2019, by and between **Merrimack County Savings Bank**, a banking corporation duly organized under the laws of the State of New Hampshire, with a mailing address of 89 North Main Street, Concord, New Hampshire 03301 (the "Company") and **the City of Concord, New Hampshire**, a municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire (the "City").

Reference is made to the following facts:

A. The City is seeking support to fund the construction and operation of a community building, known as the Skate House, at White Park in Concord, New Hampshire for use by the general public (the "Building"); and

B. The Company is willing to support the City by making a Charitable Contribution as described in Section 1 below.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties hereto agree as follows:

1. Contribution. The Company shall contribute the total sum of Eighty Thousand Dollars (\$80,000.00) (the "Contribution") during the term of this Agreement in the manner set forth below, which Contribution shall be accepted and used by the City for construction and operation of the Building. The Company shall also contribute the cost for the construction and installation of a sign, bearing the name "The Merrimack Lodge" ("the Sign") which shall be the name of the Building during the term of this Agreement in the manner set forth below.

a. On or before June 30, 2019, the Company shall contribute the sum of Twenty Thousand Dollars (\$20,000.00) for the construction and operation of the Building.

b. On or before December 31 of the calendar years ending December 31, 2019, December 31, 2020 and December 31, 2021, the Company shall contribute the sum of Twenty Thousand Dollars (\$20,000.00) per year for the operation of the Building.

c. On or before December 31, 2019, the Company shall pay for the cost of the construction and installation of the Sign. Following installation of the Sign, the City shall own it, and all of its associated installation components including any associated posts or other installation apparatus. In addition, the City shall maintain the Sign in the same manner that it maintains other similar City property.

2. Naming Rights. In recognition of the Company's Contribution, the City shall name the Building "The Merrimack Lodge" (the "Naming Rights"). The name shall be displayed upon the Sign at a location on or near the Building, which shall be determined at the City's sole discretion. The City understands and agrees that in addition to the Naming Rights,

the Company's logo, as designed by the Company, shall appear on the Sign, in accordance with Section 3 of this Agreement. The Naming Rights selected pursuant to this Section shall remain in effect, unless earlier relinquished by the Company, for a period of ten (10) years (the "Naming Rights Term") commencing on July 1, 2019 and expiring on June 30, 2029 (the "Original Expiration Date").

a. Subject to City Council approval, and subject to the following terms and conditions, the Company shall have the option to extend the Naming Rights for an additional ten (10) years from the Original Expiration Date:

- i. No later than sixty (60) days prior to the Original Expiration Date, the Company shall submit to the City an offer, in writing, to extend the Naming Rights at a fixed price (the "Initial Offer"). The decision to extend the Naming Rights for an additional ten years shall be at the sole discretion of the City. Within thirty (30) days of the City's actual receipt of the Initial Offer, the City shall respond, in writing, accepting, declining or providing a counter offer to the Company (the "Counter Offer"). If the City accepts the Initial Offer, the Company shall remit payment at the price fixed in the Initial Offer on or before the Original Expiration Date, and upon such payment the Naming Rights shall automatically extend for an additional ten (10) years from the Original Expiration Date.
- ii. If the City provides a Counter Offer to the Company, the Company shall have thirty (30) days after actual receipt of the Counter Offer to respond in writing to accept or decline the Counter Offer. If the Company accepts the Counter Offer, the Company shall remit payment at the price fixed in the Counter Offer on or before the Original Expiration Date, and upon such payment the Naming Rights shall automatically extend for an additional ten (10) years from the Original Expiration Date.

If the Company declines the Counter Offer, the City shall have the right to market the Naming Rights to third parties or continue to negotiate the terms of the payment with the Company in the City's sole discretion.

3. The Sign.

- a. On or before December 31, 2019, the Company shall deliver the design of the Sign to the City Manager. Upon the City Manager's approval of the Sign design and determination of its installed location, the City shall submit the complete Sign design and location to the City Planning Board in accordance with RSA 674:54.

- b. Within sixty (60) days of the City's Planning Board RSA 674:54 review, the Company shall hire and pay for a contractor to construct and install the Sign. The selected contractor shall be subject to the City's approval, and, at a minimum, shall satisfy the City's insurance and indemnification requirements to work on City property. Prior to construction, the contractor shall also secure the necessary Building Code Permits.

4. City's Representations and Warranties. The City represents and warrants to the Company as follows:

- a. The City has full power and authority to execute and deliver this Agreement and the transaction contemplated by the Agreement has been duly authorized in accordance with City Council approval on _____.

- b. The City, as a municipal corporation, is a political subdivision of the State of New Hampshire and qualified to accept charitable contributions within the meaning of 26 U.S.C. Section 170(c)(1) of the United States Internal Revenue Code (the "Code").

- c. The City shall use the Building in furtherance of the purposes, character, activities and methods of operation of the City.

5. Purpose of Contribution. The Company and the City acknowledge that the City shall only use the Contribution for the purposes described in this Agreement.

6. No Obligation to Purchase Products. The City and the Company acknowledge and agree that the Contribution shall not obligate or otherwise influence the City to purchase, use, recommend, or arrange for the use of any products of the Company or any affiliate of the Company.

7. Charitable Contribution. The City acknowledges that the Company intends to report the Contribution for income tax purposes as a Charitable Contribution and take a deduction therefor as allowed pursuant to IRC §170. Upon the Company's request, and with reasonable notice to the City, the City shall execute and deliver to the Company one or more acknowledgements of all cash contributions paid by the Company.

8. Assurance of Execution and Delivery of Additional Instruments. The City shall provide the Company and the Company's agents or representatives (collectively, "Agents"), with documentation as may be reasonably requested by the Company or the Company's Agents in order to document or verify compliance with the provisions of this Agreement. The City shall maintain true and accurate records necessary to demonstrate compliance with this Agreement.

9. Breach/Remedies. If a party fails to comply with any of the provisions of this Agreement, the other party shall have the right to terminate this Agreement upon written notice to the breaching party, without penalty or liability of any nature whatsoever.

10. Duration of Agreement. Except as set forth in Section 2 above regarding the Company's naming rights, this Agreement will commence on July 1, 2019 and will extend until and including June 30, 2029 unless earlier terminated by the either Party upon thirty (30) days' written notice. In the event of a termination, the parties will mutually agree as to the disposition of the Contribution. For avoidance of doubt, in no event, may the Contribution be used in any way other than in furtherance of the City's programs and purposes related to the Building.

11. Disclosure Obligations. The Parties acknowledge that certain state or federal laws now or in the future may require the Company to disclose information on contributions provided to charitable entities. The Company may report information about the Contribution provided under this Agreement, as required by law. Once reported, such information may be publicly accessible.

12. Company's Promotion Rights. Notwithstanding any other provision in this Agreement, the City understands and agrees that in addition to the Sign, located on or near the Building, the Company shall have the right to post on a website accessible to the public, information regarding funding under this Agreement, whether or not required by law, including the identity of the City, the value of the Contribution, the purposes for the Contribution, and such other information as the Company determines is appropriate.

13. No Assignment. The Company shall not assign, sell transfer or encumber this Agreement in whole or in part without the express written authorization from the City.

14. Company Dissolution: To the extent that the Company shall dissolve or shall otherwise cease to exist, this Agreement shall be terminated immediately.

15. No Third Party Beneficiaries. This Agreement inures to the benefit of the City and the Company only, and no third party shall have any rights under it, except as expressly provided herein.

16. Governing Law; Jurisdiction. This Agreement shall be construed and their provisions interpreted under and in accordance with the laws of the State of New Hampshire (excluding the laws applicable to conflicts or choice of law). The City, to the extent it may legally do so, hereby (a) consents to the jurisdiction of the courts of the State of New Hampshire and the United States District Court for the State of New Hampshire, as well as to the jurisdiction of all courts from which an appeal may be taken from such courts for the purpose of any suit, action or other proceeding arising out of any of their obligations hereunder or with respect to the transactions contemplated hereby, and (b) expressly waives any and all objections it may have to venue in any such courts.

17. Force Majeure. To the extent that the Company is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and the Company gives notice and details of the Force Majeure to the City as soon as practicable (and in any event within five (5) business days after becoming aware of the Force Majeure event or circumstance), then the applicable deadlines in effect at the time of the Force Majeure may be extended up to (60) days or as otherwise determined by the City at its sole discretion. The Company shall use

commercially reasonable and diligent efforts to eliminate or avoid the Force Majeure and, thereafter, promptly and diligently resume performing its obligations under this Agreement. As used herein, "Force Majeure" shall mean any event or circumstance that prevents either Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the fault or negligence, of the Party claiming Force Majeure, and (ii) by the exercise of reasonable due diligence, the Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on economic or financial hardship. In addition, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure. Force Majeure shall include, without limitation, events such as: fires; floods; lightning strikes; ground sliding; and earthquakes.

18. Severability. If any term, condition, or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable according to law, then the remaining terms, conditions, and provisions hereof, or the application of any such invalid or unenforceable term, condition or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

19. Entire Agreement. This Agreement represents the full and complete agreement between the Parties with respect to the subject matter contained therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

20. Notices. Any notice under this Agreement shall be made to the addresses and persons specified above. All notices, requests, statements or payments shall be made in writing. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, or email. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

21. Amendments. This Agreement may be amended only in writing signed by the Company and the City.

IN WITNESS WHEREOF, the parties have signed and thereby caused this Agreement to be duly executed effective as of the date written above.

COMPANY:

CITY OF CONCORD, NH

MERRIMACK COUNTY SAVINGS BANK

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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