

BUDGET REVIEW COMMITTEE

FEBRUARY 10, 2021

7:00 PM

To access Zoom: <https://us02web.zoom.us/j/86539172794?pwd=Z2h0Y3Fqa1EzdHBlUEVvdFNndHNSZz09>
Meeting ID: 865 3917 2794 Passcode: 854678

To join by phone: 1-929-205-6099
Meeting ID: 865 3917 2794 Passcode: 854678

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ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

R-21-111

Endorsers: Mayor Jim Donchess
Alderman-at-Large Michael B. O'Brien, Sr.
Alderman Richard A. Dowd

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO AN AMENDMENT TO THE AGREEMENT WITH FUEL MEDIA HOLDINGS FOR ADVERTISING SERVICES

NEW BUSINESS – ORDINANCES

TABLED IN COMMITTEE

R-20-016

Endorsers: Mayor Jim Donchess
Alderman Linda Harriott-Gathright
Alderman Thomas Lopez
Alderman-at-Large Michael B. O'Brien, Sr.

AMENDING THE PURPOSE OF A FISCAL YEAR 2020 UNLIKE ESCROW FOR THE COMMUNITY DEVELOPMENT DIVISION

(tabled at 4-20-20 mtg)

R-20-028, Amended

Endorsers: Mayor Jim Donchess
Alderman-at-large Michael B. O'Brien, Sr.
Alderman-at-large David C. Tencza
Alderman Richard A. Dowd
Alderman Linda Harriott-Gathright
Alderman Patricia Klee

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A MASTER DEVELOPMENT AGREEMENT WITH LANSINGMELBOURNE GROUP, LLC.

(re-tabled at 8-12-20 mtg)

GENERAL DISCUSSION

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

POSSIBLE NON-PUBLIC SESSION

ADJOURNMENT



RESOLUTION

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO AN AMENDMENT TO
THE AGREEMENT WITH FUEL MEDIA HOLDINGS FOR ADVERTISING
SERVICES**

CITY OF NASHUA

In the Year Two Thousand and Twenty- One

RESOLVED by the Board of Aldermen of the City of Nashua that the City is authorized to enter into a second amendment to the current agreement for advertising services, substantially in the attached form, with Fuel Media Holdings.

LEGISLATIVE YEAR 2021

RESOLUTION:

R-21-111

PURPOSE:

Authorizing the City of Nashua to enter into an amendment to the agreement with Fuel Media Holdings for advertising services.

SPONSOR(S):

Mayor Jim Donchess

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

Agreement provides for payments to the City

ANALYSIS

This resolution authorizes the City of Nashua to enter into a second amendment to the agreement with Fuel Media Holdings for the placement and maintenance of advertising materials on the exterior and interior of NTS vehicles, bike racks, bus shelters and at the Nashua Transit Center. This a revenue contract for the City, which revenue is being reduced by the amendment.

The contract needs to be amended (reduced) due to the unprecedented economic impacts of COVID. The current Fuel contract requires 65% of the revenue from all advertising contracts Fuel sells to be paid to the City, with a guaranteed minimum of \$120 k for FY21 ("Year 2"). The amendment removes the guaranteed minimum for Year 2 of the contract due to the negative impacts of COVID on the advertising industry. Advertisement revenue is significantly down nationally, regionally and in Nashua.

Approved as to form:

Office of Corporation Counsel

By: /s/ Celia K. Leonard

Date: January 21, 2021

**SECOND AMENDMENT
TO TRANSIT ADVERTISEMENT PROGRAM MANAGEMENT
AGREEMENT**

This SECOND AMENDMENT is made as of February _____, 2021 by and between the **City of Nashua**, New Hampshire with an address of 229 Main Street, Nashua, New Hampshire ("City") and **Fuel Media Holdings**, located at 101 Marketside Ave., Suite 404-177, Ponte Vedra, FL 32081 ("Contractor").

WHEREAS, the City and Contractor entered into a Transit Advertisement Program Management Agreement approved by the Board of Aldermen by R-19-192 on December 23, 2019, for the placement and maintenance of advertising materials on the exterior and interior of Nashua Transit Services vehicles, bike racks, bus shelters and at the Nashua Transit Center, and said agreement was amended by the "Amendment to Memorandum of Understanding By and Between City of Nashua, NH and Fuel Media Holdings" (as amended, the "Agreement");

WHEREAS, Section 5 C of the Agreement states that the "Contractor agrees to pay the City as follows: A sum equal to (65%) of the next space billings with Minimum Guaranteed Payments, whichever is higher, will be paid as shown below:

Year 1 – 2020 \$90,000
Year 2 – 2021 \$120,000
Year 3 – 2022 \$120,000;"

WHEREAS, Section 7 P of the Agreement allows for amendment by written amendment executed by City and Contractor; and

WHEREAS, COVID has negatively impacted the advertising market nationally, regionally and in Nashua.

NOW, therefore, in consideration of the mutual covenants contained herein, the parties hereby mutually agree as follows:

1. That Section 5 C of the Agreement shall be amended by deleting the struck through language and inserting the underlined language as follows,

Contractor agrees to pay the City as follows: A sum equal to (65%) of the next space billings with Minimum Guaranteed Payments, whichever is higher, will be paid as shown below:

Year 1 – 2020 \$90,000
~~Year 2 – 2021 \$120,000~~ no Minimum Guaranteed Payments for Year 2 - 2021
Year 3 – 2022 \$120,000;"

2. All other terms of the Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized representatives placed their hands as of the date first above written.

City of Nashua

Fuel Media Holdings

By: James W. Donchess, Mayor

By: _____
Title: _____



RESOLUTION

AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A MASTER DEVELOPMENT AGREEMENT WITH LANSING MELBOURNE GROUP, LLC.

CITY OF NASHUA

In the Year Two Thousand and Twenty

RESOLVED by the Board of Aldermen of the City of Nashua that the City is authorized to enter into a "Master Development Agreement" with Lansing Melbourne Group, LLC regarding the lease and development of the "School Street Lot" for a housing project and construction of a publically accessible ground level parking garage in substantially the same form as the attached. The attached agreement is "red-lined" to illustrate the changes from the agreement submitted with the resolution for first reading, however, the version of the document to be signed will not be "red-lined."

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents and take all necessary actions contemplated by the Master Development Agreement or required or advisable to effectuate the same, including but not limited to the lease.

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that \$40,000 be transferred from Fund #7084 "Downtown Redevelopment Initiatives Trust Fund" and \$60,000 from Fund #1001 "Capital Improvements-School & High Street Development Project" into the Bonded Capital Project Fund.

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EXHIBIT A	Property Description
EXHIBIT B	Development Plan
EXHIBIT C	Board of Alderman Approving Resolution

MASTER DEVELOPMENT AGREEMENT

BY AND BETWEEN

LANSING MELBOURNE GROUP, LLC, a Florida limited liability company

AND

CITY OF NASHUA, NEW HAMPSHIRE

Effective Date: _____

This Master Development Agreement (this “*Agreement*”) is made and entered into as of ~~February~~ ~~May~~ ____, 202~~10~~, between LANSING MELBOURNE GROUP, LLC, a Florida limited liability company (“Developer”), and the CITY OF NASHUA, NEW HAMPSHIRE, a New Hampshire municipal corporation (“City”). Developer and City are sometimes referred to in this Agreement collectively as the “Parties” and singularly as a “Party”.

ARTICLE I: RECITALS

1.1 City is a duly organized New Hampshire municipal corporation acting through its Board of Aldermen and Mayor, having its principal office located at Nashua City Hall, 229 Main Street, Nashua, NH 03061.

1.2 Developer is a limited liability company having its principal United States offices located at 2420 E. SUNRISE BLVD #90, FORT LAUDERDALE, FL 33304, is experienced at developing real estate in New Hampshire and elsewhere, within the public-private context and otherwise, and is authorized to do business in New Hampshire.

1.3 City strongly supports increased economic development to provide additional jobs for residents of Nashua and the region, to expand business within the City, and to develop a healthy robust economy through the means of downtown redevelopment and investment.

1.4 The City released a request for proposals on January 12, 2017 (the “RFP”) soliciting proposals from real estate developers for a housing project (the “Project”) on an approximately 0.682-acre parcel of real property owned by the City and more particularly described on Exhibit “A” attached and incorporated into this Agreement (~~the “Property”,~~ ~~also referred to in the RFP as~~ the “School Street Lot”), the vision of which RFP and Project is to accommodate the growing housing needs of the City. The RFP is a matter of public record.

1.5 Developer submitted its response to RFP on March 30, 2017 (the Proposal”), and after being selected by the City has worked with the City to develop a mutually agreeable Project concept.

1.6 Developer intends to develop the Project to comprise a 160,000 square foot building comprising approximately 150 apartments and related improvements, all in one single phase, and public parking.

1.6.1 A proposed Master Development Agreement was put forward for approval by the Board of Aldermen in resolution R-20-028, which had its first reading on April 14, 2020. The legislation was referred to the Budget Review Committee. At the Committee level, it was determined that additional parking was advisable in the area. Accordingly, the City and Developer devised a new idea for the Project which includes ground floor public parking owned by the City and the apartments over the parking.

1.7 The Project is depicted more specifically on the “Project Design Drawings” (defined below).

1.8 The City intends to lease sell and convey fee simple title to the area necessary for the lobby for the residents on the ground floor and the air rights over the parking lot on the School Street Lot for the apartments (“the Property”) to Developer as set forth in Section 2.1 below.

1.9 The purpose of this Agreement is to facilitate the development and construction of the Project in a way that results most effectively in the public benefits intended for the City and the private benefits intended for the Developer. The development and construction of the Project requires a major investment by the Developer in facilities and on-site improvements, and substantial commitment of public and private resources to achieve the benefits of the Project for Developer and City.

1.10 The general benefits to be received by City from the implementation of the Project include, without limitation:

a) Realization and implementation of the “Development Plan” (defined below and attached and incorporated into this Agreement as Exhibit “B”) for the School Street Lot in downtown Nashua;

b) Establishment of integrated site plans, urban design elements including uniform engineering, landscapes and architecture that contribute to the revitalization of the School Street Lot and downtown Nashua; ~~and~~

c) Provision of housing opportunities in downtown Nashua; and

d) New public parking in the downtown.

1.11 The general benefits to be received by Developer from the implementation of the Project include without limitation, integration of site plans, urban design elements land uses, architecture, site engineering, landscape architecture, the pleasure of working with Director Cummings and Attorney Leonard and mitigation measures over the Property;

1.12 In exchange for these benefits to City and Developer, City and Developer desire to proceed with the Project in accordance with the terms and conditions contained in this Agreement, subject to any amendments to this Agreement made in accordance with this Agreement.

NOW, THEREFORE, based upon the terms and conditions set forth in this Agreement and in consideration of the mutual promises and assurances provided in this Agreement, City and Developer hereby agree that the Recitals as stated above are incorporated herein and made a part of this Agreement and the following terms:

ARTICLE II: TERMS

2.1 Lease Purchase of Property.

a) Purchase-Initial Lease Price. Subject to the terms of this Agreement and the satisfaction of the conditions precedent contained in this Agreement, the City will ~~convey~~ lease the Property to Developer as the site of the Project and Developer will pay to City the value of the Property as determined by the Board in the amount of Nine Hundred Thousand Dollars (\$900,000) (the "Initial Lease Purchase Price"), which reflects the per-unit cost of \$6,000 for each residential unit to be constructed in the Project multiplied by a total of one-hundred and fifty (150) units. The Purchase-Initial Lease Price shall be paid by Developer to City on the "Closing Date", as defined in the subparagraph 2.1(b) immediately below, by wire delivery of funds through the Federal Reserve System to an account designated in writing by City.

b) Closing. Provided that all the conditions precedent to closing by the Parties are satisfied, City shall ~~lease convey~~ the Property to Developer and Developer shall ~~lease~~ acquire the Property from City on or before the date on which Developer closes its financing for the Project (the "Closing Date"). Developer shall diligently pursue obtaining a commitment for such financing in a timely manner. Either party may extend the Closing Date by an additional fourteen (14) days by written notice to the other party; provided, however, no extension of the Closing Date will, without the mutual written agreement of the parties, extend any other deadlines set forth in this Agreement or the documentation to be entered into pursuant to this Agreement. Notwithstanding the foregoing or any prior extensions of the Closing Date, the parties may mutually agree in writing to further extend the Closing Date by an additional sixty (60) days (the "Deadline Closing Date"). If, after the Deadline Closing Date, any of the conditions precedent to the Parties' obligation to close is not fulfilled, then Developer or City may either (i) further extend this Agreement or (ii) terminate this Agreement and neither party shall have any obligation to the other

under this Agreement except any for any obligations that expressly survive the expiration or other termination of this Agreement. In no event shall the Closing Date be after ~~February June 30+~~, 2021.

c) Conditions Precedent for Closing by Developer:

(i) Issuance to Developer of all governmental permits and licenses requisite for the construction of the Project in accordance with established procedures;

(ii) Approval by City of the Development Plan and Project Design Drawings in accordance with established procedures;

(iii) Developer obtaining all applicable financing commitments at rates and terms typically found in the Nashua, New Hampshire market; and

(vi) No default by City.

d) Conditions Precedent for Closing by City:

(i) Payment by Developer of the ~~Purchase-Initial Lease~~ Price to City;

(ii) Closing of Developer's financing;

(iii) Approval by City of the Development Plan; and

(iv) No default by Developer.

e) Other Closing Documents. At the Closing:

(i) City will deliver to Developer a ~~99 year Air Rights Lease New Hampshire compliant Quit Claim Deed~~ for the Property, free and clear of any mortgages, deeds of trust or other monetary liens (the "~~LeaseDeed~~");

(ii) City will deliver to Developer a New Hampshire compliant lien and possession affidavit regarding the Property to Developer and Developer's title insurer as customarily required by title insurers in New Hampshire; ~~and~~

(iii) City and Developer will deliver to each other fully executed counterparts to the Closing statement; ~~and~~

(iv) City and Developer will sign a Notice of Air Rights Lease, in recordable format substantially similar to Exhibit _____, to be recorded at the Hillsborough County Registry of Deeds at Closing.

2.2 Performance of Governmental Functions. The terms of this Agreement regarding the design and construction of the Project and the role of City in the Project are

independent of any obligations binding upon City or Developer pursuant to applicable laws and ordinances. In no event will any approvals given by City pursuant to the terms of this Agreement constitute the performance by City of any review or issuance of any permits, approvals or licenses that it is obligated to conduct or consider pursuant to any law, or ordinance or both. Nothing in this Agreement or any approvals or consents by City in connection with this Agreement will in any way stop, limit or impair City from exercising or performing any regulatory, policing or other governmental function with respect to either Party, including, but not limited to, the review, approval and issuance by City of applications, approvals, permits and licenses regarding the Project pursuant to any laws and ordinances. City will, to the extent reasonably appropriate and permitted by applicable laws and ordinances, facilitate Developer's submissions, requests and applications pursuant to the applicable laws and ordinances governing the Project; provided Developer's submissions, requests and applications are complete, include all necessary fees and are otherwise compliant with applicable laws and ordinances.

2.3 Property Documents. The City represents to Developer that City has delivered all the following documents and information regarding the Property to Developer in the City's possession (collectively, the "Property Documents"):

- a) All boundary or other physical surveys;
- b) All title insurance policies with copies of exceptions;
- c) All environmental site assessments; and
- d) All other reports, appraisals, inspections and documents regarding the condition or value of the Property.

City makes no representation or warranty regarding the currency or accuracy of any of the Property Documents. Developer acknowledges that its receipt of the Property Documents does not in any way relieve Developer from conducting its own required surveying; title examination; architectural, engineering, environmental, topographical, geological, soil, developmental, inspections and other due diligence reasonably sufficient to determine the condition of the Property (collectively, the "Inspections").

2.4 Due Diligence Regarding Property.

- a) For a time period not to exceed one hundred and twenty (120) days after the Effective Date (the "Diligence Period"), Developer is permitted to conduct, at Developer's sole expense and risk, tests and surveys reasonably sufficient to determine the condition of the Property, including title examination, market, geological and structural analyses and a non-intrusive environmental audit. Developer shall restore the Property, to the extent practicable, as to any damage caused by the negligence of Developer, its employees, agents, contractors, or subcontractors in making the Inspections, to the condition existing prior to such damage. Developer acknowledges that Developer has reviewed all the Property Documents and the condition of the Property, as set forth in the Property

Documents, is sufficient for its purposes under this Agreement. Developer shall have no right to terminate this Agreement after the Closing for any condition of the Property as set forth in the Property Documents.

b) Developer shall indemnify and hold harmless City from any and all claims arising out of the negligent acts or omissions of Developer, its employees, agents, contractors, or subcontractors in making the Inspections.

2.5 Project.

a) The Development Plan is subject to the City's -land use and development approval process.

b) The comprehensive development plans which are generally consistent with the description of the City's vision and objectives for the Project as described in the RFP and this Agreement (the "Development Plan") shall include a general description of all proposed development of the Project and required infrastructure improvements, including, but not limited to, its design and construction. The Development Plan shall also include the following:

(i) Creation and any modifications to the Development Plan;

(ii) All architectural and engineering designs;

(iii) All necessary governmental permits and approvals; and

(iv) All construction-related requirements (such as soil conditions and environmental constraints consistent with the Development Plan).

c) The City, together with its duly authorized agents and employees, may inspect and monitor the Project and the work performed on the Project at any time with commercially reasonable prior notice to Developer; provided that the City, and its duly authorized agents and employees shall follow Developer's reasonable safety regulations.

2.6 Schedule and Order of Development. Developer shall administer all aspects of the development of the Project subject to all applicable laws, rules and regulations, including the code requirements of the City and based upon the construction schedule as follows:

Developer shall develop the Project at its sole expense, except as otherwise described and agreed to in this Agreement, in accordance with the Development Plan consistent with the architecture, streetscape and the character of the adjacent area and downtown Nashua and shall conform to the terms of the Development Plan. Developer will, during the design process or design phase of the development of the Project, develop and implement a design review process that will provide City and its professional staff the right to review and approve, reject or suggest modifications to the Development Plan,

including regularly scheduled meetings in accordance with the construction schedule, to update City on Developer's progress of the Project. Developer shall conduct scheduled meetings on a monthly basis to keep City apprised of the progress of development of the Project. The meetings shall include the Developer, City representatives and the specialty consultants. Developer shall prepare and distribute detailed, accurate minutes for all such meetings.

2.7 Development Standards.

a) Developer shall perform the work in accordance with the standard of care and expertise normally employed by development firms, consultants and contractors performing similar services in metropolitan areas in New Hampshire, and all duties under this Agreement shall be measured and interpreted in accordance with such standard of performance.

b) Developer hereby warrants to City that the materials and equipment furnished in accordance with this Agreement will be of good quality, that the work will be free from defects, and that the work will conform with the requirements of the Development Plan. Developer hereby represents, warrants, and covenants that neither it nor its affiliates shall file a mechanic's lien, materialmen's lien, or other lien against any assets of City, and hereby waives and releases any right it may have or may hereafter acquire to file a lien against the any assets of City. Developer shall indemnify and hold harmless City from any losses, damages, and liabilities, to the City as a result of a breach of this provision.

c) Developer shall pay all fees levied by the City or any other governmental entity, including, but not limited to, all tap fees, water & sewer fees, and permit fees. Developer shall plan for all utility services required for the Project and negotiate all necessary agreements with the appropriate municipal authorities and utility companies related to access, traffic, utilities, zoning and other design and construction elements pertaining to the Project. Developer shall obtain and pay for all construction-related permits and all certificates of occupancy. City shall cooperate with Developer as is reasonably necessary for Developer to obtain such approvals, permits and certificates of occupancy.

d) Developer shall apply for and maintain in full force and effect any and all governmental permits and approvals required for the lawful construction of the Project and comply with all the terms and conditions applicable to the Project contained in any governmental permit or approval required or obtained for the lawful construction of the Project, or in any insurance policy affecting or covering the Project.

2.8 Ownership of Development Plans. If the Project is not constructed, then Developer will retain ownership of the preliminary plans, the Development Plan and other design and construction work product relating to the Project in accordance with this Agreement.

2.9 City Improvements. City represents water and wastewater are available at the Property boundary.

ARTICLE III: DEFAULTS

3.1 Defaults by Developer and Remedies of City. If Developer materially defaults on the performance of its obligations to City prior to the Closing Date, then Developer will have thirty (30) days after the City's delivery of written notice to Developer of the default to cure the default; however, if the default requires more than thirty (30) days to cure, Developer shall have such additional time as may be reasonably required to cure the default, provided Developer commences the cure within the initial thirty (30) day cure period and thereafter diligently prosecutes the cure to completion (not to exceed sixty (60) days after commencement of the cure). If Developer is not able to cure the material default during the applicable cure period, then City will be entitled to terminate this Agreement and receive all of Developer's non-confidential work product regarding the Project, including the Project Design Drawings, and Development Plan (collectively, the "Liquidated Damages"). The Parties hereby agree that the Liquidated Damages are intended to be and will be the full liquidated damages for the Developer's failure to perform its duties, liabilities and obligations under this Agreement. The parties agree that City's damages would be very difficult to ascertain and the Liquidated Damages provided in this Section 3.1 constitutes a reasonable estimate of City's damages and is not intended as a penalty but as fully liquidated damages.

If Developer defaults on the performance of its obligations to City after the Closing Date, then Developer will have thirty (30) days after the delivery of written notice by City of the default to cure the default; however, if the default requires more than thirty (30) days to cure, Developer shall have an additional thirty (30) days to cure the default, provided Developer commences the cure within the initial thirty (30) day cure period and thereafter diligently prosecutes the cure to completion. If Developer is not able to cure the default during the applicable cure period, then City may, at its sole discretion, (i) terminate this Agreement and receive the Liquidated Damages; (ii) pursue an action under the Payment and Performance Bonds as set forth in Section 4.4 below; or (iii) pursue the right to specific performance against Developer that would require Developer to fully perform all of its obligations under this Agreement on a timely basis.

3.2 Notice to Financiers and Ability to Cure. Notwithstanding anything in this Agreement to the contrary, City shall copy Developer's lender or equity partner in writing (at any address provided for that purpose by Developer or its lender or equity partner) on any default notice that City sends to Developer, and Developer's lender or equity partner shall have the same rights to cure Developer's default as Developer has under this Agreement.

3.3 Defaults by City and Remedies of Developer. If City defaults materially on the performance of its obligations to Developer under this Agreement, then City will have thirty (30) days after the delivery of written notice by Developer of the default to cure the default; however, if the default requires more than thirty (30) days to cure, City shall have

such additional time as may be reasonably required to cure the default, provided City commences the cure within the initial thirty (30) day cure period and then diligently prosecutes the cure to completion. If City is not able to cure the default during the applicable cure period, then Developer will be entitled to pursue any remedy available at law or equity, including the termination of this Agreement and claims for damages resulting from the breach and termination(s).

3.4 Other Defaults. A Party will be in default of its obligations under this Agreement in the event that it is adjudicated bankrupt or insolvent, makes an assignment for the benefit of creditors or enters into a composition for creditors, or will file a voluntary bankruptcy petition or an answer admitting the material allegations of an involuntary bankruptcy petition; or if an order is entered appointing a receiver or trustee for that Party or for a substantial portion of the assets of that Party and the same is not vacated within sixty (60) days after entry, or if that Party applies for or consents to the appointment of any such receiver or trustee. In the event of a default specified in this Section 3.4, non-defaulting Party may immediately pursue all remedies available to it by law or in equity, including specific performance and the termination of this Agreement.

ARTICLE IV: CITY AND DEVELOPER MUTUAL OBLIGATIONS

4.1 City Approval. The Board approved this Agreement on by passage of R-20-023, amended on . _____, 2021~~0~~ pursuant to the communication attached and incorporated into this Agreement as Exhibit “C”.

4.2 Exclusivity. During the term of this Agreement, City will work exclusively with the Developer to develop the Project.

4.3 Insurance. Developer shall maintain, and shall assure that its contractors who enter the Property maintain, public liability and property damage insurance in agreements and in form and substance adequate to insure Developer, its agents, employees or contractors, from claims arising out of any entry or inspections of the Property pursuant to the provisions of this Agreement, and Developer shall provide City with evidence of this insurance coverage prior to performing any inspections of the Property. The liability insurance shall name City as an additional insured and shall have liability limits of at least \$1,000,000.00 per occurrence/\$1,000,000.00 general aggregate.

4.4 Performance Bonds. In addition to any applicable performance or financial guarantees under the City’s Revised Ordinances, Developer shall require its general contractor to (i) furnish bonds covering faithful performance of the contract governing construction of the Project, completion of construction of the Project and payment of obligations arising in connection with the construction of the Project and (ii) furnish bonds for all subcontractors with contracts over \$250,000.00, from a surety or sureties acceptable to the City and duly authorized to do business in New Hampshire, (the “Payment and Performance Bonds”). City shall be specifically named as a beneficiary under the Payment and Performance Bonds and the Payment and Performance Bonds shall, in all respects, be reasonably satisfactory to City. A duplicate original of the Payment and Performance

Bonds shall be supplied to City, and City shall be entitled to maintain a direct action against the applicable surety/bonding company (and any other parties that may be necessary parties to such an action). In the event of a default by Developer's general contractor under its construction contract, City shall be entitled to participate fully in any action against the general contractor or the surety/bonding company and the Developer shall not agree to any compromise or settlement of that action without City's prior written consent, provided that City's prior written consent shall not be unreasonably withheld.

4.5 Offsite Engineering Services. During the Diligence Period, the City will provide \$100,000 in funding during predevelopment for the design of public facilities and infrastructure surrounding the project site in the form of reimbursement for pre-approved design fees.

4.5.1 Ground Floor Public Parking Garage. City shall pay Developer up to but no more ~~than \$2,500,000~~ (two million five hundred thousand dollars) for the construction of the public parking garage in the Project and as shown in the Development Plan. The City shall pay based on a percentage completion of the construction of the garage as follows: \$833,333 at 30% complete, \$833,333 at 60% complete and balance at final completion and issuance of certificate of occupancy from City. Percentage completion at the 30% and 60% milestones will be determined by certification of the construction manager substantially in the form of the AIA Document G703-1992, to be completed and submitted by Developer to City. Final completion will be determined by the date of issuance of a certificate of occupancy for the Project and City will make the final payment upon submittal of a G703-1992 by Developer at the time of certificate of occupancy issuance. City will make payment under this Section within fifteen (15) days after submittal of each G703-1992 from Developer to City. [City of Nashua Resolution R-20-071 authorized a bond for \\$2,500,000 for the cost of this parking garage.](#)

4.6 Agreement to Seek Funds for Offsite Costs. City and Developer will use best efforts to obtain funding through U.S. Housing and Urban Development Community Development Block Grants or similar programs to offset offsite costs.

4.7 Payment in Lieu of Parking Requirements. With Planning Board approval, Developer will pay an in-lieu fee of nine thousand dollars (\$9,000) per unit, for up to one hundred and fifty (150) units, in the Project for City allowing no onsite parking, which fee shall be payable at the rate of one thousand dollars (\$1,000) per unit the first anniversary of the certificate of occupancy and two thousand dollars (\$2,000) per unit per year on the subsequent anniversary date of the project certificate of occupancy and continuing annually for four (4) years. The fees shall be held in an escrow account by the City for the capital expansion of the parking system and to guarantee future parking supply.

4.8 High Street Garage Lease. The City and Developer will enter into a long term (50 year minimum) lease for parking in the High Street Garage to provide at least one space per unit for the Project's residents (the "Garage Lease"). The Garage Lease will include a ramp up period to accommodate the Project's lease up for the first twenty-four (24) months after a certificate of occupancy is issued for the Project, starting at \$0 per

month per space in the first (1st) month and increasing to FIFTY AND NO/100 DOLLARS (\$50) per month per space in the twenty-fourth (24th) month. The Garage Lease will include a provision to lease the spaces referred to above for \$50 per month through the tenth (10th) anniversary of the Project's certificate of occupancy. After that time, the lease will include a provision to allow the rate to be modified to a price not more than that offered to other "wholesale" (20 permits or more) users of the Nashua parking assets. If on the tenth anniversary that wholesale rate is greater than \$55, then the parking rate shall be adjusted up to match that wholesale rate over a three-year period in equal monthly increases in order to maintain the tenant's ability to pay.

ARTICLE V: MISCELLANEOUS

5.1 Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between Developer and City, or to impose any partnership obligation or liability upon the Parties. Neither Developer nor City shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other.

5.2 No Third-Party Beneficiaries. This Agreement is not intended to and does not confer any right or benefit on any third party other than the Parties.

5.3 Notices. Unless specifically provided otherwise by this Agreement, any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party under this Agreement shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner in this Agreement prescribed. The notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or by email with a hard copy to be delivered by independent courier service by the next business day. The Parties shall make reasonable inquiry to determine whether the names or titles of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

City: Tim Cummings, Director of Economic Development
City Hall – Economic Development Office
229 Main Street/P.O. Box 2019
Nashua, New Hampshire 03061

With a copy to: Celia Leonard, Deputy Corporation Counsel
City Hall - Corporation Counsel Office
229 Main Street/P.O. Box 2019
Nashua, NH 03061

Developer: Lansing Melbourne Group, LLC

2420 East Sunrise Boulevard, #90
Fort Lauderdale, Florida 33304
Attn: Peter Flotz

With a copy to:

Drew Melville, Esquire
Melville Law, P.A.
101 NE 3rd Avenue, Suite 1500
Fort Lauderdale, Florida 33301
Phone: 954-332-3533
Email: drew@melville.law

5.4 Entire Agreement. This Agreement sets forth and incorporates by reference all the agreements, conditions and understandings between the Parties relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among the Parties relative to the matters addressed in this Agreement other than as set forth or as referred to in this Agreement or as contained the Development Plan as of the Effective Date.

5.5 Construction. The Parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

5.6 Assignment.

a) Developer shall not, prior to the issuance of a certificate of occupancy (or local equivalent) for the Project, assign or transfer this Agreement or delegate any of its obligations or duties under this Agreement without the prior written consent of City, which consent may be withheld in City's sole discretion, except that Developer may freely assign to entities within the control of the same principals as those of the Developer or for the purposes of financing or other legal requirements provided that any such entities must be subject to real estate taxation.

b) Developer shall not, after the issuance of a certificate of occupancy for the Project, assign or transfer this Agreement or delegate any of its obligations or duties under this Agreement without the prior written consent of City (which consent shall not be unreasonably withheld or delayed), except that Developer may freely assign its interest in the Agreement to entities within the control of the same principals as those of the Developer or for the purposes of financing or other legal requirements, provided that any such entities must be subject to real estate taxation.

c) No assignment, with or without the consent of City, shall be effective unless each assignee shall assume and agree to perform and observe all the covenants and agreements of Developer being assigned. No assignment of this Agreement by Developer shall release or relieve the Developer of any duties, obligations or liabilities under this Agreement and from and after any such assignment the assigning Developer shall be jointly

and severally liable with the assignee for the performance of and compliance with all of Developer's duties obligations and liabilities under this Agreement.

d) City may not assign, transfer or delegate its rights, duties and obligations under this Agreement without the consent of Developer in its reasonable discretion (which consent shall not be unreasonably withheld or delayed) to any purchaser of the Property who assumes and agrees to perform and observe all the covenants and agreements of City being assigned thereby. No such assignment, with or without the consent of Developer, shall be effective unless each such assignee shall assume and agree to perform and observe all the covenants and agreements of City being assigned thereby. In the event of any assignment of the interest of City under this Agreement, City shall be released and relieved of all liability for the performance and observance of all covenants and agreements of City's covenants and agreements under this Agreement so assigned.

5.7 Terms for Consent or Approval. When this Agreement calls for one Party to seek the approval or consent of the other Party, the Party with the right to grant or deny consent or approval must exercise its reasonable discretion in doing so, unless specified otherwise by the terms of this Agreement. The requesting party must make requests for consent or approval in writing in accordance with the terms for notice in this Agreement and substantiate that request with commercially reasonable documentation unless specified otherwise by the terms of this Agreement. The Party with the right to grant or deny consent or approval shall review each such request diligently, reasonably and in good faith and deliver its decision whether to give or deny consent or approval to the requesting Party in writing in accordance with the terms for notice in this Agreement within thirty (30) business days of the delivery of the other Party's request. If the reviewing Party elects to deny its consent or approval, then it must substantiate that decision with commercially reasonable documentation that enables the requesting Party to comprehend the decision and, if appropriate, modify such request and re-submit it to the reviewing Party for further review pursuant to these terms for consent or approval. A Party reviewing a request for consent to the assignment of rights and obligations by the requesting Party may consider the creditworthiness, financial wherewithal, expertise and experience of the proposed assignee when compared to the requesting Party, in the exercise of reasonable discretion whether to grant or deny consent or approval.

5.8 Terms for Other Response. When this Agreement calls for one Party to notify the other Party of any other election under this Agreement, then the electing Party shall notify the other party of the applicable decision no later than thirty (30) days after the electing Party was notified of its obligation to make the election.

5.9 Governing Law. This Agreement shall be governed by the laws of the State of New Hampshire. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Hillsborough County, New Hampshire or the United States District Court of New Hampshire, Concord Division.

5.10 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

5.11 Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to cooperate in defending that action; provided, however, each Party shall retain the right to pursue its own independent legal defense.

5.12 No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of that Party to exercise at some future time said right or any other right it may have under this Agreement.

5.13 Severability. If any term or provision of this Agreement shall be judicially determined to be void or of no effect, that determination shall not affect the validity of the remaining terms and provisions of this Agreement. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

5.14 Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind City and Developer. Notwithstanding the foregoing, with the approval of this Agreement, City Council hereby delegates to the City Manager the authority to execute any supplemental documents required to effectuate the purposes of this Agreement.

5.15 Representations and Warranties of Developer. Developer represents and warrants to City that:

- a) Developer is a valid limited liability company duly organized, validly existing and in good standing under the laws of the State of Florida;
- b) Developer is duly qualified to do business and is in good standing under the laws of the State of New Hampshire;
- c) Developer has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise; and
- d) Developer will execute, deliver and perform this Agreement in accordance with all applicable laws and ordinances.

5.16 Representations and Warranties of City. City represents and warrants to Developer that:

a) City has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement without contravention of any obligation on the part of Developer, whether statutory, contractual or otherwise;

b) City will execute, deliver and perform this Agreement in accordance with all applicable laws and ordinances;

c) To the actual knowledge of City Attorney, the Property is not the subject of any litigation, pending or overtly threatened, or other judicial or quasi-judicial procedure which would, if determined unfavorably to the City, settled or otherwise resolved by the City, result in any financial liability on the part of Developer or interfere with the development of the Project;

d) To the actual knowledge of the City Attorney, the Property is not the subject of any procedure for the taking of the Property by eminent domain, in whole or in part, pending or overtly threatened by the City or any other governmental authority with the power of eminent domain;

e) To the actual knowledge of the City Attorney, no one has made any claim to title to the Property, in whole or in part, superior to the claim of the City by virtue of its chain of title; and

f) The City has not received any notice from any governmental agency, state, federal or local, that the Property is in violation of or the subject of an investigation regarding the potential violation of any Laws and Ordinances, including laws of the United States or the State regarding the presence, storage, transport, spillage, removal or remediation of hazardous or harmful substances on the Property, or the presence, storage, transport, spillage, removal or remediation of hazardous or harmful substances on properties adjacent to the Property as a result of their origination on or passage through the Property.

5.17 Continuing Obligation. From time to time after the Closing Date or the Deadline Closing Date, the Parties will execute additional instruments of assignment, lease, license, conveyance and other documents and take such other actions that are reasonably necessary to further the purposes of this Agreement.

5.18 Immunity Not Waived. City does not intend to waive its sovereign immunity by reason of this Agreement; provided, however, that the City acknowledges and agrees that by entering into this Agreement, governmental immunity shall not be a valid defense to a breach of contract claim brought under this Agreement.

5.19 Release of Information. City and Developer acknowledge that this Agreement is subject to disclosure under the New Hampshire public records laws, except for information that is excluded from the disclosure requirements of those laws. Nothing in this Agreement precludes either party from discussing the terms of this Agreement or its

work product with its attorneys, accountants, consultants, contractors, or potential lenders or investors, or prevents the holding of public City meetings in compliance with applicable laws.

5.20 Representations, Warranties and Indemnity Regarding Brokers.

a) City represents to Developer that no real estate broker or agent has rendered a service or represented City in connection with this Agreement or the transaction contemplated in this Agreement for which any brokerage commission or fee is due.

b) Developer represents to City that no real estate broker or agent has rendered a service or represented Developer in connection with this Agreement or the transaction contemplated in this Agreement for which any brokerage commission or fee is due.

c) City and Developer covenant and agree, each to the other, to indemnify the other against any claims based upon or arising out of the employment or use by the indemnifying party of any real estate broker, agent or finder in connection with the ~~purchase and sale~~leasing of the Property. This Section 5.20 shall survive Closing or any earlier termination of this Agreement.

5.21 IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY THIRD PARTY, WHETHER OR NOT CLAIMING THROUGH THAT OTHER PARTY) FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER).

5.22 Non-Appropriation. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of any Constitutional debt limitation. No provision of this Agreement shall be construed or interpreted as creating a pledge of the faith and credit of the City within the meaning of the, Constitution of the State of New Hampshire. This Agreement shall not directly or indirectly or contingently obligate the City to make any payments beyond the amount appropriated, if any, in the sole discretion of the City for any fiscal year in which this Agreement shall be in effect. The City may at the end of any fiscal year terminate its future installment payment obligations under this Agreement if the City has not appropriated sufficient funds to make the next fiscal year's scheduled installment payments; however, during each fiscal year, the City shall exercise its best efforts to appropriate funds for installment payments due in the next fiscal year. No deficiency judgment may be rendered against the City in any action for breach of a contractual obligation under this Agreement and the taxing power of the City is not and may not be pledged directly or indirectly to secure any moneys due under this Agreement. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the City's moneys. To the extent of any conflict between this Section 5.22 and any other provision of this Agreement, this Section shall take priority.

5.23 Amendment. This Agreement shall not be modified or amended in any respect except by a written instrument executed by the Parties.

5.24 Time of the Essence. Time is of the essence in this Agreement.

5.25 Survival. All representations, warranties and obligations of the Parties in this Agreement shall survive the consummation or performance of the various transactions contemplated in this Agreement for the respective terms necessary for each of the Parties to realize the benefits contemplated by this Agreement and to enforce the rights provided for in this Agreement.

5.26 Recitals and Exhibits. The Recitals of this Agreement and the Exhibits attached hereto are integral and essential components of this Agreement.

5.27 Defined Terms. All capitalized terms in this Agreement shall have the meaning ascribed to them in this Agreement, unless the context clearly indicates another meaning. All terms not defined in this Agreement shall have the usual and customary meaning ascribed to them and found in any modern English dictionary.

[SIGNATURES BEGIN ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

CITY OF NASHUA, NEW HAMPSHIRE

James W. Donchess, Mayor

ATTEST:

Susan Lovering, City Clerk

Approved as to form:

Celia K. Leonard, Deputy Corporation Counsel

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

I, _____, a Notary Public of the State and County aforesaid, certify that Susan Lovering personally came before me this day and acknowledged under seal that she is City Clerk of the City of Nashua, and that by authority duly given and as the act of the Board of Aldermen, the foregoing instrument was signed in its name by its Mayor, and attested by herself as its City Clerk.

WITNESS my hand and official seal, this ____ day of _____, 2020.

Notary Public
My commission expires:

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereby set their hands and seals, effective the date first above written.

LANSING MELBOURNE GROUP, LLC,
a Florida limited liability company

Peter Flotz, Manager

STATE OF FLORIDA
County of BROWARD

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that Peter Flotz personally came before me this day and acknowledged under seal that he is Manager of LANSING MELBOURNE GROUP, LLC, a Florida limited liability company, and acknowledged, on behalf of the company, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the ____ day of _____, 2020.

Notary Public
My commission expires:

EXHIBIT "A"

PROPERTY DESCRIPTION

Parcel Number 79-54

EXHIBIT "B"

DEVELOPMENT PLAN

EXHIBIT "C"

BOARD OF ALDERMEN APPROVING RESOLUTION