



RESOLUTION

AUTHORIZING A FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT FOR REAL PROPERTY LOCATED AT 141-143 BURKE STREET (MAP 11, LOT 158)

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

WHEREAS, Amended Resolution R-20-059, Authorizing the sale of City real property located at 141-143 Burke Street Tax Map 11, Lot 158 ("Property"), was passed by the Nashua Board of Aldermen on September 22, 2020;

WHEREAS, the Purchase and Sale agreement was executed November 6, 2020 for the Property ("Purchase and Sale");

WHEREAS, the Purchaser requested the City grant an easement over City real property known as Tax Map 11, Lot 161 ("City Lot") that allows for trucks to maneuver in and out of the back loading dock area on the Property;

WHEREAS, the City is amendable to granting Purchaser such an access easement, subject to the terms set forth herein; and

WHEREAS, Section 17 of the Purchase and Sale allows for written amendments.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is hereby authorized to amend the Purchase and Sale Agreement by entering into a First Amendment to Purchase & Sale Agreement substantially similar to the attached.

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 related to the First Amendment to Purchase & Sale Agreement.

FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT

ACCESS EASEMENTS

This FIRST AMENDMENT is made as of _____, 2021 by and between **Burke Street Nashua, LLC** a New Hampshire limited liability company with an address of 124 Joliette Street, Manchester, New Hampshire 03105 and the **City of Nashua**, a New Hampshire municipality with an address of 229 Main Street, New Hampshire 03060.

WHEREAS, Amended Resolution R-20-059, Authorizing the sale of City real property located at 141-143 Burke Street Tax Map 11, Lot 158 ("Property"), was passed by the Nashua Board of Aldermen on September 22, 2020;

WHEREAS, the Purchase and Sale agreement was executed November 6, 2020 for the Property ("Purchase and Sale");

WHEREAS, the Purchaser requested the City grant an easement over City real property known as Tax Map 11, Lot 161 ("City Lot") that allows for trucks to maneuver in and out of the back loading dock area on the Property;

WHEREAS, the City is amendable to granting Purchaser such an access easement, subject to the terms set forth herein; and

WHEREAS, Section 17 of the Purchase and Sale allows for written amendments.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

1. Section 2 of the Purchase and Sale is amended to add a new section as follows:

(d) (i) as additional consideration, Purchaser and Seller agree to grant access easements to the other substantially similar to the attached Exhibit B for access easements shown on the plan attached as Exhibit C hereto, as access easements "G", "F", and "E", which easements shall be recorded at Closing at Purchaser's expense.

(ii) Purchaser, at its sole expense, shall demolish the existing 1 story building on the City Lot and remove all resulting debris.

(iii) Purchaser shall perform all required permitting and construct at least 50 parking spaces on the City Lot and an adjacent parcel of land owned by the City commonly known as 2 Sawmill Road and now identified as Map 5, Lot 26 on the City of Nashua in the area shown as "Location of Future 50 Space Parking Lot" on the plan attached hereto as Exhibit C. The City must approve plans for the parking. The City will cooperate in any permit filings and shall grant a temporary construction license in the form attached hereto as Exhibit D in favor Purchaser to construct such parking spaces.

(iv) all work to be performed by Purchaser in this subsection (d) shall comply with all applicable laws and regulations, be done in a workmanlike manner and be completed no later than the earlier of (i) five (5) years from the Closing

Date and (ii) the completion of construction of the City's expansion of the sewer facility on the City Lot.

(v) the provisions of this subsection (d) shall survive Closing.

2. Exhibits B, C, and D attached hereto are incorporated by reference and made a part hereof.
3. All other terms and conditions of the Purchase and Sale remain unchanged unless previously amended.

EXECUTED by the parties, by their duly authorized undersigned representatives, as of the date first written above.

Burke Street Nashua, LLC

Name:

Title:

CITY OF NASHUA

Pursuant to Board of Alderman Resolution _____ dated _____

Name: James W. Donchess

Title: Mayor

Exhibit B

Form of Reciprocal Easement Agreement

[to be attached]

RECIPROCAL EASEMENT AGREEMENT

This RECIPROCAL EASEMENT AGREEMENT (this "*Agreement*") is entered into as of the ___ day of April, 2021 (the "*Effective Date*"), by and among **City of Nashua** (hereinafter "City"), a municipal corporation with a principal place of business of 229 Main Street, Nashua, New Hampshire 03060 (the "*City*"), and **141 Burke Subsidiary LLC**, a New Hampshire limited liability company, having an address 124 Joliette Street, Manchester, New Hampshire 03105 (the "*141 Property Owner*").

BACKGROUND

A. The City is the owner of that certain improved parcel of land located in Nashua, New Hampshire, and commonly known as 143 Burke Street, and now identified on the City of Nashua tax maps as Map 11-161, as more particularly described on **EXHIBIT A-1** attached hereto and made a part hereof (the "*City Land*" and together with any improvements now or hereafter located thereon, the "*City Property*").

B. 141 Property Owner is the owner of that certain improved parcel of land located in Nashua, New Hampshire, and commonly known as 141 Burke Street, and now identified on the City of Nashua tax maps as Map 11-158, as more particularly described on **EXHIBIT A-2** attached hereto and made a part hereof (the "*141 Land*" and together with any improvements now or hereafter located thereon, the "*141 Property*", and together with the City Property, the "*Land*").

C. The City and the 141 Property Owner intend hereby to grant certain easements for vehicular and pedestrian access and egress, and construction of certain site improvements for the mutual benefit of the City Property and the 141 Property subject to the terms and conditions set for the herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for good and valuable consideration paid, the receipt and sufficiency of which are hereby

acknowledged, the parties hereto hereby establish the following easement rights and agreements affecting the Land:

Section 1. Grant of Easement to 141 Property Owner. The City hereby grants the following easement on the City Land to 141 Property Owner:

a) **141 Access Easement.** The City hereby grants to 141 Property Owner a permanent, perpetual, irrevocable non-exclusive easement for purposes of pedestrian and vehicular ingress and egress and right of passage, in the area described as “Proposed Access Easement ‘F’” on that certain easement plan entitled “Exhibit Plan of Tax Map 11, Lot 158 and Lot 161, 141 & 143 Burke Street, Nashua, NH dated April __, 2021 prepared by Hayner/Swanson, Inc., and recorded in the Hillsborough County Registry of Deeds as Plan #_____ (the “*Easement Plan*”) and as is more particularly described on **EXHIBIT B-1** (the “*141 Access Easement Area*”) attached hereto and made a part hereof for the benefit and use of the 141 Land, together with rights of access and egress with motor vehicles, equipment or otherwise to construct, pave, maintain and relocate the surface, landscaping and other materials located within said 141 Access Easement Area (the “*141 Access Easement*”).

b) **Scope of 141 Access Easement.** The 141 Access Easement is authorized: (i) on a twenty-four (24) hours a day seven (7) days a week basis.

c) **Demolition of Existing Structures.** The 141 Access Easement expressly includes the right to demolish the improvements and relocate utility lines existing within the 141 Access Easement Area and the City hereby authorizes any such demolition and relocation, subject to the prior approval, if necessary or advisable, of the impacted utility.

d) **Indemnification.** 141 Property Owner agrees to indemnify and hold harmless the City of Nashua for any and all property damage, bodily injury or personal injury which arises as a result of its use of the 141 Access Easement. This obligation survives termination or revocation of this Agreement.

e) **Insurance.** At all times during the use and exercise of this Agreement, 141 Property Owner agrees to maintain comprehensive general liability insurance covering its operation under this Agreement in a commercially reasonable amount as determined by the City Manager of the City. Such insurance shall name the City as an additional insured and a certificate evidencing the same shall be delivered to the City upon five (5) days’ prior written notice to the 141 Property Owner.

f) **Use of 141 Access Area.** The 141 Property Owner shall take such commercially reasonable measures as may be necessary to maintain pedestrian and vehicular safety during its use of the 141 Access Easement Area.

Section 2. Grant of Easement to City. The 141 Property Owner hereby grants the following easement on the 141 Land to the City:

- a) **City Access Easement.** The 141 Property Owner hereby grants to the City a permanent, perpetual, irrevocable non-exclusive easement for purposes of pedestrian and vehicular ingress and egress and right of passage, in the areas described as “Proposed Access Easement ‘E’” and “Proposed Access Easement ‘G’” on the Easement Plan and as is more particularly described on **EXHIBIT B-2** (the “*City Access Easement Area*”) for the benefit and use of the City Land (the “*City Access Easement*”).
- b) **Scope of City Access Easement.** The City Access Easement is authorized: (i) on a twenty-four (24) hours a day seven (7) days a week basis, unless the 141 Property Owner requires the use of the City Access Easement on a temporary basis to construct, maintain and relocate the surface, landscaping and other materials located within said City Access Easement Area, in which case the 141 Property Owner will provide the City with three (3) days written notice of any such activities.
- c) **Indemnification.** The City agrees to indemnify and hold harmless the 141 Property Owner for any and all property damage, bodily injury or personal injury which arises as a result of its use of the City Access Easement. This obligation survives termination or revocation of this Agreement.
- d) **Insurance.** At all times during the use and exercise of this Agreement, the City agrees to maintain comprehensive general liability insurance covering its operation under this Agreement in a commercially reasonable amount. Such insurance shall name the 141 Property Owner as an additional insured and a certificate evidencing the same shall be delivered to the 141 Property Owner upon five (5) days’ prior written notice to the City.

Section 3. Limited Liability. Except as herein otherwise expressly provided, each party hereto shall be liable only for any breach of its obligations hereunder occurring during such party's period of ownership of its respective Land and such liability shall extend only to the interest in the Land, as the case may be.

Section 4. No Merger. The rights and easements hereby created shall not merge into the title of any benefited land notwithstanding common ownership of any parcels, or any part thereof.

Section 5. Bind and Inure. The rights and obligations established herein inure to the benefit of and are binding upon the parties hereto, and their respective successors and assigns from time to time of all or any portion of the Land and shall run with the Land, and shall be recorded in the Hillsborough County Registry of Deeds. The benefits and burdens of the 141 Access Easement and the City Access Easement and rights and responsibilities granted under this Agreement shall extend to the employees, agents, guests, lessees, and invitees of the City and the 141 Property Owner.

Section 6. Severability. If any provision of this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be

affected, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 7. Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any part of the real estate affected hereby to the public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purpose herein expressed.

Section 8. Termination; Amendments. This Agreement may not be terminated, released, relocated, modified or amended in whole or in part except by written instrument executed by the parties hereto and of each and every mortgagee and mortgage holder under any mortgage covering all or any part of the Land. This Agreement contains the entire agreement of the parties with respect to its subject matter.

Section 9. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of New Hampshire.

Section 10. Counterparts. This Agreement may be executed in one or more counterparts, all of which, when taken together, constitute one and the same instrument.

Section 11. No Waiver. No waiver of any condition or agreement in this Agreement by any party shall imply or constitute a further waiver by such party of the same or any other condition or agreement, and any such waiver must be in writing to be effective.

Section 12. Maintenance and Snow Removal. 141 Property Owner shall be responsible for the repair, replacement and maintenance of and the snow and ice removal from the 141 Access Easement and City Access Easement. The City may, but is not required to, remove winter snow and ice from said easements in order to maintain the City's access to City facilities. The City may, but is not required to, perform repairs, maintenance or replace improvements or landscaping in said easements and shall be reimbursed by 141 Property Owner for any and all such costs.

Section 13. Notice and Approval. Each party shall provide prior written notice of any work, including plans, to the other and, subject to section 14 below, receive approval from the other party prior to commencing any work allowed by this Agreement and the work shall be done at a mutually agreeable time. Approval shall not be unreasonably withheld by either party. Routine maintenance and snow and ice removal are exempt from this provision.

Section 14. Relocation. Each party reserves the right to relocate, in its sole discretion, the easements on its land at its sole expense and with prior written notice of such relocation to, and the reasonable approval of, the other party. The City acknowledges and agrees that it will not be unreasonable for the 141 Property Owner to object to a relocation of the 141 Access Easement if such relocation would unreasonably interfere the ability of a tractor trailer truck to access the rear of the "Existing 1 Story Warehouse Building" as shown on the Easement Plan in the area facing the 141 Access Easement Area.

Section 15. No Interference. In exercising reserved and other rights, neither party shall materially interfere with the other's rights hereunder.

Meaning and intending to describe and convey easement rights in a portion of the land conveyed to 141 Property Owner by deed of the City, dated _____, recorded at the Hillsborough County Registry of Deeds in Book _____, Page _____, and to the City by deed of _____, dated _____, recorded at said Hillsborough Registry in Book _____, Page _____.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED under seal as of the day and year first above-written.

City of Nashua

By: _____
Name: James W. Donchess
Title: Mayor

Pursuant to vote of the Board of Alderman
On R – 21 – xxxx on
_____, 2021

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this _____ day of _____, 2021, before me, _____, the undersigned officer, personally appeared James W. Donchess, who acknowledged himself to be the Mayor, of the City of Nashua, a corporation, and that he, as such Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Mayor.

In witness whereof I hereunto set my hand and official seal.

Justice of the Peace /Notary Public
My commission expires:

141 Burke Subsidiary LLC

By: _____
Name:
Its:

STATE OF _____
COUNTY OF _____

On this _____ day of _____, 2021, before me, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the Manager of 141 Burke Subsidiary LLC, a limited liability company, and that he/she, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself/herself as the Manager.

In witness whereof I hereunto set my hand and official seal.

Justice of the Peace /Notary Public
My commission expires:

Exhibit A-1
City Property
Legal Description

[to be attached]

Exhibit A-2
141 Property
Legal Description

[to be attached]

Exhibit B-1

141 Access Easement Area
Legal Description

[to be attached]

Exhibit B-2

City Access Easement Area
Legal Description

[to be attached]

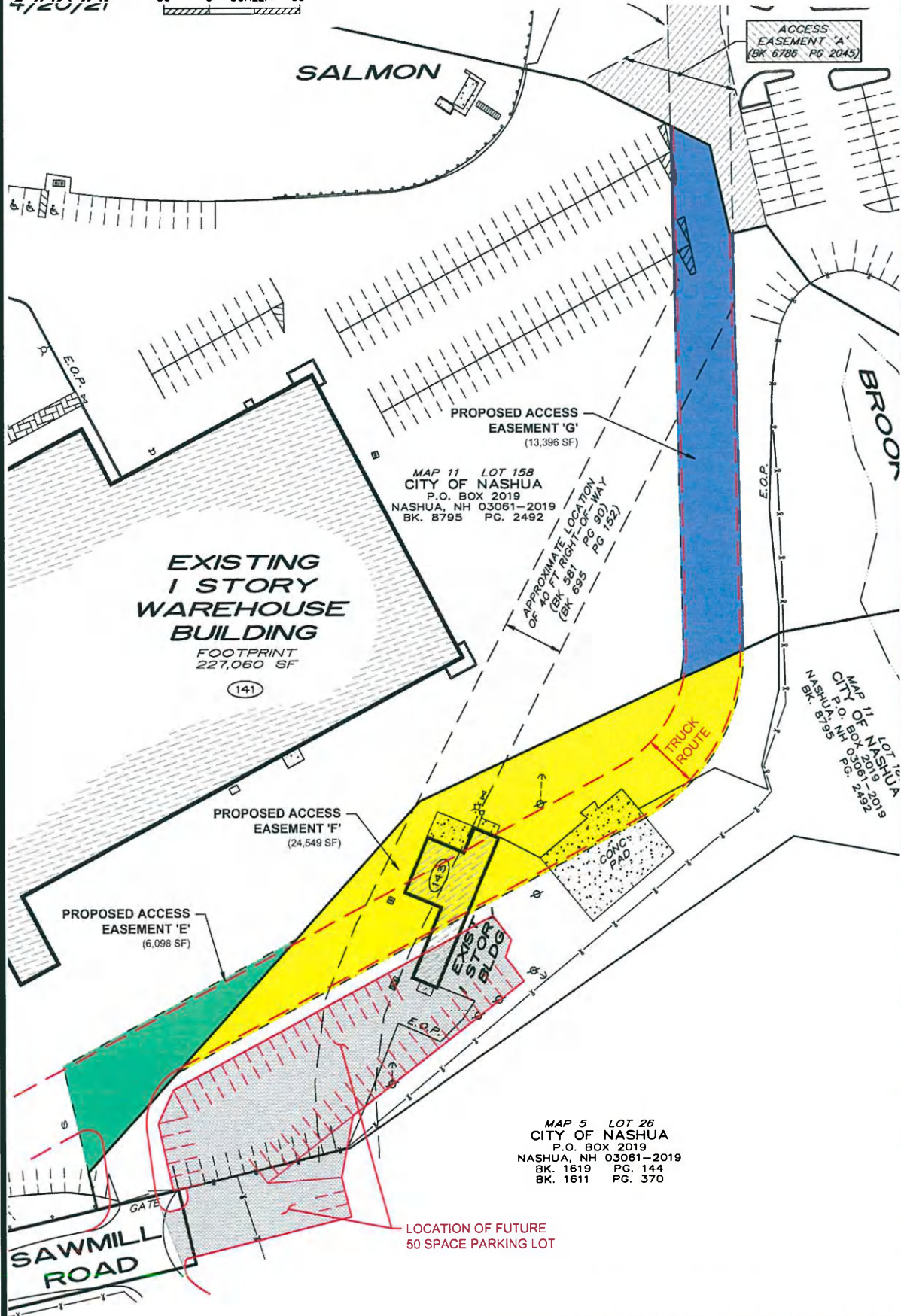
Exhibit C
Easement Plan
[to be attached]

EXHIBIT PLAN
MAP II, LOTS 158 & 161
 141 & 143 BURKE STREET
NASHUA, NH
 4/20/21

30 0 SCALE: 1" = 60'

HSI Hayner/Swanson, Inc.

Civil Engineers/Land Surveyors
 3 Congress Street Nashua, NH 03062
 131 Middlesex Turnpike Burlington, MA 01803



DWG: 5408 EASE EXHIB3	FIELD BK. -	5408
LOCATION: J:\5000\5408\DWG\5408 EASE		File Number

Exhibit C

Form of License Agreement

[to be attached]

LICENSE AGREEMENT

This LICENSE AGREEMENT (this "*License*") dated [_____] __, 2021 is by and between the **City of Nashua**, New Hampshire, a municipal corporation duly existing under the laws of the State of New Hampshire with offices located at 229 Main Street, Nashua, New Hampshire 03060 (the "*City*") and **141 Burke Subsidiary LLC**, a New Hampshire limited liability company, having an address of 124 Joliette Street, Manchester, New Hampshire 03105 (for itself and its successors and assigns, the "*Licensee*"). The City and Licensee may sometimes be collectively referred to herein as the "*Parties*" and sometimes each be individually referred to as a "*Party*".

RECITALS

A. **WHEREAS**, the City is the owner of (i) that certain improved parcel of land located in Nashua, New Hampshire, and commonly known as 143 Burke Street, and now identified on the City of Nashua tax maps as Map 11-161, and (ii) that certain improved parcel of land commonly known as 2 Sawmill Road and now identified on the City of Nashua tax maps as Map 5-26, each as more particularly described on **EXHIBIT A** attached hereto and made a part hereof (the "*City Land*" and together with any improvements now or hereafter located thereon, the "*City Property*").

B. **WHEREAS**, the City and Licensee are parties to that certain Purchase and Sale Agreement dated November 6, 2020, as amended on [April] __, 2021) (the "*P&S*"), pursuant to which Licensee is obligated to construct a fifty (50) space parking on the City Land on the terms and conditions set forth in the P&S (the "*Parking Lot*").

D. **WHEREAS**, Licensee has requested a construction license from the City in connection with construction of the Parking Lot.

E. **WHEREAS**, the City acknowledges that it will benefit from the development of the Parking Lot and hereby desires to grant this License to Licensee.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and in consideration of the mutual promises contained herein, the Parties covenant and agree as follows:

1. Grant of License. The City hereby grants to Licensee, the right and license to enter upon and use the City Land for the purpose of constructing the Parking Lot, which license rights shall include the right to demolish existing structures and relocate utility lines, with the consent of impacted utility if necessary, in the area of the Parking Lot, the rights of ingress, egress, and passage of people, vehicles and construction equipment on the City Land, the right to bring temporary utilities to the City Land, the right to use and store construction equipment and materials on the City Land, the right to conduct construction activities on the City Land, and the right to park vehicles on the City Land, provided that the foregoing activities shall not unreasonably interfere with the City's use of the City Land.

2. Term of License. The term of the License shall begin on the Effective Date and terminate on the earlier of (i) five (5) years from the Effective Date, (ii) completion of the Parking Lot (the “*Term*”). Upon expiration of the Term, the License shall automatically terminate without necessity of execution of any additional document or instrument, and the Parties shall no longer have any rights or obligations under this License, except such rights and obligations as expressly survive termination of this License, including as set forth in Sections 7 and 8 below.

3. Access and Use of Licensed Area. Licensee shall have access to the City Land and the ability to exercise the rights under the License twenty-four (24) hours a day during the Term in accordance with applicable City ordinances and regulations. The License shall be irrevocable during the Term, except that the City may temporarily suspend the License in cases of (i) emergency, (ii) paramount municipal need, or (iii) for the City’s access to its underground utilities and pipes. The City will provide Licensee with reasonable notice of the suspension of the License to access its underground utilities and pipes or in the event of a paramount municipal need.

4. Use of License by Those Claiming By, Through, or Under Parties. The License shall include use of the License by those claiming by, through or under Licensee, including, but not limited to, any agents, representatives, guests, licensees and invitees of Licensee.

5. Signage. Licensee will post appropriate detour signage for the benefit of the public, if necessary.

6. Public Safety. Licensee shall exercise the License in a safe and sound fashion at all times and shall take such actions as are reasonably necessary to protect the public.

7. Damage. Licensee shall repair any damage to the City Land to the extent caused by Licensee’s exercise of the License. This Section 7 shall survive termination or revocation of the License.

8. Indemnity. Licensee agrees to indemnify, defend and hold harmless the City and its officials, agents and employees from any and all claims to the extent arising from Licensee’s use of the City Land. This Section 8 shall survive termination or revocation of the License.

9. Insurance. Licensee shall at all times maintain insurance for bodily injury and property damage in the amount of at least \$1,000,000 per occurrence. Licensee shall maintain a certificate of insurance on file with the City’s Legal Department during the Term.

10. Notices. Any notice or other like communication given pursuant to this License shall be in writing and shall be delivered by hand, by certified mail, or by FedEx or other overnight delivery service, at the address listed in the initial paragraph of this License. Any Party shall have the right to designate a different notice address by notice similarly given. Any notices or other communications given under this License shall be deemed to have been given on the date the same was delivered, if delivered in hand, deposited in the United States mails as certified mail, or deposited with Federal Express or other overnight delivery service.

11. Force Majeure. If Licensee is hindered in or prevented from the performance of any act required under this License by reason of acts of God, strikes, lockouts, labor troubles, riots,

insurrection, war, or other circumstances outside the reasonable control of Licensee, then the Term of the License shall be extended on a day-for-day basis corresponding to the length of the delay.

12. Amendments and Termination. This License may be modified, amended, or cancelled only by a written instrument executed by all parties in interest at the time of such modification, amendment, or cancellation.

13. Waivers. Failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall never be a waiver by such Party of any of the rights hereunder. Further, no waiver at any time of any of the provisions hereof by a Party shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions.

14. Exhibits; Captions; Recitals. Exhibit A is hereby incorporated herein by reference and made a part hereof, as fully as if set forth in full herein. The captions of the articles and sections of this License are for convenience only and shall not be considered or referenced in resolving questions of interpretation and construction. The Recitals are incorporated herein by reference.

15. Construction of License. This License, which may be executed in multiple copies, is to take effect as a sealed instrument; shall be construed under New Hampshire law (without regard for conflicts of laws principles); sets forth the entire agreement between the Parties; and supersedes all prior agreements and memoranda with respect to the subject matter hereof, except for the P&S.

141 Burke Subsidiary LLC

By: _____
Name:
Its:
Duly Authorized

City of Nashua

By: _____
Name: James W. Donchess
Its: Mayor
Duly Authorized

EXHIBIT A

City Land Legal Description

[To Be Attached Hereto]

LEGISLATIVE YEAR 2021

RESOLUTION: R-21-135

PURPOSE: Authorizing a First Amendment to Purchase and Sale Agreement for real property located at 141-143 Burke Street (Map 11, Lot 158)

ENDORSERS: Mayor Jim Donchess

COMMITTEE ASSIGNMENT: Committee on Infrastructure

FISCAL NOTE:

ANALYSIS

This resolution authorizes the Mayor to enter into a First Amendment to Purchase and Sale Agreement for the property located at 141-143 Burke Street. Purchaser requested the City grant an easement that allows for trucks to maneuver in and out of the back loading dock.

Charter §77 provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen on all locations for proposed municipal building and facilities, including educational, [and] on the purchase and sale of any land by the city.”

Approved as to form: Office of Corporation Counsel

By:  _____

Date: April 21, 2021

RESOLUTION R-21-135

Authorizing a First Amendment to Purchase and Sale Agreement for real property located at 141-143 Burke Street (Map 11, Lot 158)

IN THE BOARD OF ALDERMEN

1ST READING April 27, 2021

Referred to:
Committee on Infrastructure

2nd Reading May 25, 2021

3rd Reading _____

4th Reading _____

Other Action _____

Passed May 25, 2021

Indefinitely Postponed _____

Defeated _____

Attest: _____

Lori Wilshire City Clerk
President

Approved _____
Mayor's Signature

Date

Endorsed by

MAYOR

DOWD

O'BRIEN

HARRIOTT-
GATHERICH

CARON

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President