



RESOLUTION

AUTHORIZING THE BUS PULL OFF AND SHELTER EASEMENT ON BRIDGE STREET AND TEMPORARY CONSTRUCTION EASEMENT AND USE EASEMENT AGREEMENT ON SANDERS STREET

CITY OF NASHUA

In the Year Two Thousand and Twenty-One

WHEREAS, R-09-168, amended, authorized the Business and Industrial Development Authority to enter into agreements for the transfer and redevelopment of the following parcels of land: L Bridge Street – Lot 40-34, 40 Bridge Street – Lot 39-32, 70 Bridge Street – Lot 40-48, and 10 Sanders Street – Lot 40-37, totaling approximately 12 acres (the “Property”) under certain conditions;

WHEREAS, pursuant to that authorization, the City did enter into such a “Bridge Street Waterfront Development Preferred Developer Agreement for Sale of Land for Private Development” on May 21, 2009, with Renaissance at Nashua, LLC, and three subsequent amendments (“Preferred Developer Agreement”);

WHEREAS, on November 10, 2016, pursuant to the Preferred Developer Agreement and as part of the first phase of development, the City transferred title to the land situated off Bridge Street now known as Map 40, Lot 50, which was a lot consolidated from a portion of Map 40 Lots 34 and 48, as shown on a plan entitled “Consolidation/Subdivision Plan (Map 40, Lots 34 & 48) 62 & 70 Bridge Street, Nashua, NH,” recorded as Plan #39077 in the Hillsborough County Registry of Deeds.

WHEREAS, R-19-148, passed on August 13, 2019, approved the Business and Industrial Development Authority entering into a fourth amendment to the Preferred Developer Agreement regarding the second phase of development; and

WHEREAS, certain easements and agreement are required for the closing of the second phase of the development.

NOW, THEREFORE, BE IT RESOLVED by the Board of Aldermen of the City of Nashua that the City is authorized to enter into the following in substantially the same forms as attached:

1. The Bus Pull Off and Shelter Easement from SMC Residents at Riverfront Landing Phase II Limited Partnership to the City of Nashua; and
2. The Temporary Construction Easement and Use Easement Agreement between the City of Nashua and SMC Residents at Riverfront Landing Phase II Limited Partnership at the right of way known as Sanders Street.

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 above described documents or required to effectuate the same.

After recording return to
City of Nashua Attn: Legal
229 Main Street, Nashua, NH 03061

BUS PULL OFF AND SHELTER EASEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that **SMC Residences at Riverfront Landing Phase II Limited Partnership, a New Hampshire Limited Partnership**, with a principal place of business at 100 Galen Street, Suite 301, Watertown, Massachusetts 02473 (“**Grantor**”), in reference to Map 39 Lot 32 located in Nashua, County of Hillsborough, State of New Hampshire (“**Property**”), for consideration paid, Grants to the **City of Nashua**, a New Hampshire municipal corporation, having its principal place of business at 229 Main Street, Nashua, New Hampshire 03061 and its successors and assigns (“**Grantee**”), the exclusive right and easement to use, repair, maintain and replace a bus pull off area and bus shelter (defined below) on, over and across the aforementioned Property of Grantor beyond the limits of the present highway running past Grantor’s Property in the City of Nashua, commonly known as Bridge Street (“**Easement Area**”), as will or may be necessary in association with the City of Nashua’s use of said Bus Shelter in association with the City of Nashua’s public transportation system, to be constructed by Grantor in accordance with the requirements of the City of Nashua’s Public Works Department all as more fully identified as “Proposed Bus Pull Off and Shelter Easement” on a plan entitled “Easement Plan for Bridge Street Development Phase 2; 4, 5 and 6 Sanders Street, Nashua, New Hampshire, Tax Map 39 Lot 32 and Map 40 Lot 37,” prepared for: Renaissance at Nashua, LLC; Record Owner: City of Nashua, dated April __, 2021, prepared by McFarland Johnson, and recorded at the Hillsborough County Registry of Deeds as Plan No. _____ (the “**Easement Plan**”); see also plans entitled “Site Plans for Bridge Street Development Phase 2; 4, 5 and 6 Sanders Street, Nashua, New Hampshire, Tax Map 39 Lot 32 and Map 40 Lot 37,” prepared For: Renaissance at Nashua, LLC; Record Owner: City of Nashua, dated January 11, 2021, prepared by McFarland Johnson, and on file with the City of Nashua, New Hampshire as NR _____ (the “**Site Plans**”). Collectively, the Easement Plan and the Site Plans are referred to herein as the “**Plans**.”

Grantor grants to Grantee the exclusive right and license to use the Easement Area for the purposes of constructing, installing and maintaining a passenger waiting shelter and ancillary facilities such as seating, bicycle racks and trash receptacles (collectively referred to herein as the “Shelter”). The Shelter shall be used solely as a public transit passenger waiting shelter.

Grantee shall bear sole responsibility for construction and installation of the Shelter in a safe manner and shall indemnify Grantor against any loss, damage, expense or liability resulting from such construction and installation of the Shelter or failure of Grantee to comply with its responsibilities hereunder. Grantee shall own the Shelter.

Grantor shall bear sole responsibility for maintenance of the Easement Area and the Shelter in a safe manner and shall indemnify Grantee against any loss, damage, expense or liability resulting from such maintenance of the Easement Area and the Shelter or failure of Grantor to comply with its maintenance responsibilities hereunder. Such maintenance shall include snow and ice removal.

This Easement shall include the right of access from, to and across Grantor’s Property for all purposes in connection with the exercise of the within granted rights and easement; the right to excavate, trench, and backfill by men or machines and temporarily to place excavated earth and other material on said Property, provided that the said Property shall be restored by the Grantee to substantially the condition in which it was immediately prior to such access, excavation, trenching, and backfilling subject to Grantee’s rights herein; the right to plant, trim, cut down and remove bushes, trees and other plant growth on the Property as and to such extent as in the judgment of the Grantee is necessary for any of the above purposes; and the right to place route, scheduling and advertising on the Shelter.

This Easement shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this Easement shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.

Subject to easements, restrictions, and reservations of record.

This transfer is exempt from transfer tax pursuant to N.H. RSA 78-B: 2, I.

IN WITNESS WHEREOF, Grantor has caused this Easement to be duly executed this _____ day of _____, 2021.

GRANTOR
**SMC Residences at Riverfront Landing
Phase II, LP**
By: Sentry Management Holding, LLC
General Partner

Witness

By: _____
Stephen M. Chapman, Managing Member

COMMONWEALTH/STATE OF
COUNTY OF

On this _____ day of _____, 2021, personally appeared, before me,
Stephen M. Chapman, personally known to me (or satisfactorily proven) to be the individual
whose name is subscribed to the within instrument and acknowledged that he executed the same
for the purposes therein contained on behalf of Sentry Management Holding, LLC, the General
Partner of SMC Residences at Riverfront Landing Phase II, LP.

Justice of the Peace/Notary Public
Commission Expires:

Return to:
Prunier & Prolman, P.A.
Account No.: 026

TEMPORARY CONSTRUCTION EASEMENT AND USE EASEMENT AGREEMENT
Sanders Street, Nashua, New Hampshire

This Temporary Construction Easement and Use Agreement (this "Agreement") is made this ____ day of _____, 2021, by and between the **City of Nashua**, a municipal corporation with an address of 229 Main Street, Nashua, New Hampshire 03060 (the "Grantor"), and the **SMC Residences at Riverfront Landing Phase II Limited Partnership**, a New Hampshire limited partnership with an address of 100 Galen Street, Suite 301, Watertown, Massachusetts 02472 (the "Grantee"),

RECITALS:

WHEREAS, Grantor owns the right of way known as Sanders Street by dedication and acceptance in Nashua, County of Hillsborough and State of New Hampshire, and shown as **Sanders Street** ("Sanders Street") as shown on a plan entitled "Easement Plan for Bridge Street Development Phase 2; 4, 5 and 6 Sanders Street, Nashua, New Hampshire, Tax Map 39 Lot 32 and Map 40 Lot 37," prepared for: Renaissance at Nashua, LLC, Record Owner: City of Nashua, dated January 11, 2021, prepared by McFarland Johnson, and recorded at the Hillsborough County Registry of Deeds as Plan No. _____ (the "Easement Plan"); see also plans entitled "Site Plans for Bridge Street Development Phase 2; 4, 5 and 6 Sanders Street, Nashua, New Hampshire, Tax Map 39 Lot 32 and Map 40 Lot 37," prepared For: Renaissance at Nashua, LLC; Record Owner: City of Nashua, dated January 11, 2021, prepared by McFarland Johnson, and on file with the City of Nashua, New Hampshire as NR _____ (the "Site Plans"). Collectively, the Easement Plan and the Site Plans are referred to herein as the "Plans"; and

WHEREAS, Grantee intends to commence building the Residences at Riverfront Landing Phase II project in accordance with the Plans; and

WHEREAS, Grantee desires to enter upon Sanders Street ("Easement Area") to improve and use Sanders Street as shown on the Plans, and

WHEREAS, Grantee has requested, and Grantor has agreed to grant this Temporary Construction Easement and Use Easement Agreement on the terms and conditions below.

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

1. Grant of Easement. Grantor hereby grants to Grantee (a) temporary nonexclusive rights, privileges, and easements for temporary construction in, over, across and upon the Easement Area for the purpose of installing the roadway improvements according to the Plans (the "Temporary Construction Easements"); and (b) permanent, nonexclusive rights, privileges, and easements for the use in, over, across and upon the Easement Area for the purposes as shown on the Plans ("Use Easement"). Grantor reserves the right to make any use of the Easement Area not inconsistent with this grant.

2. Use. Grantee shall have full and free use of the Easement Area for the purposes stated herein and shall have all rights and privileges reasonably necessary to the enjoyment and exercise of such rights, including the right of reasonable access to and from the Easement Area.

3. Permits and Maintenance. Grantee shall obtain and maintain all permits and/or licenses required for the use by it of the Easement Area.

4. Indemnification. To the extent permitted by law, the Grantee agrees to protect, indemnify, defend, and save Grantor harmless from and against all claims, demands, losses, liabilities, and causes of action of every kind and character in any way resulting from the acts or omissions of the Grantee, the Grantee's agent, employees, representatives, or contractors. If such property damage, personal injury or loss results from the joint negligence or willful misconduct of Grantor and Grantee, Grantee's duty of indemnification shall be in proportion to its allocable share of such joint negligence or willful misconduct.

5. No Warranty of Title. The Temporary Construction Easements and Use Easement are made by Grantor and accepted by the Grantee without warranty of title by Grantor, either express or implied.

6. No Trespass or Inverse Condemnation. The Temporary Construction Easements and Use Easement granted hereunder shall not be deemed a trespass or inverse condemnation of the Property and will not impair Grantor's right to make claim against the Grantee for damages sustained or arising out of the use of the Temporary Construction Easements or Use Easement, if any, in accordance with the terms contained herein.

7. Assignment. This Agreement will not be assignable by the Grantee in whole or in part without the written consent of Grantor. Provided however, it is agreed and acknowledged that the Grantee and its agents, employees, contractors and other users will use the Temporary Construction Easements and Use Easement for the purposes set forth herein and such use shall not be deemed an assignment of Grantee's rights hereunder.

8. Required Notice To Enter Property. Grantee shall provide notice to Grantor prior to commencement of construction. Notice may be given by personal delivery, nationally recognized overnight express mail or deposited in the mail, registered or certified, postage and charges prepaid, and address to the party for whom intended at the address specified below, or at such other address as such party may have substituted therefore by notice in the manner set forth above.

If to Grantor:

City of Nashua
Attention: Lisa Fauteux
229 Main Street
Nashua, NH 03060
Email: FauteuxL@nashuanh.gov

With a copy to:

Office of Corporate Counsel
Celia K. Leonard, Esq.
229 Main Street
Nashua, NH 03060
Email: leonardc@nashuanh.gov

If to Grantee:

SMC Residences at Riverfront Landing Phase II Limited Partnership
Attention: Robert Simonds, Director-Capital Projects
100 Galen Street, Suite 301
Watertown, MA 02472
Email: rcs@smcmgtco.com

With a copy to:

Martin J. Baroff, Esq.
Baroff & Craven, PA
740 Chestnut Street
Manchester, NH 03104
Email: mbaroff@bclawnh.com

9. Authority. Each party represents and warrants to the other that it is duly authorized to execute this Agreement.

10. Binding Agreement. This Agreement will be binding upon and inure to the benefit of all parties' successors and assigns in title.

11. Counterparts. This Agreement may be executed in as many counterparts as may be required by the parties. It shall not be necessary that the signatures on behalf of the parties hereto appear on each counterpart hereof, and it shall be sufficient that the signatures on behalf of the parties hereto appear on one or more such counterparts. All counterparts shall collectively constitute a single agreement.

12. Termination. The Temporary Construction Easements and the rights granted thereby shall terminate and be of no further force or effect upon the Grantee's completion of the Sanders Street improvements as shown on the Plans.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GRANTOR:
City of Nashua

James W. Donchess, Mayor
Duly Authorized

GRANTEE:
SMC Residences at Riverfront Landing
Phase II Limited Partnership
By: Sentry Management Holding, LLC
General Partner

By: _____
Stephen M. Chapman, Managing Member
Duly Authorized

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

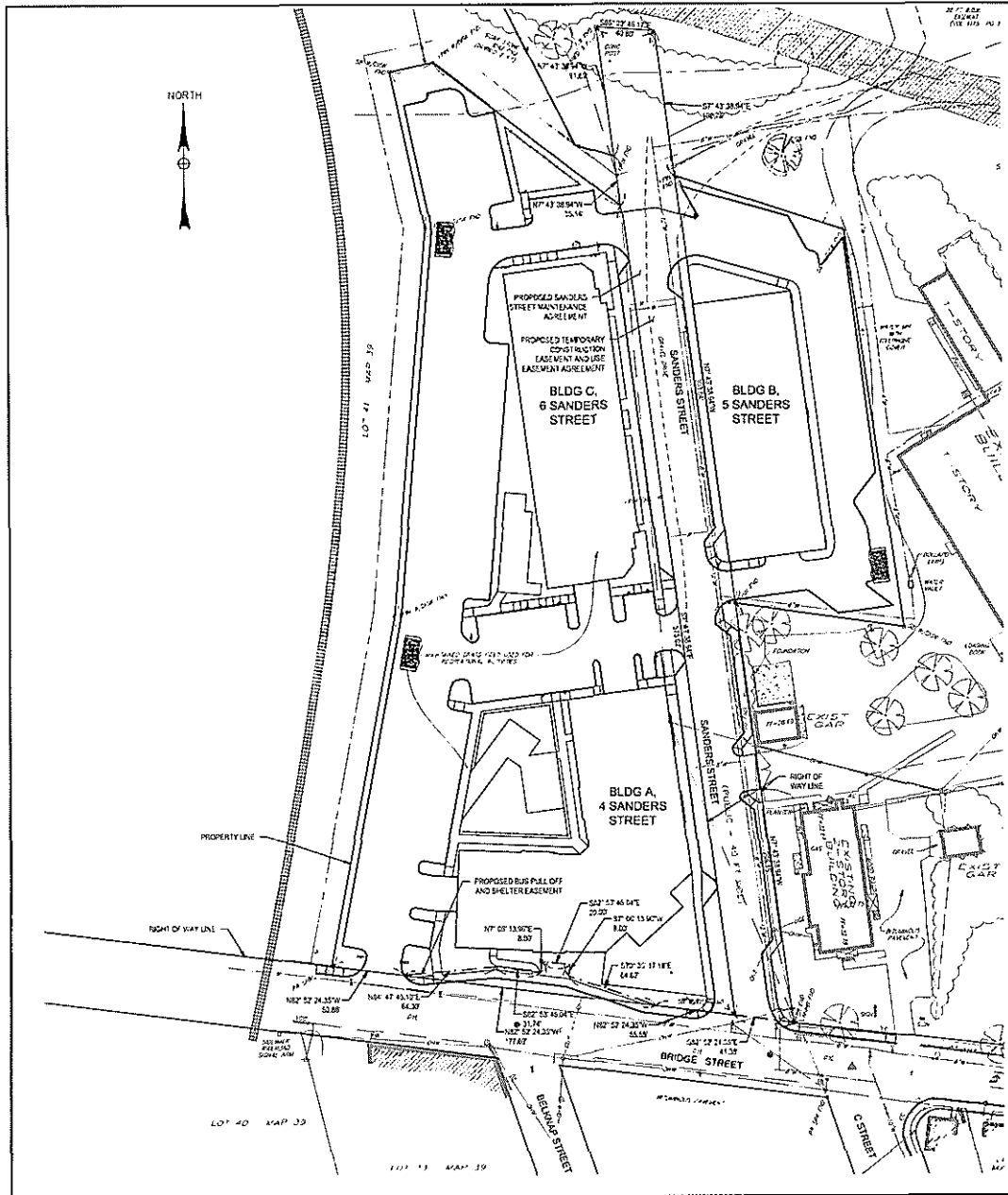
On this _____ day of _____, 2021, personally appeared, before me, James W. Donchess, Mayor of the City of Nashua, personally known to me (or satisfactorily proven) to be the individual whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

Notary Public
Commission Expires:

COMMONWEALTH/STATE OF
COUNTY OF

On this _____ day of _____, 2021, personally appeared, before me, Stephen M. Chapman, personally known to me (or satisfactorily proven) to be the individual whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained on behalf of Sentry Management Holding, LLC, General Partner of SMC Residences at Riverfront Landing Phase II Limited Partnership.

Notary Public
Commission Expires:



PLAN REFERENCE:

1. TOPOGRAPHIC WORKSHEET, (LOT 31, MAP 39 AND LOTS 34, 37, 38 AND 48, MAP 40), BRIDGE, SANDERS AND BAILEY STREETS, NASHUA, NEW HAMPSHIRE, PREPARED FOR RENAISSANCE AT NASHUA, LLC. SCALE: 1"=40', DATED 29 SEPTEMBER 2011 AND PREPARED BY HAYNOR/SWANSON, INC
2. LAND IN NASHUA, NH, BOSTON AND MAIN RAILROAD TO JOHN'S-MANVILLE PRODUCTS CORPORATION, SCALE: 1"=40', DATED: APRIL 1981 RECORDED PLAN #202.
3. CONSOLIDATION OF LAND, THE MAINE MANUFACTURING CO., 44 BRIDGE STREET, NASHUA, NH, SCALE: 1"=40', DATED 8/30/77 AND PREPARED BY D.C. CALDERWOOD, RECORDED PLAN #10399.

NOTES:

1. TOTAL AREA MAP 39 LOT 32 = 2.780 ACRES
MAP 40 LOT 37 = 0.799 ACRES
2. ZONING DISTRICT: (G/MI) GENERAL INDUSTRIAL/HAZ. USE OVERLAY DISTRICT
3. LOT NUMBERS REFER TO THE CITY OF NASHUA ASSESSORS MAP 39 AND MAP 40.
4. PURPOSE OF PLAN: TO DEVELOP A PROPOSED DEED FULL OFF AND DWELTER EASEMENT, A PROPOSED MAINTENANCE AGREEMENT AND A TEMPORARY CONSTRUCTION EASEMENT AND USE EASEMENT AGREEMENT ON SANDERS STREET.


5. OWNERS:

MAP 39 LOT 32
CITY OF NASHUA
229 MAIN STREET
NASHUA, NH 03060
BK:5758 PG: 1878

MAP 40 LOT 37
CITY OF NASHUA
229 MAIN STREET
NASHUA, NH 03060
BK:5758 PG. 1852



REV	DATE	DESCRIPTION	BY	RENAISSANCE AT NASHUA, LLC CITY OF NASHUA, STATE OF NEW HAMPSHIRE	



McFarland Johnson
53 REGIONAL DRIVE
CONCORD, NEW HAMPSHIRE, 03301

SCALE	1"=40'	DESIGN	REP
DRAWN	M.J.F	PROJECT	18356.00
CHECKED	BRC	DATE	MAY 3, 2021

LEGISLATIVE YEAR 2021

RESOLUTION:

R-21-139

PURPOSE:

Authorizing the Bus Pull Off and Shelter Easement on Bridge Street and Temporary Construction Easement and Use Easement Agreement on Sanders Street

ENDORSERS:

Alderman Jan Schmidt

**COMMITTEE
ASSIGNMENT:**

**Committee on Infrastructure
Nashua Planning Board**

FISCAL NOTE:

ANALYSIS

This resolution authorizes the Bus Pull Off and Shelter Easement on Bridge Street and Temporary Construction Easement and Use Easement Agreement at Sanders Street.

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: May 5, 2021

RESOLUTION

R-21-139

Authorizing the Bus Pull Off and Shelter Easement on Bridge Street and Temporary Construction Easement and Use Easement Agreement on Sanders Street

IN THE BOARD OF ALDERMEN

1ST READING May 11, 2021

Referred to:
Committee on Infrastructure

Nashua Planning Board

2nd Reading June 8, 2021

3rd Reading _____

4th Reading _____

Other Action _____

Passed June 8, 2021

Indefinitely Postponed _____

Defeated _____

Attest: _____
City Clerk

Kari Wikshure

President

Approved _____
Mayor's Signature

Date

Endorsed by

SCHMIDT

DOWD

LOPEZ

O'BRIEN

HARRIOTT-GATHRIGHT

Vetoed: _____

Veto Sustained: _____

Veto Overridden: _____

Attest: _____
City Clerk

President