R-10-46

RESOLUTION

APPROVING A FIVE YEAR THIRD AMENDMENT TO A LICENSE AGREEMENT WITH UNITED PARCEL SERVICE, INC. FOR PARKING ON WHIPPLE STREET FOR MINE FALLS PARK

CITY OF NASHUA

In the Year Two Thousand and Ten

RESOLVED *by the Board of Aldermen of the City of Nashua* that the attached Third Amendment to a License Agreement by and between United Parcel Service, Inc. and the City of Nashua for use over the next five years of a portion of the parking lot at 3 Whipple Street is hereby approved.

Funding for the city portion ($1,850.00) of the FY2011 obligation is available in Account # 552-81086 ("Parks and Recreation, Community and Civic Activities – Whipple Street Parking").

LEGISLATIVE YEAR 2010

RESOLUTION: R-10-46

PURPOSE: Approving a five year Third Amendment to a License Agreement with United Parcel Service, Inc. for parking on Whipple Street for Mine Falls Park

SPONSOR(S): Mayor Donnalee Lozeau

COMMITTEE ASSIGNMENT:

FISCAL NOTE: The estimated annual cost to the city for this contract is $1,850.

ANALYSIS

This resolution would approve a five-year third amendment to the existing license agreement between United Parcel Service, Inc. and the City of Nashua for a license to park in a portion of the parking lot at 3 Whipple Street for use of Mine Falls Park. The city portion ($1,850.00) of the FY2011 obligation is available in Account #552-81086 ("Parks and Recreation, Community and Civic Activities – Whipple Street Parking"). The balance of the annual obligation ($1,150.00) is provided by the Nashua Soccer Council. This parking lot license agreement has the support of the Mine Falls Advisory Committee.

Approved as to account structure, numbers and amount: **Financial Services Division**

By: Katherine Davis

Approved as to form: **Office of Corporation Counsel**

By: Dowling Clarke

Date: July 9, 2010

THIRD AMENDMENT TO LICENSE

THIS THIRD AMENDMENT TO LICENSE (this "third ~~Second~~ Amendment") dated this ___ day of June, 2010 (the "Effective Date") by and between **UNITED PARCEL SERVICE, INC.**, an Ohio corporation ("Licensor"), and **CITY OF NASHUA.**, a municipal corporation located in Hillsborough County, State of New Hampshire ("Licensee").

Recitals

A. BT-Newyo, LLC is the owner of a parcel of land containing approximately 15.35 acres (the "Premises"), more or less, located at 3 Whipple Street, Nashua, NH.

B. Licensor is the successor-in-interest to United Parcel Service, Inc. (NY) by merger, is the tenant under a certain Lease of the Premises dated June 1, 1989 with Willmanch Corporation, predecessor in interest to BT-Newyo, LLC, as "Landlord" therein and Licensor has the authority to enter into this License with Licensee.

C. Licensee and Licensor have entered into that certain License Agreement dated May 1, 2004, First Amendment to License and Second Amendment to License (collectively, the "Agreement") whereby certain permission was granted to Licensee to use a portion of the Premises for seasonal parking of automobiles.

D. Licensee and Licensor wish to make certain amendments to that License pursuant to the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the receipt and/or sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Recitals.** The hereinabove recitals are true and correct.

2. **Definitions.** Unless defined otherwise in this Third Amendment, all capitalized terms used in this Third Amendment shall have the same meaning and definition as given them in the License.

3. **Termination Date: License Fee.** The "termination date" as set forth in the License is hereby amended from April 30, 2010 to April 30, 2015. The License Fee for the period from May 1, 2010 through April 30, 2015 shall be Three Thousand ($3,000.00) Dollars per year which shall be paid to Licensor annually on or before May 1 of each year that the License Agreement is in effect without demand, deduction or set-off.

4. **Effect.** Except as expressly set forth in this Third Amendment, all terms and conditions of the License shall remain in full force and effect.

SIGNATURES FOLLOW ON THE NEXT PAGE

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

LICENSOR: UNITED PARCEL SERVICE, INC. (OH)

By: _____
Title: _____
Date: June ___, 2010

LICENSEE: CITY OF NASHUA

By: _____
Title: _____
Date: June ___, 2010

FIRST AMENDMENT TO LICENSE

THIS FIRST AMENDMENT TO LICENSE (this "First Amendment") dated this 26 day of April, 2006 (the "Effective Date") by and between **UNITED PARCEL SERVICE, INC.**, a New York corporation ("Licensor"), and **CITY OF` NASHUA.**, a municipal corporation located in Hillsborough County, State of New Hampshire ("Licensee").

Recitals

A. BT-Newyo, LLC, successor-in-interest by merger to Willmanch Corporation, is the owner of a parcel of land containing approximately 15.35 acres (the "Premises"), more or less, located at 3 Whipple Street, Nashua, NH.

B. Licensor is the tenant under a certain Lease of the Premises dated June 1, 1989 with Willmanch Corporation, predecessor in interest to BT-Newyo, LLC, as "Landlord" therein and Licensor has the authority to enter into this Agreement with Licensee.

C. Licensee and Licensor have entered into that certain License agreement dated May 1, 2004 (the "Agreement") whereby certain permission was granted to Licensee to use a portion of the Premises for seasonal parking of automobiles.

D. Licensee and Licensor wish to make certain amendments to that License pursuant to the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the receipt and/or sufficiency of which are hereby acknowledged, Licensor and Licensee agree as follows:

1. **Recitals.** The hereinabove recitals are true and correct.

2. **Definitions.** Unless defined otherwise in this First Amendment, all capitalized terms used in this First Amendment shall have the same meaning and definition as given them in the License.

3. **License Fee.** Section 3 of the License shall be amended whereby the Licensee shall pay to Licensor the sum of Three Thousand ($3,000.00) Dollars for the use of the Licensed Area payable on May 1st of each year during the Term without demand, deduction or set-off.

4. **Licensed Area.** The Licensed Area shall be amended to include Segments A, B, C, and D as set forth in Exhibit A which is attached hereto and made a part hereof.

5. **Safe and Orderly Manner.** The sentence "Licensee shall limit the parking capacity of said area to no more than 250 people" in Section 3 shall be deleted and replaced with "Licensee shall not use or permit the Licensed Area to be used in any unsafe manner and shall require that all vehicles be parked in an orderly and safe manner and within the lawful capacity for such Licensed Area."

6. **Effect.** Except as expressly set forth in this First Amendment, all terms and conditions of the License shall remain in full force and effect.

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

LICENSOR: UNITED PARCEL SERVICE, INC.:

By: _____
Title: Vice President
Date: April 26, 2006

LICENSEE: CITY OF NASHUA

By: _____
Title: MAYOR
Date: April 21, 2006

LICENSE

THIS LICENSE entered into this 1st of May, 2004 by and between United Parcel Service, Inc., a New York corporation having a place of business at 3 Whipple Street, Nashua, NH ("Licensor") and the City of Nashua, a municipal corporation located in Hillsborough County, State of New Hampshire, ("Licensee").

RECITALS

1. BT-Newyo, LLC, successor-in-interest by merger to Willmanch Corporation, is the owner of a parcel of land containing approximately 15.35 acres (the "Premises"), more or less, located at 3 Whipple Street, Nashua, NH.

2. Licensor is the tenant under a certain Lease of the Premises dated June 1, 1989 with Willmanch Corporation, predecessor in interest to BT-Newyo, LLC, as "Landlord" therein and Licensor has the authority to enter into this Agreement with Licensee.

3. Licensee desires to use a portion of the Premises for the seasonal parking of automobiles to support the Mine Falls recreational area and Licensor is willing to allow Licensee to use the Licensed Area for the period as defined below and pursuant to the terms of this License.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which and the receipt of which are hereby acknowledged, and the parties intending to be legally bound agree as follows:

1. AREA AND FACILITIES. Pursuant to the terms of this License, Licensor hereby grants Licensee a revocable license limited to the area identified as Segment A in Exhibit A which is attached hereto and made a part hereof (the "Weekend Restricted Area") during the twenty-six weekend periods of Mine Falls soccer season commencing 12:00 am Saturday morning through 11:59 Sunday evening commencing May 1, 2004 and ending April 30, 2009 (the "termination date") unless sooner terminated by either party. In addition, Licensee shall have the limited right to use that portion of the Premises identified as Segments A, B, C and D on Exhibit A ("Memorial Day Area") on Memorial Day, 2004, Memorial Day, 2005, Memorial Day. 2006, Memorial Day.2007, Memorial Day, 2008, Columbus Day, 2004 and Columbus Day, 2005, Columbus Day.2006, Columbus Day.2007, Columbus Day.2008. Licensee acknowledges that Licensor shall permit the use of the Weekend Restricted Area for the balance of the week during the term of this License. Collectively, the Weekend Restricted Area and the Memorial Day Area shall be referred to herein as the "Licensed Area".

2. TERM AND PURPOSE. Subject to either party's right to terminate this License, this License shall be limited to the times and dates expressly set forth herein for a period of twenty-six weekends during the period commencing May 1, 2004 and terminating on April 30, 2009 (the "termination date") unless sooner terminated by either party. Such use shall be limited to Saturdays and Sundays of the twenty-six weekends during the soccer season. The Licensed Area shall only be used by Licensee for the purpose of soccer season parking of automobiles to support the Mine Falls recreational area. Licensee will restrict access to the Licensed Area only for parking purposes and for no other purpose. Licensee shall limit the parking capacity of said area to no more than 250 automobiles. Subject to Licensor's right to terminate this License and provided that Licensee is not in default of any of its obligations under the term of this License and provided that Licensee has provided Licensor with written notice of its intent to renew this License no later than February 1, 2009, then Licensee may renew this License for a period of one year.

   Either party may terminate this License for any reason or for no reason at all by giving advance ninety (90) days written notice to the other party. Licensor may terminate this License upon notice to Licensee if Licensee fails to perform any of its obligations as required under this License or violates any of the provisions herein. Any obligations or liabilities of Licensee not performed or incurred during the term of this License shall survive the termination of this License.

3. LICENSE FEE. Licensee shall pay Licensor the sum of One Thousand Eight Hundred Fifty ($1,850.00) Dollars for the use of the Licensed Area (the "License Fee") payable on the May 1st of each year during the term of this License without demand, deduction or set-off.

4. NOTICE: Any notice required by this License shall be sent by certified mail, return receipt requested, with sufficient postage attached or by UPS Next Day Air to the following addresses:

Licensor: United Parcel Service, Inc
643 West 43rd Street
New York, New York 10036
Attn: Real Estate Manager

Licensee: Office of Corporation Counsel
229 Main Street
C.S. 2019
Nashua, NH 03061

5. SECURITY: Licensee shall remove all debris from the Licensed Area. Licensee shall comply with all laws, statutes, codes, ordinances, regulations and requirements of any governmental or quasi-governmental body and any restrictions of record, if any, on the Licensed Area. At the end of each weekend or holiday period, Licensee shall leave the Licensed Area in the condition in which the Licensed Area was received including but not limited to Licensee shall remove all trash and debris and property of Licensee and/or the property of its invitees and repair any damage to the Licensed Area occurring during any such weekend or holiday period.

6. INSURANCE. Licensee shall at all times during the term of this License carry comprehensive general liability insurance naming Licensor, BT-Newyo, LLC, and their related companies as additional primary insureds, covering the Licensed Area and BT-Newyo's property adjoining the Licensed Area. Such insurance shall insure against any liability for personal injury, bodily injury including death and property damage with a combined single coverage of not less than One Million Dollars ($1,000,000.00). Prior to any entry on the Licensed Area, Licensee shall forward a certificate of insurance to Licensor evidencing the aforesaid coverages and providing that the policy or policies shall not be canceled without ten (10) days' advance notice to Licensor. Additionally, Licensee shall maintain and keep in force, worker's compensation and disability benefits insurance covering Licensee's employees at the Licensed Area as same is required by law. All such insurance provided through the Licensee's self-insured program shall contain a waiver of subrogation in favor of Licensor and BT-Newyo, LLC.

7. LICENSE. This agreement shall be construed as a license and does not convey any real estate interest to Licensee in the Lease or Licensed Area whatsoever. This License is personal to Licensee and may not be assigned or transferred in any manner to any other party.

8. COMPLIANCE WITH LAW. Licensee shall use the Licensed Area in accordance with all federal, state, and local laws, statutes, ordinances, rules, codes, orders, regulations and requirements of the federal, state, and local governments (the "Laws"). Licensee shall not cause or permit any hazardous substance or other dangerous toxic substances or any solid waste to be generated, manufactured, refined, transported, treated, stored, disposed of, handled, processed, produced or released on the Licensed Area.

9. AS-IS Licensee accepts the Licensed Area in its "AS-IS, Where-Is with all faults" condition. Licensee acknowledges that Licensor has made no representations or warranties concerning the condition of the Licensed Area or its suitability for Licensee's use. Licensor, BT-Newyo, LLC and any related companies shall not be liable to Licensee for any loss or damage to person or property. Licensee shall indemnify, protect and hold Licensor and its related companies, Landlord and Landlord's mortgages harmless from and against any and all liabilities, losses, costs, damages, injuries or expenses, including reasonable attorneys' fees and court costs, arising out of or related to: (1) claims of injury to and death of persons or damage to property occurring or resulting from the use of occupancy of the Licensed Area, or from activities or failure to act of Licensee, its employees, invitees, licensees or agents or persons acting on behalf of Licensee or any in or about the Licensed Area; (2) claims for work or labor performed or for materials or supplies furnished to or at the request of Licensee in connection with performance of any work done for the account of Licensee within the Licensed Area and (3) claims arising from any breach or default on the part of Licensee in the performance of any covenant or agreement contained in this License. The provisions of this Section shall survive the expiration or termination of this License with respect to all claims or liability occurring prior to such expiration or termination.

10. ENTIRE AGREEMENT. This document constitutes the entire agreement between the parties. Any modification and amendment to this License must be in writing and signed by both parties.

11. MISCELLANEOUS. This License shall be governed by the laws of the state of New Hampshire. This License supersedes and replaces any prior license or other agreement between the parties hereto and is a fully integrated document to be interpreted in accordance with its express terms and without reference to other documents or oral interchanges between the parties. All terms of this License are material terms and are to be fully complied with. A waiver of compliance on any occasion shall not be deemed to constitute a waiver on any other occasion.

IN WITNESS WHEREOF, this License was entered into on the date first above written.

UNITED PARCEL SERVICE, INC.

By: _____
Vice President

CITY OF NASHUA

_____
Bernard A. Streeter, Mayor

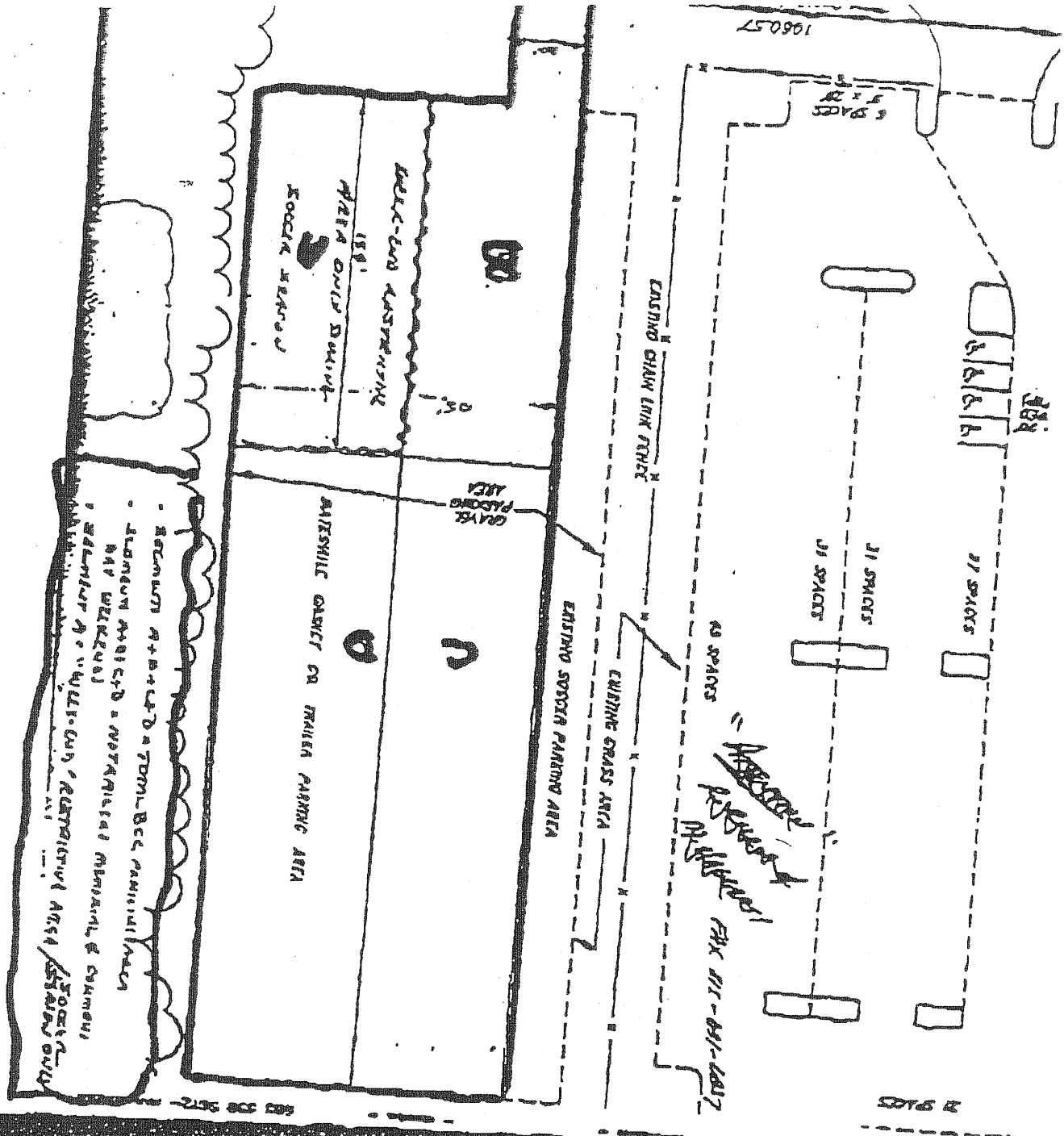
106057
6 SPACES
EXISTING CHAIN LINK FENCE
EXISTING GRASS AREA
EXISTING SOCCER PARKING AREA
GRAVEL PARKING AREA
BATESVILLE GASKET CO TRAILER PARKING AREA
31 SPACES
31 SPACES
37 SPACES
43 SPACES
FAX 812-881-6837
SOCCER SEASON
SOCCER SEASON
WEEK-END RESTRICTING
AREA ONLY DURING
SOCCER SEASON
SOCCER SEASON ONLY
603 598 5672

EXHIBIT A

RESOLUTION **R-10-46**

Approving a five year Third Amendment to a License Agreement with United Parcel Service, Inc. for parking on Whipple Street for Mine Falls Park

Endorsed by

MAYOR

SHEEHAN

DEANE

IN THE BOARD OF ALDERMEN

1ST READING JULY 13, 2010

Referred to:

FINANCE COMMITTEE

2nd Reading AUGUST 10, 2010

3rd Reading

4th Reading

Other Action

Passed AUGUST 10, 2010

Indefinitely Postponed

Defeated

Attest: Deputy City Clerk

President

Approved Mayor's Signature

8/11/10
Date

Vetoed:

Veto Sustained:

Veto Overridden:

Attest: City Clerk

President