



RESOLUTION

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO AN AGREEMENT WITH
CVS MANCHESTER NH, LLC FOR FUTURE PARKING RIGHTS AT THE CITY
OWNED PARKING LOT LOCATED BEHIND CVS PHARMACY**

CITY OF NASHUA

In the Year Two Thousand and Fourteen

RESOLVED by the Board of Aldermen of the City of Nashua that the City of Nashua is authorized to enter into the attached agreement with CVS Manchester NH, LLC (CVS) to lease a portion of the city owned parking lot located behind the CVS Pharmacy on Main Street (Nashua's Assessor sheet 31. lot 7).

LEGISLATIVE YEAR 2014

RESOLUTION:

R-14-092

PURPOSE:

Authorizing the City of Nashua to enter into an agreement with CVS Manchester NH, LLC for future parking rights at the city owned parking lot located behind CVS Pharmacy

SPONSOR(S):

Mayor Donnalee Lozeau

**COMMITTEE
ASSIGNMENT:**

FISCAL NOTE:

The city will receive from \$2,476.00 per month to \$2,975.33 per month in rental fees and all assessed real estate taxes for a portion of Nashua Assessor Sheet 31, Lot 7.

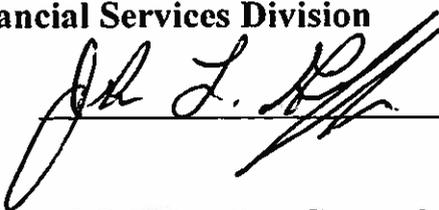
ANALYSIS

This resolution authorizes the City of Nashua to enter into an agreement with CVS Manchester NH, LLC (CVS) for a portion of the city owned parking lot located behind the CVS Pharmacy on Main Street (Nashua's Assessor sheet 31, lot 7).

The city and Southern New Hampshire Medical Center (SNHMC) entered into a 15 year lease agreement for the city owned parking lot behind CVS Pharmacy on Main Street effective July 1, 2014. That lease agreement permits SNHMC to purchase the parking lot during the term of the lease agreement. The city's lease with SNHMC also permits SNHMC to sublease thirty-seven (37) parking spaces to CVS Pharmacy. The "Non-Disturbance and Attornment Agreement", which is the subject of this resolution, permits CVS to continue leasing the thirty-seven (37) parking spaces should SNHMC terminate its lease agreement with the city and/or elect not to purchase the parking lot from the city. This agreement would permit CVS to continue to lease the thirty-seven (37) parking spaces in the city owned parking lot for up to twenty-five (25) years from the date of CVS's sublease agreement with SNHMC. CVS is obligated to pay real estate taxes and CVS will be responsible for its share (61.67%) of maintenance and repair costs for the parking lot. The monthly rental fee for the first fifteen (15) years of the term is \$2,467.00 per month, increased to \$2,721.17 per month for years 16-20 of the agreement, and increased to \$2975.33 per month during years 21-25 of the agreement.

**Approved as to account
structure, numbers and
amount:**

Financial Services Division

By:  _____

Approved as to form:

Office of Corporation Counsel

By:  _____

Date: November 5, 2014

**NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT**

THIS AGREEMENT, made as of the ___ day of _____, 2014 between The City of Nashua, a municipal corporation existing under the laws of the State of New Hampshire, with its principal place of business at 229 Main Street, Nashua, New Hampshire 03061 (the "City"), and CVS Manchester NH, L.L.C., a New Hampshire limited liability company, with its principal place of business at One CVS Drive, Woonsocket, Rhode Island, 02895 ("Subtenant").

W I T N E S S E T H:

WHEREAS, the City is the lessor under a certain lease dated as of June 18, 2014 (the "City Lease") demising certain premises identified as Nashua Assessor's Sheet 31, Lot 7 (the "East Parking Area"), to Southern New Hampshire Medical Center, a non-profit corporation existing under the laws of the State of New Hampshire and having a principal office for the transaction of business at 8 Prospect Street, Nashua, New Hampshire, 03060, as lessee (the "Hospital");

WHEREAS, Subtenant is the Subtenant under that certain sublease (the "Sublease") dated June 9, 2014, between the Hospital and Subtenant demising a portion (the "Premises") of Nashua Assessor's Sheet 31, Lot 7 (the "East Parking Area"), a Memorandum of Sublease with respect to which shall be recorded simultaneously herewith in the Registry of Deeds of Hillsborough County, New Hampshire;

WHEREAS, Subtenant has requested that the City consent to the terms of the Sublease and agree to recognize Subtenant's rights under the Sublease in the event of the expiration or other termination of the City Lease other than as a result of the purchase of the East Parking Area by the Hospital; and

WHEREAS, the City hereby consents to the terms of the Sublease and is willing to enter into an agreement to recognize Subtenant's rights under the Sublease on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and Subtenant agree as follows:

1. Purchase by Hospital. If the City Lease terminates as a result of the purchase of the East Parking Area by the Hospital, this Agreement shall terminate and be of no further force or effect.

2. Non-Disturbance. The City agrees that so long as Subtenant is not in default in its obligations under the Sublease beyond any applicable notice and cure period:

(a) neither the rights, possession nor enjoyment of the Premises by Subtenant under the Sublease shall be terminated or disturbed by the City, its successors or assigns; and

(b) Subtenant shall not be named as a party in any summary proceeding or other action or proceeding instituted by reason of the Hospital's default under the City Lease nor shall such action or proceeding result in a cancellation, modification or termination of the Sublease.

3. Attornment. (a) Upon the expiration or other termination of the City Lease for any reason, other than the purchase of the East Parking Area by the Hospital (i) the Sublease shall, notwithstanding any provision to the contrary therein contained, continue in full force and effect as a direct lease between the City and Subtenant; (ii) the City and Subtenant shall be directly bound to each other under all the terms, covenants and conditions of the Sublease for the balance of the term thereof (subject to the limitations below in Section 3(b)), with the same force and effect as if the City were the sublandlord under the Sublease; and (iii) Subtenant does hereby attorn to the City as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), as of the date the City Lease terminates. The respective rights and obligations of Subtenant and the City upon such attornment, to the extent of the then-remaining balance of the term of the Sublease (subject to the limitations below in Section 3(b)), shall be and are the same as now set forth in the Sublease, such attornment to be effective as of the date that the City Lease terminates, without the execution of any further agreement. However, the City agrees to execute and deliver, at any time and from time to time upon request of Subtenant, any agreement that may reasonably be necessary or appropriate to evidence such attornment, or, at Subtenant's election, a direct lease with the City upon all of the terms of the Sublease. Failure of the City to so execute any such an agreement shall not vitiate such attornment.

(b) Notwithstanding the foregoing, upon the termination or expiration of the City Lease, the term of the Sublease shall be amended to expire twenty-five (25) years from the Date of Rent Commencement under the Sublease, plus any months and days necessary to have the term expire on the next January 31st, and Subtenant shall not thereafter have any right to renew or extend the term of the Sublease. In addition, commencing as of the expiration of years 1-15 (and through the next January 31) of the initial term of the Sublease, the rent to be paid to the City shall be \$32,654.00 annually (\$2,721.17/month) for Years 16-20 and \$32,703.00 annually (\$2,975.33/month) for Years 21-25.

4. Improvements. The City acknowledges that Subtenant has the right under the Sublease, subject to obtaining any necessary governmental permits, to make improvements to the Premises, including the reconfiguration of the parking areas, associated landscaping, lighting, signage and markings consistent with the purposes of the Sublease, and that title to all improvements located on the Premises and constructed by Subtenant shall remain with Subtenant during the Term of the Sublease (without limitation of any rights of reversion of such improvements to the Hospital at the expiration or other termination of the Sublease) so long as the Subtenant is in good standing under the Sublease or direct lease, if any, to the City. Title to any and all improvements left by Subtenant after the expiration or other termination of the Sublease, shall immediately and without notice pass to the City at such expiration or termination free and clear of any claims by Subtenant, any lender or other party. The City hereby waives any

right under the City Lease to require Subtenant to remove any improvements located on the Premises after the expiration or other termination of the Sublease.

5. Notices. Whenever, by the terms of this Agreement, any notice, demand, request, approval, consent or other communication (each of which shall be referred to as a "notice") shall or may be given either to the City or to Subtenant, such notice shall be in writing and shall be sent by hand delivery or by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, as follows:

(i) If intended for the City, addressed to the City at the address of the City set forth on the first page of this Agreement, Attention: Office of the Mayor.

(ii) If intended for Subtenant, addressed to Subtenant at the address of Subtenant set forth on the first page of this Agreement, Attention: Lease Administration Department, Store #639.

Either party may, by notice as aforesaid, designate a different address or addresses for notices. Except as otherwise provided herein, all such notices shall be deemed to have been given or served on the date of actual receipt (in the case of hand delivery), or three (3) business days after such notice shall have been deposited in the United States mails within the continental United States (in the case of mailing by registered or certified mail as aforesaid), or one (1) business day after such notice shall have been deposited with such overnight courier service.

6. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto and may not be modified or terminated orally. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the law of the State of New Hampshire. This Agreement may be signed in counterparts.

8. Use of Premises. Notwithstanding any provision of the City Lease to the contrary, the City hereby agrees that Subtenant shall have the right to use the Premises for the uses permitted under the Sublease and to make alterations to the East Parking Area as provided in the Sublease, and that the City's consent shall not be required for any such use or alterations permitted by the Sublease. Subtenant shall be solely responsible, and at its cost, for complying with all rules, regulations, laws and permits related to its use and alteration of the Premises.

9. Default under City Lease and Sublease:

(a) The City shall promptly give notice to Subtenant in writing (together with a copy of any notice received or given by the City) of: (i) the giving by the City or the Hospital of any notice of any termination or expiration of the City Lease pursuant to the terms thereof or otherwise, and (ii) the giving by the Hospital of its exercise of its right to purchase the Premises

as provided in the City Lease, and notice of the Hospital's purchase of the Premises promptly after the closing of the purchase.

(b) Subtenant shall promptly give notice to the City in writing (together with a copy of any notice received or given by the Subtenant) of: (i) Any material breach (or alleged material breach) by the Subtenant or the Hospital of the Sublease; and (ii) the giving by the Subtenant or the Hospital of any notice of any termination or expiration of the Sublease.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

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

The City of Nashua

By: _____
Name: _____
Title: _____

CVS Manchester NH, L.L.C.

By: _____
Name: _____
Title: _____

CVS Legal Approval: Susan E. Carlson
Mintz Levin

State of New Hampshire
County of Hillsborough, SS

This instrument was acknowledged before me on _____, 2014 by
_____ as _____ of The City of Nashua.

Justice of the Peace/Notary Public

State of _____
County of _____, SS

This instrument was acknowledged before me on _____, 2014 by
_____ as _____ of CVS Manchester NH,
L.L.C.

Justice of the Peace/Notary Public



RESOLUTION

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In the Year Two Thousand and Fourteen

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NON-DISTURBANCE AND
ATTORNMENT AGREEMENT

THIS AGREEMENT, made as of the ___ day of _____, 201__ between The City of Nashua, a municipal corporation existing under the laws of the State of New Hampshire, with its principal place of business at 229 Main Street, Nashua, New Hampshire 03061 (the "City"), and CVS Manchester NH, L.L.C., a New Hampshire limited liability company, with its principal place of business at One CVS Drive, Woonsocket, Rhode Island, 02895 ("Subtenant").

W I T N E S S E T H:

WHEREAS, the City is the lessor under a certain lease dated as of June 18, 2014 (the "City Lease") demising certain premises identified as Nashua Assessor's Sheet 31, Lot 7 (the "East Parking Area"), to Southern New Hampshire Medical Center, a non-profit corporation existing under the laws of the State of New Hampshire and having a principal office for the transaction of business at 8 Prospect Street, Nashua, New Hampshire, 03060, as lessee (the "Hospital");

WHEREAS, Subtenant is the Subtenant under that certain sublease (the "Sublease") dated , a between the Hospital and Subtenant demising a portion (the "Premises") of Nashua Assessor's Sheet 31, Lot 7 (the "East Parking Area"), a Memorandum of Sublease with respect to which shall be recorded simultaneously herewith in the Registry of Deeds of Hillsborough County, New Hampshire;

WHEREAS, Subtenant has requested that the City consent to the terms of the Sublease and agree to recognize Subtenant's rights under the Sublease in the event of the expiration or other termination of the City Lease other than as a result of the purchase of the East Parking Area by the Hospital; and

WHEREAS, the City hereby consents to the terms of the Sublease and is willing to enter into an agreement to recognize Subtenant's rights under the Sublease on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the City and Subtenant agree as follows:

1. Purchase by Hospital. If the City Lease terminates as a result of the purchase of the East Parking Area by the Hospital, this Agreement shall terminate and be of no further force or effect.

2. Non-Disturbance. The City agrees that so long as Subtenant is not in default in its obligations under the Sublease beyond any applicable notice and cure period:

(a) neither the rights, possession nor enjoyment of the Premises by Subtenant under the Sublease shall be terminated or disturbed by the City, its successors or assigns; and

(b) Subtenant shall not be named as a party in any summary proceeding or other action or proceeding instituted by reason of the Hospital's default under the City Lease nor shall such action or proceeding result in a cancellation, modification or termination of the Sublease.

3. Attornment. (a) Upon the expiration or other termination of the City Lease for any reason, other than the purchase of the East Parking Area by the Hospital (i) the Sublease shall, notwithstanding any provision to the contrary therein contained, continue in full force and effect as a direct lease between the City and Subtenant, subject, however, to the City's right to convey or otherwise transfer the East Parking Area to the Hospital, without the prior consent of Subtenant, but any such conveyance or other transfer shall remain subject to Subtenant's rights under the Sublease and subject to those conditions set forth in Section 14.01 of the City Lease or such other terms and conditions for redevelopment of the East Parking Area as the Hospital and the City may agree upon (all collectively referred to as the "Redevelopment Obligations"), Subtenant agrees to attorn to the Hospital as its new landlord, with Subtenant's rights to the use of the East Parking Area set forth in the Sublease thereafter also surviving, and being subject to the Redevelopment Obligations; (ii) the City and Subtenant shall be directly bound to each other under all the terms, covenants and conditions of the Sublease for the balance of the term thereof (subject to the limitations in Section 3(a)(i) above and below in Section 3(b)), with the same force and effect as if the City were the sublandlord under the Sublease; and (iii) Subtenant does hereby attorn to the City as its landlord, said attornment to be effective and self-operative (without the execution of any further instruments), as of the date the City Lease terminates. The respective rights and obligations of Subtenant and the City upon such attornment, to the extent of the then-remaining balance of the term of the Sublease (subject to the limitations in Section 3(a)(i) above and below in Section 3(b)), shall be and are the same as now set forth in the Sublease, such attornment to be effective as of the date that the City Lease terminates, without the execution of any further agreement. However, Subtenant and the City agree to execute and deliver, at any time and from time to time upon request of the other party, any agreement that may reasonably be necessary or appropriate to evidence such attornment, or, at Subtenant's or the City's election, a direct lease with the City upon all of the terms of the Sublease. Failure of Subtenant or the City to so execute any such an agreement shall not vitiate such attornment.

(b) Notwithstanding the foregoing, upon the termination or expiration of the City Lease, the term of the Sublease shall be amended to expire twenty-five (25) years from the Date of Rent Commencement under the Sublease, plus any months and days necessary to have the term expire on the next January 31st, and to include the conditions set forth in Section 3(a)(ii) above, and as long as the City owns the East Parking Area and is Subtenant's direct landlord, Subtenant shall not thereafter have any right to renew or extend the term of the Sublease; provided, however if the City thereafter conveys or otherwise transfers the East Parking Area to the Hospital, the term of the Sublease shall expire twenty-five (25) years from the Date of Rent Commencement under the Sublease, plus any months and days necessary to have the term expire on the next January 31st, and Subtenant shall again have the same rights to renew or extend the term of the Sublease as are contained in the original Sublease. In addition, commencing as of the expiration of years 1-15 (and through the next January 31) of the initial term of the Sublease, the rent to be paid to the City shall be \$32,654.00 annually (\$2,721.17/month) for Years 16-20 and ~~\$32,703.00~~\$35,703.00 annually (\$2,975.33/month) for Years 21-25.

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shall immediately and without notice pass to the City free and clear of any claims by Subtenant, any lender or other party. The City hereby waives any right under the City Lease to require Subtenant to remove any improvements located on the Premises after the expiration or other termination of the Sublease.

5. Notices. Whenever, by the terms of this Agreement, any notice, demand, request, approval, consent or other communication (each of which shall be referred to as a "notice") shall or may be given either to the City or to Subtenant, such notice shall be in writing and shall be sent by hand delivery or by registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier, as follows:

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7. Intentionally omitted.

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breach) by the Subtenant or the Hospital of the Sublease; and (ii) the giving by the Subtenant or the Hospital of any notice of any termination or expiration of the Sublease.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

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

The City of Nashua

By: _____
Name: _____
Title: _____

CVS Manchester NH, L.L.C.

By: _____
Name: _____
Title: _____

CVS Legal Approval: Susan E. Carlson
Mintz Levin

State of New Hampshire
County of Hillsborough, SS

This instrument was acknowledged before me on _____, 2014, by
_____ as _____ of The City of Nashua.

Justice of the Peace/Notary Public

State of _____
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(i) If intended for the City, addressed to the City at the address of the City set forth on the first page of this Agreement, Attention: _____.

(ii) If intended for Subtenant, addressed to Subtenant at the address of Subtenant set forth on the first page of this Agreement, Attention: Lease Administration Department, Store #639.

Either party may, by notice as aforesaid, designate a different address or addresses for notices. Except as otherwise provided herein, all such notices shall be deemed to have been given or served on the date of actual receipt {in the case of hand delivery), or three (3) business days after such notice shall have been deposited in the United States mails within the continental United States (in the case of mailing by registered or certified mail as aforesaid), or one (1) business day after such notice shall have been deposited with such overnight courier service.

6. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto and may not be modified or terminated orally. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the law of the State of New Hampshire. This Agreement may be signed in counterparts.

7. Intentionally omitted.

8. Use of Premises. Notwithstanding any provision of the City Lease to the contrary, the City hereby agrees that Subtenant shall have the right to use the Premises for the uses permitted under the Sublease and to make alterations to the East Parking Area as provided in the Sublease, and that the City's consent shall not be required for any such use or alterations permitted by the Sublease. Subtenant shall be solely responsible, and at its cost, for complying with all rules, regulations, laws and permits related to its use and alteration of the Premises.

9. Default under City Lease and Sublease;

(a) The City shall promptly give notice to Subtenant in writing (together with a copy of any notice received or given by the City) of: (A) the giving by the City or the Hospital of any notice of any termination or expiration of the City Lease pursuant to the terms thereof or otherwise, and (B) the giving by the Hospital of its exercise of its right to purchase the Premises as provided in the City Lease, and notice of the Hospital's purchase of the Premises promptly after the closing of the purchase.

(b) Subtenant shall promptly give notice to the City in writing (together with a copy of any notice received or given by the Subtenant) of: (i) any material breach (or alleged material

breach) by the Subtenant or the Hospital of the Sublease; and (ii) the giving by the Subtenant or the Hospital of any notice of any termination or expiration of the Sublease.

[SIGNATURES ARE ON THE FOLLOWING PAGE]

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

The City of Nashua

By: _____

Name: _____

Title: _____

CVS Manchester NH, L.L.C.

By: _____

Name: _____

Title: _____

CVS Legal Approval: Susan E. Carlson
Mintz Levin

State of New Hampshire
County of Hillsborough, SS

This instrument was acknowledged before me on _____, 2014, by
_____ as _____ of The City of Nashua.

Justice of the Peace/Notary Public

State of _____
County of _____, SS

This instrument was acknowledged before me on _____, 2014, by
_____ as _____ of CVS Manchester NH,
L.L.C.

Justice of the Peace/Notary Public