R-08-118

RESOLUTION

AUTHORIZING THE LEASE OF A CITY-OWNED PARCEL OF LAND ON PINE STREET (LOT 85-102), APPROXIMATELY 10,068 SQUARE FEET, TO PALM SQUARE, , LLC, AND AUTHORIZING THE CITY TO LEASE FROM PALM SQUARE, LLC, A PARCEL OF LAND ON ASH STREET TO BE KNOWN AS LOT 83-158, APPROXIMATELY 8,539 SQUARE FEET

CITY OF NASHUA

In the Year Two Thousand and Eight

RESOLVED *by the Board of Aldermen of the City of Nashua* that the City of Nashua is authorized to enter into the attached Ground Leases with Palm Square, LLC, (formerly Palm View Crossing, LLC) whereby the City will lease to Palm Square, LLC, a parcel of land known as 57 Pine Street, Lot 85-102, and Palm Square, LLC, will lease to the City a parcel of land located on Ash Street to be known as Lot 83-158.

LEGISLATIVE YEAR 2008

RESOLUTION: R-08-118

PURPOSE: **Authorizing the lease of a city-owned parcel of land on Pine Street (Lot 85-102), approximately 10,068 square feet, to Palm Square, , LLC, and authorizing the City to lease from Palm Square, LLC, a parcel of land on Ash Street to be known as Lot 83-158, approximately 8,539 square feet**

ENDORSER(S): **Alderman-at-Large Brian S. McCarthy**

COMMITTEE ASSIGNMENT:

FISCAL NOTE: **None.**

ANALYSIS

This resolution authorizes the City of Nashua to enter into Ground Leases with Palm Square, LLC, (formerly Palm View Crossing, LLC) by leasing to Palm Square, LLC, city-owned property located on Pine Street (Lot 85-102) and the City would lease from Palm Square, LLC, a parcel of land located on Ash Street to be known as Lot 83-158. The terms of the leases are three (3) years. Annual rent for each parcel of land is $30. Each lease contains an "Option To Purchase" the leased parcels for $1.

This Board had previously authorized the exchange of these lots between the City and Palm Square, LLC, by Resolution R-07-265. A subsequent title search revealed an issue with the City's title to Lot 85-102. Once the title defect is cured, the parcels can be exchanged by Palm Square, LLC, and the City.

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

By: _____

Date: 9/4/08

GROUND LEASE

THIS GROUND LEASE ("Lease") dated the _____ day of _____, 2008, between Palm Square, LLC (formerly Palm View Crossing, LLC) a New Hampshire limited liability company with an address of 9 Old Derry Road, Hudson, County of Hillsborough and State of New Hampshire ("Landlord") and The City of Nashua, a municipal corporation having a principal place of business at 229 Main Street, Nashua, County of Hillsborough and State of New Hampshire ("Tenant").

1. **EFFECTIVE DATE.** The effective date of this Lease ("Effective Date") shall be the date of final execution of the Lease.

2. **DESCRIPTION OF PROPERTY.** In consideration of the mutual covenants contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the property located on Ash Street in the City of Nashua, County of Hillsborough and State of New Hampshire, and to be known as Lot 158, Map 83, of the City of Nashua and legally described as follows:

See Exhibit "A"

having approximately .196 acres together with (a) all rights, easements and appurtenances belonging or appertaining thereto, (b) all right, title and interest of Landlord in and to any and all roads, streets, alleys and ways, bounding such property and (c) all buildings and other improvements thereon, if any ("Property").

3. **TERM.** The term of the Lease is three (3) years ("Term"), commencing on _____, (the "Commencement Date").

4. **EXTENSIONS.** Tenant shall have the option of extending the Term for one (1) additional period of five (5) years ("Extension"), commencing at midnight on the date on which the Term expires.

The extension shall be automatic and shall be under the same terms and conditions set forth herein, and the parties shall be bound by the Lease for such Extension unless Tenant gives Landlord notice, not later than ninety (90) days prior to the expiration of the Term, that Tenant does not intend to extend the Lease.

5. **RENT AND COMMON AREA MAINTENANCE.**

(a) TERM. Tenant agrees to pay Landlord rent for the use and occupancy of the Property in advance for the entire term in the amount of Thirty Dollars and 00/100 ($30.00).

The entire rent payment for the Term shall be due on the Commencement Date.

6. **TENANT'S PROPOSED USE.** Tenant proposes to use the Property (as shown on Exhibit A) for off-street parking and uses incident thereto, including the construction of parking lots, tot lots, skateboard parks, curb-cuts, culverts, driveways and signage acceptable to Tenant ("Tenant's Proposed Use"). Tenant shall at all times comply with all applicable federal, State and local laws, ordinances and regulations in its use of the Property.

7. **AUTHORIZATIONS AND PERMITS.** Tenant's obligations under this Lease are contingent on Tenant obtaining all necessary permits and licenses ("Permits") for Tenant's Proposed Use. In the event that the Property is restricted by any State, county, municipal or other governmental law, ordinance, rule or regulation which prohibit, limit or restrict the use of the Property for Tenant's Proposed Use, Landlord shall cooperate with Tenant in obtaining special use permits, wetland permits, or variances so that the Property may be used for Tenant's Proposed Use. The cost of securing the Permits shall be borne by Tenant. Landlord agrees to cooperate fully with Tenant in securing Permits and grants permission to Tenant to make application for Permits in the name of Landlord. The determination of the necessity for obtaining Permits and the adequacy of the Permits granted shall be within the sole discretion of Tenant.

8. **TITLE ISSUES.** Tenant may order a title search on the Property. In the event the title search discloses encumbrances or other conditions not previously known to Tenant and not acceptable to Tenant ("Defects"), then, Tenant shall give Landlord written notice of such Defects whereupon Landlord shall immediately and diligently proceed to cure, and shall have a reasonable time within which to cure, the Defects.

9. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AND CONSENT TO EASEMENT.** Upon written request of Landlord, or any mortgagee or beneficiary of Landlord, Tenant will, in writing, subordinate its right hereunder to the lien of any mortgage or deed of trust, now or hereafter in force against the land of which the Property is a party and to all advances made or hereafter to be made upon the security thereof; provided, however, that the mortgagee or trustee named in such mortgage or trust deed shall execute a Non-Disturbance Agreement in form and substance acceptable to Tenant.

10. **OPTION TO TERMINATE.**

10.1 Tenant's Option. In addition to any other rights of Tenant to terminate the Lease, Tenant shall have the right to terminate the Lease at any time. In the event Tenant has constructed any improvements, Tenant shall surrender the Property to Landlord with all improvements thereon, except as provided in Paragraph 14, and Tenant shall restore and repair any damage associated with the removal of any improvements.

10.2 Landlord's Option. In addition to any other right that Landlord may have to terminate this Lease, it shall have the right to terminate this Lease upon One hundred twenty (120) days written notice to Tenant in the event that Tenant fails to convey 57 Pine Street, Nashua, New Hampshire a/k/a Lot 102, Map 85 as shown on Plan 35363 recorded in the Hillsborough County Registry of Deeds to the Landlord by the end of the Term of this Lease, or

Extension if applicable, in accordance with the terms and conditions of Resolution No. R-07-265 passed on October 9, 2007.

11. REAL ESTATE TAXES. Tenant shall pay before they become delinquent the real estate taxes imposed during the Term and any Extension upon or against the Property ("Real Estate Taxes"), if any. Nothing herein contained shall require Tenant to pay corporation, franchise, income, estate, gift and inheritance taxes or charges imposed on rent or other similar taxes, charges or imposition which may be levied or assessed against Landlord, fee owner, or their successor in title. Copies of Real Estate Tax bills shall be delivered by Landlord to Tenant as soon as reasonably possible. For the 2008 tax year, any tax assessment to be paid by Tenant shall be a proportionate share of the taxes based upon the area of Lot 158 (8,539 square feet) as it bears to the area of former Lot 48 (22,351 square feet). It is expressly understood that the prorated tax for which the Tenant shall be responsible shall not exceed 38 percent of the total tax liability for old Lot 48 for the 2008 tax year.

12. INSURANCE. From the Effective Date and continuing during the Term and any Extensions, Tenant shall protect, indemnify and save harmless Landlord from and against any and all liability arising out of Tenant's use of the Property, or from the conduct of Tenant's business or any activity, work or things done by Tenant in or about the Property, and shall further indemnify and hold Landlord harmless from and against or arising from any negligence of Tenant; and in case any action or proceeding be brought against Landlord by reason of such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense. Tenant shall, during the entire Term hereof, and any Extensions, keep in full force and effect a policy of comprehensive general public liability and property damage insurance with respect to the Property, and the business operated by Tenant thereon, paying as same shall become due all premiums with respect thereto. Such insurance shall contain limits of not less than $1,000,000.00 per accident for and against liability for bodily injury including death resulting therefrom, and not less than $3,000,000.00 per accident against liability for damage to property, including loss or the use thereof, occurring on, in or about or any way relating to the Property, and provided that no such policy shall be terminated, cancelled or otherwise modified unless thirty (30) days prior written notice given to Landlord. All such policies of insurance shall name Landlord as an additional insured.

13. LANDLORD'S TITLE AND QUIET ENJOYMENT. Landlord represents and warrants that Landlord is seized in fee simple title to the Property, free, clear and unencumbered. Landlord covenants that so long as Tenant fulfills the conditions and covenants required of it to be performed, Tenant will have peaceful and quiet possession thereof. Landlord further represents and warrants that it has good right, full power and lawful authority to enter into the Lease for the Term and any Extensions.

14. IMPROVEMENT, ALTERATIONS, REPAIR AND MAINTENANCE. From and after the Effective Date, Tenant shall have the right from time to time to construct a parking lot, tot lots, skateboard parks, driveways, culverts, curbing, signs and similar improvements upon the Property and to alter, renovate, add, remodel, modify, change and/or demolish the same. At the termination of the Lease, Tenant shall not remove any such

improvements, except equipment associated with any skateboard park or tot lot. During the term of this Lease, Tenant shall perform all necessary repairs and maintenance, including, but not limited to snow removal associated with the Property, as well as pay for all utilities associated with the Property.

15. LIENS. Landlord and Tenant covenant each with the other not to permit any judgment, attachment and/or lien to be filed against the Property. Any judgment, attachment and/or lien of any nature be filed against the Property, the party from whose fault or alleged debt such lien arises shall within thirty (30) days cause such judgment, attachment and/or lien to be removed by substitution of collateral or otherwise.

16. EVENTS OF DEFAULT.

16.1 The occurrence of any of the following shall constitute an event of default:

(a) Failure or Tenant to pay when due, following ten (10) days' written notice, any installment of rent hereunder or any other sum herein required to be paid by Tenant;

(b) The filing of a petition by or against Tenant for adjudication as bankrupt or insolvent, for its reorganization or for the appointment of receiver or trustee of Tenant's Property which action is not dismissed in thirty (30) days;

(c) An assignment by Tenant for the benefit of creditors;

(d) The filing by Tenant for relief under the Bankruptcy Code;

(e) Tenant's failure to perform any other covenant or condition of this Lease within thirty (30) days after notice, unless such failure is of such character so as to require more than thirty (30) days to cure, in which event Tenant's failure to proceed immediately, diligently, and continuously to cure such default shall constitute an event of default.

16.2 If the Tenant is in default as defined in Section 16.1 of this Lease then the Landlord shall have the following rights as its sole and exclusive remedies:

(a) To re-enter and remove all persons and personal property from the Property following service of notice or resort to legal process.

(b) To distrain, collect or bring action for the rent as and when due hereunder, less mitigation.

(c) To re-enter and repossess the Property and any part thereof and attempt to

relet all or any part of such Property for the account of Tenant for such rent and upon commercially reasonable terms and to such persons, firms or corporation and for such period or periods as Landlord, in the exercise of commercially reasonable discretion, shall determine, including a term beyond the termination of this Lease. Landlord shall act and exercise reasonable commercial care and diligence with respect to such reletting. Any sums collected by Landlord from any new tenant obtained on account of the Tenant shall be credited against the balance of the rent due hereunder as aforesaid; or

(d) To serve notice upon Tenant that this lease and the then unexpired Term hereof shall cease and expire and become absolutely void on the date specified in such notice, to be not less than thirty (30) days after the date of such notice, and thereupon this Lease and the Term hereby granted, as well as all of the right, title and interest of the Tenant hereunder, shall wholly cease and expire and become void in the same manner and with the same force and effect as if the date fixed in such notice were the date herein specified for expiration of the Term of this Lease. Thereupon, Tenant shall immediately quit and repossess the Property by summary proceedings, detainer, ejectment or otherwise, and remove all occupants thereof and, at Landlord's option, any property thereon, without being liable for indictment, prosecution or damages by reason thereof.

17. CONDEMNATION. In the event of a taking of a substantial portion of the Property as would, in the judgment of the Tenant, render the balance of the Property not suitable for Tenant's Proposed Use, the Lease shall terminate upon the date that possession is surrendered to the condemning authority, at which time all rights and obligations between the parties shall cease and rent and other charges payable by Tenant under the Lease shall be apportioned. Notwithstanding any provision of the Lease or by operation of law that leasehold improvements may be or shall become the property of Landlord at the termination of the Lease, the loss of the improvements paid for by Tenant, the loss of Tenant's leasehold estate and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority if a separate claim therefore is allowable under applicable law, or the basis of Tenant's damages to a portion of the total award if only One award is made.

18. ASSIGNMENT OR TRANSFER BY LANDLORD OR TENANT. No assignment or transfer of the Lease by Landlord shall be binding on Tenant unless the assignee or transferee shall assume and agree to be bound by the terms of the Lease and until notice of assignment or transfer together with an executed copy of such assignment or transfer instrument is received by Tenant.

Tenant shall have the right to assign, sublet or transfer any or all of its rights and privileges under the Lease provided that no such assignment, sublease or transfer shall operate to relief Tenant of its obligations under the Lease, including the payment of the rent.

19. NOTICES. All notices shall be sent by certified mail addressed to the receiving party at the address first above stated or such other address as such party shall designate in writing.

20. HAZARDOUS SUBSTANCES.

20.1 Landlord's Representations and Warranties. Landlord represents and warrants the following:

(i) The Property does not presently contain and is free from all hazardous substances and/or wastes, toxic and nontoxic pollutants and contaminants including, but not limited to, petroleum products and asbestos ("Hazardous Substances").

(ii) To the best of Landlord's knowledge, the Property has not in the past been used for storage, manufacture or sale of Hazardous Substances or for any activity involving Hazardous Substances.

(iii) To the best of Landlord's knowledge, no Hazardous Substances are located in the vicinity of the Property.

(iv) Landlord has not transported, or caused to be transported, any Hazardous Substances to or from the Property.

(v) Landlord has not received and is not aware of any notification from any federal, State, county or city agency or authority relating to Hazardous Substances, in or near the Property.

20.2 Landlord's Indemnity. Landlord shall indemnify, defend (with counsel selected by Tenant and acceptable to Landlord in its reasonable discretion) and hold harmless Tenant from and against any and all liability arising from any and all claims, demands, litigation, or governmental action involving any of the following:

(i) Any breach of the representations and warranties contained in this Section 20.

(ii) The presence or suspected presence of Hazardous Substances on or in the Property, unless such presence is due to the acts of Tenant or the acts of any party other than Landlord, its agents and employees, occurring after the Effective Date.

(iii) The migration of Hazardous Substances from the Property to any other property if such migration occurred prior to the Effective Date or if the migrating substances were located on or in the Property at the time of the Effective Date.

Without limiting the generality of the foregoing, this indemnification shall specifically cover fines, penalties, sums paid in settlement of claims or litigation, fees for attorneys, consultants and experts (to be selected by Tenant) and costs for investigation, clean-up, removal or restoration.

20.3 Tenant's Operations. Tenant shall comply with all applicable federal, State and local environmental laws, ordinances, orders or regulations affecting the Property, the operation of Tenant's business at the Property, or removal of any substances therefrom. Notwithstanding anything in this Lease to the contrary, Tenant shall not, without Landlord's prior written consent and subject to reasonable conditions imposed by Landlord, use, store, manufacture, process or dispose of any oil or Hazardous Substances regulated by public authority. Further, Tenant shall not permit any on site disposal of any oil or Hazardous Substances. No Hazardous or industrial waste, contaminated substances or those resulting from manufacturing or processing shall be deposited in containers provided for trash removal. All waste materials (including Tenant's construction and/or remodeling wastes) other than ordinary, sanitary commercial trash, or cooking by-products shall be removed from the Property and properly disposed of in compliance with all applicable laws as Tenant's sole cost and expense. Tenant does hereby agree to indemnify and hold Landlord harmless of, from and against all claims, actions, liens, demands, costs, expenses, fines and judgments (including legal costs and attorneys' fees) resulting from Tenant's violation of any environmental laws or regulations.

20.4 Survival of Lease. The representations, warranties and indemnity in this Section 20 shall survive the termination of the Lease.

21. MISCELLANEOUS.

(a) The Lease contains the entire agreement between the parties. No rights are conferred upon Landlord until the Lease has been executed by Tenant. Neither Landlord nor Tenant nor any of their agents have made any statement, promises or agreements verbally or in writing in conflict with the terms of the Lease. Any and all representations by either of the parties or their agents made during negotiations prior to execution of the Lease and which representations are not contained in the Lease shall not be binding upon either of the parties.

(b) The parties agree to indemnify, defend and hold each other harmless from any and all claims, costs or damages by any person claiming a brokerage fee or commission out of this Lease.

(c) The Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

(d) Landlord and Tenant are not and shall not be considered joint ventures nor partners and neither shall have power to bind or obligate the other except as set forth in the Lease.

(e) Any legal proceedings initiated by reason of an alleged default of the Lease by either Landlord or Tenant must be commenced within One (1) year from the date that such alleged default occurred.

(f) If any provision of the Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

(g) No modification, alteration or amendment of the Lease shall be binding unless in writing and executed by the parties.

(h) The Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

22. OPTION TO PURCHASE

The Landlord further covenants and agrees that the Tenant shall have a sole and exclusive Option to Purchase the Property hereby leased during the Term or Extension of the lease in accordance with the following terms: the purchase price shall be One Dollar and 00/100 ($1.00). Said Option to Purchase shall be exercised and be completed prior to the end of the Term or Extension, if applicable and the Property shall be conveyed free and clear of all encumbrances and shall be conveyed with marketable title. The Option to Purchase the Property by the Tenant is contingent upon the Tenant conveying 57 Pine Street a/ka/ Lot 102, Map 85, to the Landlord by the end of the Term of the Lease, or Extension if applicable.

IN WITNESS WHEREOF, Landlord had caused the Lease to be executed and sealed this _____ day of _____, 2008.

LANDLORD:

PALM SQUARE, LLC

_____
Witness

By:_____
Mario Plante, Its Manager

TENANT:

CITY OF NASHUA

_____
WITNESS

_____
Mayor Donnalee Lozeau

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the _____ day of_____, 200__, before me, the undersigned officer, personally appeared Mario Plante, who acknowledged himself to be the Manager of Palm Square, LLC, a limited liability company, and that he, as such manager being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as manager.

In witness whereof I hereunto set my hand and official seal

_____
Notary Public/Justice of the Peace
My Commission Expires:

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the _____ day of_____, 200__, before me, the undersigned officer, personally appeared Donnalee Lozeau, who acknowledged herself to be the Mayor of the City of Nashua, a municipality, and that she, as such Mayor being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by Herself as Mayor.

In witness whereof I hereunto set my hand and official seal

_____
Notary Public/Justice of the Peace
My Commission Expires:

EXHIBIT A

A certain tract or parcel of land with all improvements thereon situated on the westerly side of Ash Street in Nashua, New Hampshire, and further described as New Lot 158, Map 83, on a plan of land entitled "Tax Map 83, Lot 48, Resubdivision Plan, prepared for and Land of Palm View Crossing, LLC located at Palm and Ash Street, Nashua, New Hampshire, Scale 1" = 20' dated May 8, 2007, by Bedford Design Consultants, Inc. and recorded in the Hillsborough County Registry of Deeds as Plan 36041.

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GROUND LEASE

THIS GROUND LEASE ("Lease") dated the _____ day of _____, 2008, between The City of Nashua, a municipal corporation having a principal place of business at 229 Main Street, Nashua, County of Hillsborough and State of New Hampshire ("Landlord") and Palm Square, LLC (formerly Palm View Crossing, LLC) a New Hampshire limited liability company with an address of 9 Old Derry Road, Hudson, County of Hillsborough and State of New Hampshire ("Tenant").

1. **EFFECTIVE DATE.** The effective date of this Lease ("Effective Date") shall be the date of final execution of the Lease.

2. **DESCRIPTION OF PROPERTY.** In consideration of the mutual covenants contained herein, Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the property located at 57 Pine Street a/k/a Lot 102, Map 85, in the City of Nashua, County of Hillsborough and State of New Hampshire, legally described as follows:

See Exhibit "A"

having approximately .231 acres together with (a) all rights, easements and appurtenances belonging or appertaining thereto, (b) all right, title and interest of Landlord in and to any and all roads, streets, alleys and ways, bounding such property and (c) all buildings and other improvements thereon, if any ("Property").

3. **TERM.** The term of the Lease is three (3) years ("Term"), commencing on _____, (the "Commencement Date").

4. **EXTENSIONS.** Tenant shall have the option of extending the Term for one (1) additional period of five (5) years ("Extension"), commencing at midnight on the date on which the Term expires.

The extension shall be automatic and shall be under the same terms and conditions set forth herein, and the parties shall be bound by the Lease for such Extension unless Tenant gives Landlord notice, not later than ninety (90) days prior to the expiration of the Term, that Tenant does not intend to extend the Lease.

5. **RENT AND COMMON AREA MAINTENANCE.**

(a) TERM. Tenant agrees to pay Landlord rent for the use and occupancy of the Property in advance for the entire term in the amount of Thirty Dollars and 00/100 ($30.00).

The entire rent payment for the Term shall be due on the Commencement Date.

6. **TENANT'S PROPOSED USE.** Tenant proposes to use the Property (as shown on Exhibit A) for off-street parking and uses incident thereto, including the construction of parking lots, curb-cuts, culverts, driveways and signage acceptable to Tenant ("Tenant's Proposed Use"). Tenant shall at all times comply with all applicable federal, State and local laws, ordinances and regulations in its use of the Property. Landlord covenants that all playground equipment and skateboard park fixtures shall be removed from the Property at its sole costs and expense prior to the commencement of this Lease.

7. **AUTHORIZATIONS AND PERMITS.** Tenant's obligations under this Lease are contingent on Tenant obtaining all necessary permits and licenses ("Permits") for Tenant's Proposed Use. In the event that the Property is restricted by any State, county, municipal or other governmental law, ordinance, rule or regulation which prohibit, limit or restrict the use of the Property for Tenant's Proposed Use, Landlord shall cooperate with Tenant in obtaining special use permits, wetland permits, or variances so that the Property may be used for Tenant's Proposed Use. The cost of securing the Permits shall be borne by Tenant. Landlord agrees to cooperate fully with Tenant in securing Permits and grants permission to Tenant to make application for Permits in the name of Landlord. The determination of the necessity for obtaining Permits and the adequacy of the Permits granted shall be within the sole discretion of Tenant.

8. **TITLE ISSUES.** Tenant may order a title search on the Property. In the event the title search discloses encumbrances or other conditions not previously known to Tenant and not acceptable to Tenant ("Defects"), then, Tenant shall give Landlord written notice of such Defects whereupon Landlord shall immediately and diligently proceed to cure, and shall have a reasonable time within which to cure, the Defects.

9. **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AND CONSENT TO EASEMENT.** Upon written request of Landlord, or any mortgagee or beneficiary of Landlord, Tenant will, in writing, subordinate its right hereunder to the lien of any mortgage or deed of trust, now or hereafter in force against the land of which the Property is a party and to all advances made or hereafter to be made upon the security thereof; provided, however, that the mortgagee or trustee named in such mortgage or trust deed shall execute a Non-Disturbance Agreement in form and substance acceptable to Tenant.

10. **OPTION TO TERMINATE.**

10.1 Tenant's Option. In addition to any other rights of Tenant to terminate the Lease, Tenant shall have the right to terminate the Lease at any time. In the event Tenant has constructed any improvements, Tenant shall surrender the Property to Landlord with all improvements thereon.

10.2 Landlord's Option. In addition to any other right that Landlord may have to terminate this Lease, it shall have the right to terminate this Lease upon One hundred twenty (120) days written notice to Landlord in the event that Tenant fails to convey Lot 158, Map 83, as shown on Plan 36041 and recorded in the Hillsborough County Registry of Deeds to the

Landlord by the end of the Term of this Lease, or Extension if applicable, in accordance with the Terms and Conditions of Resolution: R-07-265 passed on October 9, 2007.

11. REAL ESTATE TAXES. Tenant shall pay before they become delinquent the real estate taxes imposed during the Term and any Extensions upon or against the Property ("Real Estate Taxes"), if any. Nothing herein contained shall require Tenant to pay corporation, franchise, income, estate, gift and inheritance taxes or charges imposed on rent or other similar taxes, charges or imposition which may be levied or assessed against Landlord, fee owner, or their successor in title. Copies of Real Estate Tax bills shall be delivered by Landlord to Tenant as soon as reasonably possible.

12. INSURANCE. From the Effective Date and continuing during the Term and any Extensions, Tenant shall protect, indemnify and save harmless Landlord from and against any and all liability arising out of Tenant's use of the Property, or from the conduct of Tenant's business or any activity, work or things done by Tenant in or about the Property, and shall further indemnify and hold Landlord harmless from and against or arising from any negligence of Tenant; and in case any action or proceeding be brought against Landlord by reason of such claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense. Tenant shall, during the entire Term hereof, and any Extensions, keep in full force and effect a policy of comprehensive general public liability and property damage insurance with respect to the Property, and the business operated by Tenant thereon, paying as same shall become due all premiums with respect thereto. Such insurance shall contain limits of not less than $1,000,000.00 per accident for and against liability for bodily injury including death resulting therefrom, and not less than $3,000,000.00 per accident against liability for damage to property, including loss or the use thereof, occurring on, in or about or any way relating to the Property, and provided that no such policy shall be terminated, cancelled or otherwise modified unless thirty (30) days prior written notice given to Landlord. All such policies of insurance shall name Landlord as an additional insured.

13. LANDLORD'S TITLE AND QUIET ENJOYMENT. Landlord represents and warrants that Landlord is holds title to the Property, free and clear and unencumbered except as previously disclosed to Tenant. Landlord covenants that so long as Tenant fulfills the conditions and covenants required of it to be performed, Tenant will have peaceful and quiet possession thereof. Landlord further represents and warrants that it has good right, full power and lawful authority to enter into the Lease for the Term and any Extensions.

14. IMPROVEMENT, ALTERATIONS, REPAIR AND MAINTENANCE. From and after the Effective Date, Tenant shall have the right from time to time to construct a parking lot, driveways, culverts, curbing, signs and similar improvements upon the Property and to alter, renovate, add, remodel, modify, change and/or demolish the same. At the termination of the Lease, Tenant shall not remove any such improvements. During the term of this Lease, Tenant shall perform all necessary repairs and maintenance, including, but not limited to snow removal associated with the Property.

15. LIENS. Landlord and Tenant covenant each with the other not to permit any judgment, attachment and/or lien to be filed against the Property. Any judgment, attachment and/or lien of any nature be filed against the Property, the party from whose fault or alleged debt such lien arises shall within thirty (30) days cause such judgment, attachment and/or lien to be removed by substitution of collateral or otherwise.

16. EVENTS OF DEFAULT.

16.1 The occurrence of any of the following shall constitute an event of default:

(a) Failure or Tenant to pay when due, following ten (10) days' written notice, any installment of rent hereunder or any other sum herein required to be paid by Tenant;

(b) The filing of a petition by or against Tenant for adjudication as bankrupt or insolvent, for its reorganization or for the appointment of receiver or trustee of Tenant's Property which action is not dismissed in thirty (30) days;

(c) An assignment by Tenant for the benefit of creditors;

(d) The filing by Tenant for relief under the Bankruptcy Code;

(e) Tenant's failure to perform any other covenant or condition of this Lease within thirty (30) days after notice, unless such failure is of such character so as to require more than thirty (30) days to cure, in which event Tenant's failure to proceed immediately, diligently, and continuously to cure such default shall constitute an event of default.

16.2 If the Tenant is in default as defined in Section 16.1 of this Lease then the Landlord shall have the following rights as its sole and exclusive remedies:

(a) To re-enter and remove all persons and personal property from the Property following service of notice or resort to legal process.

(b) To distrain, collect or bring action for the rent as and when due hereunder, less mitigation.

(c) To re-enter and repossess the Property and any part thereof and attempt to relet all or any part of such Property for the account of Tenant for such rent and upon commercially reasonable terms and to such persons, firms or corporation and for such period or periods as Landlord, in the exercise of commercially reasonable discretion, shall determine, including a term beyond the termination of this Lease. Landlord shall act and exercise reasonable commercial care and diligence with respect to such reletting.

Any sums collected by Landlord from any new tenant obtained on account of the Tenant shall be credited against the balance of the rent due hereunder as aforesaid; or

(d) To serve notice upon Tenant that this lease and the then unexpired Term hereof shall cease and expire and become absolutely void on the date specified in such notice, to be not less than thirty (30) days after the date of such notice, and thereupon this Lease and the Term hereby granted, as well as all of the right, title and interest of the Tenant hereunder, shall wholly cease and expire and become void in the same manner and with the same force and effect as if the date fixed in such notice were the date herein specified for expiration of the Term of this Lease. Thereupon, Tenant shall immediately quit and repossess the Property by summary proceedings, detainer, ejectment or otherwise, and remove all occupants thereof and, at Landlord's option, any property thereon, without being liable for indictment, prosecution or damages by reason thereof.

17. CONDEMNATION. In the event of a taking of a substantial portion of the Property as would, in the judgment of the Tenant, render the balance of the Property not suitable for Tenant's Proposed Use, the Lease shall terminate upon the date that possession is surrendered to the condemning authority, at which time all rights and obligations between the parties shall cease and rent and other charges payable by Tenant under the Lease shall be apportioned. Notwithstanding any provision of the Lease or by operation of law that leasehold improvements may be or shall become the property of Landlord at the termination of the Lease, the loss of the improvements paid for by Tenant, the loss of Tenant's leasehold estate and such additional relief as may be provided by law shall be the basis of Tenant's damages against the condemning authority if a separate claim therefore is allowable under applicable law, or the basis of Tenant's damages to a portion of the total award if only One award is made.

18. ASSIGNMENT OR TRANSFER BY LANDLORD OR TENANT. No assignment or transfer of the Lease by Landlord shall be binding on Tenant unless the assignee or transferee shall assume and agree to be bound by the terms of the Lease and until notice of assignment or transfer together with an executed copy of such assignment or transfer instrument is received by Tenant.

Tenant shall have the right to assign, sublet or transfer any or all of its rights and privileges under the Lease provided that no such assignment, sublease or transfer shall operate to relief Tenant of its obligations under the Lease, including the payment of the rent.

19. NOTICES. All notices shall be sent by certified mail addressed to the receiving party at the address first above stated or such other address as such party shall designate in writing.

20. HAZARDOUS SUBSTANCES.

20.1 Landlord's Representations and Warranties. Landlord represents and warrants the following:

(i) The Property does not presently contain and is free from all hazardous substances and/or wastes, toxic and nontoxic pollutants and contaminants including, but not limited to, petroleum products and asbestos ("Hazardous Substances").

(ii) To the best of Landlord's knowledge, the Property has not in the past been used for storage, manufacture or sale of Hazardous Substances or for any activity involving Hazardous Substances.

(iii) To the best of Landlord's knowledge, no Hazardous Substances are located in the vicinity of the Property.

(iv) Landlord has not transported, or caused to be transported, any Hazardous Substances to or from the Property.

(v) Landlord has not received and is not aware of any notification from any federal, State, county or city agency or authority relating to Hazardous Substances, in or near the Property.

20.2 Landlord's Indemnity. Landlord shall indemnify, defend (with counsel selected by Tenant and acceptable to Landlord in its reasonable discretion) and hold harmless Tenant from and against any and all liability arising from any and all claims, demands, litigation, or governmental action involving any of the following:

(i) Any breach of the representations and warranties contained in this Section 20.

(ii) The presence or suspected presence of Hazardous Substances on or in the Property, unless such presence is due to the acts of Tenant or the acts of any party other than Landlord, its agents and employees, occurring after the Effective Date.

(iii) The migration of Hazardous Substances from the Property to any other property if such migration occurred prior to the Effective Date or if the migrating substances were located on or in the Property at the time of the Effective Date.

Without limiting the generality of the foregoing, this indemnification shall specifically cover fines, penalties, sums paid in settlement of claims or litigation, fees for attorneys, consultants and experts (to be selected by Tenant) and costs for investigation, clean-up, removal or restoration.

20.3 Tenant's Operations. Tenant shall comply with all applicable federal, State and local environmental laws, ordinances, orders or regulations affecting the Property, the operation of Tenant's business at the Property, or removal of any substances therefrom. Notwithstanding anything in this Lease to the contrary, Tenant shall not, without Landlord's prior written consent and subject to reasonable conditions imposed by Landlord, use, store, manufacture, process or dispose of any oil or Hazardous Substances regulated by public authority. Further, Tenant shall not permit any on site disposal of any oil or Hazardous Substances. No Hazardous or industrial waste, contaminated substances or those resulting from manufacturing or processing shall be deposited in containers provided for trash removal. All waste materials (including Tenant's construction and/or remodeling wastes) other than ordinary, sanitary commercial trash, or cooking by-products shall be removed from the Property and properly disposed of in compliance with all applicable laws as Tenant's sole cost and expense. Tenant does hereby agree to indemnify and hold Landlord harmless of, from and against all claims, actions, liens, demands, costs, expenses, fines and judgments (including legal costs and attorneys' fees) resulting from Tenant's violation of any environmental laws or regulations.

20.4 Survival of Lease. The representations, warranties and indemnity in this Section 20 shall survive the termination of the Lease.

21. MISCELLANEOUS.

(a) The Lease contains the entire agreement between the parties. No rights are conferred upon Landlord until the Lease has been executed by Tenant. Neither Landlord nor Tenant nor any of their agents have made any statement, promises or agreements verbally or in writing in conflict with the terms of the Lease. Any and all representations by either of the parties or their agents made during negotiations prior to execution of the Lease and which representations are not contained in the Lease shall not be binding upon either of the parties.

(b) The parties agree to indemnify, defend and hold each other harmless from any and all claims, costs or damages by any person claiming a brokerage fee or commission out of this Lease.

(c) The Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

(d) Landlord and Tenant are not and shall not be considered joint ventures nor partners and neither shall have power to bind or obligate the other except as set forth in the Lease.

(e) Any legal proceedings initiated by reason of an alleged default of the Lease by either Landlord or Tenant must be commenced within One (1) year from the date that such alleged default occurred.

(f) If any provision of the Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Lease, or the application of such term or provision to persons whose circumstances are other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

(g) No modification, alteration or amendment of the Lease shall be binding unless in writing and executed by the parties.

(h) The Lease shall be binding upon and inure to the benefit of the parties, their successors and assigns.

22. OPTION TO PURCHASE

The Landlord further covenants and agrees that the Tenant shall have a sole and exclusive Option to Purchase the Property hereby leased during the Term or Extension of the lease in accordance with the following terms: the purchase price shall be One Dollar and 00/100 ($1.00). Said Option to Purchase shall be exercised and be completed prior to the end of the Term or Extension, if applicable and the Property shall be conveyed free and clear of all encumbrances and shall be conveyed with marketable title. The Option to Purchase the Property by the Tenant is contingent upon the Tenant conveying the parcel of land located on Ash Street (to be known as Lot 83-158) to the Landlord by the end of the Term of the Lease, or Extension if applicable.

IN WITNESS WHEREOF, Landlord had caused the Lease to be executed and sealed this _____ day of _____, 2008.

LANDLORD:
CITY OF NASHUA

_____
WITNESS

_____
Mayor Donnalee Lozeau

TENANT:
PALM SQUARE, LLC

_____
Witness

By:_____
Mario Plante, Its Manager

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the _____ day of_____, 200__, before me, the undersigned officer, personally appeared Donnalee Lozeau, who acknowledged herself to be the Mayor of the City of Nashua, a municipality, and that she, as such Mayor being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the municipality by Herself as Mayor.

In witness whereof I hereunto set my hand and official seal

_____
Notary Public/Justice of the Peace
My Commission Expires:

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the _____ day of_____, 200__, before me, the undersigned officer, personally appeared Mario Plante, who acknowledged himself to be the Manager of Palm Square, LLC, a limited liability company, and that he, as such manager being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself as manager.

In witness whereof I hereunto set my hand and official seal

_____
Notary Public/Justice of the Peace
My Commission Expires:

EXHIBIT A

A certain parcel of land with any improvements thereon located on the westerly side of Pine Street, Nashua, New Hampshire and further described as follows: Lot 102 Map 85 as shown on a plan entitled "Boundary Plan (Lot 102 Map 85) 57 Pine Street, Nashua, New Hampshire prepared for record owner: City of Nashua, Sale 1" = 20' dated March 26, 2007 by Hayner/Swanson, Inc." and recorded in the Hillsborough County Registry of Deeds as Plan #35363.

F:\2007\07-287\ground lease city as landlord 5.12.08.doc

RESOLUTION R-08-118

Authorizing the lease of a city-owned parcel of land on Pine Street (Lot 85-102), approximately 10,068 square feet, to Palm Square, LLC, and authorizing the City to lease from Palm Square, LLC, a parcel of land on Ash Street to be known as Lot 83-158, approximately 8,539 square feet

Endorsed by

McCarthy

PLAMONDON

TABACSKO

IN THE BOARD OF ALDERMEN

1ST READING SEPTEMBER 9, 2008

Referred to:

COMMITTEE ON INFRASTRUCTURE

2nd Reading OCTOBER 14, 2008

3rd Reading

4th Reading

Other Action

Passed OCTOBER 14, 2008

Indefinitely Postponed

Defeated

Attest: Paul B Bergeron
City Clerk

President

Approved Donalee Lozea
Mayor's Signature

10-17-08
Date

Vetoed:

Veto Sustained:

Veto Overridden:

Attest:
City Clerk

President