



## **RESOLUTION**

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO A LEASE AGREEMENT  
WITH RIVERSIDE PROPERTIES OF NASHUA, INC.**

### ***CITY OF NASHUA***

*In the Year Two Thousand and Eight*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the City is authorized to enter into the attached Lease Agreement with Riverside Properties of Nashua, Inc. for city owned property located at 7 Pine Street Extension – North, and described as Lot 77-3 on the City of Nashua's Assessing Map. The rental amount is \$20,000 for the first year of the lease and \$30,000 per year for the remaining four (4) years of the lease. The Lessee has the option to renew the lease for one five (5) year period at a monthly rental amount of \$2,750 per month (\$33,000 per year).

Approval of R-08-148 with the attached lease is subject to incorporating the city rights-of-way both pedestrian and vehicular and inclusive of any planning board stipulations and conditions.

**LEGISLATIVE YEAR 2008**

**RESOLUTION:** R-08-148

**PURPOSE:** Authorizing the City of Nashua to enter into a lease agreement with Riverside Properties of Nashua, Inc.

**ENDORSER(S):** Mayor Donnalee Lozeau  
Alderman Michael J. Tabacsko

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** Fiscal impact will be a \$20,000 increase in City revenue for the first year of the lease agreement and a \$30,000 increase in City revenue per year for the remaining four (4) years of the lease agreement.

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**ANALYSIS**

This resolution authorizes the City of Nashua to enter into a lease agreement with Riverside Properties of Nashua, Inc. for the city-owned property located at 7 Pine Street Extension – North, and described as Lot 77-3 on the City’s Assessing Map. The initial term of the lease is five (5) years with an option for a one five (5) year extension.

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

By: Dowling Clarke

Date: November 20, 2008

## **LEASE AGREEMENT**

THIS LEASE AGREEMENT made between the City of Nashua, hereinafter called the "LANDLORD", and Riverside Properties of Nashua, Inc., hereinafter called the "LESSEE".

WHEREAS, the LANDLORD is the owner of the hereinafter described property and has been requested by the LESSEE to lease the property to LESSEE, on an "as is" basis.

WHEREAS, the LANDLORD is willing to comply with said request, provided that the LESSEE, as a condition to the occupancy of said premises, joins in the execution of this LEASE AGREEMENT for the purpose of accepting each and every condition herein set forth during the occupancy of said premises by the LESSEE.

NOW, THEREFORE, THIS LEASE AGREEMENT WITNESSETH THAT:

### **1. DEMISE OF THE PREMISES**

1.01 For and in consideration of the rent and the mutual covenants hereinafter stated, and the acceptance by the LESSEE of each and every term and condition herein set forth, the LANDLORD hereby leases and demises to the LESSEE a portion of the premises located at

7 Pine Street Extension – North, Nashua, New Hampshire and also described as Lot 77-3 on the City of Nashua's Assessing Map. Total square footage of the leased premise is 78,408 (1.80 +/- acres). There are fifty-three (53) marked parking spaces on the premises as of the date of execution of this LEASE AGREEMENT. LESSEE plans to seek approval to increase this up to one hundred sixty-seven (167) spaces at LESSEE's expense.

### **2. TERM**

2.01 The term of this LEASE AGREEMENT shall be for a term of five (5) years, commencing on \_\_\_\_\_, 2008. LESSEE thereafter shall have the option to renew this LEASE AGREEMENT for one (1) additional five (5) year period by giving LANDLORD written notice thereof at least ninety (90) days prior to the expiration of the LEASE AGREEMENT.

### **3. RENT**

3.01 The LESSEE shall be responsible to the LANDLORD for rent payments in money. Rent shall be paid monthly in advance on the first day of the month. For the first year (12 months) of the term of this LEASE AGREEMENT, the monthly rent shall be \$1,667.00 (\$20,000.00 per year). For the remaining four (4) years (48 months) of the term of this LEASE AGREEMENT, the monthly rental shall be \$2,500.00 per month (\$30,000.00 per year). Should the LESSEE exercise its right to renew this LEASE AGREEMENT, the monthly rental during the renewal period shall be \$2,750.00 (\$33,000.00 per year).

3.02 Payments shall be made to the "Treasurer, City of Nashua" and mailed to the following address: Attention: Treasurer, 229 Main Street, P.O. Box 2019, Nashua, New Hampshire 03061-2019.

4. **QUIET ENJOYMENT**

4.01 LANDLORD covenants and agrees that so long as the LESSEE is not in default of any of the covenants and agreements of this LEASE AGREEMENT, LESSEE's quiet and peaceful enjoyment of the premises shall not be disturbed or interfered with by the LANDLORD or any person claiming by or through the LANDLORD.

4.02 LESSEE agrees to allow non-peak Monday through Friday, 9:00 A.M. to 5:00 P.M. usage of this lot for training events conducted by the Nashua Police Department or occasional special event downtown overflow parking for no cost to the LANDLORD or the public.

5. **USE OF PREMISES**

5.01 The LESSEE shall use the leased premises only for the parking of its tenants', invitees' and customers' vehicles and neither the premises nor any part thereof shall be used at any time during the term of this LEASE AGREEMENT by the LESSEE for the purpose of carrying on any other business, profession or trade of any kind. The LESSEE shall comply with all laws, ordinances, rules and orders of appropriate governmental authorities affecting the safety, cleanliness, occupancy, operation and preservation of the demised premises during the term of this LEASE AGREEMENT.

5.02 No tenant, visitor or invitee of LESSEE may park any motorized vehicle on any portion of premises which is not designated specifically for parking and for which all necessary approval/permits for parking have not been obtained by the LESSEE. No unregistered motor vehicles shall be stored upon the premises.

6. **COMPLIANCE WITH LAWS**

6.01 The LESSEE acknowledges that no trade or occupations shall be conducted on the leased premises or use made thereof other than for the parking of LESSEE'S tenants', invitees' or customers' motor vehicles.

6.02 The LESSEE shall obtain and maintain any and all approvals/permits necessary for the operation of a parking lot as described in paragraph 5.01.

7. **ALTERATIONS & MAINTENANCE OF PREMISES**

7.01 The LESSEE acknowledges that the premises is a vacant lot. The LESSEE shall, at its own expense, improve and maintain the premises in a clean, sanitary and safe manner.

The LESSEE acknowledges that the premises is approximately 50% a vacant and unpaved lot, and that of the remainder lot consists of a previously paved area containing fifty-three (53) parking spaces. The LESSEE, at its own expense and after obtaining any and all necessary approvals and permits, may improve the site for use as a parking area/lot for its tenants, customers and invitees, to the extent allowed by governing authorities. Items of improvement shall include, but not be limited to, drainage, striping, lighting, landscaping and paving.

**7.02** The LESSEE shall be responsible for maintaining the leased premises and any improvements thereon during its tenancy. LESSEE agrees to be responsible for all maintenance and repair costs resulting from its use of the premises. The LANDLORD shall not incur any maintenance or repair costs as a result of this LEASE AGREEMENT. Maintenance shall include, but not be limited to, removal of abandoned/unregistered vehicles, periodic striping, sweeping, catch basin cleaning, ice and snow removal and paving.

**7.03** Right of way maintenance: It is acknowledged by LANDLORD and LESSEE that a deeded right of way that accesses through this lot shall be maintained by the Millyard Association, as is the present agreement between LANDLORD and Association, as part of their dues structure.

## **8. DAMAGE TO PREMISES**

**8.01** If the premises are damaged so as to render them unleaseable, then either party shall have the right to terminate this LEASE AGREEMENT as of the date on which the damage occurs, through written notice to the other party, to be delivered within ten (10) days after the occurrence of such damage. However, should the damage or destruction occur as a result of any act or omission on the part of the LESSEE or its invitees, then only the LANDLORD shall have the right to terminate this LEASE AGREEMENT. Should the right to terminate be exercised, the rent for the current month shall be prorated between the parties as of the date the damage occurred. If the LEASE AGREEMENT is not terminated due to damages not the result of any act or omission of the LESSEE or its agents or invitees, then the LANDLORD shall repair the premises.

## **9. ENTRY AND INSPECTION**

**8.01** The LANDLORD retains the right to enter the premises in the case of an emergency or to exhibit the premises to prospective purchasers or lessees, workmen, contractors or others or when the LESSEE has abandoned or surrendered the premises or whenever necessary to determine the condition of the premises. Whenever practical, the LANDLORD shall provide the LESSEE with 24 hours notice prior to entry. Any indication of LEASE AGREEMENT violations shall be brought to the attention of the LESSEE in writing with 30 days allowed for LESSEE to make necessary corrections.

**10. ASSIGNMENT AND SUBLETTING**

**10.01** Without the prior written consent of the LANDLORD, the LESSEE shall not assign this LEASE AGREEMENT or sublet or grant any concession or license to use the premises or any part thereof. A consent by the LANDLORD to one assignment, subletting concession or license shall not be deemed to be a consent to any subsequent assignment, subletting, concession or license. An assignment, subletting, concession or license without the prior written consent of LANDLORD or an assignment or subletting by operation of law, shall be void.

**10.02** In the case of a sale of LESSEE'S adjacent property, where utilization of this lot would be an integral part of the buyers ability to LEASE or occupy LESSEE'S buildings. The buyer may assume the terms of this LEASE.

**11. UTILITIES**

**10.01** The LESSEE shall be responsible for obtaining any required utility services for the leased premises. LESSEE shall be responsible for payment of any and all utility services required and/or received on the premises, including electricity, water and sewage.

**12. FIRST RIGHT OF REFUSAL TO PURCHASE**

**12.01** The LESSEE, by way of its investment into the proposed improvements to this site, shall be awarded first right to purchase this property from the City of Nashua. LESSEE is also granted first right to refuse purchase for any sum offered to the City of Nashua from a third party buyer. LESSEE will be allotted thirty (30) days to respond to such an offer to purchase.

**13. DANGEROUS MATERIALS**

**13.01** The LESSEE shall not keep or have on the premises any article or nothing of a dangerous, inflammable or explosive character that might unreasonably increase the danger of fire on the premises or that might be considered hazardous or extra hazardous.

**14. INSURANCE**

**14.01** The LESSEE shall carry during the lease term, at its own cost and expense, the following insurance:

- (a) Comprehensive General Liability insurance - \$1,000,000 per occurrence/\$2,000,000 aggregate;

All required insurance policies shall name LANDLORD as an additional insured and must provide that the termination, cancellation or modification of said policies will not occur without at least thirty (30) days' prior written notice to LANDLORD. LESSEE shall provide a certificate

of insurance to the City of Nashua Risk Management Department prior to signing this LEASE AGREEMENT that includes language indicating the existence of these conditions.

**15. HOLDOVER BY LESSEE**

**15.01** No holdover by LESSEE shall be permitted. The LANDLORD and LESSEE must execute a new lease upon expiration of an existing LEASE AGREEMENT in order for the LESSEE to remain in possession of the premises.

**16. DEFAULT**

**16.01** The LANDLORD shall determine what shall constitute a violation of the provisions of the LEASE AGREEMENT or the failure of the LESSEE to otherwise abide by any of the covenants herein contained and may order a discontinuance of the practices or the performance of any of the work related to such default by giving the LESSEE thirty (30) days notice in writing. Failure of the LESSEE to comply with the notice shall automatically give the LANDLORD the right to terminate this LEASE AGREEMENT, evict the LESSEE and take full and complete possession of the premises. LESSEE shall reserve the right to appeal the reason for eviction through an agreed upon third part arbitration. No notice of default related to the payment of rent shall be required.

**17. TERMINATION OF LEASE AGREEMENT FOR CAUSE**

**17.01** In the event that the LESSEE shall default in the payment of any installment of rent or other sum herein specified and such default shall continue for ten (10) days, or if the LESSEE shall default in the observance or performance of any other of the LESSEE's covenants, agreements or obligations hereunder and such default shall not be corrected within thirty (30) days of written notice by the LANDLORD to the LESSEE specifying such default and requiring it to be remedied then, and in such an event, LANDLORD may serve a written notice of termination of this LEASE AGREEMENT upon the LESSEE and this LEASE AGREEMENT and the term hereunder shall terminate and upon such termination LANDLORD may immediately or at any time thereafter, without demand or notice, enter into or upon the premises and repossess the same.

**17.02** If it becomes necessary for the LANDLORD to institute suit for eviction or damages on account of rental arrears or violation of the terms of this LEASE AGREEMENT, the LANDLORD shall be entitled to include in such suit for eviction or damages a claim for attorney's fees and court costs incident thereto which fees the LESSEE hereby covenants and agrees to pay.

**18. RIGHT TO TERMINATE FOR CONVENIENCE**

**18.01** Except for LESSEE'S default as set forth in paragraphs 16.01 and 17.01, the LANDLORD may only terminate this LEASE AGREEMENT without cause as a result of its intention to construct a roadway/parkway or an approved building for the benefit of the City.

The LANDLORD may not evict LESSEE until approval for such roadway/parkway or building has been received from the governing authority.

**18.02** LANDLORD may not terminate this LEASE AGREEMENT without cause for the purpose of utilizing the LESSEE'S improved site for increased municipal parking.

**18.03** The LESSEE may terminate this LEASE AGREEMENT at any time by giving at least ninety (90) days notice, in writing, specifying in said notice the day (and the time of day) on which possession of the premises will be surrendered. LANDLORD'S representative shall have sufficient time to check the premises prior to taking formal possession thereof. In the event that the LESSEE shall terminate this LEASE AGREEMENT in accordance with the above provisions, payment of rent shall cease at the end of the said ninety (90) day period or at the end of the day on which possession shall be surrendered, whichever shall last occur.

## **19. SURRENDER OF THE PREMISES**

**19.01** In the event that the term or any extension thereof shall have expired or terminated, the LESSEE shall peacefully quit and surrender to LANDLORD the premises together with all improvements, alternations or additions made by LESSEE which cannot be removed without damaging the premises or negating or violating any approvals or permits required for improvements made to the premises by LESSEE. LESSEE's obligations to observe or perform the covenants contained herein shall survive the expiration or termination of this LEASE AGREEMENT.

## **20. INDEMNIFICATION AND RELEASE FROM LIABILITY**

**20.01** The LESSEE shall defend, indemnify and hold harmless the LANDLORD, its officers, agents and employees, from and against any and all losses suffered by the LANDLORD, its officers, agents and employees and any and all claims, liabilities or penalties asserted against the LANDLORD, its officers, agents and employees by or on behalf of any person on account of, based on or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the LESSEE its tenants, guests or invitees or from the use or maintenance of the above described premises. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of immunity of the City of Nashua, which immunity is hereby reserved to the City of Nashua. This covenant shall survive the termination of this agreement. The LESSEE further releases the LANDLORD, its agents and employees, from any and all claims or demands for damages or injuries of any nature whatsoever attributable to the taking, use and occupancy of any portion of the premises caused by the construction and maintenance by the City of Nashua and/or the State of New Hampshire of any proposed highway/parkway, building for public use, and/or bridge project which abuts (or will abut) or may affect in any way the property herein leased.

## **21. DISCRIMINATION PROHIBITED**

**21.01** The LESSEE hereby covenants and agrees that no person on the grounds of race, color, national origin, sex or sexual orientation, shall be excluded from participation in,

denied the benefits of, or be otherwise subjected to discrimination of the use of the premises and that in the construction of any improvements on, over or under such premises and the furnishing of services thereon, no person on the grounds of race, color, national origin, sex, or sexual orientation, shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and that the Lessee shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulation, Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended and any other applicable state and federal laws.

**21.02** The LESSEE for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event that facilities are constructed, maintained, or otherwise operated on the said property described in this LEASE AGREEMENT for a purpose for which a City of Nashua and/or Department of Transportation program or activity is intended or for another purpose involving the provisions of similar services or benefits, the Lessee shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination of Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as such Regulations may be amended and any other applicable state and federal laws.

**21.03** That in the event of breach of any of the above nondiscrimination covenants, the LANDLORD shall have the right to immediately terminate the LEASE AGREEMENT and to re-enter and repossess said land and facilities thereon, and hold the same as if said LEASE AGREEMENT had never been issued.

## **22. MISCELLANEOUS**

**22.01 LANDLORD'S Agents.** All rights and obligations of LANDLORD under this LEASE AGREEMENT may be performed or exercised by such agents as LANDLORD may select.

**22.02 Notice.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by registered or certified mail, postdate prepaid, in a United States Post Office.

**22.03 Extent of Instrument, Choice of Laws, Amendment, etc.** This LEASE AGREEMENT, which may be executed in a number of counterparts, each of which shall have been deemed an original, but which shall constitute one and the same instrument, is to be construed according to the Laws of the State of New Hampshire, is to take effect as a sealed instrument, is binding upon, inures to the benefit of, and shall be enforceable by the parties hereto and their respective successors and assigns, and may be canceled, modified, or amended only by a written instrument executed and approved by the LANDLORD and LESSEE.

**22.04 No Waiver of Breach.** No assent, by either party, whether express or implied, to a breach of covenant, condition or obligation by the other party, shall act as a waiver

of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition or obligation.

**22.05 Unenforceable Terms.** If any terms of this LEASE AGREEMENT or any application thereof shall be invalid or unenforceable, the remainder of this LEASE AGREEMENT and any application of such term shall not be affected thereby.

**22.06 Entire Agreement.** This LEASE AGREEMENT embodied the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

**22.07 No Waiver of Immunity.** No provision in this LEASE AGREEMENT is intended to be nor shall it be interpreted by either party to be a waiver of immunity by the City of Nashua.

**22.08 Applicable Laws.** This LEASE AGREEMENT shall be governed exclusively by the provisions hereof and by the laws of the State of New Hampshire.

**IN WITNESS WHEREOF**, the parties hereto have set their hands as of the day and year first above written.

**LANDLORD:  
CITY OF NASHUA**

Date: \_\_\_\_\_, 2008

By: \_\_\_\_\_  
Donnalee Lozeau, Mayor

**LESSEE:  
RIVERSIDE PROPERTIES OF NASHUA, INC.**

Date: \_\_\_\_\_, 2008

By: \_\_\_\_\_

State of New Hampshire  
County of Hillsborough, SS

This instrument was acknowledged before me on \_\_\_\_\_, 2008 by Donnalee Lozeau as Mayor of the City of Nashua.

\_\_\_\_\_  
Justice of the Peace/Notary Public

State of New Hampshire  
County of Hillsborough, SS

This instrument was acknowledged before me on \_\_\_\_\_, 2008 by  
\_\_\_\_\_ as \_\_\_\_\_ of Riverside Properties of  
Nashua, Inc.

\_\_\_\_\_  
Justice of the Peace/Notary Public

**RESOLUTION** R-08-148

**Authorizing the City of Nashua**  
**to enter into a lease agreement**  
**with Riverside Properties of**  
**Nashua, Inc.**

**IN THE BOARD OF ALDERMEN**

1<sup>ST</sup> READING November 25, 2008

Referred to:

Committee on Infrastructure

2<sup>nd</sup> Reading DECEMBER 23, 2008

3<sup>rd</sup> Reading JANUARY 27, 2009

4<sup>th</sup> Reading \_\_\_\_\_

12/23/08: Re-referred to Infrastructure and  
Other Action Budget Review Committees

Passed JANUARY 27, 2009

Indefinitely Postponed \_\_\_\_\_

Defeated \_\_\_\_\_

Attest: [Signature]  
City Clerk

[Signature]  
President

Approved [Signature]  
Mayor's Signature

2/2/09  
Date

Endorsed by

[Signature] Mayor  
[Signature] TABACSKO

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Vetoed: \_\_\_\_\_

Veto Sustained: \_\_\_\_\_

Veto Overridden: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
President