

COMMITTEE ON INFRASTRUCTURE

August 26, 2020

7:00 PM

Join Zoom Meeting: <https://us02web.zoom.us/j/85208975468?pwd=Zy9xeGtEOW0zeGJPSFJ0SHMvWDRoUT09>

Meeting ID: 852 0897 5468

Passcode: 176833

Join by telephone: 1-929-205-6099

Meeting ID: 852 0897 5468

Password: 176833

If anybody has a problem accessing the meeting via phone or Channel 16, please call 603-821-2049 and they will help you connect.

ROLL CALL

PUBLIC COMMENT

COMMUNICATIONS

UNFINISHED BUSINESS

NEW BUSINESS – RESOLUTIONS

R-20-059

Endorsers: Mayor Jim Donchess
Alderman Richard A. Dowd
Alderman Linda Harriott-Gathright
Alderman David C. Tencza
Alderman-at-Large Lori Wilshire

**AUTHORIZING THE SALE OF CITY REAL PROPERTY LOCATED AT 141-143 BURKE STREET
(MAP 11, LOT 158) TO BURKE STREET NASHUA, LLC**

NEW BUSINESS – ORDINANCES

TABLED IN COMMITTEE

O-20-004

Endorsers: Alderman Thomas Lopez
Alderman Patricia Klee
Alderman-at-Large Shoshanna Kelly
Alderman Linda Harriott-Gathright

ALLOWING PERMITTED OVERNIGHT ON-STREET PARKING ON EIGHTH STREET

- Tabled at 2/26/20 meeting

O-20-006

Endorsers: Alderman Thomas Lopez
Alderman Patricia Klee
Alderman-at-Large Shoshanna Kelly
Alderman-at-Large Linda Harriott-Gathright

ALLOWING PERMITTED OVERNIGHT ON-STREET PARKING ON A PORTION OF PRESCOTT STREET

- Tabled at 2/26/20 meeting

PUBLIC COMMENT

REMARKS BY THE ALDERMEN

NON-PUBLIC SESSION

ADJOURNMENT



RESOLUTION

**AUTHORIZING THE SALE OF CITY REAL PROPERTY LOCATED AT 141-143
BURKE STREET (MAP 11, LOT 158) TO BURKE STREET NASHUA, LLC**

CITY OF NASHUA

In the Year Two Thousand and Twenty

RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor is hereby authorized to enter into a Purchase and Sale Agreement, substantially similar to the attached, for the sale of City real property at 141-143 Burke Street (Map 11, Lot 158). The purchase price for the property is three million six hundred and fifty thousand dollars (\$3,650,000).

FURTHER RESOLVED by the Board of Aldermen of the City of Nashua that the Mayor, with the assistance of the Office of Corporation Counsel, is authorized to prepare and execute all necessary documents related to the Purchase and Sale Agreement.

LEGISLATIVE YEAR 2020

RESOLUTION:

R-20-059

PURPOSE:

Authorizing the sale of City real property located at 141-143 Burke Street (Map 11, Lot 158) to Burke Street Nashua, LLC

ENDORSERS:

**Mayor Jim Donchess
Alderman Richard A. Dowd
Alderman Linda Harriott-Gathright
Alderman-at-Large David C. Tencza
Alderman-at-Large Lori Wilshire**

**COMMITTEE
ASSIGNMENT:**

**Committee on Infrastructure
Nashua Planning Board**

FISCAL NOTE:

The purchase of this building and land was funded through R-15-172. (Authorizing the acquisition of property at 141-143 Burke Street, Tax Map 11, Lot 158, for a purchase price of \$4,200,000). Proceeds from this sale must be spent within 24 months of receipt as prescribed in the bond spending and arbitrage requirements rule.

ANALYSIS

This resolution authorizes the Mayor to enter into a Purchase and Sale Agreement with Burke Street Nashua, LLC and sell City-owned real property located at 141-143 Burke Street. The sale price is \$3,650,000. The City acquired the property in 2015 with the intent it would be used by the Department of Public Works (DPW) (R-15-172). At the Board of Public Works meeting of July 30, 2019, the Board voted unanimously to transfer to the Board of Aldermen the jurisdiction for 141-143 Burke Street, Map 11, Lot 158 (excluding new Map 11, Lot 161, 2.5 acres subdivided from the original parcel purchased by the City which is being retained for DPW).

Charter §77 provides that the Planning Board “shall review and make recommendations to the mayor and board of aldermen on all locations for proposed municipal building and facilities, including educational, [and] on the purchase and sale of any land by the city.”

Approved as to form:

Office of Corporation Counsel

By: /s/ Celia K. Leonard

Date: August 5, 2020

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), is made as of _____, 2020 (the "Effective Date"), by and between **Burke Street Nashua, LLC**, a _____ limited liability company with an address at 124 Joliette Street, Manchester, NH 03102 ("Purchaser") and the **City of Nashua**, New Hampshire municipal with an address of 229 Main Street, Nashua, NH 03060 ("Seller").

1. PURCHASE AND SALE.

Seller shall sell and convey to Purchaser, and Purchaser shall purchase from Seller, in accordance with and subject to the provisions, terms and conditions of this Agreement, the following:

(a) Premises. That certain parcel of land known as 141 Burke Street, Nashua, NH, together with all rights, privileges, easements and other rights appurtenant to such land, and as more particularly described in Exhibit A attached hereto (collectively, the "Premises");

(b) Improvements. Together with all other structures and improvements located on the Premises, including, without limitation, all fixtures belonging to the Seller and used in connection therewith and all construction supplies and materials on site at the Premises, if any (the "Improvements" and together with the Premises, the "Property");

2. PURCHASE PRICE.

The "Purchase Price" to be paid by Purchaser to Seller for the Property shall be \$3,650,000.00, payable as follows:

(a) Simultaneously with the execution of this Agreement, Purchaser shall deliver a deposit of \$25,000.00 to the City of Nashua (the "Initial Deposit") to be applied against the Purchase Price. The Initial Deposit is nonrefundable;

(b) Within 2 days after the expiration of the Due Diligence Period (as defined below) an additional deposit of \$100,000 to be held by Sheehan, Phinney, Bass and Green (the "Escrow Agent"), in a non- interest bearing account and applied against the Purchase Price or otherwise disbursed according to the terms and conditions of this Agreement (the "Second Deposit," together with the Initial Deposit, the "Deposit"); and

(c) The balance of the Purchase Price, shall be payable by Purchaser to Seller at closing of title, subject to the adjustments provided for herein, by wire transfer of immediately available funds.

3. CLOSING DATE.

The delivery of the deed and the closing of title (the "Closing" or the "Closing Date") shall take place at the offices of Escrow Agent, or such other place and time as the parties may agree, no later than that date which is 30 days after the expiration of the Due Diligence Period, but in no event no later than December 31, 2020. TIME IS OF THE ESSENCE with respect to the Closing Date and all other dates for performance set forth in this Agreement. If the Purchaser requests an extension of the Closing Date in order to perform its obligations, a monthly payment of \$10,000 shall be paid to the Seller which payment will be non-refundable and will not be credited to the purchase price. If the Closing Date is extended for any other reason, no additional payment shall be required.

4. USE OF MONEY TO CLEAR TITLE.

To enable Seller to make conveyance as herein provided, Seller may, at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that such encumbrances shall be discharged out of the closing funds, or, in the case of any mortgage or other security instrument held by an institutional lender, shall be paid off pursuant to written instructions from the holders of such encumbrances (a) setting forth the amount due as of the Closing Date with a per diem interest amount, (b) providing wiring instructions for payment of such amount to such holder and (c) confirming that the holder will execute and deliver discharges of such encumbrances upon receipt of the amount due.

5. EXAMINATION OF TITLE.

The cost of examination of title shall be borne by Purchaser. During the Due Diligence Period, Purchaser may conduct such investigations of the condition of title to the Property, including such title searches and land title surveys as Purchaser shall elect to perform (the "Title Examination"). Purchaser shall notify Seller in writing on or before 5:00 p.m. on the last day of the Due Diligence Period of any Title Objections (the "Title Notice"). As used herein, Purchaser's "Title Objections" may include any defects, exceptions, encumbrances to Seller's title to the Property, and may include both monetary encumbrances and non-monetary encumbrances. Seller shall have 10 days (the "Cure Notice Period") after the timely receipt of a Title Notice to give Purchaser written notice ("Cure Notice") as to which, if any, Title Objections Seller agrees to cure on or before the Closing Date (the "Cured Title Objections"). If Seller does not give a Cure Notice within such period, Seller shall be deemed to have elected not to cure any of the Title Objections, and in that event, or if Seller gives Purchaser a Cure Notice within such period but does not agree therein to cure all Title Objections, then Purchaser may elect to terminate this Agreement by giving Seller written notice of such election prior to the Closing Date. If Purchaser so elects, then this Agreement shall terminate as of the date of Purchaser's termination notice, whereupon the Second Deposit shall be promptly returned to Purchaser by Escrow Agent, and this Agreement shall become void and without recourse to the parties hereto. In any event, Seller shall cause all monetary encumbrances reported in the Title Notice to be discharged, terminated or otherwise removed from the title to pursuant to Section 4. If Seller fails to remove or cure any such non-monetary encumbrances for which Seller is

responsible under the Cure Notice on or before the Closing, Purchaser shall have the option of either terminating this Agreement by written notice to Seller and or proceeding to Closing without any deduction, reduction or offset in the Purchase Price, except to pay any monetary liens encumbering the Premises. If Purchaser terminates this Agreement as a result of Seller's failure to cure any matter set forth in the Cure Notice, the Second Deposit shall be promptly returned to Purchaser.

6. TRANSFER TAXES; ADJUSTMENTS.

Pursuant to statute, Seller is exempt from New Hampshire Real Estate Transfer Tax. Purchaser shall pay Purchaser's portion of the New Hampshire Real Estate Transfer Tax imposed on the transaction contemplated by this Agreement. Sewer liens or any other governmental lien or assessment and use taxes will be apportioned in accordance with standard conveyancing practice in New Hampshire. Should any tax, assessment or rate be undetermined on the Closing Date, the last determined tax, assessment or rate shall be used for the purpose of the apportionment; provided, however, at Closing the parties shall enter into an agreement to adjust said apportionment between them upon issuance of the final tax bill for the tax period in which the Closing occurs. All revenues and expenses, including, but not limited to, installment payments of special assessment liens, utility charges, reimbursement of maintenance and repair expenses and normally prorated operating expenses billed or paid as of the Closing Date shall be prorated as of the Closing. Gas, electricity, water, sewer and other utility charges for which Seller is responsible, if any, and such charges shall be apportioned at Closing on the basis of the most recent meter reading occurring prior to the Closing. Any other operating expenses and other items pertaining to the Property which are customarily prorated between a buyer and seller in the area where the Property is located, such as costs arising from any service contracts assumed by Purchaser, shall be apportioned in accordance with such local customs.

7. INSURANCE AND RISK OF LOSS.

All risk of loss until recordation of deed required herein, whether in whole or in part, shall be borne by the Seller.

8. POSSESSION.

Full possession of the Property, shall be delivered on the Closing Date, the Property to be then in the same condition as it is now, except for reasonable use and wear or as otherwise expressly stated herein.

9. SALE "AS-IS"; REPRESENTATIONS AND WARRANTIES.

The Property shall be sold and conveyed strictly on an "as is", "where is" and "with all defects" basis and, except as otherwise expressly stated herein, without representation, warranty or covenant, express, implied or statutory, of any kind whatsoever, including, without limitation, representation, warranty or covenant as to condition (environmental or otherwise), past or present use, investment potential, tax ramifications or consequences, income, compliance with law, suitability for any particular purpose, all of which are hereby expressly disclaimed. Without

limiting the generality of the foregoing, Purchaser acknowledges that, except as otherwise expressly stated herein, Seller has made no representations, warranties or covenants as to the compliance of the Property with any federal, state, municipal or local statutes, laws, rules, regulations or ordinances, including, without limitation, those pertaining to land use, zoning, lead paint, urea formaldehyde, asbestos, environmental conditions, hazardous or toxic wastes or substances, pollutants, contaminants, other environmental matters or any other matter. Purchaser further agrees, acknowledges and represents that Purchaser is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction contemplated by this Agreement solely in reliance on and as a result of Purchaser's own investigations and efforts (including Purchaser's inspection of the Property and such other investigations, examinations and inspections as Purchaser has chosen to make or has made) and the representations of Seller herein and at Purchaser's sole risk, cost and expense, including, without limitation, the risk that Purchaser's inspection of the Property and such other investigations, examinations and inspections may not reveal any or all adverse or existing conditions, aspects or attributes of the Property. Purchaser acknowledges that Seller has afforded Purchaser the opportunity for full and complete investigation, examination and inspection of the Property pursuant to this Agreement. Purchaser acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same. It is acknowledged that Seller will deliver to Purchaser various information and documentation relating to the Property, including Seller's Property Documentation (as such term is defined below), without representations and warranties of any kind, except as set forth herein. The provisions of this Section 9 shall survive the Closing and the delivery of the Deed or any expiration or termination of this Agreement.

(a) Notwithstanding the foregoing, Seller makes the following express representations and warranties to Purchaser, and agrees with Purchaser that all such representations and warranties shall be true and accurate on the date of this Agreement and on the Closing Date:

- (i) Seller has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder.
- (ii) The execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with, or result in a breach of, any of the terms, covenants and provisions of any agreement or instrument to which Seller is a party or by which Seller is bound.
- (iii) Seller has not received any notices of any violations of federal or state law or municipal ordinances, orders or requirements issued by any governmental department having authority as to use and operations, lands, health or environmental conditions affecting the Property.
- (iv) There are no actions, suits or proceedings pending or, to the best of Seller's knowledge, threatened against or affecting Seller or the Property, at law or in equity or before any federal, state, municipal or governmental department, commission, board, bureau, agency or instrumentality (including but not limited to zoning changes, and proceedings related to

hazardous waste, harmful substances or the environment) regarding the Premises.

- (v) There are no leases, licenses, occupancy or related agreements or tenancies (written or unwritten) affecting the Property except those in the public record.
- (vi) To Seller's knowledge, there are no taxes, charges or assessments of any nature or description arising out of the ownership or operation of the Property which would constitute a lien against the Property and that will be unpaid at the Closing Date or not paid from the Seller's closing proceeds, except for the lien of ad valorem property taxes for the year in which the closing occurs.
- (vii) To Seller's knowledge, Seller has provided Purchaser with all material and relevant facts and information pertaining to the Property that Seller has in its possession and has made no misrepresentation or errors in any materials pertaining to the Property.

(b) Purchaser makes the following representations and warranties to Seller, and agrees with Seller that all such representations and warranties shall be true and accurate on the date of this Agreement and on the Closing Date:

- (i) Purchaser has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder.
- (ii) The execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder will not conflict with, or result in a breach of, any of the terms, covenants and provisions of any agreement or instrument to which Purchaser is a party or by which Purchaser is bound.
- (iii) No consent, approval, waiver, authorization or novation is required to be obtained by Purchaser from, and no notice or filing is required to be given by, Purchaser to, any governmental entity or other person or entity in connection with the consummation of the transactions contemplated hereby or the execution, delivery and performance by Purchaser of this Agreement and each of the documents to be executed by Purchaser pursuant to this Agreement.

(c) The representations and warranties set forth in this Article 9 shall survive the Closing and shall not be merged with the execution and delivery of the Deed and other closing documents hereunder.

10. **DEFAULT.**

(a) Default by Purchaser: If Purchaser shall fail to timely close on the Closing Date due to a breach of any material term of this Agreement, then Seller, as its sole and exclusive remedy for Purchaser's default, shall be entitled to obtain from the Escrow Agent and retain the Deposit as reasonable liquidated damages.

(b) Default by Seller: If Seller shall materially default in the performance of Seller's obligations under this Agreement, Purchaser shall have the option of terminating this Agreement and requiring the Escrow Agent to return the Second Deposit to Purchaser, and pursuing an action for specific performance. In the event Purchaser elects to pursue an action for specific performance for a breach of this Agreement by Seller, Purchaser shall be entitled to collect as damages for such breach the reasonable cost of such action for specific performance if Purchaser obtains an injunction ordering specific performance of this Agreement from a court of competent jurisdiction.

11. **BROKERS.**

Each party represents to the other that no broker or agent has brought about this sale on its behalf. Each party hereby indemnifies and holds harmless the other party from any demand, action, claim or suit by any person claiming a fee or commission through Seller or Purchaser as a result of this sale. The indemnification provisions of this Section 11 shall survive the Closing.

12. **ACCESS.**

During the Due Diligence Period, Purchaser shall have the right to enter onto the Property with prior approval of Seller (for inspection, testing, survey, engineering, and permitting); provided, however, Purchaser shall not perform any invasive testing without having obtained Seller's prior written approval. Seller shall reasonably cooperate with Purchaser's due diligence efforts, provided that such cooperation shall not cause Seller to incur any expenditure (unless Purchaser reimburses Seller in advance for any such expenses). Purchaser understands and agrees that any on-site inspections of the Property shall be conducted during normal business hours unless otherwise approved by Seller and, at Seller's option, in the presence of Seller or its representative. Prior to Purchaser or any such other party entering the Property in the exercise of the access rights hereunder, Purchaser shall have procured comprehensive public liability insurance in an amount of not less than \$1,000,000.00 per occurrence. Purchaser agrees to defend, indemnify against, and hold Seller harmless from any actions, causes of action, losses, claim, liabilities, costs, expenses (including reasonable attorneys' fees actually incurred), damages or injuries arising out of or resulting from the inspection of the Property by Purchaser or its agents or representatives. Notwithstanding anything to the contrary in this Agreement, such obligation to defend, indemnify, and hold harmless Seller and the other obligations of Purchaser under this paragraph shall survive any termination of this Agreement or the Closing.

13. DUE DILIGENCE.

During the period that begins on the Effective Date and ends on the later of 45 days thereafter or November 12, 2020 (the "Due Diligence Period"), Purchaser may perform, at Purchaser's sole cost and expense, an evaluation of the Property including:

(a) An appraisal and site assessment, investigations, inspections, and review of use, zoning, permitting, engineering, wetlands, ledge, access and other construction issues;

(b) Whatever non-invasive environmental inspection of the Property that Purchaser may desire, in its sole discretion and at Purchaser's sole cost and expense, including a Phase I environmental site assessment; and

(c) Any other items that Purchaser considers necessary and appropriate to evaluate the Premises and the suitability of the Premises for use by Purchaser.

14. CLOSING.

(a) Seller's Closing Deliveries. On the Closing Date, Seller shall deliver or cause to be delivered each of the following items to Purchaser:

(i) Duly executed and acknowledged quit claim deed in the statutory form (the "Deed") conveying the Property to Purchaser;

(ii) Certificate of non-foreign status from Seller;

(iii) Customary affidavits sufficient for the title company issuing a title insurance policy to Purchaser (the "Title Company") to confirm the absence of (i) parties in possession under unrecorded leases or similar agreements, and (ii) mechanic's or materialmen's liens affecting the Premises;

(iv) Evidence reasonably satisfactory to Purchaser and the Title Company of Seller's authority to convey the Property pursuant to this Agreement in form and substance reasonably satisfactory to Purchaser and the Title Company;

(v) A counterpart executed original of the closing statement setting forth the Purchase Price, the closing adjustments and the application of the Purchase Price as adjusted (the "Closing Statement");

(vi) All books, records, plans, specifications, contracts, agreements and other instruments or documents to the extent reasonably requested by Purchaser and in the possession of Seller related to the operation and maintenance of the Property;

- (vii) Keys to all locks on the Property in Seller's possession or control, if any;
- (viii) Such other instruments as Purchaser may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability or expense to Seller.

(b) Purchaser's Closing Deliveries. On the Closing Date, Purchaser shall deliver or cause to be delivered each of the following to Seller:

- (i) A counterpart executed original of the Closing Statement;
- (ii) The balance of the Purchase Price, payable in accordance with Section 2 hereof;
- (iii) A certificate updating Purchaser's representations and warranties under Section 10; provided any updates set forth therein which either are permitted or contemplated by this Agreement and are not materially adverse to Seller are herein collectively called "Purchaser Permitted Changes";
- (iv) Such other instruments as Seller may reasonably request to effectuate the transaction contemplated by this Agreement without additional liability or expense to Purchaser.

15. NOTICES.

Any notice required under this Agreement shall be sufficient only if in writing and delivered (a) by certified mail postage prepaid, (b) by nationally-recognized overnight express mail service, or (c) by e-mail, to a party at its address set forth below:

If to Seller:

cummmingst@nashuanh.gov
and
leonardc@nashunh.gov

If to Purchaser:

John R. Allard
john@allardventures.com
and
jdibrigida@sheehan.com

16. SUCCESSORS AND ASSIGNS.

Purchaser may assign its rights, duties and obligations hereunder prior to the Closing to an entity under common control with Purchaser. No other assignment shall be permitted without Seller's consent, which consent may be withheld in Seller's sole discretion. This Agreement and the rights, duties and obligations of the parties hereunder shall apply to and bind the heirs, executors, administrators, trustees, legal representatives, successors and assigns of the respective parties.

17. ENTIRE AGREEMENT; AMENDMENT.

This Agreement (including any exhibits or schedules, as the same may be amended, referred to in the body of this Agreement which are attached hereto and made a part hereof) constitutes the entire agreement and understanding between the parties with respect to the purchase and sale of the Property, and no oral statements or promises and no understanding not embodied in this Agreement shall be of any effect whatsoever. Any modification shall be valid only if in agreed upon by Purchaser and Seller in writing.

18. CAPTIONS.

The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

19. COUNTERPARTS.

This Agreement may be executed in multiple counterparts, all of which taken together shall constitute a single agreement.

20. GOVERNING LAW.

This Agreement shall be deemed a contract made under and interpreted by the laws of the State of New Hampshire.

21. DUTIES OF ESCROW AGENT.

The Second Deposit shall be held in an interest bearing account by the Escrow Agent, and shall be credited towards payment of the Purchase Price at Closing or otherwise disbursed according to the terms of this Agreement. In its capacity as escrow agent, Escrow Agent shall have only those duties and obligations as are expressly set forth herein. No implied duties or obligations shall be read into this Agreement against Escrow Agent. Except as explicitly stated herein, Escrow Agent shall be under no obligation to refer to any other documents between or among Purchaser and Seller or otherwise related to the Property or the transaction contemplated hereunder. Escrow Agent shall not be liable to either party or any other person on account of any error of judgment, any act done or stop taken or omitted in good faith, any mistake of fact or law, or anything else Escrow Agent may do or refrain from doing in connection herewith, unless

caused by or arising out of actual and intentional misconduct, willful disregard of this Agreement or gross negligence on the part of the Escrow Agent. Escrow Agent shall be entitled to rely, and shall not be subject to any liability in acting in reliance, upon any writing furnished to Escrow Agent by either party, and shall be entitled to treat as genuine and as the document which it purports to be, any letter, paper or other document furnished to Escrow Agent in connection with this Agreement. Escrow Agent further may rely on any affidavit of either Party or any other person as to the existence and accuracy of any facts stated therein to be known by the affiant. In the event of any dispute relative to the deposit monies held in escrow, the Escrow Agent may, in its sole discretion, pay such deposit monies with the clerk of any court with competent jurisdiction, with notice to the parties hereto at the addresses recited hereinabove, and thereupon the Escrow Agent shall be discharged from its obligations as recited herein, and each party to this Agreement shall thereafter hold the Escrow Agent harmless in such capacity. Both parties hereto agree that the Escrow Agent may (a) deduct the administrative cost of opening, maintaining and closing the said escrow account from the deposit monies before disbursing any of said monies, and (b) deduct the cost of bringing such Interpleader action, from the deposit monies held in escrow prior to the forwarding of the same to the Clerk of such Court. Purchaser and Seller shall jointly and severally defend, indemnify and hold Escrow Agent for solely for its actions as escrow agent under this Agreement harmless from and against any and all losses, liabilities, damages, costs, expenses or claims incurred by Escrow Agent in the performance of its duties as escrow agent under this Agreement, except only to the extent caused by the Escrow Agent's intentional misconduct, bad faith, willful disregard of its obligations hereunder or gross negligence. As between themselves, each party shall be responsible for one-half of the total costs incurred in connection with such indemnity, and each shall have the right of contribution from the other to the extent necessary to achieve such allocation.

22. PURCHASER FINANCING.

Purchaser's satisfaction of its obligations under this Agreement shall be contingent upon obtaining financing upon terms acceptable to Purchaser; provided, however, that Purchaser shall comply with the following:

- (a) Within 5 business days of the execution of this Agreement, Purchaser shall provide Seller with a written financing plan with a detailed timeline on how Purchaser plans to close the transaction. Failure to provide such a plan or failure to follow the plan as presented to Seller will constitute waiver of any financing contingency and failure to close due to financing will be considered a default of the Agreement.
- (b) Purchaser shall receive a written commitment to be able to proceed with the transaction as described in this Agreement from a lending institution on terms and conditions acceptable to the Purchaser in the Purchaser's sole discretion, on or before 5:00 p.m. on the last day of the Due Diligence Period.

23. **CASUALTY.**

If the Property or any material part thereof is materially damaged or destroyed by fire or other casualty, then Purchaser may terminate this Agreement and the Second Deposit shall be returned to Purchaser.

24. **TAKING.**

If the Property or any material part thereof (including access and easements on which the Property depends) is taken by condemnation or eminent domain prior to the Closing, or comes under bona fide threat of such a taking, the Purchaser may terminate this Agreement and the Second Deposit shall be returned to Purchaser.

25. **CALCULATION OF TIME PERIODS.**

If the day specified hereunder for any event or the last day of any period of time provided for hereunder shall be a Saturday, Sunday, legal holiday for national banks in the location where the Property is located or day on which the Hillsborough County Registry of Deeds is closed, such day or period shall be extended to the next day which is none of the foregoing. The last day or period of time provided for hereunder shall be deemed to end at 5:00 pm in the location where the Property is located.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.

Executed as of the Effective Date.

PURCHASER:
Burke Street Nashua, LLC

SELLER:
City of Nashua

By: _____
Name:
Title:

By: _____
Name: James W. Donchess
Title: Mayor

EXHIBIT A

A certain parcel of land located in the City of Nashua, Hillsborough County, State of New Hampshire known as 141 Burke Street and more specifically shown as Proposed Lot 158, consisting of 27.101 acres, on a plan entitled "Subdivision Plan (Map 11, Lot 158) 141-143 Burke Street, Nashua, New Hampshire" prepared by Hayner Swanson, Inc., dated April 19, 2019, and recorded as Plan #40222 in the Hillsborough County Registry of Deeds.