



## RESOLUTION

### AUTHORIZING DEVELOPER AGREEMENT WITH PAYMENT IN LIEU OF TAXES (PILOT) FOR BRONSTEIN REDEVELOPMENT

### *CITY OF NASHUA*

*In the Year Two Thousand and Twenty-One*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the City is authorized to enter into a Developer Agreement, including payment in lieu of taxes (PILOT) pursuant to RSA 203:23, XIV, and waiver of impact fees pursuant to NRO 190-85, for the Bronstein Redevelopment in substantially the same form as the attached.

**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 and take all necessary actions contemplated by the Developer Agreement or required to effectuate the same.

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between **Nashua Housing and Redevelopment Authority**, a New Hampshire municipal housing authority under RSA Chapter 203 with its principal address of 40 East Pearl Street, New Hampshire 03060, (“NHRA”), **Boston Capital Development, LLC** a Massachusetts limited liability company with a mailing address of One Boston Place, Suite 2100, Boston, Massachusetts, 02108, **55 Central Street 4%, LLC**, a New Hampshire limited liability company with a mailing address of c/o Boston Capital Corporation, 11 Beacon Street, Suite 325, Boston, Massachusetts 02108, **55 Central Street 9%, LLC**, a New Hampshire limited liability company with a mailing address of c/o Boston Capital Corporation, 11 Beacon Street, Suite 325, Boston, Massachusetts 02108, **Bronstein 4% Limited Partnership** a New Hampshire limited partnership with a mailing addresses c/o Boston Capital Corporation, One Boston Place, Boston, Massachusetts, 02108 and **Bronstein 9% Limited Partnership**, a New Hampshire limited partnership with a mailing addresses c/o Boston Capital Corporation, One Boston Place, Boston, Massachusetts, 02108 (individually or jointly, “Developer”), and the **City of Nashua**, a New Hampshire municipal corporation with a principal address of 229 Main Street, Nashua, New Hampshire 03060 (“City”)(each a “party”, together the “parties”).

### **Recitals**

WHEREAS, Developer owns a certain parcel of land, with improvements thereon, situated at 41 Central Street, Nashua, NH, identified on the records of City of Nashua Assessors as Lot 80, Sheet 89, (“Property”);

WHEREAS, NHRA currently owns, manages and maintains a 48-unit multifamily affordable housing project on the Property known as the Bronstein Apartments (“Bronstein Property”);

WHEREAS, Developer desires to renovate and redevelop the Bronstein Property to construct 216 new apartments, comprising of 10 market-rate units and 206 affordable units, approximately 2500 square feet of community space and approximately 3000 square feet for a Head Start childcare center (“Bronstein Redevelopment”);

WHEREAS, Developer has requested City support of the Bronstein Redevelopment in various ways, including but not limited to by agreeing to a payment in lieu of taxes “(PILOT)” under RSA 203:23, XIV, and

WHEREAS, City is desirous of supporting the Bronstein Redevelopment.

NOW, THEREFORE, in and for the mutual covenants set forth herein and other good and valuable consideration paid, the parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are hereby incorporated into this Agreement.

2. PILOT. Pursuant to RSA 203:23, XIV, Developer agrees to pay City payments in lieu of taxes as follows:

Tax years 2022, 2023 and 2024: \$0

Commencing in tax year 2025 (April 1, 2025) and continuing for fifteen (15) years to tax year 2038: \$225,000 in 2025 escalating at 3% annually thereafter.

3. PILOT Payment Procedure. Developer shall follow the City's standard procedure for payment of property taxes including paying the amounts for the particular tax year in two installments, billed in accordance with the City's normal tax billing procedures. Unpaid installments shall carry interest at the same rate as unpaid taxes. The parties further agree that, in addition to any other remedy available to the City in the event of non-payment, the City may utilize the tax lien procedures of RSA 80:58-86 in order to secure and collect sums due.

4. Continuation of Agreement. This Agreement shall continue in full force and effect through (and including) the tax year running from April 1, 2022 through March 31, 2038, except, however, that the occurrence of either of the following events, the City may terminate this Agreement upon thirty (30) days written notice to Developer:

- a. Cessation of the use of the Property for 206 apartment which are made available for families of low income as provided in RSA 203:8, II; or
- b. The Developer or Property no longer qualifies for a PILOT under state law.

5. Annual Filings. In order to facilitate the administration of this Agreement, Developer shall file with the City annually the documentation required under state law as follows: on or before March 1 of each year, the Developer shall furnish to the City a certificate setting forth the real property to be exempt from all taxes and special assessments as provided herein during the ensuing tax year.

6. Effect of Termination. In the event the City has terminated this Agreement for cause under section 4, then within thirty (30) days after issuance of the final bill for the then particular tax year, Developer shall pay the City the full amount of such tax bill for the then particular tax year, less any amounts paid by or credited to Developer previously for that tax year.

7. Waivers on Impact Fees and Permit Fees. City shall waive the following fees for the Bronstein Redevelopment:

- a. Building permit fees for the (including all trade permits plumbing, mechanical, electrical) up to \$100,000 (estimated to be approximately \$81,500);
- b. School impact fees up to \$125,000 (estimated to be \$108,000); and

c. City shall waive wastewater service permit fees (hook-up/construction related and not applicable to operations) up to \$60,000 (estimated to be \$52,680).

8. Funding for Myrtle St improvements. City shall repave and stripe Myrtle Street up to a cost of \$55,000, work to be performed by City forces.

9. Home Funds. City shall make \$700,000 total in HOME Funds available to Developer for the Bronstein Redevelopment as follows: \$500,000 available in July 2021 and \$200,000 available in July 2022

10. Performance of Governmental Functions. The terms of this Agreement are independent of any obligations binding upon City or Developer pursuant to applicable laws, regulations, rules and ordinances. In no event will any approvals given by City pursuant to the terms of this Agreement constitute the performance by City of any review or issuance of any permits, approvals or licenses that it is obligated to conduct or consider pursuant to any law, or ordinance or both. Nothing in this Agreement or any approvals or consents by City in connection with this Agreement will in any way stop, limit or impair City from exercising or performing any regulatory, policing or other governmental function with respect to either Party, including, but not limited to, the review, approval and issuance by City of applications, approvals, permits and licenses regarding the Project pursuant to any laws and ordinances. City will, to the extent reasonably appropriate and permitted by applicable laws and ordinances, facilitate Developer's submissions, requests and applications pursuant to the applicable laws and ordinances governing the Project; provided Developer's submissions, requests and applications are complete, include all necessary fees and are otherwise compliant with applicable laws and ordinances.

11. Amendment. The terms of this Agreement may be altered, amended or changed only by the mutual, written consent of the parties.

12. Entire Agreement. This Agreement contains the entire agreement between the City and Developer with respect to the subject matter herein, and supersedes any earlier agreements.

13. Law. This Agreement shall be interpreted in accordance with the laws of the State of New Hampshire. The parties hereto agree that any action brought by either party to enforce the terms of this Agreement shall be filed in the Superior Court of Hillsborough County, New Hampshire.

14. Notice. Any notice by one party to the other shall be in writing, and shall be either hand-delivered, sent via certified mail, return receipt requested, or by email (with confirmation of receipt) at the addresses first set forth above unless otherwise provided in writing to the other party. All notices to the City shall be directed to the Director of Economic Development, City of Nashua, 229 Main Street, Nashua, New Hampshire 03061-2019 and copies sent by email to the following email address: legal@nashuanh.gov.

15. Counterparts. This Agreement may be executed in counterparts, which collectively shall constitute one agreement. Executed copies of this Agreement shall have the same force and effect as originals.

16. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between Developer and City, or to impose any partnership obligation or liability upon the parties. Neither Developer nor City shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other.

17. Severability. If any term or provision of this Agreement shall be judicially determined to be void or of no effect, that determination shall not affect the validity of the remaining terms and provisions of this Agreement. The parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.

18. Authority. Each party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind City and Developer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the date first set forth above.

*Signature pages follow*

*To be inserted*

**LEGISLATIVE YEAR 2021**

**RESOLUTION:** R-21-136

**PURPOSE:** Authorizing Developer Agreement with Payment in Lieu of Taxes (PILOT) for Bronstein Redevelopment

**ENDORSERS:** Mayor Jim Donchess  
President Lori Wilshire

**COMMITTEE ASSIGNMENT:** Budget Review Committee  
Board of Public Works  
Nashua Planning Board

**FISCAL NOTE:** As part of this agreement, the City will waive up to \$285,000 in fees, expend up to \$55,000 on Myrtle St. improvements, make \$700,000 in HOME funds available and has agreed to PILOT payments. The City will be receiving on average 50% of property taxes over the period of 15 years which is a concession of approximately \$3.7 million.

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**ANALYSIS**

This resolution authorizes a Developer Agreement with payment in lieu of taxes (PILOT) pursuant to RSA 203:23, XIV, fee waivers, and street improvements, as well as HOME funds availability, which HOME funds will require additional, future legislation.

The wastewater fee waiver requires Board of Public Works approval.

NRO 190-85 allows the full or partial waiver of impact fees if the proposed development consists of low or moderate-income housing. NRO 190-85 requires that “the Planning Board and Administrative Officer shall evaluate the request and forward written findings and recommendations to the Mayor and Board of Aldermen for considerations. The amount for the impact fee waived shall be proportional to the amount of the new development which is dedicated to low-income . . . housing.”

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**Approved as to account number and/or structure, and amount:**

**Financial Services Division**

**By:** /s/ John Griffin

**Approved as to form:**

**Office of Corporation Counsel**

**By:** /s/ Celia K. Leonard

**Date:** April 27, 2021

**RESOLUTION R-21-136**

**Authorizing Developer  
Agreement with Payment in Lieu  
of Taxes (PILOT) for Bronstein  
Redevelopment**

**IN THE BOARD OF ALDERMEN**

1<sup>ST</sup> READING April 27, 2021

Referred to:  
Budget Review Committee

Board of Public Works

Nashua Planning Board  
2<sup>nd</sup> Reading May 25, 2021

3<sup>rd</sup> Reading \_\_\_\_\_

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

Other Action \_\_\_\_\_

Passed May 25, 2021

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

Defeated \_\_\_\_\_

Attest: \_\_\_\_\_ City Clerk  
Gari Wilshire President

Approved \_\_\_\_\_ Mayor's Signature

\_\_\_\_\_ Date

**Endorsed by**

\_\_\_\_\_  
Gari Wilshire MAYOR  
\_\_\_\_\_  
WILSHIRE  
\_\_\_\_\_  
DOWD  
\_\_\_\_\_  
O'BRIEN  
\_\_\_\_\_  
SCHMIDT  
\_\_\_\_\_  
KLEE  
\_\_\_\_\_  
HARRIOTT-  
GATHRIGHT  
\_\_\_\_\_  
CLEMONS

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

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

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

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

\_\_\_\_\_ President