



## RESOLUTION

**AUTHORIZING THE CITY OF NASHUA TO ENTER INTO AN OPTION AGREEMENT WITH HARBOR HOMES, INC. FOR PARKING LEASE**

### *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 an Option Agreement with Harbor Homes, Inc. for the lease of fifteen (15) parking spaces at the Factory Street Lot, substantially in the form of 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 Option Agreement or parking lease, or required to effectuate the same, including but not limited to, entering into the Option Agreement, the parking lease and renewing the parking lease.

**OPTION AGREEMENT**  
**(City of Nashua / Harbor Homes, Inc. – Parking Lease)**

THIS OPTION AGREEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the **City of Nashua**, a municipal corporation with offices at 229 Main Street, Nashua, New Hampshire 03060 (the “City”), and **Harbor Homes, Inc.**, a New Hampshire voluntary (non-profit) corporation with offices at 77 Northeastern Boulevard, Nashua, New Hampshire 03062 (“Harbor Homes”).

**Recitals**

WHEREAS, the City owns an open air parking lot known as the Factory Street Lot situated between High Street and Factory Street in Nashua, New Hampshire, to the west of the High Street Garage and the east of the property at 45 High Street owned by Harbor Homes (“45 High Street”); and

WHEREAS, Harbor Homes operates the Harbor Clinic at 45 High Street which provides medical and other services to low income patients and others; and

WHEREAS, the City is also the owner of an open air parking lot located between High Street and School Street in said Nashua, known as the School Street Lot; and

WHEREAS, the City has finalized or anticipates finalizing a so-called Master Development Agreement with Lansing Melbourne Group, LLC (or its related entity) for the development of apartment units in the School Street Lot (the “Apartment Project”); and

WHEREAS, in light of the prospective development of the Apartment Project and the parties desire to ensure adequate, adjacent parking for the Harbor Clinic, the City has agreed to provide Harbor Homes with an option to enter into a lease of 15 spaces located in the Factory Street Lot adjacent to the easterly side of 45 High Street (the “Parking Spaces”).

**Agreement**

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

1. Option to Lease Parking Spaces. The City hereby grants Harbor Homes the exclusive option to lease the Parking Spaces (the “Option”). The Option does not include the handicap spaces in the Factory Street Lot.

2. Term of Option. Harbor Homes may exercise the Option at any time during a one (1) year period (the “Option Term”). The Option Term begins on the first day that the School Street Lot is no longer open for public use (e.g. being fenced in anticipation of the commencement of development of the Apartment Project) and ends one (1) year thereafter.

3. Exercise of Option. During the Option Term, Harbor Homes may exercise the Option, at any time, by providing written notice of such exercise to the City (the “Notice of Exercise”) by forwarding the Notice of Exercise to the following address:

Tim Cummings, Director of Economic Development  
City Hall – Economic Development Office  
229 Main Street/P.O. Box 2019  
Nashua, New Hampshire 03061  
[cummingsst@nashuanh.gov](mailto:cummingsst@nashuanh.gov)

4. Effect of Exercise of Option. In addition to forwarding the City the Notice of Exercise pursuant to Section 3 above, Harbor Homes shall execute and deliver to the City (at the same address) an original of the Lease Agreement in the form of **Exhibit A** attached. Upon its receipt of the Notice of Exercise, the City shall cause the Lease Agreement to be duly executed and return an original of the same to Harbor Homes within fifteen (15) days of the City's receipt. Upon execution of the Lease Agreement by the City, the Lease Agreement shall be in effect.

5. Law. This Option Agreement is governed by the law of the State of New Hampshire.

6. No Other Leases. During the term of this Option Agreement, and during the term of the Lease Agreement (if entered into), the City shall not lease any of the Parking Spaces to any person or entity, other than Harbor Homes, for the hours reserved to Harbor Homes (7:00 a.m. to 7:00 p.m.).

7. Representations. Harbor Homes makes the following representations and warranties to the City:

- (i) Harbor Homes has the legal right, power and authority to enter into this Option Agreement and to perform all of its obligations hereunder.
- (ii) The execution and delivery of this Option Agreement and the performance by Harbor Homes 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 Harbor Homes is a party or by which Harbor Homes is bound.
- (iii) No consent, approval, waiver, authorization or novation is required to be obtained by Harbor Homes from, and no notice or filing is required to be given by Harbor Homes 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 Harbor Homes of this Option Agreement and each of the documents to be executed by Harbor Homes pursuant to this Option Agreement.

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

9. Successors and Assigns. Harbor Homes may assign its rights, duties and obligations hereunder prior to the end of the term of this Option Agreement, and during the term of the Lease Agreement (if entered into) to an entity under common control with Harbor Homes. No other assignment shall be permitted without the City's consent, which consent may be

withheld in the City's sole discretion. This Option Agreement and the rights, duties and obligations of the parties hereunder shall apply to and bind the successors and assigns of the respective parties.

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

IN WITNESS WHEREOF, the City and Harbor Homes have caused this Option Agreement to be duly executed the date first set forth above.

**City of Nashua**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
James W. Donchess, Mayor

Pursuant to Board of Aldermen Resolution \_\_\_\_\_ dated \_\_\_\_\_

**Harbor Homes, Inc.**

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Peter J. Kelleher, President and CEO

**EXHIBIT A**

**LEASE**

(Factory Street Lot / Fifteen (15) Parking Spaces)

**THIS LEASE** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by and between the CITY OF NASHUA, a municipal corporation existing under the laws of the State of New Hampshire (hereinafter LESSOR) and having an office for the transaction of business at 229 Main Street, Nashua, New Hampshire and HARBOR HOMES, INC., a non-profit corporation existing under the laws of the State of New Hampshire (hereinafter LESSEE) and having a principal office for the transaction of business at 77 Northeastern Boulevard, Nashua, New Hampshire.

**WHEREBY:**

1. LESSOR does hereby lease to LESSEE, for the purpose of the parking of automobiles, fifteen (15) spaces on the westerly side of the Factory Street Lot (Nashua Assessor's Sheet \_\_, Lot \_\_\_\_), owned by LESSOR, adjacent to the easterly side of 45 High Street (collectively, the "Leased Spaces"). The Leased Spaces shall not include any handicap spaces.

2. This Lease has a term of five (5) years, commencing on \_\_\_\_\_, 202\_\_ and terminating on \_\_\_\_\_ 202\_\_. LESSEE shall have the option to renew this Lease for one (1) additional five (5) year renewal term by giving LESSOR written notice thereof at least ninety (90) days prior to the expiration of the initial term; provided, however, that (i) LESSEE may terminate this Lease during the initial term or the renewal term upon one hundred eighty (180) days written notice to LESSOR and (ii) LESSOR may terminate this Lease during the renewal term upon one hundred eighty (180) days written notice to LESSEE.

3. LESSEE shall be responsible to the LESSOR for rent payments in money. Rent shall be paid monthly in advance on the first day of the month. The monthly rent for the initial five (5) year term shall be Fifty Dollars (\$50.00) per each parking space per month multiplied by fifteen (15) parking spaces, for a total monthly rental payment of \$750.00. The monthly rent for the five (5) year renewal term, if exercised, shall be at LESSOR's then-current standard per month per space rate, which shall be disclosed by LESSOR to LESSEE, at LESSEE's written request, at least 120 days prior to LESSEE's election of whether or not to renew this Lease.

4. LESSEE shall peacefully have, hold and enjoy the Leased Spaces, without objection, hindrance or interference by LESSOR subject to the provisions of this Lease, provided that LESSEE complies with the terms hereof and all applicable ordinances, rules and laws. In the event of LESSEE's failure to comply with the terms hereof, LESSOR may, at its option, terminate this Lease upon thirty (30) days written notice to LESSEE. LESSEE shall have exclusive use of the Leased Spaces from the hours of 7:00 a.m. to 7:00 p.m. seven (7) days per week. From the hours of 7:01 p.m. to 6:59 a.m., the Leased Spaces may be used by any other permitted visitors to the Factory Street Lot, subject to LESSOR's rules and regulations regarding the operation of the Factory Street Lot.

5. LESSOR shall at all times during the term of this Lease, and at its own cost and expense, keep and maintain, or cause to be kept and maintained, the Leased Spaces in good order and in a clean, sanitary, healthful and safe condition. LESSEE shall periodically inspect the Leased Spaces and keep the Leased Spaces free of garbage, refuse, or other debris. LESSOR shall remove and properly dispose of snow from the Leased Spaces, and shall remove and properly dispose of any unregistered or abandoned vehicles from the Leased Spaces. During snow emergencies, LESSEE shall cause all vehicles parked in the Leased Spaces during the hours of LESSEE's exclusive use to be removed.

6. LESSEE shall maintain in full force and effect during the term of this Lease liability insurance relating to the Leased Spaces and to LESSEE's use and occupancy thereof. LESSEE shall deliver to LESSOR certificates of insurance indicating such coverage in an amount of not less than one million dollars (\$1,000,000.00) single incident limit, designating the LESSOR as an additional insured, and providing that such coverage may not be canceled or materially altered except upon thirty (30) days written notice to LESSOR. Notwithstanding any other provision of this Lease, LESSOR may terminate this Lease upon cancellation or an unacceptable material alteration of the specified insurance coverage not cured within thirty (30) days after such cancellation or unacceptable material alteration.

7. LESSEE shall make no alterations to, or construct any improvements upon, the Leased Spaces. LESSOR shall install signage on each of the Leased Spaces indicating that each Leased Space is "Reserved for the Exclusive Use of Harbor Clinic – 7:00 a.m. to 7:00 p.m." LESSOR shall install appropriate markings in the Factory Street Lot, including without limitation on the Leased Spaces, such as parking space lines, directional arrows, and other pavement markings, and shall ensure the same are kept in good condition.

8. LESSEE makes the following representations and warranties to LESSOR:

- (i) LESSEE has the legal right, power and authority to enter into this Lease and to perform all of its obligations hereunder.
- (ii) The execution and delivery of this Lease and the performance by LESSEE 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 LESSEE is a party or by which LESSEE is bound.
- (iii) No consent, approval, waiver, authorization or novation is required to be obtained by LESSEE from, and no notice or filing is required to be given by, LESSEE 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 LESSEE of this Lease and each of the documents to be executed by LESSEE pursuant to this Lease.

9. LESSEE shall defend, indemnify and hold harmless LESSOR, its officers, agents and employees, from and against any and all losses suffered by the LESSOR, its officers, agents and employees and any and all claims, liabilities or penalties asserted against the LESSOR, 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 guests or invitees or from the use by LESSEE, its guests or invitees of the above described Leased Spaces during the hours of LESSEE's exclusive use of the Leased Spaces. 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 Lease. LESSEE has no liability for acts or omissions at or about the Leased Spaces by persons other than LESSEE, its officers, agents, employees, guests, or invitees.

10. Whenever by the terms of this Lease notice shall or may be given to LESSOR or LESSEE, such notice shall be in writing and shall be delivered in hand or sent by registered or certified U.S. mail, postage prepaid, to the address as stated above, or to such other addresses as may from time to time be designated by like notice. Notices to LESSOR should be directed to the City Clerk.

11. LESSEE may assign its rights, duties and obligations hereunder to an entity under common control with LESSEE. No other assignment shall be permitted without LESSOR's consent, which consent may be withheld in LESSOR's sole discretion.

12. This Lease may not be altered, changed or amended, nor any obligation hereunder or condition hereof be deemed waived, except by instrument in writing signed by LESSOR and LESSEE. The provisions of this Lease shall extend and inure to the benefit of, and shall be binding upon LESSOR and LESSEE and their respective successors and assigns as provided in Section 11.

13. In the event either party defaults in its obligations under this Lease, the other party shall have all rights and remedies available to it at law and equity.

14. This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of New Hampshire.

15. This Lease contains the entire agreement between the parties with respect to the subject matter hereof, and supercedes all prior understandings and agreements, if any, with respect thereto.

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

WITNESSED BY:

CITY OF NASHUA, LESSOR

\_\_\_\_\_

By: \_\_\_\_\_  
James W. Donchess, Mayor  
Duly authorized

State of New Hampshire  
County of Hillsborough, SS

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_ by James W. Donchess, as Mayor of the City of Nashua.

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My Commission Expires:



HARBOR HOMES, INC., LESSEE

\_\_\_\_\_

By: \_\_\_\_\_  
Peter. J. Kelleher, President and Chief  
Executive Officer

Duly authorized

State of New Hampshire  
County of Hillsborough, SS

This instrument was acknowledged before me on \_\_\_\_\_, 202\_\_ by Peter J.  
Kelleher, as President and Chief Executive Officer of Harbor Homes, Inc..

\_\_\_\_\_  
Justice of the Peace/Notary Public  
My Commission Expires:

**LEGISLATIVE YEAR 2021**

**RESOLUTION:** R-21-156

**PURPOSE:** Authorizing the City of Nashua to enter into an option agreement with Harbor Homes, Inc. for parking lease

**ENDORSERS:** Mayor Jim Donchess

**COMMITTEE  
ASSIGNMENT:**

**FISCAL NOTE:** The monthly rent for the initial five (5) year term shall be Fifty Dollars (\$50.00) per each parking space per month multiplied by fifteen (15) parking spaces, for a total monthly rental payment of \$750.00. The cost for updating space/lot signage is \$350.00.

---

**ANALYSIS**

This resolution authorizes the City to enter into an option agreement with Harbor Homes, Inc. for a parking lease. NRO Section 5-4, C, states that the "Board of Aldermen shall approve the lease of any City-owned lands and buildings."

---

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

**Financial Services Division**

By: /s/ John Griffin

**Approved as to form:**

**Office of Corporation Counsel**

By: /s/ Celia K. Leonard

Date: August 3, 2021