

GUARANTY AND COLLATERAL AGREEMENT

GUARANTY AGREEMENT (this "Agreement"), dated as of the 11th day of December, 2020, is by and between **The City of Nashua**, having a mailing address of 229 Main Street, Nashua, NH (the "Guarantor"), **MARMAC FUNDING, LLC**, a New Hampshire Limited Liability Company, with a mailing address of 40 Temple Street, Nashua, NH, 03060, or its successors and assigns, (the "Assignee")., or its successors and assigns (the "Bank") and **NASHUA COMMUNITY ARTS**, a New Hampshire Non Profit Company, having a mailing address of PO Box 970, , Nashua, NH, 03061 (hereinafter "Borrower").

WITNESSETH:

WHEREAS, the Bank has agreed, subject to the terms and conditions set forth in a certain Promissory Note (hereinafter defined) dated of on or near even date herewith, by and between the Borrower and the Bank, to make a certain loan (the "Loan") to the Borrower in the principal amount of **Six Hundred Eighteen Thousand and No/100 Dollars (\$618,000.00)** such Loan to be evidenced by a certain Promissory Note in the amount of \$618,000.00 dated of on or near even date herewith, issued or to be issued by the Borrower, made by the Borrower, payable to the order of the Bank (the "Note") and the "Loan Documents" (as defined within the Note); and

WHEREAS, the obligation of the Bank to make the Loan to the Borrower is subject to the condition, among others, that the Guarantor shall execute and deliver this Guaranty Agreement;

WHEREAS, Borrower is raising funds for the Nashua Performing Arts Center, through cash and pledges (together, the "Donations") ;

WHEREAS, the Nashua Performing Arts Center will provide a public benefit to the City of Nashua;

WHEREAS, the Loan proceeds will be transferred, along with cash, to 201 Main Street Real Estate Corp. as part of a New Markets Tax Credits transaction for the Nashua Performing Arts Center; and

WHEREAS, the Guarantor is not a subsidiary or member of the Borrower but will be benefited, at least indirectly, by the public benefit of the proceeds of the Loan disbursed to the Borrower.

NOW, THEREFORE, in order to induce the Bank to make the Loan to the Borrower, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Guarantor, the Guarantor hereby agrees as follows:

1. Guaranteed Obligations. The Guarantor does hereby irrevocably and unconditionally guarantee the due and punctual payment and performance, upon written demand by Bank to Guarantor, of the following obligations to the Bank (individually, a "Guaranteed Obligation" and together the "Guaranteed Obligations"):

- (a) Principal of and premium, if any, and interest on the Note, when the same becomes due and payable, whether on demand or by acceleration or otherwise;
- (b) Any and all other obligations of the Borrower to the Bank under the Note, or under any agreement or instrument relating thereto, including any amendment, modification, extension, renewal, replacement or restatement thereof;
- (c) Any and all expenses that may be incurred by the Bank in collecting all or any of the Guaranteed Obligations, including reasonable attorneys' fees.

2. Demand by the Bank. Upon any failure by the Borrower punctually to pay or perform any Guaranteed Obligation when due, the Bank may make written demand upon the Guarantor for the payment or performance of such Guaranteed Obligation and the Guarantor binds and obliges itself to make such payment or performance forthwith upon such demand.

3. Obligations of the Guarantor Unconditional. This Guaranty is an absolute, unconditional and continuing guaranty of the full and punctual payment and performance by the Borrower of the Guaranteed Obligations and not of their collectability only and is in no way conditioned upon any requirement that the Bank first attempt to collect any of the Guaranteed Obligations from the Borrower or resort to any collateral, security, guaranty or other means of obtaining payment of any of the Guaranteed Obligations which the Bank now has or may acquire after the date hereof, or upon any other contingency whatsoever.

The obligations of the Guarantor under this Agreement shall be unconditional, irrespective of the validity, regularity or enforceability of any Guaranteed Obligations, and shall not be affected by (a) any action taken under any Guaranteed Obligations in the exercise of any right or remedy therein conferred, (b) any failure or omission on the part of the Bank to enforce

any right given thereunder or hereunder or any remedy conferred thereby or hereby, (c) any waiver of any term, covenant, agreement or condition of any Guaranteed Obligation or this Guaranty, (d) any release of any security or any other guaranty at any time existing for the benefit of any Guaranteed Obligation, (e) the merger or consolidation of the Borrower, (f) any sale, lease or transfer by the Borrower or any Guarantor to any person or any or all of its or their properties, (g) any action of the Bank granting indulgence or extension to, or waiving or acquiescing in any default by the Borrower or any Guarantor, or any successor to the Borrower or any Guarantor or any person or party which shall have assumed its obligations, (h) reason of any disability or other defense of the Borrower or any Guarantor or any successor to the Borrower or any Guarantor, or (i) any modification, alteration, or by any circumstance whatsoever (with or without notice to or knowledge of the Guarantor) which may or might in any manner or to any extent vary the risk of the Guarantor hereunder, it being the purpose and intent of the Guarantor that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment or performance as herein provided, and then only to the extent of such payment or performance. Payments by the Guarantor hereunder may be required by the Bank on any number of occasions by written notice of the Bank to Guarantor. .

4. Continuing Nature of Guaranty. The obligation of the Guarantor under this Guaranty shall continue in full force and effect, notwithstanding any intermediate or temporary payment or settlement of the whole or any part of the Guaranteed Obligations. This Guaranty shall not be discharged until such time as (i) all Guaranteed Obligations shall be finally paid in full, (ii) all covenants, terms, conditions and undertakings of the Guarantor shall be complied with and performed and (iii) the Bank shall deliver a final discharge in writing to the Guarantor. In the event of any discontinuance or termination of this Guaranty in any manner, all indebtedness and obligations included within the term Guaranteed Obligations under Section 1 herein (including, without limitation, the Note and the Loan Documents) executed, issued, drawn or made by, or for the account of, the Borrower on the Bank or any of its agents purporting to be dated on or before the date such discontinuance or termination becomes known to the Bank, and all advances and payments made pursuant thereto even though made after such date, shall form part of the Guaranteed Obligations for which the Guarantor shall be liable under the terms hereof.

5. Bank's Freedom to Deal with the Borrower and Other Parties. The Bank shall be at liberty, without giving notice to or obtaining the assents of the Guarantor and without relieving the Guarantor of any liability hereunder, to deal with the Borrower and with each other party who now is or after the date hereof becomes liable in any manner for any of the Guaranteed Obligations, in such manner as the Bank in its sole discretion deems fit, and to this end the Guarantor gives to the Bank full authority in its sole discretion to do any or all of the following things: (a) extend credit, make loans and afford other financial accommodations to the Borrower at such times, in such amounts and on such terms as the Bank may approve, (b) vary the terms and grant extensions or renewals of any present or future indebtedness or obligations to the Bank of the Borrower or of any such other party, (c) grant time, waivers and other indulgences in respect thereto, (d) vary, exchange, release or discharge, wholly or partially, or delay in or abstain from perfecting and enforcing any collateral, security, guaranty or other

means of obtaining payment of any of the Guaranteed Obligations which the Bank now has or acquires after the date hereof, (e) accept partial payments from the Borrower or any such other party, (f) release or discharge, wholly or partially, any endorser or Guarantor, and (g) compromise or make any settlement or other arrangement with the Borrower or any such other party.

6. Subordination of Claims of the Guarantor, Security. Any claim against the Borrower to which the Guarantor may be or become entitled (including, without limitation, claims by subrogation or otherwise by reason of any payment or performance by the Guarantor in satisfaction and discharge, in whole or in part, of its obligations under this Guaranty) shall be and hereby is made subject and subordinate to the prior payment or performance in full of the Guaranteed Obligations. The Guarantor will not, by payment of any sum recoverable hereunder (whether or not demanded by the Bank) or by any means or on any other ground, claim any setoff or counterclaim against the Borrower in respect of any liability of the Guarantor to the Borrower or, in proceedings under the Bankruptcy Reform Act of 1978, as amended, or insolvency proceedings of any nature, prove in competition with the Bank in respect of any payment hereunder or be entitled to have the benefit of any counterclaim or proof of claim or dividend or payment by or on behalf of the Borrower or the benefit of any other security for any Guaranteed Obligation which, now or hereafter, the Bank may hold or in which it may have any share.

The terms of this section 6 are not applicable to fees, fines, interest, penalties and taxes charged by the City or which are collected or enforced by the City.

7. Waiver of Demands, Notices, Diligence, etc. The Guarantor hereby assents to all the terms and conditions of the Guaranteed Obligations and waives (a) demand for the payment of the principal of any Guaranteed Obligation or of any claim for interest or any part of any thereof (other than the demand provided for in Section 2 hereof); (b) notice of the occurrence of a default or an event of default under any Guaranteed Obligation; (c) protest of the nonpayment of the principal of any Guaranteed Obligation or of any claim for interest or any part of any thereof; (d) notice of presentment, demand and protest; (e) notice of acceptance of any guaranty herein provided for or of the terms and provisions thereof or hereof by the Bank; (f) notice of any indulgences or extensions granted to the Borrower or any corporate successor to the Borrower, or any Guarantor or any person or party which shall have assumed the obligations of the Borrower or any Guarantor; (g) any requirement of diligence or promptness on the part of the Bank in the enforcement of any of its rights under the provisions of any Guaranteed Obligations or this Guaranty; (h) any enforcement of any Guaranteed Obligation; (i) any right which the Guarantor might have to require the Bank to proceed against the Borrower or any other Guarantor of the Guaranteed Obligations or to realize on any collateral security for the Guaranteed Obligations; and (j) any and all notices of every kind and description which may be required to be given by any statute or rule of law in any jurisdiction. The waivers set forth in this Section 7 shall be effective notwithstanding the fact that the Borrower ceases to exist by reason of its liquidation, merger, consolidation or otherwise.

8. Notices, etc. All notices, demands and other communications hereunder shall be

deemed to have been sufficiently given or made if in writing and mailed by first class mail, postage prepaid, to the parties at the addresses set forth herein or at such other address as the party to whom such notice or demand is directed may have designated in writing to the other parties hereto.

9. Survival of Guaranty, etc. This Guaranty shall inure to the benefit of and be binding upon the Guarantor and the Bank and their respective successors and assigns, including any subsequent holder or holders of any Guaranteed Obligations, and the term "Bank" shall include any such holder or holders whenever the context permits. This Guaranty Agreement is intended to take effect as a sealed instrument.

10. Counterparts. This Guaranty Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of the counterparts shall together constitute one and the same instrument.

11. Governing Law; Jurisdiction. This Guaranty Agreement shall be construed in accordance with and governed by the laws of the State of New Hampshire. The Guarantor, to the extent that it may lawfully do so, hereby consents to the jurisdiction of the courts of the State of New Hampshire as well as to the jurisdiction of all courts from which an appeal may be taken from such courts, for the purpose of any suit, action or other proceeding arising out of any of its obligations hereunder or with respect to the transactions contemplated hereby, and expressly waives any and all objections it may have as to venue in any such courts.

12. Joint and Several Liability. It is agreed that the Guarantor's liability hereunder is joint and several with and independent of any other guaranties at any time in effect with respect to all or any part of the Guaranteed Obligations to the Bank and that the Guarantor's liability hereunder may be enforced regardless of the existence of any such other guaranties.

13. Gender of Pronouns. The provisions hereof shall apply to the parties according to the context thereof and without regard to the number or gender of words or expressions used.

14. Assignment.

- (a) The Borrower does hereby assign, pledge, hypothecate, transfer, set over and deliver unto the Guarantor, and does hereby grant to the Guarantor a first priority security interest in, all right, title and interest of the Borrower in and to and the Donations and all rights, claims, powers, privileges and remedies of the Borrower whether arising by statute or at law or in equity or otherwise consequent on the failure on the part of any party to perform or comply with any term of the Donations, together with full and sole power and authority, in the name of the Borrower or otherwise, to enforce, collect, receive and give receipt for all or any of the foregoing. The assignment herein set forth and security interest granted hereby shall be absolute and continuing until this Guaranty Agreement is discharged by Bank. The Donations shall secure repayment of any payment by Guarantor under this Guaranty Agreement.

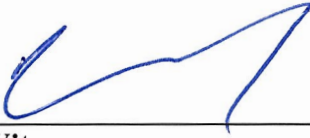
- (b) Promptly and from time to time following request from the Guarantor, the Borrower shall furnish or cause to be furnished to the Guarantor documents related to the Donations or evidencing an interest in the Donations pledged hereunder or intended to be so pledged as the Guarantor may reasonably request and shall do such acts and things at its own expense as the Guarantor may reasonably request to perfect, confirm or further assure the interests granted pursuant to this Guaranty Agreement and to further the purposes of this Guaranty Agreement.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty Agreement as of the date first above written.

Signature page follows

BANK

Marmac Funding, LLC



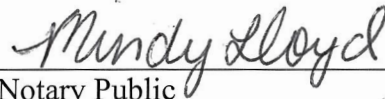
Witness

By: 

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 11th day of December, 2020, before me, the undersigned officer, personally appeared the above named Mark Nash in his/her capacity as Manager, known to me (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

Before me:



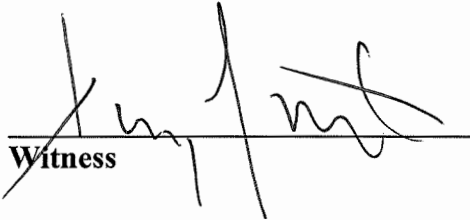
Notary Public


My Commission Expires: 11/8/22



BORROWER

Nashua Community Arts


Witness



By: **Richard Lannan**

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 11th day of December, 2020, before me, the undersigned officer, personally appeared the above named Richard Lannan in his capacity as President of Nashua Community Arts, known to me (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.


Before me:

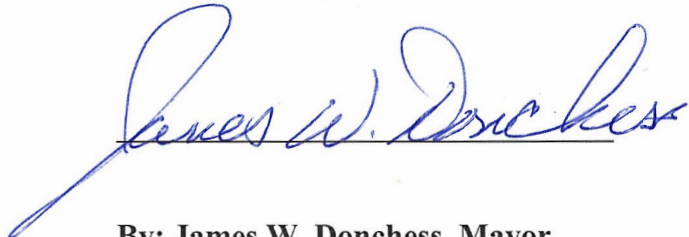



Notary Public
My Commission Expires: 5-4-2021

GUARANTOR

The City of Nashua



Witness: Celia K. Leonard, Esq.


By: James W. Donchess, Mayor

STATE OF NEW HAMPSHIRE
COUNTY OF HILLSBOROUGH

On this the 11 day of December, 2020, before me, the undersigned officer, personally appeared the above named James W. Donchess in his capacity as Mayor of the City of Nashua, NH, known to me (or satisfactorily proven), to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

Before me:


Notary Public
My Commission Expires: 1/24/2023

