

**CONFIDENTIALITY AND  
COMMON LEGAL INTEREST AGREEMENT**

This **CONFIDENTIALITY AND COMMON LEGAL INTEREST AGREEMENT** (the "Agreement"), effective as of April 21, 2023, is entered into by and among the undersigned for the purpose of sharing information concerning a common legal interest. Specifically, each Party and/or their counsel (the "Disclosing Party") may, without waiving any privilege or protection, disclose to the other Party and/or their counsel (the "Receiving Party") certain information that is subject to and protected by the attorney-client privilege, work-product immunity, the joint-defense privilege, the common-interest privilege, or any other applicable privilege, protection, or immunity, including without limitation any exemption from NH RSA 91-A or the confidentiality of any trade secret or other proprietary, non-public information ("Common Legal Interest Information and Materials").

WHEREAS Joseph A. Foster and Graham W. Steadman, and their firm, McLane Middleton, PA have been retained as counsel to 201 Main Street Real Estate Corporation and 201 Main Street Financing Corporation ("201s") in the matter of *Laurie Ortolano v. City of Nashua and 201 Main Street Real Estate Corporation and 201 Main Street Financing Corporation*, relating to a right-to-know request ("RTK request");

WHEREAS Russell F. Hilliard and his firm, Upton & Hatfield, LLP have been retained as counsel for the City of Nashua ("Nashua") in the matter of *Laurie Ortolano v. City of Nashua and 201 Main Street Real Estate Corporation and 201 Main Street Financing Corporation*, relating to a right-to-know request ("RTK request");

WHEREAS Steven A. Bolton, counsel for the City of Nashua, represents the City of Nashua ("Nashua") in the matter of *Laurie Ortolano v. City of Nashua and 201 Main Street Real Estate Corporation and 201 Main Street Financing Corporation*, relating to a right-to-know request ("RTK request");

WHEREAS Celia K. Leonard, counsel for the City of Nashua, represents the City of Nashua ("Nashua") in the matter of *Laurie Ortolano v. City of Nashua and 201 Main Street Real Estate Corporation and 201 Main Street Financing Corporation*, relating to a right-to-know request ("RTK request");

WHEREAS the Parties and their counsel believe the Parties have a common legal interest in exchanging Common Legal Interest Information and Materials, as defined below, in connection with the claims and defenses asserted in the Actions.

WHEREAS, the Parties also desire to have their legal counsel analyze certain factual information, expert analysis, and attorney conclusions and impressions concerning the Actions to aid the Parties in assessing the Actions and the claims and defenses asserted in the Actions, including, but not limited to, assessing, preparing, and maintaining legal strategies for defending the Parties' common or potentially common legal interests in connection with the plaintiff's RTK request;

WHEREAS, this Agreement is intended to confirm and memorialize the Parties' understandings for exchanging Common Legal Interest Information and Materials in pursuit of their common and potentially common legal interests in the Actions and the claims and defenses asserted in the Actions and to ensure that any oral or written communications between or among counsel for the Parties concerning the Actions and/or claims and defenses, or records of communications among the Parties or their counsel relating to the Actions and/or claims and defenses, do not constitute a waiver of the attorney-client privilege, work-product immunity, the joint-defense privilege, the common-interest privilege, or any other applicable privilege, protection or immunity, including without limitation any exemption from NH RSA 91-A or the confidentiality of any trade secret or other proprietary, non-public information.

NOW, THEREFORE, the Parties, on behalf of themselves and their respective counsel, by and through the Parties' counsel, agree as follows:

1. The Parties acknowledge and agree that they have common and mutual legal interests in assessing the Actions and/or claims and defenses.

2. This Agreement reduces to writing the Parties' agreement and understanding that they are each claiming a common-interest privilege, and that communications between the Parties directly and by and through their respective counsel concerning the Actions are intended to be in furtherance of that common and joint legal interest and are subject to the joint-defense privilege and/or the common-interest privilege, and do not constitute a waiver of the attorney-client privilege, work-product immunity, the joint-defense privilege, the common-interest privilege, or any other applicable privilege, protection or immunity, including without limitation any exemption from NH RSA 91-A or the confidentiality of any trade secret or other proprietary, non-public information otherwise applicable. To the extent the Parties and their counsel have already been in communication with one another since the incidents giving rise to the Actions those communications have been at all times subject to the joint-defense privilege and/or the common-interest privilege and are now also subject to this Agreement.

3. In order to pursue their common interest effectively, the Parties have concluded that their mutual interests will be best served if the Parties and their counsel, in their discretion, may share with each other Common Legal Interest Information and Materials. Such Common Legal Interest Information and Materials may be in oral or written form, and may include without limitation documents, memoranda, summaries, notes, factual analyses, mental impressions, communications concerning strategy, communications with or concerning potential or retained experts or consultants, draft or final expert reports, communications concerning issues relating to the merits or procedures of the Actions or concerning legal or economic issues relating to the Actions, reports of witness interviews, draft briefs and pleadings, jury research, and other information, in each case prepared by any Party, their affiliates, their counsel, their experts or consultants, or anyone else at the direction of that Party or their counsel.

4. To avoid any suggestions of waiver of the confidentiality, privilege, and/or protection of such Common Legal Interest Information and Materials, the Parties agree that Common Legal Interest Information and Materials shall be maintained by the Parties and their counsel in strictest confidence, and that any such privileged and/or protected Common Legal

Interest Information and Materials shall continue to be protected from disclosure to third parties pursuant to the joint-defense privilege, the common-interest privilege, the attorney-client privilege, work-product immunity, and all other applicable privileges, protections, and immunities. The Parties further acknowledge and agree that no disclosure to each other or their counsel of Common Legal Interest Information or Materials is intended to waive any confidentiality or trade-secret protection to which such Common Legal Interest Information or Materials is or may be entitled. Common Legal Interest Information and Materials received by a Receiving Party from a Disclosing Party may not be disclosed by that Receiving Party or their counsel to any other person or entity without prior express written consent of the Disclosing Party or their counsel, except (i) their employees, officers, directors who have a need to know in connection with the analysis and defense of the Actions or for a Legal Disclosure (defined below), and (ii) independent consultants and experts specially retained to assist the Parties and their counsel in connection with their analysis and/or prosecution of the Actions or for a Legal Disclosure. All persons permitted access to Common Legal Interest Information and Materials (other than those who receive such information pursuant to a Legal Disclosure) shall be specifically advised that the Common Legal Interest Information and Materials are privileged and subject to the terms of this Agreement.

5. It is further agreed that a Receiving Party or their counsel that has received any Common Legal Interest Information and Materials from a Disclosing Party or their counsel pursuant to this Agreement shall use such Common Legal Interest Information and Materials solely in connection with the Parties' assessment of the Actions and/or in the assessment or preparation of strategies for defense to all claims asserted in the and not for any other purpose. Without limiting the foregoing, in particular, neither a Receiving Party nor their counsel may use Common Legal Interest Information and Materials it has received from a Disclosing Party or their counsel pursuant to this Agreement in connection with any litigation or dispute against the Disclosing Party or their Affiliates, including any individual associated with the Disclosing Party or their Affiliates, unless such Common Legal Interest Information and Materials are obtained through the discovery process in connection with any such litigation or dispute.

6. Notwithstanding the foregoing, this Agreement shall not (a) restrict any Party from using (in any manner) or disclosing information that (i) is or becomes publicly available other than as a result of a disclosure by the Receiving Party or their counsel in violation of this Agreement, (ii) is or becomes available to the Receiving Party or their counsel from a source which, to the Receiving Party's knowledge, is not prohibited from disclosing such information to the Receiving Party, (iii) is known to the Receiving Party or their counsel prior to disclosure by the Disclosing Party or their counsel, (iv) is or has been independently developed by the Receiving Party without use of any information furnished to it by the Disclosing Party. The fact of communication of any such information by one Party to any other Party or through the Parties' respective counsel, however, shall be subject to all applicable privileges and protections arising under or pertaining to the Parties' joint defense and common legal interests to the full extent provided by law.

7. In the event that the Receiving Party or their counsel is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, any informal or formal investigation by any government or governmental or regulatory agency or authority or otherwise, or pursuant to a judicial, administrative or legal proceeding in which the Receiving Party or an affiliate, employee, officer, director, or partner of

it is involved ("Legal Disclosure") to disclose any of the Common Legal Interest Information and Materials provided pursuant to this Agreement (the "Compelled Information"), the Receiving Party will, to the extent permitted by law or by the rules governing the process for such disclosure, notify the Disclosing Party promptly in writing so that the Disclosing Party may seek a protective order or other appropriate remedy. The Receiving Party and their counsel agree not to oppose any action by the Disclosing Party to obtain a protective order or other appropriate remedy and shall reasonably cooperate with the Disclosing Party in connection therewith. In the event that no such protective order or other remedy is obtained, or in the absence of such protective order, other remedy or the waiver by the Disclosing Party and where the Receiving Party has been advised by counsel that is legally compelled to disclose the Compelled Information, the Receiving Party and/or their counsel will furnish only that portion of the Compelled Information that the Receiving Party is advised by counsel is legally required and will exercise their reasonable efforts to obtain reliable assurance at the Disclosing Party's expense, that confidential treatment will be accorded such Compelled Information.

8. Nothing in this Agreement shall obligate any Party to provide any information to the other Party or to exchange any information with the other Party, nor shall it restrict any Party from using or disclosing information not obtained hereunder in any manner it chooses. The Parties each recognize their respective rights to conduct separate witness interviews or otherwise undertake independent investigative efforts and to elect not to share such information with the other Party. Any failure to disclose documents or information shall not in any way affect the validity of this Agreement or the application of their terms.

9. This Agreement shall not create any joint venture, agency, or similar relationship between the Parties. This Agreement is not intended by any Party to create any duty between the Parties not explicitly set forth herein (including, without limitation, any fiduciary duty) nor is it intended to expand, modify, or otherwise alter any duties that may be owed by any Party to each other or to third parties under any agreement giving rise to the Actions. No Party shall have authority to waive any applicable privilege or doctrine on behalf of the other Party; nor shall any waiver of an applicable privilege or doctrine by the conduct of a Party be construed to apply to the other Party.

10. Nothing in this Agreement shall be construed to affect the separate and independent representation of the Parties by their respective counsel. Further, it is specifically understood and agreed that this Agreement in no way limits a Party with respect to the positions that it may assert in connection with the Actions. Each Party is free to assert or to refrain from asserting any position, argument, or claim, regardless of whether it is or may be contrary or detrimental to the position, argument, or claim asserted or not asserted by the other Party.

11. The Parties agree that the sharing of Common Legal Interest Information and Materials under this Agreement shall not be grounds for disqualification of any Party's counsel in any present or future action or proceeding, and each Party hereby waives the right to seek any such disqualification. Such waiver does not extend, however, to any circumstance in which a Party or their counsel is found or reasonably believed to have disclosed or used Common Legal Interest Information and Materials in a manner prohibited by this Agreement. No provision of this Agreement shall be construed to defeat the attorney-client privilege between any Party and their

respective counsel, and no provision of this Agreement shall be construed to create an attorney-client relationship between any Party and the counsel for the other Party.

12. Any Party may withdraw from this Agreement after giving written notice to the other Party and thereafter returning all materials obtained pursuant to this Agreement to the Disclosing Party. Following withdrawal, the privileges, protections, and all other obligations set forth in this Agreement shall continue to apply to both Parties and their counsel with respect to Common Legal Interest Information and Materials obtained pursuant to this Agreement.

13. In the event that any Party withdraws from this Agreement pursuant to paragraph 12, no Common Legal Interest Information and Materials provided by the other Party shall be retained or used by anyone receiving them in any form. In the alternative, the Receiving Party may at that Party's option provide a certificate to the Disclosing Party attesting to the destruction of all written or tangible Common Legal Interest Information and Materials and all documents the Receiving Party or their counsel have made reflecting that Common Legal Interest Information and Materials, and all copies thereof; provided, however, that this provision shall not apply to (i) legal memoranda prepared by counsel for any Party during or regarding conferences among any counsel and during or regarding interviews or discussions with Parties, witnesses, counsel, or other persons, (ii) any such information contained in the Receiving Party's electronic back-up systems, or (iii) information required to be retained by the Receiving Party in accordance with their internal record retention procedures.

14. This Agreement does not modify or supersede any other agreement between the Parties, including without limitation any agreement regarding confidentiality of information disclosures. When the same material is subject to both this Agreement and another agreement regarding confidentiality of information disclosures, the more-restrictive agreement shall govern treatment of the material.

15. Neither this Agreement nor any Common Legal Interest Information and Materials exchanged under this Agreement shall be construed as an admission of any kind.

16. The Parties agree to submit to the exclusive jurisdiction of the state courts in New Hampshire for purposes of enforcing this Agreement. The Parties acknowledge that the unauthorized disclosure or use of any Common Legal Interest Information or Materials would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, the Parties agree that an immediate injunction enjoining any breach or threatened breach of this Agreement or use or disclosure of Common Legal Interest Information and Materials obtained pursuant to this Agreement, is the appropriate means to enforce this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach. The Parties hereby irrevocably waive any and all right to a trial by jury in any legal proceeding arising out of this Agreement.

17. This Agreement may be executed by the signing of separate counterparts, all of which shall constitute one document.

18. This Agreement shall be binding upon each Party's respective successors, legal representatives, and assigns.

19. Each Party may execute counterpart copies of this Agreement, each of which shall be deemed to be an original for all purposes. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart and wet signatures are not required. Delivery of an execution page by facsimile or .pdf transmission and/or via electronic signature /s/ shall be deemed as an original execution page for all purposes.

20. All recitals set forth above are included in their entirety in this Agreement and made a part thereof.

21. The Parties and their counsel hereby agree to the above terms and conditions of this Confidentiality and Common Legal Interest Agreement and acknowledge the same by the following signatures:

**201 Main Street Real Estate Corporation  
and 201 Main Street Financial  
Corporation**

By their Attorneys:

McLane Middleton, PA

By:   
Joseph A. Foster, Esq.

By:   
Graham W. Steadman, Esq.

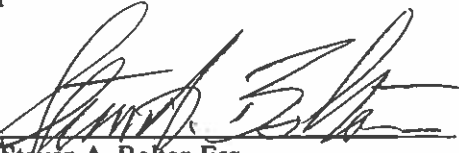
**City of Nashua**

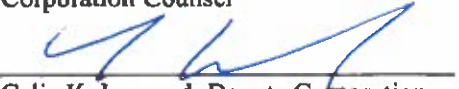
By its Attorneys:

Upton & Hatfield, LLP

By: \_\_\_\_\_  
Russell F. Hilliard, Esq.

and

By:   
Steven A. Bolton Esq.,  
Corporation Counsel

By:   
Celia K. Leonard, Deputy Corporation  
Counsel