

## PARKING LEASE AGREEMENT

This LEASE AGREEMENT ("Lease" or "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the City of Laconia, a New Hampshire municipal corporation with its principal office located at 45 Beacon Street East, Laconia, New Hampshire 03246 (hereinafter the "Lessor" or "City"), and EJM Holdings, LLC, a New Hampshire limited liability company, having a mailing address of PO Box 1596, Meredith, NH 03253 (referred to as the "Lessee").

WITNESSETH:

**WHEREAS**, the Lessor is the owner of municipal parking lots located at 45 Beacon Street East, Laconia, New Hampshire 03246, Assessor's Parcel Number 432-15-34 (the "City Hall Parking Lot") and at Main Street, Laconia, NH, Assessor's Parcel Number 432-186-5; and

**WHEREAS**, the City has facilitated the Lessee's purchase of the second and third floors of the historic Colonial Theater building, for development of 9 residential condominiums; and

**WHEREAS**, the Parties have agreed that in connection with the redevelopment of that space, the City will lease to the Lessee, a total of 18 parking spaces for exclusive use of the owners and guests of those 9 units, said spaces to be located in the two parking lots referenced above; and

**WHEREAS**, ten (10) of those parking spaces shall be located in the City Hall lot in the locations indicated on Exhibit 1 attached, and eight (8) of those parking spaces shall be located in the Main Street lot in the locations indicated on Exhibit 2 attached.

**NOW THEREFORE**, in consideration of the respective representations and agreements of the parties in this Lease herein contained, the parties hereto agree as follows:

### **1. Definitions:**

- 1.1 "Lease" or "Agreement" means this lease and any amendments and supplements hereto.
- 1.2 "Lease Term" means the duration of the leasehold estate created in this Lease, which period is fifty (50) years.
- 1.3 "Lessee" means EJM Holdings, LLC, and its successors and assigns.
- 1.4 "Lessor" or "City" means the City of Laconia and its successors and assigns.
- 1.5 "Premises" means eighteen (18) parking spaces in the City Parking Lots as specified in Exhibits 1 and 2. The parking spaces may be relocated from the City Hall and Main Street lots to the Beacon Street Parking Garage upon completion of its renovation, by mutual agreement.

**2. Lessor's Representations:** The Lessor makes the following representations:

- 2.1 The Lessor has the power and authority to enter into the transactions contemplated by this Lease, to execute and deliver this Lease to Lessee, and to carry out its obligations hereunder.
- 2.2 The Lessor has, and will continue for the term of this Lease to have, good and marketable title to the Premises as of the Effective Date of this Lease (as specified in this Lease hereof).
- 2.3 This Lease, when executed by Lessor, will be the valid and binding obligations of Lessor enforceable against Lessor in accordance with its terms.

**3. Lessee's Representations:** The Lessee makes the following representations:

- 3.1 This Lease, when executed by Lessee, will be the valid and binding obligation of Lessee enforceable against Lessee in accordance with its terms.

**4. Demising Clause:** The Lessor hereby leases to the Lessee, and the Lessee hereby leases from the Lessor, as of the Effective Date (as specified in Section 5.1 hereof), the Premises at the lease rate set forth in section 5.3 hereof and in accordance with the provisions of this Lease.

The parking spaces may be relocated from the City Hall and Main Street lots to the Beacon Street Parking Garage upon completion of its renovation, by mutual agreement. Should the spots be relocated, the lease rate for the covered parking shall be adjusted to the parking garage rate.

**5. Effective Date of This Lease; Duration of Lease Term; Rental Provisions; Renewal Terms;**

5.1 Effective Date of Lease; Duration of Lease Term; Renewals:

- a) This Lease shall become effective on \_\_\_\_\_, 2021.
- b) The term of this Lease shall be fifty (50) years beginning on the Effective Date, and ending fifty (50) years following the Effective Date .

5.2 Delivery and Acceptance of Possession; Covenant of Quiet Enjoyment:

- a) The Lessor shall deliver possession of the Premises to Lessee on the Effective Date and Lessee agrees to accept possession upon such date.
- b) The Lessor covenants that if, and so long as, the Lessee keeps and performs each and every covenant, agreement, term, provision, and condition herein contained on the part and on behalf of the Lessee to be

kept and performed, the Lessee shall quietly enjoy the Premises from and against the claims of all persons claiming by, through, or under the Lessor; subject, nevertheless, to the covenants, agreements, terms, provisions, and conditions of this Lease.

- c) Nothing in this agreement shall obligate the Lessor to control parking, trespassing, or theft of service on the Premises except as it would under any applicable statute or ordinance on non-municipal property in the City of Laconia.

5.3 Lease Rate (Rent): During the first 5 years of this lease, the Lessee shall pay rent in the sum of \$27 per month per parking space, which total amount shall be due and paid in full at the start of the lease. For the second 5 years of the lease period, the Lessee shall pay the sum of \$28.50 per month per parking space, and shall at the start of that period again pay all rents in advance. For the third 5 years of the lease period, the Lessee shall pay \$30 per month per parking space, and shall at the start of that period again pay all rents in advance. For the fourth 5 years of the lease period, the Lessee shall pay \$31.50 per month per parking space, and shall at the start of that period again pay all rents in advance.

Thereafter, beginning in year 21 of the lease period, the rent shall increase by 10% every five years. Total rent shall continue to be paid in full of each 5 year period.

Should the parking spots be relocated to the Beacon Street Parking Garage, the lease rate for the covered parking shall be adjusted to the parking garage rate.

5.4 Exclusive Use: The owners, guests, tenants and occupants of the residential condominium units created in the Colonial Theater shall have the exclusive right to occupy the parking spaces on the Premises, and may, at the Lessee's sole cost and expense, erect signage, subject to review and approval by the Lessor, which approval shall not be unreasonably withheld or delayed, identifying such exclusive parking rights.

## **6. Repairs, Improvements, Insurance, Indemnification, and Taxes:**

6.1 Routine Maintenance: The Lessee recognizes and accepts that routine parking lot maintenance and repair may result in the loss of use of the parking spaces for limited periods of time. In such cases the City will notify Lessee prior to the start of any work. The City assumes no responsibility to arrange for alternate parking during these periods.

6.2 Insurance: Throughout the Lease Term, the Lessee shall keep the Premises insured as set forth below:

- a) Insurance to the extent of \$2,000,000/\$2,000,000 combined single limits of bodily injury and property damage protection. The City of Laconia shall be named as an additional insured.

- b) The City reserves the right to periodically adjust its insurance requirements, including the amounts and types of coverage required of the Lessee.
- c) All insurance policies required in Section 6 hereof shall be issued and maintained by recognized responsible insurance companies admitted to do business in the State of New Hampshire.

6.3 Hold Harmless and Indemnification: The Lessee agrees to indemnify the Lessor, its employees and officers from any and all liability, loss, or damages which the Lessor becomes legally obligated to pay as a result of claims, demands, costs or judgments against the Lessor arising out of the Lessee's occupancy and use of the Premises and caused by or arising out of the negligence of the Lessee, its agents, employees, guests and invitees. The Lessor agrees to indemnify the Lessee, its invitees, tenants, occupants, guests and invitees, successors, assigns, employees and officers from any and all liability, loss, or damages which the Lessee becomes legally obligated to pay as a result of claims, demands, costs or judgments against the Lessee arising out of the negligence of the Lessor, its agents and employees in connection with Lessor's ownership, maintenance, operation, repair and replacement of the Premises.

6.4 Taxes and Tax Escalation: Per the provisions of RSA 72:23, I, non-governmental use of the City's parking lot is subject to municipal real estate taxes. The Lessee shall be responsible for its proportionate share of the payment of all properly assessed real and personal property taxes for the Premises. The failure of the Lessee to pay the duly assessed personal and real estate taxes when due, shall be cause to terminate this Agreement by the Lessor. The Lessee is also responsible for its proportionate share of payment of any other municipal, state, county, or federal taxes assessed against the Premises. The parties agree that during the period of this use, the Leased property shall be assessed at a value of \$1000 per parking space.

6.5 Improvements: The Lessee is responsible at its sole cost and expense, to make any improvement in and around the Premises to accommodate the use of the Premises as parking spaces, including obtaining any governmental permits and approvals for any improvements that it may wish to make to the Premises, or those portions of the Parking Lot providing access to the Premises. Any improvements shall be subject to review and written approval by the Lessor, which approval shall not be unreasonably withheld or delayed.

## **7. Special Covenants:**

7.1 Lessor's Right of Access to the Premises: The Lessee agrees that the Lessor and its duly authorized agents have the right at all times to enter upon the Premises to examine and inspect the Premises, and to perform the Lessor's obligations under this Agreement.

- 7.2 *Maintenance*: The Lessee represents that it has inspected and examined the Premises and accepts them in their present condition. The Lessor agrees to make all repairs, except those made necessary by the negligence of the Lessee, at its sole cost and expense, and to maintain the Premises and access to the Premises in as good order and condition as they were at the commencement of the term of this Lease, reasonable wear and tear excepted. The Lessor will also be responsible for winter maintenance of the Premises, in accordance with its general practices and policies for winter maintenance of City parking lots.
- 7.3 *Notice of Lease*: The Lessor and Lessee, at the request of either, shall execute a "notice of lease", conforming to the standards of NH RSA 477:7-a, which shall be recorded at the Belknap County Registry of Deeds.
- 7.4 *Termination*: Other than in the case of default as set forth within this Agreement, this Lease cannot be terminated prior to expiration without the express written mutual consent of the Lessee and Lessor.

## **8. Covenants:**

- 8.1 *Use of Premises*: The Lessee agrees to use the Premises only for providing parking spaces for registered and state inspected passenger cars and other automotive vehicles in connection with residential units to be created in the Colonial Theater. Further, the Lessee agrees to comply with any and all applicable federal, state and local laws, regulations, rules and ordinances governing Lessee's use of the Premises. Lessor shall not adopt any laws, rules, regulations or ordinances applicable to the Premises or the Parking Lot which would materially interfere with the Lessee's intended use of the Premises as parking spaces for Colonial Theater residential units. The Lessee shall not build on or make any improvements to the Premises without the written permission of the Lessor.

## **9. Assignment, Subleasing:**

- 9.1 *Lessee's Ability to Assign Parking Space Lease*: In the event the Lessee sells all or a portion of the Colonial Theater residential units, the Lessee shall have the ability to assign all or a portion of its interests in this Lease Agreement to any heirs, successors, nominees, or assigns of the Lessee's choice provided that:
- a) No assignment shall occur without the express written consent of the Lessor which shall not be unreasonably withheld by the Lessor; and
  - b) Any heirs, successors, nominees, or assigns either own or occupy all or a portion of the former Colonial Theater building.
- 9.2 *Subleasing*: The Premises may not be subleased by Lessee, in whole or in part, without the prior written consent of the Lessor.

## **10. Events of Default and Remedies:**

10.1 Events of Default Defined: The following shall be "events of default" under this Lease and the terms "events of default" or "default" shall mean, whenever they are used in this Lease, any one or more of the following events:

- a) Failure of the Lessee to pay the rent or taxes for the Premises for a period of thirty (30) days following demand of payment by the Lessor.
- b) Failure by the Lessee to observe and perform any covenant, condition, or agreement on its part in this Lease to be observed or performed (other than as referred to in subsection (a) above) for a period of thirty (30) days after notice specifying such failure and requesting that it be remedied has been given to the Lessee by the Lessor, unless the Lessor shall agree in writing to an extension of such time prior to its expiration, or unless the Lessee has, within said thirty (30) days, commenced with all due diligence to cure said default, in which the time period allowed the Lessee shall be extended for such time period as may reasonably be required to cure default, but in any event not beyond an additional thirty (30) days.

10.2 Remedies on Default: Whenever any event of default referred to in Section 10.1 hereof shall have occurred and shall not have been cured prior to the expiration of any applicable grace or cure period set forth therein, the Lessor, at its option, may re-enter and take possession of the Premises with or without notice or demand of any kind to the Lessee and take possession of the Premises thereby terminating this Lease.

10.3 Remedies Not Exclusive: Remedies herein conferred upon or reserved to the Lessor are not intended to be exclusive. The Lessor retains any other legally available remedy or remedies. No delay or omission by the Lessor to exercise any right or power accruing upon default shall impair any such right of power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed by the Lessor to be expedient. In order to entitle the Lessor to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

10.4 No Additional Waiver Implied by One Waiver: In the event any agreement contained in this Lease should be breached by the Lessee and thereafter waived by the Lessor, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other or further breach by the Lessee hereunder.

## **11. Miscellaneous:**

11.1 Notices: All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when mailed by registered or

certified mail, postage prepaid, to the following addresses or to such other addresses as the parties shall, by like notice, notify one another:

- a) If to the Lessor: City of Laconia  
45 Beacon Street East  
Laconia, NH 03246  
Attn.: City Manager
  
- b) If to the Lessee: EJM Holdings, LLC  
PO Box 1596  
Meredith, NH 03253

- 11.2 Binding Effect: This Lease shall inure to the benefit of and shall be binding upon the Lessor, the Lessee, and their legal representatives, successors, and assigns.
  
- 11.3 Severability: In the event any provision of this Lease shall be held invalid or unenforceable by any court of competent jurisdiction or by any future legislative action, such holding or such action shall not invalidate or render unenforceable any other provisions hereof.
  
- 11.4 Amendments, Changes and Modifications: This Lease may be amended, changed, modified, altered or terminated only with the written consent of the parties hereto.
  
- 11.5 Execution Counterparts: This Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
  
- 11.6 Applicable Law: This Lease shall be governed exclusively by the applicable laws of the State of New Hampshire. Any action to enforce the provisions of this Lease shall be brought in Laconia District Court or the Belknap County Superior Court.
  
- 11.7 Surrender of the Premises: Except as otherwise provided in this Lease, the Lessee shall, upon the expiration or termination of this Lease for any reason whatsoever, surrender the Premises to the Lessor in good order, condition, and repair, reasonable wear and tear excepted, and free of all tenants and personal property of Lessee.
  
- 11.8 Exhibits: Each Exhibit attached to this Lease shall be incorporated into, and be a part of, this Lease.

**City of Laconia**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Myers, City Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

Personally appeared before me on this date the above-named Scott Myers, City Manager for the City of Laconia, duly authorized, known to me or satisfactorily proven, who executed the foregoing instrument, and being first duly sworn, has acknowledged that he executed said instrument for the purposes therein contained, as his free and voluntary act and deed on behalf of the City of Laconia.

Dated: \_\_\_\_\_

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

**EJM Holdings, LLC**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Edward J. McLear, Manager

STATE OF NEW HAMPSHIRE  
COUNTY OF \_\_\_\_\_

Personally appeared before me on this date, the above-named Edward J. McLear, Manager of EJM Holdings, LLC, duly authorized, known to me or satisfactorily proven, who executed the foregoing instrument, and being first duly sworn, has acknowledged that he executed said instrument for the purposes therein contained, as his free and voluntary act and deed on behalf of EJM Holdings, LLC.

Dated: \_\_\_\_\_

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