

LIMITED LICENSE AGREEMENT FOR PATRON USE

This LICENSE AGREEMENT ("License" or "Agreement") is made as of the ____ day of _____, 2023, 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 "Licensor" or "City"), and Paugus Properties, LLC, a domestic limited liability company, having a business address of 14801 Quorum Drive, Suite 300, Dallas, TX 75254 (referred to as the "Licensee") (collectively referred to as "Parties," individually may be referred to as "Party").

WITNESSETH:

WHEREAS, the Licensor is the owner of municipal parking spaces located along Elm Street, Laconia, New Hampshire 03246, and along Railroad Avenue, Laconia, New Hampshire 03246, more particularly identified as spaces 1 through 36, inclusive (hereinafter "Premises"), on the attached Exhibit A; and

WHEREAS, the Licensee wishes to have the Premises dedicated to the use by patrons of its commercial tenants, located at 51 Elm Street, Laconia, NH 03246; and

WHEREAS, the Parties have agreed that the City will license to the Licensee the Premises, subject to the terms of use delineated herein.

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

1. Definitions:

- 1.1 "License" or "Agreement" means this license and any amendments and supplements hereto.
- 1.2 "License Term" means the duration of the license created in this License, which is further delineated in paragraph 5.1 herein.
- 1.3 "Licensee" means Paugus Properties, LLC only, as this license is not transferable.
- 1.4 "Licensor" or "City" means the City of Laconia and its successors and assigns.
- 1.5 "Premises" means the 36 parking spaces in the City Parking Lots as specified in Exhibit A. The parking spaces may be relocated only upon mutual agreement, incorporated as a supplement to this License.

2. Licensor's Representations: The Licensor makes the following representations:

- 2.1 The Licensor has the power and authority to enter into the transactions contemplated by this License, to execute and deliver this License to Licensee, and to carry out its obligations hereunder.
- 2.2 The Licensor has, and will continue for the term of this License to have authority and control over the Premises as of the Effective Date of this License.
- 2.3 This License, when executed by Licensor, will be the valid and binding obligations of Licensor enforceable against Licensor in accordance with its terms.

3. Licensee's Representations: The Licensee makes the following representations:

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

4. Demising Clause: The Licensor hereby licenses to the Licensee, and the Licensee hereby licenses from the Licensor, as of the Effective Date (as specified in Section 5.1 hereof), the Premises at the license rate set forth in section 5.3 hereof and in accordance with the provisions of this License.

5. Effective Date of This License; Duration of License Term; Rental Provisions; Renewal Terms:

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

- a) This License shall become effective on the Effective Date of _____, 2023.
- b) The term of this License shall be for five (5) years beginning on the Effective Date, and ending on the fifth anniversary of the Effective Date.

There shall be five renewals for five (5) year terms thereafter (each five year period being known as "renewal period" herein).

Upon the one-year anniversary of the Effective Date the Parties shall meet and discuss this License, its terms and conditions, at which time any necessary actions to be taken under this license shall occur including, but not limited to, amendment of this License. The requirement of this meeting in no way undermines or cancels either ability to request amendment or termination of this license under any other term of this Agreement.

The successive terms of renewal beginning with the second 5-year term, are automatic, unless either party supplies to the other a notice of non-

renewal, no cause is required to be identified, delivered to the other party more than 30 days in advance of the applicable anniversary of the Effective Date. Nonrenewal is in the sole discretion of the nonrenewing Party.

The Parties shall endeavor to meet on the yearly anniversary of the Effective Date to discuss the License, the Premises, and the respective needs of the Parties. At such time, if an amendment is to be made to this License, said amendment shall be crafted and submitted for City Council approval. No amendment shall be executed that undermines and/or materially alters the spirit of the original License and its terms including, but not limited to, the element that this License is limited for patron use only. A failure of the Parties to engage in this yearly meeting shall not be deemed in any way a breach of the terms of this License.

5.2 Covenant of Quiet Enjoyment:

- a) The Licensor covenants that if, and so long as, the Licensee keeps and performs each and every covenant, agreement, term, provision, and condition herein contained on the part and on behalf of the Licensee to be kept and performed, the Licensee shall quietly enjoy the Premises from and against the claims of all persons claiming by, through, or under the Licensor; subject, nevertheless, to the covenants, agreements, terms, provisions, and conditions of this License.
- b) Nothing in this agreement shall obligate the Licensor 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 License Rate (Rent): The license fee for each year of the first term of the license is \$7,500.00 for the Premises. Said rate shall increase by ten (10) percent from the prior term's license fee for each renewal period. The resultant license fee to be paid yearly. Payment shall be received by _____.

In lieu of cash, the City may, in its sole and unfettered discretion, accept payment in another form, including, but not limited to, an in-kind donation to a City project. Eligible City projects, may include but are not limited to, parking studies, traffic studies, infrastructure improvements or any other project that is beneficial to the residents of the City. Said donation need not be credited only to the year the donation was received and may be credited towards any future years' payment.

5.4 Exclusive Use: During the following periods **ONLY**, the Premises are for the sole use of the patrons, Licensee's commercial tenants located in the building at 51 Elm Street:

- Parking spaces 1-7
 - o 9 am to 8 pm; Monday through Friday
- Parking Spaces 8-17
 - o 9 am to 8 pm; Everyday
- Parking Spaces 18-36
 - o 9 am to 9 pm; Monday through Saturday
- In no event shall any Parking Space within the premises be utilized by the same patron for more than two (2) consecutive hours.

Outside of this Exclusive Use Period, any and all members of the public may utilize the Premises for any and all lawful purposes.

5.5 Signage: Licensee may, at its sole cost and expense, erect signage, subject to all necessary reviews and approvals by the Licensor, including, but not limited to, City Council approval that said signage reflects the use restrictions contained Herein.

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

6.1 Routine Maintenance: The Licensee recognizes and accepts that routine parking space maintenance including, but not limited to snow removal, as well as repair of the Premises and streets upon which the Premises are located may result in the loss of use of the Premises for limited periods of time. In such cases the City will make its best efforts, within reason, to notify Licensee prior to the start of any work. The City assumes no responsibility to arrange for alternate parking during these periods, nor is the Licensee entitled to any proration of its license payment or its tax obligation for this interference with use.

The time necessary to perform said maintenance and/or repair is at the sole discretion of the City and no priority shall be given to Premises solely by virtue of the existence of this License.

6.2 Insurance: Throughout the License Term, the Licensee 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 its officials, agents, volunteers and employees 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 Licensee. Licensee shall not contest these adjustments, and if the Licensee does not comply with this requirement, the License shall terminate at the time this provision is violated, allowing the City to take sole possession of the Premises, with no return of any License payments, or portion thereof, to Licensee.
- c) All insurance policies required in Section 6.2 hereof shall be issued and maintained by recognized responsible insurance companies admitted to do business in the State of New Hampshire, and said policies are subject of the approval of the Licensor's risk pool carrier.

6.3 Hold Harmless and Indemnification: The Licensee agrees to indemnify the Licensor, its officials, agents, volunteers and employees from any and all liability, loss, or damages which the Licensor becomes legally obligated to pay as a result of claims, demands, costs or judgments against the Licensor arising out of the Licensee's occupancy and use of the Premises and caused by or arising out of the negligence of the Licensee, its agents, employees, guests and invitees.

6.4 Taxes and Tax Escalation: Per the provisions of RSA 72:23, I, non-governmental use of the City property is subject to municipal real estate taxes. The Licensee 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 Licensee to pay the duly assessed personal and real estate taxes when due, shall be cause to terminate this Agreement by the Licensor. The Licensee 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 Premises shall be assessed at a value of \$1000 per parking space. The City may, at its sole discretion, increase the assessed value at each renewal, however, said increase is limited to a 100% increase of the assessed value utilized for the prior license period.

7. Special Covenants:

7.1 Licensor's Right of Access to the Premises: The Licensee agrees that the Licensor 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 Licensor's obligations under this Agreement, and any and all other obligations necessary to perform their functions on behalf of the City.

7.2 Maintenance: The Parties agree to a joint inspection of the Premises to occur on _____ which shall establish the condition of the Premises for purposes of this License. The Licensee agrees that if repairs are necessary, in the sole

determination of the Licensor, that it will make said repairs, at its sole cost and expense, subject to the prior approval of the Licensor.

The Licensee shall have full responsibility for maintenance of the Premises, inclusive of access to the Premises in as good order and condition as they were at the commencement of the term of this License, reasonable wear and tear excepted.

The Licensee also agrees to the explicit condition that it shall be responsible for winter maintenance including, but not limited to snow removal and sanding, of the Premises, above and beyond any and all other maintenance agreements/obligations for the area adjacent to the Premises required under any and all approvals the Licensee has received in conjunction with its ownership/development of the property located at 51 Elm Street.

The Licensee's maintenance of the property may not result in anything being placed upon the Licensor's property including, but not limited to, snow removed from the Premises.

- 7.3 *Termination:* Other than in the case of default as set forth within this Agreement, this License cannot be terminated prior to expiration of the then present renewal period without the express written mutual consent of the Licensee and Licensor.

8. Covenants:

- 8.1 *Use of Premises:* The Licensee agrees to use the Premises only for providing parking spaces to accommodate the patrons' registered and state inspected passenger cars and other automotive vehicles, of its commercial tenants occupying 51 Elm Street, consistent with section 5.4.

Further, the Licensee agrees to comply with any and all applicable federal, state and local laws, regulations, rules, ordinances, and approvals governing Licensee's use of the Premises. The Licensee shall not build on or make any improvements to the Premises.

9. Assignment, Subleasing:

- 9.1 *Assignability of License:* This License is not assignable.
- 9.2 *Subleasing:* The Premises may not be sublicensed by Licensee.

10. Events of Default and Remedies:

- 10.1 *Events of Default Defined:* These are in addition to the termination provided for in Section 6.2 *Insurance*. following shall be "events of default" under this License

and the terms "events of default" or "default" shall mean, whenever they are used in this License, any one or more of the following events:

- a) Failure of the Licensee to pay the rent or taxes for the Premises for a period of thirty (30) days following demand of payment by the Licensor.
- b) Failure by the Licensee to observe and perform any covenant, condition, or agreement on its part in this License to be observed or performed (other than as referred to in subsection (a) above) for a period of thirty (30) days after the date of a notice specifying such failure and requesting that it be remedied has been given to the Licensee by the Licensor, unless the Licensor shall agree in writing to an extension of such time prior to its expiration, or unless the Licensee has, within said thirty (30) days, commenced with all due diligence to cure said default, in which the time period allowed the Licensee 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. This extension is inapplicable to a failure to maintain proper insurance on the Premises pursuant to Section 6.2.

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, this License terminates by operation of law. The Licensor, at its option, may re-enter and take possession of the Premises with or without notice or demand of any kind to the Licensee.

10.3 Remedies Not Exclusive: Remedies herein conferred upon or reserved to the Licensor are not intended to be exclusive. The Licensor retains any other legally available remedy or remedies. No delay or omission by the Licensor 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 Licensor to be expedient. In order to entitle the Licensor 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 License should be breached by the Licensee and thereafter waived by the Licensor, 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 Licensee 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 Licensors: City of Laconia
45 Beacon Street East
Laconia, NH 03246
Attn.: City Manager

b) If to the Licensee: Paugus Properties, LLC
17 North Street
Laconia, NH 03246

11.2 Binding Effect: This License shall inure to the benefit of and shall be binding upon the Licensors and their legal representatives, successors, and assigns, and the Licensee, and its legal representatives.

11.3 Severability: The License is a whole and thereby no severability is incorporated herein. In the event any provision of this License shall be held invalid or unenforceable by any court of competent jurisdiction or by any future legislative action, the Parties shall endeavor to renegotiate this License to conform to said decision and/or action and maintain the original spirit of the License. If said negotiation is unsuccessful, the License is terminated.

11.4 Amendments, Changes and Modifications: This License may be amended, changed, modified, supplemented, altered or terminated only with the written consent of the Parties hereto.

11.5 Execution Counterparts: This License 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 License shall be governed exclusively by the applicable laws of the State of New Hampshire. Any action to enforce the provisions of this License 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 License, the Licensee shall, upon the expiration or termination of this License for any reason whatsoever, surrender the Premises to the Licensors in the same condition as the inspection conducted on _____, pursuant to Article 7.2, reasonable wear and tear excepted and determined in the City's sole discretion, and free of all tenants and personal property of Licensee.

11.8 Exhibits: Each Exhibit attached to this License shall be incorporated into, and be a part of, this License.

(Remainder of page intentionally left blank)

City of Laconia

Date: _____

By: _____
Kirk Beattie, City Manager

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Personally appeared before me on this date the above-named Kirk Beattie, 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:

And:

Paugus Properties, LLC

Date: _____

By: _____
Scott Everett, Manager

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Personally appeared before me on this date, the above-named Scott Everett, Manager of Paugus Properties, 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: