

## **LICENSE AGREEMENT**

### **I. PARTIES**

A. The City of Concord, New Hampshire, a municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire (the “City”).

B. Stickney Avenue, LLC, a domestic limited liability company, with a managing member of Arthur W. Sullivan, a business address of 670 North Commercial Street, Suite 303, Manchester, New Hampshire, 03101 (“Licensee”), and the owner of real property located at 5, 7, 9, 11 & 13 Stickney Avenue, Concord, Merrimack County, New Hampshire.

C. The City and Licensee are collectively referred to as the “Parties.”

### **II. PURPOSE**

The purpose of this License Agreement is to permit the Licensee to maintain an encroachment of the southwest corner of Building A, as shown on the plan referenced herein and to install, operate, and maintain site improvements in order to facilitate pedestrian access over a portion of land owned by the City known as Map 6414Z, Lot 92, is labeled as Proposed Building & Access License ‘A’ (“Licensed Area”) and shown on a plan of land entitled “Easement Plan (Map 6442Z, Lots 12 & 12-2) Lofts 11, 5, 7, 9, 11 & 13 Stickney Avenue, Concord, New Hampshire” prepared by Hayner Swanson, Inc. dated November 8, 2023, and recorded in the Merrimack County Registry of Deeds as plan number: \_\_\_\_\_ (“Plan”) and is more particularly described as:

Beginning at a point on the northerly sideline of Loudon Road at the southeasterly corner of land of the City of Concord (Map 6414Z, Lot 92), said point also being the southwesterly corner of land of Stickney Ave., LLC (Map 6442Z, Lot 12), thence

S 81° 25’ 08” W by said sideline of Loudon Road a distance of 21.67 feet to a concrete bound, thence

N 12° 47’ 03” W through Map 6414Z, Lot 92 a distance of 122.90 feet to a point at Map 6442Z, Lot 12; thence

S 22° 38’ 05” E by said Map 6442Z, Lot 12 a distance of 126.35 feet to the point of beginning and containing an area of 1,328 square feet, more or less.

### **III. USE OF LICENSED AREA**

In accordance with applicable local ordinances, and state and federal laws, rules, and regulations, the City hereby grants to Licensee a License to maintain the Private Improvements for the express purposes identified above.

Unless otherwise agreed to by the City in writing, if the Licensee ceases to use the Licensed Area for purposes that necessitate the Private Improvements, the Licensee shall

immediately, at its own expense, remove the Private Improvements and restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to remove the Private Improvements, excepting only the long existing section of Building A that may encroach on land owned by the City, from the Licensed Area and restore Licensed Area within thirty (30) days of ceasing to do business that necessitates the Private Improvements, the City may remove the Private Improvements and restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area.

#### **IV. REGULATIONS AND FEES**

Licensee shall conform with all laws, ordinances, rules, and regulations applicable to the Licensee's use of the Licensed Area.

#### **V. TERM AND TERMINATION**

This License Agreement shall remain in effect until terminated by the City or the Licensee.

In addition, the City or the Licensee may terminate this License Agreement in writing to the other party or its agent(s) at any time and for any reason. It is understood and agreed between the Parties that upon any termination of this License Agreement, Licensee shall have no claim whatsoever upon the City for reimbursement of any of Licensee's costs in the exercise of the license rights set forth in this License Agreement. Licensee further understands and acknowledges that the City's future extension of Storrs Street North, and associated relocation of utilities and railroad corridors related thereto may necessitate the termination of this License Agreement.

In the event of termination, the Licensee shall immediately cease using the Licensed Area. In no more than thirty (30) days following notice, at its sole expense, the Licensee shall also restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to restore the License Area within thirty (30) days of the notice of termination, the City may restore the Licensed Area. Licensee shall pay the City for any and all work performed by the City in the restoration of the Licensed Area.

Licensee understands and agrees that further Planning Board approval may be required to the extent that the termination of the License prohibits use of the Licensed Area consistent with the approved site plan.

#### **IV. CONSTRUCTION AND MAINTENANCE**

Licensee shall provide written notice to the City before commencing any construction. All construction and other improvements to the Licensed Area undertaken by Licensee shall be at its sole risk and expense. All construction and improvements shall be made in a workmanlike manner and in compliance with all applicable federal, state and municipal law regulations. Licensee shall be responsible for obtaining any and all necessary permits and approvals required for any improvements constructed pursuant to this License Agreement. Any permanent

improvements or fixtures constructed by Licensee on the Licensed Area shall be considered the property of the City. The Licensee shall be responsible for all costs associated with the installation, maintenance, and removal of the Private Improvements.

Licensee shall obtain written permission from the City before installing or constructing any permanent improvements or fixtures on the Licensed Area that are not shown on the Plan.

The Licensee shall keep the Licensed Area in good condition and repair, safe for public travel and use, and free from snow, ice, and dirt to the satisfaction of the City.

## **V. INDEMNIFICATION**

Licensee shall defend, indemnify and hold harmless the City and its officials, agents and employees (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability, and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation set forth in this License Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Licensee (or its contractors, agents or employees) in connection with this License Agreement; provided, however, that nothing herein shall require the Licensee to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the City. Additionally, to the fullest extent permitted by law, no official, employee, agent, or representative of the City shall be individually or personally liable for any obligation or liability of Licensee under this License Agreement.

Further, Licensee agrees that the City, its agencies and their employees, agents, and representatives shall not incur any legal liability whatsoever to Licensee for any damage to the Licensed Area or to any other property or employee of Licensee or to any other person or entity hired by or affiliated with Licensee resulting from or arising out of the use of the Licensed Area.

The indemnification obligations set forth herein shall survive the term of this License Agreement. Licensee must choose defense counsel acceptable to the City and obtain the City's consent to any proposed settlement.

## **VI. INSURANCE**

During the Term of this License Agreement, Licensee shall furnish to the City a certificate that the Licensee has in force general liability insurance, naming the City as an additional insured, by written endorsement without a waiver of subrogation, with respect to commercial general liability, as it pertains to this license, in an amount not less than \$1,000,000 per incident or occurrence. Upon issuance of a Certificate of Occupancy, the Licensee shall maintain, during the Term of this License Agreement and for so long as Licensee continues Licensee's use within the Licensed Area, the following insurance:

**A. Commercial General Liability**

General Aggregate	\$2,000,000
Products-Completed Operations Agg.	\$2,000,000
Personal and Advertising	\$1,000,000
Each Occurrence Injury	\$1,000,000
Fire Damage (Any One Fire)	\$ 50,000
Medical Expense (Any One Person)	\$ 5,000

**B. Workers Compensation**

NH Statutory including Employers Liability  
Each Accident/Disease-Policy Limit/Disease-Each Employee  
\$100,000/\$500,000/\$100,000

**C. General Requirements.** The following conditions shall apply to the insurance policies required herein:

(1) Licensee shall submit certificates of insurance for all coverage required hereunder on the effective date and on each anniversary thereof, or at the City's reasonable request, together with such other relevant insurance documentation as the City may reasonably request. All the insurance required under this License Agreement shall name the City as additionally insured with respect to commercial general, and all insurance policies and certificates shall include a provision requiring thirty (30) business days' written notice to the City by certified mail of any cancellation, material change, or reduction in coverage.

(2) All insurance of Licensee shall be primary with respect to any insurance maintained by the City and shall not call on the City's insurance for contributions.

(3) All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the State of New Hampshire and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

(4) Licensee's failure to obtain, procure, or maintain the required insurance shall constitute a material breach of this License Agreement.

(5) Licensee's obligation to hold harmless and indemnify the City shall not be limited by the requirement for, or existence of, insurance coverage.

(6) The City shall have the right to require Licensee to increase such limits when, during the term of this License Agreement, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Licensed Area by responsible owners or Licensees are more or less generally increased, it being the intention of this sentence to require Licensee to take account of inflation in establishing minimum limits of liability insurance maintained from time to time, but not without sixty (60) days advanced written notice to Licensee.

## **VII. NOTICES**

Any notice or other communication required by this License Agreement will be deemed to have been duly given, if deposited in the U.S. Mail, postage prepaid, and addressed to the City or Licensee at the address set forth in the identification of the Parties in this License Agreement.

## **VIII. DISPUTES**

The Parties hereby submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this License Agreement or any related agreement, and further waive any and all objections they may have as to venue in such courts and waive all rights to bring any such action or proceeding before any other court or tribunal. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court.

## **X. NO ORAL WAIVER, MODIFICATION, OR TERMINATION**

This License Agreement may not be changed, modified, waived, discharged, or terminated orally, but only by an instrument in writing signed by each of the parties hereto or by the party against which enforcement is sought. Any change, modification or amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.

## **XI. ASSIGNMENT**

Licensee may assign or otherwise transfer this License Agreement upon the City's written consent and at its sole discretion.

## **XII. GOVERNING LAW**

This License Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.

## **XIII. SEVERABILITY**

If any term or provision of this License Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License Agreement shall be valid and be enforced to the fullest extent permitted by law.

## **XIV. NO THIRD PARTY BENEFICIARIES**

This License Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto.

## **XV. CAPTIONS**

The captions and headings throughout this License Agreement are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify, or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this License Agreement, nor in any way affect this License Agreement, and shall have no legal effect.

## **XVI. PROPERTY TAXES**

Licensee shall have the responsibility to pay any personal property taxes, real estate taxes, assessments, or charges owed on the Licensed Area which are the result of Licensee's use of the Licensed Area and/or the installation, maintenance, and operation of the Licensee's improvements. Pursuant to RSA 72:23, I(b), or other applicable statute or ordinance, the failure of the Licensee to pay the duly assessed personal and real estate taxes when due shall result in termination of this License Agreement.

## **XVII. ENTIRE AGREEMENT**

This License Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and thereof, and supersedes all prior agreements and understandings between the Parties.

## **XVIII. AUTHORITY OF CITY**

Authority for the issuance of this License Agreement was granted by an affirmative action of the City Council on December 11, 2023.

**City of Concord**

By: \_\_\_\_\_  
Thomas J. Aspell, Jr., City Manager  
Duly Authorized  
**Stickney Avenue, LLC**

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

By: \_\_\_\_\_  
Arthur W. Sullivan  
Duly Authorized

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