

## 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. Phenix Livery, LLC, a domestic limited liability company, with a managing member of Mark Ciborowski, and mailing address of 18 North Main Street, Suite 202, Concord, NH 03301, (“Licensee”), and the owner of real property located at 18-22 Low Avenue, Concord, New Hampshire, Map 45, Block 8, Lot 4.

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 construct a patio area and pedestrian walkway, retaining walls and associated improvements (collectively, “patio improvements”) on property owned by the City at Map 45, Block 8, Lot 7 located on Storrs Street (“Licensed Area”). The location of the patio improvements are shown on the attached document.

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

If the Licensee ceases to use the Licensed Area for purposes that necessitate the patio improvements, the Licensee shall immediately, at its own expense, remove the patio improvements and restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to remove the patio improvements from the Licensed Area and restore Licensed Area within thirty (30) days of ceasing to do business that necessitates the patio improvements, the City may remove the patio 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. MAINTENANCE**

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 patio improvements.

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. MUNICIPAL INFRASTRUCTURE**

Any municipal infrastructure, including but not limited to, parking meters, signs, sidewalks, etc., impacted by the construction of the patio improvements shall be replaced or relocated per direction from the City Engineer at the cost of the Licensee.

Licensee affirms and accepts that an existing City underground water main crosses the Licensed Area. The Licensee, or his agent, shall coordinate with the City's Engineering Services Division prior to, and during construction of the patio improvements to ensure that this water main is not damaged by the construction of the patio improvements. Should the City Engineer conclude that safeguards, including but not limited to the installation of additional valves on the water main, are necessary, the cost for the acquisition and installation of those safeguards shall be borne by the Licensee. Any damage to the City's water main from the construction or operation of the patio improvements shall be the responsibility of the Licensee.

During the term of this License Agreement, should the City have to service, repair, relocate or otherwise do any work to this water main in a manner that requires the City, or its agent, to remove any portion of the patio improvements, the City shall bear no responsibility for any damage nor any obligation (financial or otherwise) to rebuild any portion of the patio improvements. If the City incurs a documentable greater cost to any work it undertakes to the water main due to the presence of the patio improvements, that cost shall be borne by the Licensee. The City shall make an effort to notify the Licensee prior to work being done on the water main. However, the City is not under any obligation to do so in emergency situations where such notice is not feasible.

## **VI. TERM AND TERMINATION**

This License Agreement shall remain in effect until terminated by the City at any time and for any reason.

The City may terminate this License Agreement in writing to Licensee 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 exercise the license rights set forth in this License Agreement.

In the event of termination, the Licensee shall immediately, but no more than thirty (30) days following notice, at its sole expense, restore the Licensed Area to a condition satisfactory to the City Engineer. If Licensee fails to restore Licensed 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

## **VII. 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.

## **VIII. INSURANCE**

It is agreed that during the term of this License Agreement, Licensee, at its sole cost and expense and for the mutual benefit of the Licensee and the City, shall furnish the City a Certificate of Insurance confirming that Licensee has in force general liability insurance, naming the City as an additional insured, with waiver of subrogation favoring the City, in an amount not less than \$1,000,000 per incident or occurrence and an aggregate of \$2,000,000. The evidence of insurance shall be filed with the City prior to the construction of the improvements and shall include a statement by the carrier that thirty (30) days notice will be given to the City before cancellation of coverage. The insurance shall remain in place until the termination of the License Agreement.

## **IX. COMPLIANCE WITH LAW**

The Licensee shall use, possess, maintain, repair, and replace said Licensed Area, and any improvements to the Licensed Area, in compliance with all applicable federal, state, and local laws, codes, ordinances, statutes, rules, and regulations, and in accordance with any and all federal, state, and local permits and approvals.

## **X. 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 other City or Licensee at the address set forth in the identification of the Parties in this License Agreement.

## **XI. 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.

## **XII. 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.

## **XIII. 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.

## **XIV. 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.

## **XV. 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.

## **XVI. 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.

**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 July 13, 2020.

**City of Concord**

By: \_\_\_\_\_  
Thomas J. Aspell, Jr., City Manager  
Duly Authorized

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

**Phenix Livery, LLC**

By: \_\_\_\_\_  
Mark Ciborowski  
Duly Authorized

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