

## LEASE AND PURCHASE AGREEMENT

This Lease (“Lease”) and Purchase Agreement (“Purchase Agreement”) (collectively, this “Agreement”) is made effective as of \_\_\_\_\_, 2021 (“Effective Date”) between **Park City, LLC**, a Minnesota limited liability company (the “Lessor/Seller”) and **the City of Waite Park** (the “Lessee/Buyer”), hereinafter known as the “Parties”.

WHEREAS, Lessor/Seller is the fee owner of certain real property being, lying and situated in Stearns County, Minnesota, such real property described in **Exhibit A** attached hereto and incorporated by reference (hereinafter referred to as “Premises”); and

WHEREAS, Lessor/Seller and Lessee/Buyer are in agreement that the Premises is sufficient for the intended uses of Lessee/Buyer, to wit the operation of a parking lot; and

WHEREAS, Lessor/Seller desires to lease the Premises to Lessee/Buyer upon the terms and conditions as contained herein, and sell the Premises to Lessee/Buyer should certain contingencies set forth herein be met; and

WHEREAS, Lessee/Buyer desires to lease the Premises from Lessor/Seller on the terms and conditions as contained herein, and purchase the Premises from Lessor/Seller should certain contingencies set forth herein be met; and

WHEREAS, Lessor/Seller and Lessee/Buyer expressly acknowledge and understand that Lessee/Buyer’s agreement to Purchase the Premises is contingent upon the November 2022 referendum vote by the citizens of Waite Park (the “Referendum”); and

WHEREAS, the parties have negotiated at arms-length to come to mutually beneficial terms.

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lessor/Seller hereby leases the Premises to Lessee/Buyer, and agrees to sell the aforementioned Premises, subject to the following terms:

1. **LEASE.** Lessee/Buyer agrees to continuously and at all times use and occupy the Premises during the Lease term(s) solely for the operation of a parking lot and open lot for activities and operations under the authority of the Lessee/Buyer (“Permitted Use”). Lessee/Buyer is accepting the Premises in its current “As Is” condition. Lessee/Buyer shall not make any material or foundational alterations to the Premises during the Lease term(s) without Lessor/Seller’s prior written consent. Upon the expiration of the Lease, and if Lessee/Buyer does not close on the purchase of the Premises, Lessee/Buyer shall return possession of the Premises in its present condition, reasonable wear and tear excepted. Lessee shall commit no waste to the leased Premises. Lessee/Buyer shall comply with all building, zoning and health codes and other applicable laws in its use of said Premises during the Lease term(s).

2. **LEASE TERM AND RENEWAL.** The Lease is comprised of three (3) consecutive Lease terms (each term known as “Term”, and collectively known as “Terms”). The initial Term begins on the Effective Date of this Agreement and runs until 11:59PM, December 31, 2021. Upon conclusion of the first Term, the Lease automatically renews for a second Term commencing at 12:00AM, January 1, 2022 and continuing until 11:59PM, December 31, 2022. Unless terminated pursuant to the terms herein, the Lease shall automatically renew for a third Term commencing at 12:00AM, January 1, 2023 and run until 11:59PM, December 31, 2023. Lessee/Buyer shall vacate the Premises upon termination of the third Term of the Lease, unless:
  - a. Lessor/Seller and Lessee/Buyer have extended this Agreement or signed a new agreement;
  - b. Lessor accepts rent from Lessee/Buyer (other than past due rent), in which case a month-to-month tenancy shall be created which either party may terminate by a thirty (30) day written notice; or
  - c. Lessee/Buyer closes on the Purchase.
3. **LEASE RENT.** Rent shall mean all monetary obligations owed from Lessee/Buyer to Lessor/Seller under the terms of this Agreement, except for security deposits, if any.
  - a. The total rent owed for each Lease term is the sum of \$1.00, payable on the first day of each Lease term.
  - b. Payments shall be made to Lessor/Seller at Lessor's address listed here: 3335 W St. Germain Street, P.O. Box 1228, St. Cloud, MN 56302-1228 or any other location subsequently specified by Lessor/Seller in writing to Lessee/Buyer, on or before the due date and without demand.
4. **LESSEE/BUYER OBLIGATIONS.** During the Terms of the Lease, Lessee/Buyer shall be solely responsible for any and all maintenance required for Lessee/Buyer’s Permitted Use. Lessee/Buyer shall, at its sole cost and expense, procure and maintain in full force and effect during the Terms, commercial general liability insurance with a combined single limit for bodily injury and property damages of not less than Two Million and No/100 Dollars (\$2,000,000) per occurrence and Two Million and No/100 Dollars (\$2,000,000.00) in the annual aggregate for any property damage, personal injuries or deaths occurring in or about the Premises. Upon request, Lessee/Buyer shall provide a certificate of insurance, evidencing the required insurance as in force, to Lessor/Seller.
5. **EARLY TERMINATION OF LEASE.** The Parties acknowledge and understand that Lessee/Buyer’s purchase of the Premises is contingent upon sufficient funding being approved and allocated through the Referendum. If the Referendum fails, the Parties agree that the Lease shall terminate upon final determination of the Referendum’s failure, and shall not automatically renew for the third Term contemplated by this Agreement absent the express written agreement of the Parties.
6. **PURCHASE AGREEMENT.** Lessor/Seller shall sell to Lessee/Buyer and Lessee/Buyer shall purchase from Lessor/Seller the Premises. On the closing date, Lessor/Seller shall convey good and marketable title to the Premises on an “As Is” basis via warranty deed, free and clear of all liens and encumbrances, except as permitted herein. The purchase is

expressly contingent upon sufficient funding being approved through the Referendum and the allocation of adequate funding by the State of Minnesota with a date of determination by the State of Minnesota that is variable. In the event such Referendum fails or Lessee/Buyer's financing cannot be/is not obtained prior to December 31, 2023, this Lease and Purchase Agreement shall be terminated and the Parties shall have no further obligations related to the Purchase Agreement or Lease. If Lessee/Buyer is unable to obtain financing following the success of the Referendum, Lessee/Buyer shall immediately notify Lessor/Seller of such fact, thereby triggering this Lease and Purchase Agreement's immediate termination as set forth in this paragraph. In the event of a successful Referendum and procurement of financing, the closing of the purchase shall occur within sixty (60) days of Lessee/Buyers satisfaction of its financing contingency, provided the purchase shall close no later than December 31, 2023.

7. **PURCHASE CONSIDERATION.** As consideration for this Purchase Agreement, the Lessee/Buyer agrees to waive the property assessments due and owing in the year of each Lease Term. Lessee/Buyer shall waive a portion of the property assessments during the initial Lease Term and each renewal of the Lease Term. Upon execution of this Lease, Lessee/Buyer shall waive the portion of the property assessments (principal and accrued interest) due and owing for the remainder of 2021. If the Lease is in effect on January 1<sup>st</sup> in any subsequent year after the Effective Date, the Lessee/Buyer shall waive the property assessment due and owing for that respective year, in full, as of January 1<sup>st</sup>.

The Parties hereby expressly acknowledge and understand that one hundred percent (100%) of the assessments due and owing as of the Effective Date of this Agreement would be waived if Lessee/Buyer elects to Lease the Premises for all three (3) Terms contemplated by this Agreement, irrespective of whether the purchase is closed. In the event the purchase is closed during the first or second Lease Term, Lessee/Buyer would assume the obligations of the remaining assessments due and owing as of the Effective Date of this Agreement. Lessee/Buyer and Lessor/Seller expressly acknowledge and understand that any waived assessments shall not be reinstated in the event any Lease Term is terminated prior to its completion or if Lessee/Buyer does not close on the purchase.

8. **PURCHASE PRICE.** The total purchase price for the Premises is Two Million Seven Hundred Thousand and No/100 Dollars (\$2,700,000.00), to be paid in full in cash or other certified funds on the date of closing.
9. **TITLE REVIEW.** Within twenty (20) days after passage of the Referendum, or such later date as agreed upon by the Parties, Lessor/Seller, at Lessor/Seller's expense, shall furnish the Lessee/Buyer with a commitment for title insurance issued by a reliable title company insuring Lessor/Seller's marketable title in an amount equal to said purchase price. Lessee/Buyer shall provide written notice of any objections to the items set forth in the title commitment within twenty (20) days of receipt of the title commitment. Lessor/Seller shall diligently pursue remedy of such objections. If Lessor/Seller's said title is not insurable or free of the defects to which Lessee/Buyer objects and cannot be made so within a sixty (60) day cure period after notice containing a written statement of

defects is delivered to Lessor/Seller, Lessee/Buyer may terminate this Agreement on written notice to Lessor/Seller. The Closing shall be postponed as necessary during this Sixty (60) day cure period to allow Lessor/Seller to attempt to cure title. Any items disclosed in the title commitment which are not objected to in the manner set forth above shall be deemed to be permitted encumbrances.

10. **EXCLUSIVITY OF LEASE AND PURCHASE.** This Lease and Purchase Agreement is exclusive to the City of Waite Park and non-assignable and exists solely for the benefit of the City of Waite Park. Any attempt to assign, convey, delegate, or transfer this Lease and Purchase Agreement without the express written permission of the Lessor/Seller shall be deemed null and void.
11. **CLOSING AND SETTLEMENT.** Lessor/Seller shall determine the title company at which settlement shall occur and shall inform Lessee/Buyer of this location in writing. Lessee/Buyer agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Lessee/Buyer. The only expense related to closing costs apportioned to Lessor/Seller shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Lessor/Seller is solely responsible. The Parties shall prorate the real estate taxes for the year in which closing occurs as of the date of closing.
12. **FINANCING AVAILABILITY. LESSOR/SELLER MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS PURCHASE AGREEMENT. LESSEE/BUYER IS SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO CLOSE ON THE PURCHASE OF THE PREMISES.**
13. **COMMISSION.** No real estate commissions or any other commissions shall be paid in connection with this transaction.
14. **RECORDING OF AGREEMENT.** Lessor/Seller consents to Lessee/Buyer recording this Purchase Agreement on the Public Records.
15. **INDEMNITY.** Except for the negligence or willful misconduct of Lessor/Seller or its agents, Lessee/Buyer shall indemnify, defend, and hold Lessor/Seller harmless from any and all claims, losses, suits, obligations, fines, or other liabilities related to or occurring in or about the Premises, including but not limited to all attorney's fees and costs related to defense.
16. **ACKNOWLEDGMENTS.** The Parties are executing this Purchase Agreement voluntarily and without any duress or undue influence. The Parties have carefully read this Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The Parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Lease and Purchase Agreement.

17. **GOVERNING LAW AND VENUE.** This Lease and Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of Minnesota. The Parties further agree that the venue for any and all disputes related to this Lease and Purchase Agreement shall be Stearns County, Minnesota.
18. **PURCHASE AGREEMENT CONTROLLING.** In the event a conflict arises between the terms and conditions of the Lease and the Purchase Agreement, the Purchase Agreement terms shall control.
19. **ENTIRE AGREEMENT.** This document sets forth the entire agreement and understanding between the Parties relating to the subject matter herein and supersedes all prior discussions between the Parties. No modification of or amendment to this Lease and Purchase Agreement, nor any waiver of any rights under this Lease and Purchase Agreement, will be effective unless in writing signed by the party to be charged.

**PARK CITY, LLC**

By \_\_\_\_\_

\_\_\_\_\_  
Its \_\_\_\_\_

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**LESSEE/BUYER SIGNATURE:** \_\_\_\_\_

Print: \_\_\_\_\_