

THIS LICENSE AGREEMENT made effective as of the ____ day of _____, 2024

BETWEEN:

THE CITY OF FREDERICTON, a municipal corporation by virtue of the *Local Governance Act*, S.N.B. 2017, C. 18, and amendments thereto, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, hereinafter called the “**Licensor**”

AND:

NORTHROP HOLDINGS LTD., a body corporate having its registered office at 975 Alison Boulevard, Fredericton, New Brunswick, E3C 0E5, hereinafter called the “**Licensee**”,

Collectively referred to as the “Parties”

WHEREAS the Licensor is the owner of the lands and premises located at Whiting Road, Fredericton, NB, being a portion of the Whiting Road Public Right of Way (the “Licensor’s Property”);

AND WHEREAS the Licensee is the owner of lands and premises located at 151 Whiting Road, Fredericton, NB, being SNB PID 75002402 (the “Licensee’s Property”);

AND WHEREAS the Licensee is desirous of licensing a portion of the Licensor’s Property (the “Licensed Property”), which Licensed Property is more particularly outlined in blue on the sketch annexed hereto as Schedule “A” for the sole purpose of adding to their paved parking area and erecting a fence at the edge of their parking lot (for secure parking and storage).

NOW THEREFORE THIS INDENTURE WITNESSETH that for and in consideration of the rents, covenants and agreements reserved and contained herein, and intending to be legally bound hereby, the parties hereby agree with each other as follows:

1. PREMISES

The Licensor hereby licenses and lets to the Licensee, and the Licensee hereby accepts and rents from the Licensor, upon and subject to the terms, conditions, covenants and provisions hereof; the Licensed Property situated at Whiting Road, Fredericton, County of York and Province of New Brunswick.

2. TERM

(a) The term of this License shall be for a fixed period of five (5) years, commencing on the 1st day of June, 2024, and terminating on the 31st day of May, 2029.

(b) The Parties agree that, on mutual agreement by the parties at least 90 days prior to the termination of this License Agreement, the License may be extended for an additional term of five (5) years at a rent to be determined by the Parties acting in good faith at such time, failing such agreement or should either party opt not to proceed with an extension, this License will be terminated. In the event of extension, all other terms of the License Agreement shall be as set out herein.

(c) In the event that the Licensed Property is required for use as a connector to the highway or a trail connector, the Licensor may terminate this license on 12 months' notice to the Licensee, and without compensation for any improvements made to the Licensed Property.

3. RENT

The Licensor covenants and agrees that the rent due to the Licensee for the Licensed Property during the Term, shall be set at the rate of \$2,307 plus HST per year.

The parties acknowledge and agree that the Licensed Property is currently not taxed for assessment purposes, however, should that be changed by the Province of New Brunswick, the Licensee would be responsible for payment of same in addition to the rent above.

4. INDEMNITY

(a) The Licensee hereby covenants to indemnify and save harmless the Licensor, its councillors, directors, officers and employees from and against any and all claims, demands, suits, proceedings, liabilities, losses, damages, assessments, re-assessments, costs and expenses (collectively, the "Claims") of any nature or kind whatsoever arising from or in any way related to the occupation of the Licensed Property during the Term of this License, including without limitation:

- (i) any Claims arising from or in any way related to the operations and activities carried out by the Licensee on the Licensed Property;
- (ii) any Claims asserted by any guest or invitee of the Licensee, or any other person entering onto the Licensed Property at the request of the Licensee; and
- (iii) any lien, charge or other encumbrance attaching to the Licensed Property as a result of the occupation by the Licensee.

(b) The Licensee shall not be liable for any Claims with respect to the Licensed Property, arising from the operations, conduct or actions of the Licensor or other third parties for whom the Licensor is responsible at law.

5. THE LICENSEE'S COVENANTS

(a) The Licensee shall comply with all laws, by-laws, ordinances, regulations and directives of any public authority having jurisdiction affecting the Licensed Property or the use or occupation thereof.

(b) The Licensee covenants, at its own expense, to maintain the Licensed Property in reasonable and safe condition. Any improvements made shall be done at the Licensee's expense – no compensation shall be paid for same on termination or expiration of this agreement.

(c) The Licensee covenants and agrees that the Licensed Property shall be used for the purposes of a parking lot and fencing only (with the intention of Licensee constructing a fenced in area as shown on Schedule "B" for a secured parking/storage area), to be used by tenants of the Licensee's building, and further, that no daily or monthly rental charges are being applied to users of the parking spaces on the Licensed Property.

(d) The Licensee covenants and agrees to confirm the location of all underground infrastructure with the appropriate City departments before beginning any site work on the Licensed Property and to ensure that no damage is caused to the existing underground infrastructure in the course of the installation of the asphalt and fencing on the Licensed Property.

(e) The Licensee acknowledges and agrees that there is municipal infrastructure (as well as a Municipal Service Easement) below the Licensed Property and that Licensor will maintain all rights to perform any maintenance to the water and sewer pipes located thereon at any time and, in the event of emergency, without notice.

(f) The Licensee shall be solely responsible for repair to asphalt areas at all times, including if the City should cause damage in the course of regular or emergency maintenance of the water and sewer pipes located on the Licensed Property.

(g) The Licensee covenants, at its own expense, to comply with all applicable federal, provincial, municipal and police by-laws and regulations affecting the condition, equipment, maintenance, use or occupation of the Licensed Property.

(h) The Licensee covenants not to assign or sublet this License or the whole or any part of the Licensed Property.

(i) The Licensee covenants not to do or permit to be done anything upon or in respect of the Licensed Property, the doing of which shall be or result in a nuisance.

(j) The Licensee covenants and agrees that no permanent buildings or structures shall be erected on the Licensed Property (with the exception of a fencing that may be removed later), and further covenants and agrees not to remove any trees located on the Licensed Property and adjacent to Whiting Road.

(k) The Licensee covenants and agrees that any construction, work, or improvement of the Licensed Property must be approved by the Licensor, acting reasonably, prior to the commencement of same.

(l) The Licensee acknowledges and agrees that it shall be solely responsible for ensuring any fencing installed by Licensee does not encroach on any adjacent properties.

6. THE LICENSOR'S COVENANTS

(a) Upon the observance and performance of all the covenants, terms and conditions on the Licensee's part to be observed and performed, the Licensee shall peaceably and quietly hold and enjoy the Property for the term hereby demised without hindrance or interruption by the Licensor or any other person or persons lawfully or equitably claiming by, through or under the Licensor, subject nevertheless, to the terms and conditions of this License.

(b) Upon execution of this License, the Licensors covenants to allow the Licensee and its agents, contractors, suppliers and invitees of the Licensee to have access to the Licensed Property.

(c) The Licensors covenants to pay all taxes, levies, charges and assessments with respect to the Licensed Property as they become due.

7. PROVISOS.

Provided always, and it is hereby agreed between the parties as follows:

(a) **Non-Liability of the Licensors** - The Licensors shall not in any event whatsoever be liable or responsible in any way for any personal injury or death that may be suffered or sustained by the Licensee or any agent, employee, customer or guest of the Licensee or any other person who may be upon the Property or for any loss or damage or injury to any property belonging to the Licensee or any agent, employee, customer or guest of the Licensee or to any other person incurred while such property is on the Licensed Property; provided however, that this clause shall not apply to injuries, damages or death caused directly by the negligent, reckless or willful conduct of the Licensors, its employees, agents or representatives.

(b) **Damage to Licensed Property** - If and whenever during the Term of this License the materials or equipment located on the Licensed Property shall be destroyed or damaged by fire, lightning or tempest, or by other casualty, then and in every such event the Licensors shall not be liable for any loss or damage occasioned by such fire or other casualty except for such loss or damage caused directly by the negligent, reckless or willful conduct of the Licensors, its agents or representatives, but in no event shall the Licensors be liable for any indirect or consequential damages.

(c) **Re-entry by Licensors** In the event of any failure of the Licensee to perform any of the terms, conditions or covenants of this License, then the Licensors shall provide written notice to the Licensee within thirty (30) days of the failure to perform such term, condition or covenant, and after receipt of such notice, the Licensee shall have thirty (30) days to rectify such noted failure. If the Licensee fails to comply with such notice within said Thirty (30) day period after receipt of such notice, then the Licensors, besides other rights or remedies it may have, shall have the immediate right of re-entry.

(d) **Successors and Assigns** – The license extends and binds the respective heirs, executors, administrators, successors and assigns of the parties hereto as the case may be.

(e) **Overholding** - If the Licensee remains in possession of all or any part of the Licensed Property after the expiry of the Term or any renewal or termination thereof with the consent of the Licensors and without any further written agreement, or without the consent of the Licensors, there shall be no tacit renewal or extension of this License and despite any statutory provision or legal presumption to the contrary, the Licensee shall be deemed conclusively to be occupying Licensed the Property.

(f) **Warranty of Title** - The Licensors hereby warrants that to the best of its knowledge and belief it has good and lawful title to the Licensed Property and full right and authority to License the same according to the terms hereof.

(g) **Waiver of Breaches** - The failure of the Licensor to insist upon a strict performance of any of the covenants and provisos hereof shall not be deemed a waiver of any rights of remedies that the Licensor may have or a waiver of any subsequent breach or default.

(h) **Notices** - Any notices, request or demand herein provided for shall be sufficiently given or made if mailed by registered mail, postage prepaid, addressed or delivered by hand, if to the Licensor, at The City of Fredericton. Attention: Real Estate Manager, 397 Queen Street, Fredericton, New Brunswick, E3B 1B5, and if to the Licensee, 540 Kitchen & Bar Inc., 191 Emerson Court, Fredericton, NB, E3B 5X7, and every such notice shall be deemed to be given upon the day it was so mailed or delivered. Either of the parties hereto may at any time give notice in writing to the other of any change of address and thereafter all notices shall be mailed **to** the new address so notified.

(i) **Entirety** - This License constitutes the entire agreement between the parties and it is hereby declared and understood that no prior stipulation, agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the provisions of this License. This License may not be modified or amended except in writing and signed by the Licensor and the Licensee.

(j) **Registration** — The parties agree that this License will not be registered on title to the Licensor's Property.

8. **INTERPRETATION**

a) This License shall be construed and governed by the Laws of the Province of New Brunswick and shall enure to the benefit of and be binding upon the heirs, executors, administrators, successors, assigns and other legal representatives, as the case may be, of each of the parties hereto, subject to the granting of consent by the Licensor to any assignment or sublicense, and every reference herein to any party hereto shall include the heirs, executors, administrators, successors, assigns and other legal representatives of such party and all covenants shall be deemed joint and several. Any reference in this License to "Licensee" shall further include, where the text allows, the servants, employees, agents, invitees and licensees of the Licensee and all others over whom the Licensee might reasonably be expected to exercise control.

b) Should any provision or provisions of this License and/or its conditions be illegal or not enforceable, it or they shall be considered separate and severable from the remaining provisions of this License which shall remain in force and be binding upon the parties hereto as though the said illegal or unenforceable provisions had never been included.

c) The headings in this License have been inserted as a matter of convenience and for reference only and in no way defines, limits or enlarges the scope or meaning of this License, nor of any provision thereof.

d) **Counterparts.** This License may be executed electronically and in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by facsimile, email or other electronic means is as effective as a manually executed counterpart of this License.

IN WHEREOF the parties hereto have caused these presents to be duly executed as of the day and year first above written.

THE CITY OF FREDERICTON

Kate Rogers, Mayor

Jennifer Lawson, City Clerk

NORTHROP HOLDINGS LTD.

Per:

Per:

Schedule "A"



Schedule "B"



DRAFT

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS THAT:**

1. I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. The seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. The signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. The Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
_____, 2024.)

Alexa Donovan)
A Commissioner of Oaths)
My Commission Expires)
December 31, 2026)

Jennifer Lawson