

ATTACHMENT C

1 of 5

PARKADE USE AGREEMENT

THIS AGREEMENT dated for reference the _____ of _____ 2021 is

BETWEEN: **CITY OF NANAIMO**, 455 Wallace Street, Nanaimo, B.C. V9R 5J6

(the “**City**”)

AND: **1141872 BC LTD.**, 200-180 North University Avenue, Provo, Utah, USA, 84601

(the “**Licensee**”)

WHEREAS:

A. The City is the registered owner in fee simple of those lands and improvements located at 101 Gordon Street, Nanaimo, British Columbia, legally described as:

Parcel Identifier: 026-458-942

Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo Plan VIP79754 Except that Part in Plan VIP85148

(the “**Lands**”);

B. On the Lands, there is a building which is or includes a parking garage (the “**Parkade**”);

C. The Licensee wishes to use a portion of the Parkade for the storage of guests vehicles.

D. The City has agreed to provide 30 reserved spots for guests and invitees of the Licensee and further to provide unallocated parking spaces for guests and invitees of the Licensee on an ‘as is’ availability within the Parkade.

E. The City has agreed to allow the installation of signage for the Licensee based on the terms in this Agreement.

NOW THEREFORE in consideration of the fees paid by the Licensee to the City hereunder and in consideration of the premises, covenants, and agreements contained in this Agreement, the City and the Licensee covenant and agree with each other as follows:

1. **Term** – The licence granted hereby is for a term of twenty (20) years, commencing on _____, and terminating on _____, subject to earlier termination as provided herein.
2. **Licence Fee** – In consideration of the right to use the Parkade in accordance with this Agreement, the Licensee shall pay to the City the sum of \$125.00 (the “**Licence Fee**”), which Licence Fee is due and payable upon the execution of this Agreement.
3. **Parking Permit Fees – Licence Area** – The current cost of daily parking validation permits shall be \$9.00 per day each for the use of 30 parking stalls in the parkade. The Licensee shall

pay \$98,550.00 per annum to be billed in the amount of \$8,212.50 monthly plus GST. This rate may be changed from time to time by Council in accordance with the current Parking Bylaw rates for the City.

4. **Parking Permit Fees – Additional Parking** – If additional parking is required, the Licensee may purchase prepaid tickets from the City for the use of its hotel guests at the current rate of \$9.00 per day. This rate may be changed from time to time by Council in accordance with the current Parking Bylaw rates for the City.

The hotel guests may park in the unreserved and available stalls at any of the City's parking garages; Harbourfront Centre Parkade, Gordon Street Parkade and Vancouver Island Conference Centre Parkade.

5. **Signage** – The City will provide and install signage (the “**Licensee Signage**”) for the benefit of the Licensee in the designated area shown in Schedule A. The Licensee shall maintain, repair, and keep in good and safe condition all Licensee Signage constructed or otherwise placed in the Parkade for the benefit of the Licensee for the duration of this Agreement at the request of the City. Any and all existing signage placed by the Licensee in the Parkade and approved by the City shall remain in the Parkade under the terms of this Agreement. The Licensee will reimburse the City for any costs associated with the manufacture and installation of the Licensee Signage upon receipt of the invoice.
6. **Indemnification** – The Licensee hereby releases and shall indemnify and save harmless the City and its elected and appointed officials, employees, and agents from and against all lawsuits, damages, costs, expenses, fees, or liabilities (collectively, “**Liability**”) which the City or any of them or any other person may incur, suffer, or allege arising out of or in connection with this Agreement, the exercise by the Licensee of any of its rights under this Agreement, and the use of the Parkade generally by the Licensee or its agents, employees, and invitees, except to the extent that any Liability results from the negligence of the City.
7. **Compliance with Laws** – The Licensee shall use the Parkade in compliance with any and all applicable statutes, enactments, bylaws, regulations, and orders from time to time in force and shall not contravene same.
8. **Parkade Operations** – The Licensee acknowledges and agrees that operation of the Parkade is entirely within the control of the City and, without limitation, the City reserves the right, acting reasonably, from time to time, to add, remove or change signage (including Licensee Signage), dimensions of the parking spaces and markings, directional signs, security measures, lighting, and other aspects of the parkade, provided access and use of the parking spaces by guests of the hotel is not limited. The City will not alter the Licensee Signage in the Parkade without providing reasonable advance notice to the Licensee.
9. **Termination for Cause** – If the Licensee defaults in the observance or performance of any of the terms and conditions contained herein then the City may terminate this Agreement immediately upon written notice to the Licensee, notwithstanding any rule at law or in equity to the contrary.

10. **Termination without Cause** – Either party may, upon sixty (60) days written notice to the other party, terminate this Agreement and on the 60th day following delivery of such notice of termination all rights of the Licensee under this Agreement shall lapse and be absolutely forfeited. In the event that this Agreement is terminated as of a day that is not the last day of the year, the Licence Fee payable shall be pro-rated accordingly.
11. **Removal of Signage**– The City shall, upon the termination of this Agreement, remove all Licensee Signage from the Parkade and restore the Parkade to the condition it was in prior to installation of such signage, to the satisfaction of the City, acting reasonably. The Licensee will reimburse the City for all costs associated with removal of the Licensee Signage upon receipt of the invoice.
12. **Survival** – All of the Licensee’s obligations under this Agreement that are outstanding on the date that this Agreement is terminated (including the obligations to release and indemnify the City set out in section 7 herein) will survive such termination.
13. **Notices** – The parties agree that any notice required to be given under this Agreement shall be deemed to be sufficiently given:
 - (a) if delivered personally, at the time of delivery; and
 - (b) if mailed from any government post office in the Province of British Columbia by prepaid registered mail addressed as follows:
 - (i) if to the City:

Attn: Real Estate Manager
City of Nanaimo
455 Wallace Street
Nanaimo, B.C. V9R 5J6
 - (ii) if to the Licensee:

Attn: Robert Schmidt or Cameron Gunter
1141872 BC Ltd.
200-180 North University Avenue
Provo, Utah, USA 84601

or at the address a party may from time to time designate, then the notice shall be deemed to have been received forty-eight (48) hours after the time and date of mailing. If, at the time of mailing the notice, the delivery of mail in the Province of British Columbia has been interrupted in whole or in part by reason of a strike, slow-down, lock-out, or other labour dispute, then the notice may only be given by actual delivery of it.

14. **Assignment** – The Licensee shall not assign this Agreement or sublicense use of the Parkade to any other party without the prior written consent of the City, which consent may be withheld for any reason.
15. **No Interest in Lands** – Nothing in this Agreement shall be interpreted as granting any interest in the Lands or the Parkade to the Licensee.
16. **No Representations** – The Licensee acknowledges and agrees that the City has made no representations, warranties, guarantees, promises, covenants, or agreements to or with the Licensee in respect of this particular subject matter, including in respect of the condition of the Parkade or its sufficiency for the Licensee’s purposes.
17. **Waiver** – Waiver of any default by the City shall not be interpreted or deemed to be a waiver of any subsequent default. All waivers must be in writing.
18. **No Other Agreements** – This Agreement is the entire agreement between the parties regarding its particular subject matter.
19. **Modification** – This Agreement may not be modified except by an instrument in writing signed by both the City and the Licensee.
20. **Interpretation** – Wherever in this Agreement the singular is used, it includes the plural, and wherever the neuter is used, it includes the feminine, masculine, or body corporate, where the context or the parties so require.
21. **Headings** – The headings to the clauses in this Agreement have been inserted as a matter of convenience and for reference only and in no way define, limit, or enlarge the scope or meaning of this Agreement or any provision of it.
22. **Further Assurances** – The parties shall at all times execute and deliver at the request of the other all such further documents, deeds, and instruments, and do and perform all such other acts as may be reasonably necessary to give full effect to the intent and meaning of this Agreement.
23. **Enurement** – This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, executors, successors, administrators, and permitted assigns.
24. **Covenants** – All provisions of this Agreement are to be construed as covenants and agreements.
25. **Governing Law** – This Agreement will be governed by and construed in accordance with the laws of British Columbia.
26. **Counterparts** – This Agreement may be executed in one or more facsimile or PDF counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date and year first written above.

CITY OF NANAIMO by its authorized signatories:

Mayor:

Corporate Officer:

1141872 BC LTD. by its authorized signatories:

Name:

Name: