

# CITY OF NEWBURYPORT



## IN CITY COUNCIL

### ORDERED:

April 29, 2024

AN ORDER TO AUTHORIZE THE AGREEMENT BY AND BETWEEN THE CITY AND NEWBURYPORT MANAGER, LLC WITH RESPECT TO A PARKING LOT

Be it ordained by the City Council of the City of Newburyport as follows:

**THAT** the City Council of the City of Newburyport hereby approves the terms and conditions contained in the attachment "A" with respect to the parking lot located at 9 Titcomb Street, Newburyport. The term of this License shall be for the period commencing April 1, 2024 and expiring on March 31, 2027, subject to Section 11 hereof.

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Councillor James J. McCauley

“A”

## LICENSE AGREEMENT

This LICENSE AGREEMENT (this "License") is executed this \_\_\_\_ day of \_\_\_\_\_, 2024 (the "Execution Date") by and between Newburyport Manager LLC, a Massachusetts limited liability company, as Trustee of 1-11 Titcomb Street Nominee Trust, u/d/t dated January 28, 2005 ("Licensor"), and the City of Newburyport, acting by and through its Mayor (the "City" or "Licensee").

Whereas, Licensor owns a parking lot located at 9 Titcomb Street in Newburyport, Massachusetts (the "Premises");

Whereas, the City, for itself and its affiliates, successors, assigns, and designees, desires to enter upon and use the Premises for parking in common with all others entitled thereto; and

Whereas, the Licensor is willing to permit such use subject to the conditions set forth herein;

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Licensor hereby grants to City the non-exclusive right to enter and use the Premises and to access the Premises subject to the following terms and conditions:

### 1. REFERENCE DATA

Mailing Address of Licensor:

Newburyport Manager LLC  
c/o NED Management Co., Inc.  
75 Park Plaza  
Boston, MA 02116

Mailing Address of City:

Office of the Mayor  
Newburyport City Hall  
60 Pleasant Street  
Newburyport, MA 01950

Permitted Use:

The Premises may be used, except as set forth below, solely for off-street parking of ordinary passenger vehicles by holders of City parking permits. The Licensor reserves the right to require the City to immediately and permanently remove from the Premises any vehicle which, in the sole opinion of the Licensor, is undesirable or poses a threat of injury or damage to the Premises. As an ancillary use the City may temporarily store snow from the Parking Garage during inclement weather. The City has the sole burden of removal of said

snow. Furthermore, the City may, at its own expense, place a parking kiosk on the Premises. Licensee may not use the Premises for off-street parking by the general public.

#### Termination of Existing License and Term of License:

Reference is made to that certain License Agreement by and between Licensor and the City dated as of August 1, 2019 (the "Existing License") under which the City is currently occupying the Premises. The Existing License terminates effective as of 12:00 midnight on March 31, 2024 with the same force and effect as if such date were the expiration date of the term of the Existing License. Further, effective upon such termination date, each party remises, releases and forever discharges the other of and from any and all claims, liabilities and obligations arising under or in connection with the Existing License, except for any indemnification of the other as provided in the Existing License for claims of third parties for events occurring on or prior to such termination date.

The term of this License shall be for the period commencing April 1, 2024 and expiring on March 31, 2027, subject to Section 11 hereof.

## 2. CONDITION OF PREMISES

City acknowledges and agrees that it accepts the Premises in "as is" condition for the purpose of this License, and that Licensor has made no representation or warranty regarding the fitness of the Premises for the Permitted Use.

## 3. COVENANTS AND LICENSE FEE

The City covenants with the Licensor that the City, during the term of this License and for such further time as the City, or any other person or persons claiming through or under the City, shall hold the Premises or any part thereof, (a) shall maintain the Premises in a clean and orderly condition during the term of this License, including, without limitation, being responsible for the removal of snow and ice therefrom; (b) shall not permit any use of the Premises which shall create a fire hazard or be unlawful or which is improper, offensive or which constitutes a nuisance or which is contrary to any law, rule, regulation or requirement of any governmental authority; (c) shall not violate any applicable federal, state or local statutes, laws, regulations or other requirements affecting the Premises; and (d) shall obtain all federal, state and local permits, licenses and approvals, in its name, which are required for City's use of the Premises.

#### 4. ALTERATIONS

The City shall not make any alterations or improvements upon the Premises except to undertake the Permitted Use under this License, and except to restore the Premises as closely as practical to their condition prior to the exercise of the City's rights, immediately after they are disturbed by said Permitted Use.

#### 5. CONDUCT OF THE CITY

##### a. Non-interference with Licensor's Operations

The City shall at all times conduct itself so as not to interfere in any way with the Licensor's use of the Premises.

##### b. Compliance with Laws

The City shall at all times perform the Permitted Use in accordance with all applicable laws, statutes, ordinances, regulations, permits, licenses, orders and requirements of governmental authorities and with all requirements of its insurance policies.

##### c. Repair of Damage

The City shall, at its own expense, keep the Premises in good repair and order and tenantable condition during the term of this License, normal wear and tear excepted. The City agrees that the Licensor shall not be under any obligation to do anything to render the Premises serviceable for parking purposes.

##### d. Security

The Licensor is not responsible for the security of the Premises, or the use made by City thereof, which shall be the sole responsibility of City, during the times that City is using or occupying the Premises under this License.

##### e. Costs of Operations

The City shall be solely responsible for any and all costs, expenses, damages and liabilities associated with the exercise of its rights under this License.

##### f. Operations Limited to Permitted Use

The City shall not conduct any operations upon the Premises except for the Permitted Use under Section 1 of this License and except for any requirement set forth in this License.

#### 6. CONSIDERATION

The City agrees to pay a lease fee to Licensor of Four Thousand, Six Hundred (\$4,600.00) Dollars per year. The City agrees to pay such fee in quarterly payments of \$1,150.00 in advance beginning on or about the Execution Date first written above.

#### 7. RISK OF LOSS

The City agrees that it shall use and occupy the Premises at its own risk, and the Licensor shall not be liable to the City for any injury or death to persons entering the Premises pursuant to the License, or loss or damage to vehicles, equipment, structures or other personal property of any nature whatsoever of the City, or of anyone claiming by or through any of them, that are brought upon the Premises pursuant to the License, except if such injury, death, loss or damages is caused by the willful act or gross negligence of Licensor, or its employees, agents, contractors or invitees.

#### 8. INDEMNIFICATION

To the extent allowable by law, the City agrees to indemnify, defend and hold harmless the Licensor against any claim by any person for any injury or death to persons or loss or damage to or diminution in value of any property occurring upon the Premises or the Property or relating in any way to the City's exercise of its rights under this license; provided, however, the foregoing shall not be deemed to waive any liability the City might enjoy under Massachusetts and/or local law nor shall it apply to any claim for which the City is immune as a government entity.

#### 9. INSURANCE

The City shall maintain, at its sole cost and expense, commercial general liability insurance, including coverage for bodily injury, wrongful death and property damage, with a limit of at least \$1,000,000 per occurrence, which can be a combination of primary and excess. The City shall also maintain Workers' Compensation/Disability/Employers' Liability Insurance covering claims under workers' compensation, disability benefits and other similar statutory employee benefit acts which are applicable to this License.

The City shall provide the Licensor with a certificate of insurance showing compliance with the forgoing provisions, in each case indicating the Licensor, Licensor's representative, any lender and any other party requested by Licensor as additional insureds on the commercial general liability and umbrella/excess policies and shall be primary and non-contributory to any insurance Licensor and any other additional insured carries.

The current additional insured are as follows:

Newburyport Manager LLC  
Newburyport Development LLC  
NED Management Limited Partnership  
Newburyport Operating Holding LLC  
Newburyport Development Holding LLC  
New England Development LLC

NED Realty Advisors Inc.  
NED Newburyport LLC  
NED Manager LLC  
1-11 Titcomb Street Nominee Trust

Failure to obtain and keep in force said insurance, and failure to provide the Licensor with proof of same, shall automatically terminate this License and any rights granted herein.

#### 10. RIGHTS OF LICENSOR TO ENTER

Licensor reserves the right and the City shall permit the Licensor and its employees, contractors, agents and invitees to enter upon and use the Premises with reasonable notice to the City.

#### 11. TERMINATION

This License is terminable at any time by either party, provided that written notice thereof is given to the other party by certified U.S. Mail or delivered by a private express carrier such as FedEx, return receipt requested, not less than ten (10) business days prior to termination. This License shall expire on the date specified in such notice.

#### 12. NO ESTATE CREATED

This License shall not be construed as creating or vesting in the City any estate in the Premises or any interest in real property, nor shall this License be construed as containing a promise that the License shall have a term greater than is specified herein, that it shall not be terminated as allowed herein, or that it shall be replaced at any time by a permanent easement or other interest in land allowing City to continue its use.

#### 13. COMPLIANCE WITH MGL CHAPTER 21E

The City covenants and agrees with the Licensor that neither the City nor any person utilizing or claiming rights under this License, nor the employees, agents, contractors, licensees, invitees or visitors of the City or any such person shall bring onto, store, generate, or permit to be stored or generated on the Premises any oil, hazardous material, hazardous waste or hazardous substance, as those terms are defined by any applicable federal, state or municipal law, rule, regulation, code or ordinance, including without limitation, the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E, the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Sections 9601 et seq., and the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq. (hereinafter “Hazardous Materials”), except for any normal and ordinary operating fluids that are self-contained and not leaking and necessary for the operation of ordinary passenger vehicles. The City shall, to the extent permitted by law, indemnify and hold the Licensor harmless from and against any claim, liability, loss, damage or expense (including attorneys’ fees and expenses and court costs, assessments and remedial or response actions) arising out of (a) any of the covenants or agreements of this paragraph, or breach thereof, or (b) the past, present or future use of the

Premises involving Hazardous Materials by City or any person utilizing or claiming rights to use the Premises under the City, or the employees, agents, contractors, licensees, invitees or visitors of the City or any such person. The provisions of this section shall survive any expiration or earlier termination of this License.

#### 14. MISCELLANEOUS

- a. This License may not be modified except in writing, duly executed by both parties.
- b. This License contains the entire agreement of the parties and there are no other agreements or understandings between the parties regarding the subject matter of the License.
- c. The City is not authorized to bind or involve the Licenser in any contract or to incur any liability for or on the part of the Licenser; likewise, the Licenser, its employees, agents, contractors or invitees, is not authorized to bind or involve the City in any contract or to incur any liability for or on the part of the City.
- d. If any portion of this License is declared to be illegal, unenforceable or void, then all parties to this License shall be relieved of all obligations under that portion; provided, however, that the remainder of this License shall be enforced to the fullest extent permitted by law.
- e. The captions in this License are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this License or any of the provisions thereof.
- f. This License shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and any and all legal actions brought in connection with this License shall be brought in courts within the Commonwealth of Massachusetts.
- g. This License is to take effect as a sealed instrument.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**LICENSOR:** NEWBURYPORT MANAGER LLC,  
as Trustee of 1-11 Titcomb Street Nominee Trust

By: \_\_\_\_\_  
Name:  
Its: Manager

**CITY:** CITY OF NEWBURYPORT

By its MAYOR

\_\_\_\_\_  
Sean Reardon