

**PUBLIC PARKING ALLOCATION AGREEMENT
247 PEARL STREET.**

This Public Parking Allocation Agreement (“Agreement”) is entered into between the City of Burlington, through its Department of Public Works (“City”), and 247 Pearl LLC (“Company”). The Company and the City agree to the terms and conditions of this Agreement.

1. RECITALS

- A. Authority.** Authority to enter into this Agreement exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.
- B. Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.
- C. Purpose.** The City seeks to offer public parking spaces in a private parking facility owned by the Company at 247 Pearl Street in Burlington, Vermont. This Agreement outlines the scope and management of those public spaces.

2. EFFECTIVE DATE AND TERM

- A. Effective Date.** This Agreement shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation for any performance prior to the Effective Date or after the expiration or termination of this Agreement.
- B. Term.** This Agreement and the Parties respective performance shall commence on the Effective Date and expire 5 years after the Effective Date.
- C. Renewal.** This Agreement shall automatically renew for one additional 5 year term unless either Party provides written notice to the other Party no later than 90 days prior to the expiration of this Agreement.
- D. Termination.** Either Party may terminate this Agreement upon issuing written notice to the other Party. The notice shall specify the effective date of the termination.

3. DEFINITIONS

- A. “Effective Date”** means the date on which this Agreement is approved and signed by the City, as shown on the signature page of this Agreement.
- B. “Facility”** means the parking facility owned by the Company located at 247 Pearl Street in Burlington, Vermont.
- C. “Party”** means the City or Company and “Parties” means both the City and Company.

4. GRANT OF PUBLIC SPACES

- A. Allocation.** The Company shall allocate a total of 10 parking spaces in the Facility to the City for use by the public (“Public Spaces”). The location of these Public Spaces is demonstrated in Attachment 1. The Company shall allow public use of such Public Spaces between the hours of 9

a.m. and 6 p.m., Monday through Friday.

- B. Management.** The City shall be solely responsible for management of the Public Spaces. To that end, the City shall install and maintain coin operated meters at the Public Spaces. The City may also give the public access to the ParkMobile phone application to remit payment for use of the Public Spaces. The City shall also install and maintain exterior and interior signage necessary to alert the public of the hours, rates, conditions, and locations of Public Spaces within the Facility.
- C. Rates.** The City shall charge customers in an amount similar to amounts charged by the City at City-owned parking facilities. The Parties agree to make all efforts to establish rates for the Public Spaces in a manner designed to achieve an approximate 85% utilization rate.
- D. Enforcement.** The City shall enforce compliance with conditions of use established by the City for use of the Public Spaces. The Company shall grant the Burlington Police Department the right to enter any portion of the Facility to enforce the conditions for use on behalf of the City.
- E. Restrictions.** The City shall comply with all restrictions imposed on the Company for the operation of the Facility by the Certificate of Completion recorded in the City's Land Records at book 1368, pages 197-201.

5. PARKING FACILITY

- A. Responsibility.** Notwithstanding the grant of Public Spaces set forth in §4.A, the Company shall remain solely responsible for management of all other parking spaces and the Parking Facility. The City shall not hold any other responsibility or obligation not set forth in this Agreement.
- B. Maintenance.** The Company shall—at its sole cost—be solely responsible for the repair and maintenance of the Parking Facility and all spaces contained therein, excluding the meters described in §4.B. This responsibility includes:
 - i. Appearance.** The Company shall keep the Facility, its parking areas, driveways, pedestrian entrances, and stairways in a clean and presentable condition that is equal to the conditions of City-owned parking facilities. The Company shall sweep, remove trash, and empty trash receptacles on a daily basis.
 - ii. Facility Improvements.** The Company shall maintain all paving, painting, line striping, lighting, curbs, and all other improvements required for operation of the facility in good repair at a quality equal to such operations at parking facilities owned by the City.
 - iii. Removal of Dangerous Conditions.** The Company shall immediately remove snow, ice, graffiti, and all other dangerous conditions from all portions of the Facility.
 - iv. Notification.** The Company shall advise the City within a reasonable time period of any planned renovation or improvements to the Facility that impacts the Public Spaces, or use of the Public Spaces. If renovation or improvements occur, the Company shall provide appropriate signage and work with the City to provide applicable notification to the public.

6. SHARE OF REVENUE

The City shall share with the Company fifty percent (50%) of all revenues collected from the Public Spaces. The City shall remit the Company's share to the Company on a monthly basis and issue the

v. Fire Damage (any one fire) \$ 250,000

vi. Med. Expense (any one person) \$ 5,000

B. Workers Compensation Insurance. With respect to all operations performed, each Party shall carry Workers Compensation Insurance in accordance with the laws of the State of Vermont. The Parties shall also ensure that all subcontractors carry Workers Compensation Insurance for all Work performed by them. Minimum limits for employer's liability is as follows:

i. Bodily Injury by Accident: \$1,000,000 each accident

ii. Bodily Injury by Disease: \$1,000,000 policy limit
\$1,000,000 each employee

C. Automobile Liability Insurance. The Parties shall carry Automobile Liability Insurance covering all motor vehicles—including owned, hired, borrowed, and non-owned vehicles—used in connection with this Agreement. Each policy shall provide coverage with a limit not less than \$1,000,000 – Combined Single Limit for each occurrence

D. Umbrella Liability. Each Party shall obtain the following minimum umbrella liability coverage:

\$1,000,000 Each Event Limit

\$1,000,000 General Aggregate Limit

E. Inland Marine/Property Insurance. The Company shall obtain Inland Marine/Property Insurance coverage with limits applicable to the property at risk whether Building, Improvements and Betterments, Business Personal Property or Equipment.

F. Garage Keepers Legal Liability. The Company shall obtain Garage Keepers Legal Liability coverage insuring against physical damage to automobiles in the care, custody, and control of the Company At a minimum amount of \$100,000 for each event.

G. Monies and Securities Coverage. The Company shall obtain Monies and Securities coverage at the following minimum amounts: \$50,000 inside/on premise and \$50,000 outside premise/in-transit.

11. ACCEPTANCE OF RISK

The City shall not be liable for any loss or damage caused by members of the public to the Facility while using Public Spaces. The City does not guard, assume care, custody, or control of any vehicle using the Facility, or their contents.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter of this Agreement. All prior representations and understandings of the Parties—oral or written—are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

13. MODIFICATION

Except as otherwise provided by this Agreement, any modification to this Agreement shall only be

effective if agreed to in a formal written amendment to this Agreement, properly executed and approved by the Parties.

14. THIRD PARTY BENEFICIARIES

This Agreement does not confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely for the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement and do not create any right for such third parties.

15. WAIVER

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

16. CHOICE OF LAW

Vermont law shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with Vermont law shall be null and void. Any provision rendered null and void by operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

17. JURISDICTION

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Vermont.

18. BINDING NATURE

This Agreement shall be binding on and shall benefit the parties hereto and their respective successors and assigns.

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19. SIGNATURE PAGE

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

The Parties hereto have executed this Parking Allocation Agreement

247 PEARL LLC

By: _____

Erik Hoekstra

Date: _____

**CITY OF BURLINGTON
Department of Public Works**

By: _____

Chapin Spencer, Director
Department of Public Works

Date: _____