

## **PARKING LEASE**

THIS PARKING LEASE AGREEMENT (this “**Parking Lease**”), dated as of **October 24, 2024** (the “**Effective Date**”), is by and between the CITY OF UTQIAGVIK, an Alaska municipal organization (the “**City**”), and Billy Carafinoski (“**Lessee**”). The City and Lessee are individually a “**Party**” and collectively, the “**Parties**” for the purposes of this Parking Lease.

### **BACKGROUND**

A. The City is the owner of the real property located at 739 Stevenson Street, Utqiagvik, Alaska 99723, further described (the “**Property**”).

B. The City agrees to lease to Lessee a designated parking space at the Property for parking purposes only. Lessee shall not use the Property for any other purpose unless otherwise agreed to in writing by the City.

### **AGREEMENT**

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, the Parties hereto agree as follows:

#### **ARTICLE 1 PREMISES; WARRANTIES**

1.1 Premises. Subject to and upon the terms, conditions, covenants, and undertakings set forth in this Parking Lease, the City hereby leases to Lessee, and Lessee hereby leases from the City, the Leased Premises. The Leased Premises are leased to Lessee in its present condition without representation or warranty by the City regarding the existing state of title, any state of facts that an accurate survey or physical inspection of the Leased Premises might show, or any restrictions, rules, ordinances, regulations, statutes or any other laws now in effect or hereafter adopted by any governmental authority having jurisdiction, now or hereafter in effect. Lessee acknowledges that it is authorized to occupy the surface of the Leased Premises and is not authorized to occupy any other space within the Property unless the City changes the Leased Premises pursuant to this Section 1.1 (Premises) in an amendment signed by an authorized officer of the City. The City may grant others rights to occupy the Property not occupied by Lessee.

Notwithstanding anything in this Parking Lease to the contrary, the Property upon the Leased Premises shall be and remain the property of Lessee during the Term unless Lessee is in default with respect to payment of Rent (as defined in Section 2.2 (Rent)), fines, penalties, fees and any other amounts due and owing to the City under this Parking Lease, or has otherwise failed to perform any of its duties and obligations provided for in this Parking Lease. Upon termination, Lessee shall return the Leased Premises to its original condition prior to the Effective Date, normal wear and tear excepted. If Lessee does not return the Leased Premises to its original condition within 45 days of termination, the City may take possession and ownership of the Leased Premises and take any one or more of the actions provided for in Article 7 of this Parking Lease.

1.2 Lessee's Warranties. Lessee hereby covenants and warrants to the City that all of the following are true, correct, and complete on the Effective Date and shall be true, correct, and complete throughout the Term:

- A. Lessee has authority to enter into, execute, and deliver this Parking Lease, and has duly authorized the execution and delivery of this Parking Lease; and
- B. Lessee represents that Lessee has had a full opportunity to inspect the Leased Premises and has determined that the Leased Premises are suitable for the intended use and accepts the Leased Premises **“AS IS” and “WHERE IS” with all faults.** Lessee's taking possession of the Leased Premises constitutes Lessee's acknowledgment that the Leased Premises are in good condition and that the City makes no representation or warranty regarding the condition of the Leased Premises nor any use that may be made thereof.

The failure of any representation or warranty by Lessee in this Parking Lease to be true when deemed given hereunder shall constitute a default by Lessee.

1.3 **AS IS/WHERE IS/NO WARRANTY. LESSEE ACKNOWLEDGES THAT THE CITY HAS NOT MADE ANY REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED OR AT COMMON LAW, BY STATUTE, OR OTHERWISE RELATING TO THE LEASED PREMISES OR THE FACILITY (INCLUDING, WITHOUT LIMITATION, ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, ENVIRONMENTAL CONDITION, OR GEOLOGIC CONDITION). IN FURTHERANCE OF THE FOREGOING, THE CITY EXPRESSLY DISCLAIMS AND NEGATES, AND LESSEE HEREBY WAIVES (I) ANY IMPLIED OR EXPRESSED WARRANTY OF MERCHANTABILITY, (II) ANY IMPLIED OR EXPRESSED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (III) ANY IMPLIED OR EXPRESSED WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS, AND (IV) ANY AND ALL IMPLIED WARRANTIES EXISTING UNDER APPLICABLE LAW. IT IS THE EXPRESS INTENTION OF THE PARTIES THAT THE LEASED PREMISES AND THE FACILITY BE LICENSED ON AN “AS IS”, “WHERE IS” BASIS. THE PARTIES AGREE THAT, TO THE EXTENT REQUIRED BY APPLICABLE LAW TO BE EFFECTIVE, THE DISCLAIMERS OF CERTAIN WARRANTIES CONTAINED IN THIS SECTION ARE CONSPICUOUS DISCLAIMERS.**

## ARTICLE 2 TERM, RENT, HOLDOVER

2.1 Term. The term of this Parking Lease (the “**Term**”) commences on the Effective Date and will continue for a period ending 1 years thereafter, unless extended or earlier terminated pursuant to the provisions hereof. Lessee shall have the right to extend the Term for 3 additional 1-year terms (collectively, part of the “**Term**”) if it provides the City with written notice no less than 90 days and no more than 120 days before expiration of the Term and the City accepts such extension in writing which shall not be unreasonably withheld.. If the City fails to respond after forty-five (45) days, the extension shall be automatically accepted. If Lessee remains in possession of the Leased Premises after expiration of the Term or termination of this Parking Lease, such possession shall be a violation of this Parking Lease and the City may exercise any rights available to it at law, at equity, or in this Parking Lease. While remaining in possession, Lessee shall be treated as a holdover Lessee and will be deemed to have offered to continue as a month-to-month Lessee. The City shall have the right to exercise all available rights at law. Lessee’s Base Rent during any holdover month shall be two times the amount of monthly Base Rent in the immediately preceding month.

2.2 Rent. Commencing on the first day of each month beginning on the Effective Date and continuing on the first day of each succeeding month thereafter during the Term, Lessee shall pay the City: (1) a rent payment of \$20 in advance for the month (the “**Base Rent**”); The Base Rent shall increase by 3% on each anniversary of the Effective Date until the termination of this Parking Lease. Any Rent not paid within 5 days of the due date will be subject to a late fee of \$200, plus interest at a rate of 12% per annum for each day the payment is late. For the purposes of this Parking Lease, “**Rent**” shall mean collectively the Base Rent, late charges, or other charges under this Parking Lease. If any Rent payment due under this Parking Lease is overdue by more than 60 days, the Mayor or his/her designee may suspend Lessee’s use of the Leased Premises until full payment of all amounts owed is received.

2.3 Additional Costs. Lessee shall be responsible for the direct payment of all costs, taxes, expenses, and obligations of whatever character or kind, general or special, ordinary or extraordinary, foreseen or unforeseen and of every kind or nature whatsoever, relating to the Leased Premises and Lessee’s use and occupancy thereof (whether covered by insurance or not), including, without limitation, (i) utilities, (ii) insurance costs, (iii) maintenance, repair and replacement costs, and (iv) any and all costs to comply with requirements in connection with Lessee’s use or occupancy of the Leased Premises during the Term.

2.4 Payment Method. All payments due hereunder shall be paid by Lessee to the City at the address set forth in Article 7 or to such other place as the City may notify Lessee in writing.

## ARTICLE 3 MAINTENANCE

3.1 Maintenance. During the Term, Lessee, at its sole expense, shall keep and maintain the Leased Premises in good and safe condition and repair, including any and all snow and ice removal, shoveling, and plowing required, and shall make all repairs and replacements necessary

to keep the Leased Premises in such condition, ordinary wear and tear excepted. The City shall have no duty to perform snow or ice removal, or any other maintenance or repair on the Leased Premises, but may, without waiving or releasing Lessee, cure Lessee's breach of any of its obligations under this Section 3.1 (Maintenance). Lessee agrees to pay the City all of the City's reasonable expenses incurred in connection with curing Lessee's breaches, in addition to its remedies set forth in Article 7 (Default; Remedies).

#### **ARTICLE 4 USE OF LEASED PREMISES**

4.1 Use of Leased Premises. The Leased Premises shall be used solely for the purpose of parking. Lessee shall not use or permit the use of the Leased Premises for any other purpose. Furthermore, Lessee shall, at its sole cost and expense, comply with all laws and requirements applicable to the Leased Premises now in force of which may hereafter be in force.

4.2 Impact on Insurance. Lessee shall not use or permit the Leased Premises, or any part thereof, to be used for any purpose or purposes other than the purpose provided for in Section 4.1. No use will be made or permitted to be made of the Property, or acts done, that will cause a cancellation of any insurance policy covering the Property, or any part thereof. Lessee shall not sell or permit to be kept, used, or sold, in, on, or about the Leased Premises, any article that may be prohibited by the insurance policies required to be maintained by Lessee or the City. Lessee shall, at its sole cost and expense, comply with all requirements of any insurance organization or company for the maintenance of insurance, as herein provided, covering the Leased Premises or the Property.

4.3 Signage. Lessee, at its sole cost and expense, shall be permitted to place signage ("**Signage**"), on, in, and around the Leased Premises, subject to prior review and approval by the City, in its reasonable discretion. Lessee shall be solely responsible for all permitting, installation, maintenance, and removal of Lessee's Signage.

4.4 Protection of the City's Title. Lessee shall not suffer or permit the Leased Premises to be used by the public or any other person or entity in any manner that might reasonably impair the City's title to the Property or any portion thereof.

4.5 Entry by the City. Lessee will permit the City, and the agents and employees of the City, to enter into and upon the Leased Premises at all reasonable times for the purpose of inspecting the Leased Premises and the Facility; provided that the City and its agents and employees shall give prior notice to Lessee that they desire to inspect the interior of the Leased Premises and Facility and shall use commercially reasonable efforts not to disrupt Lessee's operations in the Facility; provided, further, that no such prior notice shall be required in connection with any emergency on the Property.

4.6 Indemnification. Lessee shall defend, indemnify, and hold the City, its elected and appointed officials, officers, employees, agents, trustees, administrators, sureties, insurers, attorneys, successors and predecessors in interest, assigns and receivers (in both their official and personal capacities), and each of them, past, present and future (the "**Indemnified Parties**"),

harmless from and against any and all claims arising from (1) Lessee's use of the Leased Premises, or from the operation of the Facility, or from any activity, work or things done, permitted or suffered by Lessee in or about the Leased Premises or elsewhere; (2) any breach or default in the performance of any obligation on Lessee's part to be performed under the terms of this Parking Lease; (3) any act or omission of Lessee, or any of Lessee's agents, contractors, invitees, subLessees, customers, employees, or any person claiming by, through or under Lessee, in, on, or about the Leased Premises or in connection with this Parking Lease; and (4) any accident on or in connection with the Leased Premises, or any fire thereon, or any nuisance made or suffered thereon. Lessee shall further indemnify and hold the Indemnified Parties harmless from and against all costs, attorneys' fees, expenses, and liabilities incurred in the defense of any proceeding brought against the Indemnified Parties by reason of any such claim. Lessee, upon notice from the City, shall defend any of the above-described claims at Lessee's expense by counsel reasonably satisfactory to the City. Lessee, as a material part of the consideration to the City, hereby assumes all risk of damage to property or injury to persons, in, upon, or about the Leased Premises, arising from any cause and Lessee hereby waives all claims in respect thereof against the Indemnified Parties. Under no circumstance shall the City be liable to Lessee, or to any third-party, for: (a) any interruption in Lessee's or subLessee's communication services; or (b) any data breach or cyberattack caused by a third-party's access to the Leased Premises, regardless of howsoever caused.

## **ARTICLE 5 DEFAULT; REMEDIES**

5.1 Definition. Lessee's failure to pay the Rent, fines, penalties, fees and any other amounts due and owing to the City within 5 days after the City provides written notice to Lessee of such failure, or Lessee's failure to observe or perform any of the obligations of Lessee provided herein or under the Colocation Agreement within 30 days after the City provides written notice to Lessee of such failure, will be an "**Event of Default.**"

5.2 Remedies of the City. If an Event of Default occurs, the City may thereafter take any one or more of the following actions:

- A. Terminate this Parking Lease in accordance with any laws governing such termination, and require Lessee to immediately surrender the Leased Premises to the City, including the Facility if any unpaid Rent is owed to the City;
- B. Enter and take possession of the Leased Premises and the Facility, in accordance with any laws governing such repossession, and remove Lessee, with or without having terminated this Parking Lease, or re-let the Leased Premises;
- C. Take such action as may be necessary to cure such default and charge the reasonable cost (including reasonable actual attorneys' fees) of cure to Lessee; or
- D. Exercise any other remedy available to the City at law or in equity.

5.3 Default by the City. The City shall not be deemed to be in default in the performance of any obligation required to be performed by it hereunder unless and until it has failed to perform such obligation within 30 days after receipt of written notice by Lessee to the City specifying the nature of such default; provided, however, that if the nature of the City's obligation is such that more than 30 days are required for its performance, then the City shall not be deemed to be in default if it shall commence its performance within such 30 day period and thereafter shall diligently prosecute the same to completion. If the City default occurs, Lessee may thereafter pursue any other remedy to which Lessee is entitled at law or in equity.

## **ARTICLE 6 DUTIES UPON TERMINATION OR EXPIRATION**

8.1 Surrender of Leased Premises. Upon expiration or early termination of this Parking Lease, Lessee shall surrender to the City the possession of the Leased Premises. Lessee shall leave the Leased Premises in a clean and leasable condition, which shall include removal of all personal property, trash, vehicles, and the Facility. If Lessee fails to surrender the Leased Premises at expiration or termination, Lessee shall defend and indemnify the City from all liability and expense resulting from the delay or failure to surrender, including, but not limited to claims made by any succeeding Lessee founded on or resulting from Lessee's failure to surrender. In the event of failure or refusal of Lessee to surrender possession of the Leased Premises, the City shall have the right to reenter the Leased Premises and remove therefrom Lessee or any entity in possession and to obtain damages from Lessee.

8.2 Abandonment of Lessee's Personal Property. All personal property that Lessee leaves on the Leased Premises shall, on the 10th day following expiration or termination of this Parking Lease, be conclusively deemed abandoned. Abandoned property shall, at the election of the City, become the property of the City or be disposed of by the City as it sees fit, without notice to Lessee or obligation to pay to Lessee any sums which the City might receive from the sale or disposition of the abandoned property.

8.3 Liability for Cleanup Expenses. In addition to Lessee's other obligations and liabilities under this Parking Lease, Lessee shall be liable for all costs and expenses incurred by the City to remove or destroy any personal property required to be removed under Section 8.1 (Surrender of Leased Premises); or to dispose of any personal property abandoned under Section 8.2 (Abandonment of Lessee's Facility, or any Personal Property); and, if Lessee fails to leave the Leased Premises and surrendered property in clean and leasable condition, to put the Leased Premises in that condition.

## **ARTICLE 7 MISCELLANEOUS**

7.1 Notices. All notices provided for in this Parking Lease must be in writing and delivered at the following addresses, or any substitute addresses of which either Party notifies the other, by personal delivery, or United States certified or registered mail, postage prepaid and return receipt requested. Notices shall be effective upon receipt.

To the City:

City of Utqiagvik  
Attn: Mayor  
PO Box 629  
Utqiagvik, AK 99723

With a copy to (which shall not constitute service):

Dorsey & Whitney, LLP  
Attn: Bonnie J. Paskvan  
1031 W 4th Avenue, Suite 600  
Anchorage, Alaska 99501

To Lessee: Billy Carafinoski

7.2 Captions. The Article, Section, and subsection headings in this Parking Lease are only for convenience. They are not a part of this Parking Lease and must not be considered in interpreting this Parking Lease.

7.3 Entire Agreement; Modification. This Parking Lease with the Colocation Agreement collectively constitute the complete, final, and exclusive agreement between the Parties as to the subject matter thereof and hereof, and supersede any prior oral or written agreements between the Parties, including, without limitation, the Original Lease. All prior understandings, terms, or conditions of the Parties are deemed merged into this Parking Lease. In the event of an actual conflict between this Parking Lease and the Colocation Agreement, the terms of this Parking Lease shall control. This Parking Lease may not be modified or amended unless agreed to in a writing signed by authorized representatives of the Parties.

7.4 Parties Bound. The covenants and conditions herein contained will apply to and bind the successors and assigns of the Parties hereto.

7.5 Governing Law. The provisions of this Parking Lease and all questions arising concerning this Parking Lease shall be determined and resolved in accordance with the laws of the State of Alaska, without regard to conflicts of law principles. Jurisdiction and venue as to any action, claim, or proceeding arising out of, or based upon this Parking Lease, including, but not limited to, any action for declaratory or injunctive relief, shall be convened in the trial courts of the State of Alaska, Third Judicial District, Anchorage, Alaska.

7.6 Specific Performance. Lessee acknowledges and agrees that any breach of this Parking Lease would give rise to irreparable harm to the City for which monetary damages would not be an adequate remedy. Lessee accordingly agrees that, in addition to any other rights or

remedies it may have at law or in equity, the City shall be entitled to seek to enforce the terms of this Parking Lease by decree of specific performance without the necessity of proving the inadequacy of monetary damages as a remedy. Lessee waives any defense that a remedy at law is adequate and any requirement to post bond or provide similar security in connection with actions instituted for injunctive relief or specific performance of this Parking Lease.

7.7 Date for Performance. Any time period provided for in this Parking Lease that expires on a Saturday, Sunday, or holiday will automatically be extended until 5:00 pm on the next regularly scheduled business day.

7.8 Severability. If a court of proper jurisdiction finds any provision of this Parking Lease to be illegal or unenforceable, that provision is affected only to the extent of the invalidity. The remainder of that provision and all remaining provisions of this Parking Lease will continue in full force and effect.

7.9 Counterparts. This Parking Lease may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which, when taken together, will constitute the same instrument. Signatures on this Parking Lease that are transmitted by email, facsimile, or other electronic means are valid for all purposes.

7.10 No Assignment or Subleasing. Notwithstanding anything herein contained to the contrary, Lessee shall not sublease the Leased Premises or assign this Parking Lease without the prior written consent of the City, in its sole discretion. Subleases shall be subject to the rental charges owed to the City under Section 2.2 (Rent). For the purposes of this Parking Lease, any change in control of 50% or more of the ownership interest in Lessee, or any parent entity of Lessee, shall constitute an assignment.

7.11 No Third-Party Beneficiaries. This Parking Lease does not create, and shall not be construed as creating, any rights enforceable by any person or entity not a party to this Parking Lease.

7.12 Mitigation. Each Party under this Parking Lease shall use commercially reasonable efforts to mitigate any damages caused thereby.

7.13 Time of the Essence. Every provision in this Parking Lease, which imposes an obligation upon a Party or invests a right in a Party, shall be deemed to be a covenant in favor of the other Party, and the time of observance and performance by the Party of each such covenant shall be of the essence.

7.14 No Recording. The Parties agree that neither this Parking Lease, nor any memorandum thereof, shall be recorded.

7.15 Survival. The following sections and articles shall survive the termination or expiration of this Parking Lease: Section 1.3 (AS IS/WHERE IS/NO WARRANTY), Section 2.3 (Additional Costs), Section 5.5 (Hazardous Material), Section 5.6 (Waiver of Subrogation), Section 6.1 (Indemnification), Section 7.2 (Remedies of the City), Article 8 (Duties upon



Termination or Expiration), Section 9.1 (Notices), Section 9.5 (Governing Law), Section 9.6 (Specific Performance), and Section 9.16 (Attorneys' Fees).

7.16 Attorneys' Fees. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Parking Lease on the part of the Parties, the substantially prevailing Party in such litigation shall be entitled to recover any and all costs associated with such litigation, including actual attorneys' fees and costs.

7.17 Waiver. No delay or omission by either Party hereto to exercise any right or power accruing upon any noncompliance or default by the other Party with respect to any of the terms hereof shall impair any such right or power or be construed to be a waiver thereof. Subject to the provisions of this Section 9.17 (Waiver), every such right and power may be exercised at any time during the continuance of such default. It is further agreed that a waiver by either of the Parties hereto of any of the covenants and agreements hereof to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any other covenants or agreements herein contained.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Parking Lease to be duly executed as of the Effective Date.

**THE CITY:**

**City of Utqiagvik**

By: \_\_\_\_\_

Name: Elizabeth Asisaun Toovak

Title: Mayor

**LESSEE:**

**Billy Carafinoski**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A  
Property Description**

**Exhibit B  
Depiction of Leased Premises**

**[Attached]**