

## PARKING LEASE AGREEMENT

THIS PARKING LEASE AGREEMENT (the “Agreement”) is made as of this \_\_\_\_ day of \_\_\_\_\_, 2023, between the CITY OF FAYETTEVILLE, a municipal corporation organized and existing under the laws of North Carolina (“City”), and DK Enterprise, Inc., a North Carolina corporation (“Tenant”).

### RECITALS:

WHEREAS, City owns a parking garage (the “Garage”) lying on the north side of Franklin Street, Fayetteville, North Carolina, being designated as Lot 2 “Proposed Parking Deck Site” on the related plat entitled “Proposed Franklin Street Parking Deck and Existing Office Building” recorded in Plat Book 127, Page 43, Cumberland County Registry; and

WHEREAS, City desires to lease a portion of the Garage for onsite parking; and

WHEREAS, Tenant desires to lease from City fifteen (15) parking spaces in the Garage and an additional five (5) spaces located within a one block radius of the proposed Kress Lofts located at 111 Maxwell Street, and City desires to lease parking spaces in the Garage to Tenant;

WHEREAS, this Agreement is entered into pursuant to N.C.G.S. §§ 160A-272, and in accordance with the requirements contained therein.

NOW THEREFORE, in consideration of the foregoing, the mutual covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Lease of Parking Spaces. During the Term (defined below) of this Agreement, City hereby leases to Tenant, and Tenant hereby leases from City, fifteen (15) reserved parking spaces in the Garage and five (5) spaces located within a one block radius of the proposed Kress Lofts located at 111 Maxwell Street (the “Parking Spaces”). Tenant shall have the exclusive right to use the Parking Spaces twenty-four hours a day, seven days a week. The sole permitted use of the Parking Spaces shall be for the parking of passenger vehicles specifically identified as authorized to use the Parking Spaces pursuant to the reasonable and customary procedures established by the City.

2. Term. The term of the Agreement shall be for an initial period of fifteen (15) years, commencing upon one (1) month after the issuance of the certificate of occupancy for the Kress Lofts (the “Commencement Date”), unless this Agreement is sooner terminated as provided for in this Agreement. Provided Tenant is not in default of this Agreement, Tenant shall have the option to extend or otherwise renew the Agreement for two (2) additional fifteen (15) year Term. Each to extension of the Term shall be by written notice to City on or before the date that is six (6) months prior to the expiration of the Term. Any termination will be effective only upon the last day of next full month after receipt by the City of the termination notice. The lease term, including any renewal term if exercised, is referred to herein as the “Term.” The term of this agreement shall include an automatic extension of term at the end of the second renewal option for five (5) years unless either party notifies the other of the party’s intent to terminate the Agreement at the end of the term via certified mail, return receipt requested, time being of the essence, unless otherwise agreed in writing by the parties hereto.

3. Rent. Beginning on the Commencement Date, Tenant shall pay rent in the amount of \$50.00 per month, per space for all twenty (20) of the Parking Spaces. Rent may be further adjusted annually and shall be based upon the then current rate charged by the City. It is agreed that the above stated rent figures are subject to the final approval of the Fayetteville City Council on a periodic basis. However, the rent for the Parking Spaces shall at no time exceed the then current rate charged by the City in other City-owned parking lots. During this agreement, the rent shall be paid on a monthly basis. Payment shall be due on the first day of the month and shall be paid by the Tenant in one check or electronic payment made payable to “City of Fayetteville,” at the City’s address for payment as City may designate in writing from time to time. Partial month’s rent will be prorated based on the number of days in the partial month. If Tenant fails to make the monthly rent payment by the 5th of any month, a late fee of \$10.00 per month will be assessed as indicated by the City of Fayetteville fee schedule. Said late fee rate will be assessed annually per the fee schedule and is subject to change if fee schedule changes.

4. Deposit. Tenant paid a bid deposit of \$30,000.00 to the City of Fayetteville for the proposal of leasing the Parking Spaces. Said deposit will be credited toward the Rent as stated above at the credit rate of \$2,000.00 per year for the first fifteen-year term. If said lease is terminated before the first term ending date the remainder of the deposit will remain with the City.

5. Operation and Maintenance.

a. City or its designated operator shall operate the Garage with all services and facilities normally associated with comparable public parking garages in the City of Fayetteville, including lighting and signage to ensure the safe flow of vehicular and pedestrian traffic. City shall allow Tenant unimpeded and open access to the Parking Spaces. City will sign the Parking Spaces with adequate signage provided by the Tenant and approved by the City for the orderly management of the Garage. The City will enforce the use of the Garage using the standard ticketing, booting, and towing policies in operation for management of other downtown City parking garages. City will provide access fobs or cards to Tenant, at least one per space, and will offer replacement fobs or cards for a reasonable fee as dictated by the City of Fayetteville fee schedule.

b. City will maintain the Garage in good working condition, including routine cleaning and all maintenance, repair and replacement. City will coordinate in advance any maintenance or repair with Tenant prior to any such work, and will use commercially reasonable efforts to minimize interference with the use, occupation and enjoyment of the Parking Spaces by Tenant. Maintenance and repairs will be confined to the area actually being so maintained or repaired to the extent reasonably possible. In the event that Tenant is denied the use of any Parking Spaces because of any such maintenance or repairs, City will provide substitute parking spaces (in the Garage, if available) on a space by space basis for the period of time the Parking Spaces are unavailable to Tenant, at no additional cost to Tenant. The substitute parking spaces will be at a location within reasonable walking distance of the Garage and mutually agreeable to the City and Tenant, which agreement shall not to be unreasonably withheld.

c. The Parking Spaces will be made available for the exclusive use of the owners, residents, guests and/or customers of the Kress Lofts. The above notwithstanding, the Tenant shall utilize the Parking Spaces exclusively for legitimate residential and/or business purposes in connection with the Kress Lofts, the remainder of the Garage shall be available to the general public.

6. Casualty and Condemnation. If any portion of the Garage is damaged or destroyed as a result of a casualty event such that the use of the Parking Spaces is compromised, then City shall promptly repair and/or rebuild the Garage, including any affected Parking Spaces. For any casualty that renders more than half of the parking spaces in the Garage unusable, City shall have up to twenty four (24) months to repair and/or rebuild the Garage, provided that City will use its best efforts to complete the repair and/ or reconstruction in a shorter time. For any period of time that any Parking Spaces are unavailable, subject to the force majeure provisions of Section 8 below, City shall provide Tenant substitute parking spaces, on a space by space basis, as contemplated in above Section 4.b. In the event that any or all of the Parking Spaces become unavailable as a result of condemnation, City shall provide substitute parking spaces as contemplated in Section 4.b. above on a space by space basis.

7. Tenant Default.

a. Each of the following shall constitute a default hereunder by Tenant (each a "Default"):

i. The failure by Tenant to make any payment due to City hereunder within fifteen (15) days after written notice of nonpayment is given by City to the Tenant;

ii. The failure by Tenant to perform any of its other covenants or obligations hereunder within sixty (60) days after written notice of nonperformance is given by the City to the Tenant; provided, however, that if such failure to perform cannot reasonably be cured within sixty (60) days, the Tenant shall not be in default if it commences within sixty (60) days steps reasonably calculated to cure the nonperformance and in good faith pursues those steps diligently and in good faith to completion (not to exceed ninety (90) days).

b. Upon the occurrence of a Default as set forth in Section 6.a. above, the City may immediately terminate this Agreement by written notice to the Tenant. In addition to this right to terminate this Agreement, the City may also in the event of a Default by Tenant hereunder exercise any and all other rights and remedies available to the City at law or in equity, including without limitation the recovery of any and all monetary damages that the City has suffered as a result of such Default, provided that City shall make commercially reasonable efforts to mitigate Tenant's damages.

8. Termination. Upon the occurrence of any event of default by the Tenant, the City may, at the City selection, at any time thereafter (with or without prior notice or demand, and without limiting the City's other lawful rights and remedies) immediately terminate this Agreement by providing ninety (90) days advance written notice of such termination to Tenant. However, notwithstanding the foregoing, before the City shall have the right to terminate this Agreement, the City shall afford the Tenant thirty (30) days to cure the event of default. If the event of default is cured by the Tenant within such thirty (30) day period, then the City shall not have the right to terminate this Agreement. Also, it is agreed that Tenant may terminate this Agreement at any time so long as it has provided to the city at least ninety (90) days prior written notice of such termination to the City.

9. Force Majeure. A delay in, or failure of, performance by any party, shall not constitute a default, nor shall the Tenant or the City be held liable for loss or damage, or be in

breach of this Agreement, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such party, and its agents, employees, contractors, subcontractors, and consultants, including results from Acts of God or the public enemy, compliance with any order or request of any governmental authority or person authorized to act therefore, acts of declared or undeclared war, public disorders, rebellion, sabotage, revolution, earthquake, floods, riots, strikes, labor or equipment difficulties, delays in transportation, inability to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities or any other causes, whether direct or indirect, and which by the exercise of reasonable diligence said party is unable to prevent. For purposes of this Agreement any one delay caused by any such occurrence shall not be deemed to last longer than six (6) months and the party claiming delay caused by any and all such occurrences shall give the other party written notice of the same within thirty (30) days after the date such claiming party learns of or reasonably should have known of such occurrence. Notwithstanding anything else set forth above, after a total of nine (9) months of delays of any type have been claimed by a party as being subject to force majeure, no further delays or claims of any type shall be claimed by such party as being subject to force majeure and/or being an excusable delay.

10. Insurance Requirements. Tenant shall maintain commercial general liability insurance in the amount of at least One Million and No/100 Dollars (\$1,000,000.00) per occurrence. Such insurance coverage shall be obtained at the Tenant's sole expense and maintained during the Term of this Agreement and shall be effective prior to the beginning of any performance by the Tenant or others under this Agreement. All insurance companies providing the coverages required hereunder must be lawfully authorized to do business in North Carolina and be acceptable to City's risk manager, in its reasonable discretion. Certificates evidencing required insurance shall be delivered to the City prior to any use of the Spaces and upon renewal of the applicable policies. Notice of cancellation or reduction or elimination of coverage shall be provided to additional insureds in accordance with the terms of the applicable policy.

11. Indemnity. Tenant hereby assumes liability for, and shall indemnify, protect, defend, save and keep harmless City and its council members, officers, employees, agents, contractors, subcontractors, successors, assigns, licensees, mortgagees of City and invitees (individually a "City Indemnitee" and collectively, "City Indemnitees") from and against any and all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees actually incurred), whenever they may be suffered or incurred by, imposed on or asserted against a City Indemnitee, as applicable (collectively, "City Claims"), arising out of or resulting from: (i) any default, breach, violation, or nonperformance by Tenant under this Agreement (including breach of any representation, warranty or covenant of Tenant contained herein); or (ii) any negligent act or omission of Tenant, including, without limitation, injury to or death of any person or damage to property arising out of Tenant's use of the Parking Spaces, except in all cases to the extent such City Claims are caused by the negligent act or omission or willful misconduct of City or City Indemnitees. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

12. Assignment and Leasing. The Tenant shall not sublease, assign, pledge, mortgage, or otherwise encumber this Agreement, or further sublet any part or all of the Parking Spaces, by operation of law or otherwise, without the prior written approval by the City.

13. Notices. Except where other forms of notice are expressly and specifically authorized in this Agreement, all notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To the City:	City of Fayetteville 433 Hay Street Fayetteville, NC 28401 Attn: City Manager
with a copy to:	City of Fayetteville 433 Hay Street Fayetteville, NC 28401 Attn: City Attorney
To Tenant:	DK Enterprise, Inc. 4002 Arcadia Court Fayetteville, NC 28311 Attn: Daphne Sanitz daphnesanitz@gmail.com

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

14. Entire Agreement. This Agreement, including any attachments, exhibits, and referenced documents, constitutes the complete understanding between the parties hereto with respect to the matters addressed herein and supersedes all prior understandings and writings, and this Agreement may be amended or modified only by a writing signed by City and Tenant.

15. Miscellaneous.

a. The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

b. In the event that any provisions of this Agreement shall be held invalid, the same shall not affect in any respect whatsoever the validity of the remaining provisions of this Agreement.

c. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of North Carolina.

d. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[City signature page to Parking Lease Agreement]

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

CITY: City of Fayetteville

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

Name: Douglas J. Hewett, ICMA-CM

Title: City Manager

ATTEST:

Approved as to form:

\_\_\_\_\_

\_\_\_\_\_

Pamela Megill, City Clerk

\_\_\_\_\_, City Attorney

**STATE OF NORTH CAROLINA  
COUNTY OF CUMBERLAND**

I, \_\_\_\_\_, a Notary Public for \_\_\_\_\_ County, North Carolina, certify that **Pamela Megill** personally came before me this day and acknowledged that she is the **City Clerk** of **City of Fayetteville**, a North Carolina Municipal Corporation, and that by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its City Manager, sealed with its corporate seal and attested by herself as its **City Clerk**.

Witness my hand and notarial seal, this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Place seal here ↓

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[Tenant signature page to Parking Lease Agreement]

TENANT: DK Enterprise, Inc.

\_\_\_\_\_  
By: Daphne Sanitz, President

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public for said County and State, do hereby certify that Daphne Sanitz personally appeared before me this day and acknowledged that she is President of DK Enterprise, Inc. and in such representative capacity voluntarily signed and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Place seal here ↓

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_