

NORTH CAROLINA

ORANGE COUNTY

## **LEASE AGREEMENT AND OPTION CONTRACT**

THIS LEASE AGREEMENT AND OPTION CONTRACT (the "Agreement") is made and entered into this the \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the TOWN OF CARRBORO, North Carolina, a North Carolina municipal corporation, with its municipal offices at 301 West Main Street, Carrboro, NC 27510 (hereinafter referred to as "Lessee"), and Fitch Lumber Company, Inc., a North Carolina corporation, 502 North Greensboro Street, Carrboro, NC 27510 (hereinafter referred to as "Lessor").

### **I. LEASE AGREEMENT (the "Lease")**

IN CONSIDERATION of the covenants and agreements hereinafter set forth, Lessor does hereby demise and lease to Lessee for the term and upon the conditions hereinafter set out, the exclusive use of the property located at 502B North Greensboro Street, Carrboro, North Carolina (Orange County PIN 9778876689; the "Property"). The lease area of the Property is depicted on Exhibit A attached hereto and incorporated herein by reference. The property is to be leased for use as a parking lot.

TO HAVE AND TO HOLD said Property and the privileges and appurtenances thereto belonging to Lessor, his representatives, successors and assigns, upon the following terms and conditions:

1. Term. This Lease shall begin on the \_\_\_\_ day of \_\_\_\_\_, 2021, hereinafter referred to as the "Commencement Date," and shall continue for a term of three (3) year, provided that either party may terminate the lease sooner upon giving the other party ninety (90) days advance written notice of termination.

2. Automatic Renewal. The term of this Lease shall be automatically renewed and extended on a month-to-month UNLESS either party notifies the other of its intent NOT to renew at least ninety (90) days prior to the expiration of the original term; or

3. Rental. As rental for the Property, Lessee shall pay to Lessor each year of the Lease an amount equal to \$365 per parking space located on the leased area of the Property. Lessee shall, prior to commencing use of the Property, prepare at Lessee's own cost and deliver to Lessor with an estimate of the cost of any improvements to the Property deemed necessary by Lessee, a design and layout of the leased area showing the number of parking spaces to be marked and established on the Property. A copy of the parking lot plans and cost estimate shall then be attached to this lease as Exhibit B, and the number of parking spaces shown on Exhibit B shall become the basis for calculating the rent payment due. The costs, if any, actually incurred by Lessee to improve the parking lot area on the Premises shall be credited toward the rental due from Lessee to Lessor until the credit due to Lessee for the cost of said improvements is exhausted. The first year's rental payment and/or a certification from Lessee to Lessor of the cost of improvements actually incurred by Lessee to make the parking lot area suitable for use by Lessee, shall be delivered to Lessor within \_\_\_ days of completion by Lessee of the parking lot improvements. The yearly rental for each subsequent year shall be payable in one installment on or before the anniversary of the Commencement Date for each year of the lease term.

4. Use. Lessee shall use and occupy the Property throughout the duration of the Lease term only for a municipal parking lot. The parking lot on the Property shall be available for use twenty-four (24) hours per day, seven (7) days per week; HOWEVER, no overnight parking (between the hours of 3:00 a.m. and 7:00 a.m.) shall be permitted in the parking lot. No unlawful or offensive use shall be made of the Property. Lessee agrees to use the Property in a

Careful manner and to comply with all laws, ordinances and governmental restrictions relating to the use of said Property. Lessee shall not permit a nuisance to exist upon the Property, and Lessee hereby agrees to hold Lessor harmless from any and all acts committed or permitted by Lessee upon the Property resulting from the creation of a nuisance or other use of the Property prohibited by law. Lessee shall monitor use of the lease area to ensure compliance with these terms.

5. Upfit, Repairs and Maintenance. Lessee shall be responsible for all costs of improvements it deems necessary or appropriate to make the condition of the leased area of the Property suitable for the parking lot use. Lessee shall also, at its sole cost and expense, provide signage on the Property to identify the parking lot area which is the subject of this lease. Plans for all such improvements shall be approved by Lessor in advance of the work, such approval not to be unreasonably withheld, conditioned or delayed. Lessee agrees that during the term of this Lease, Lessee will, at its own expense, keep and maintain the parking lot on the Property in good condition.

Lessee agrees that it shall not, except with the prior written consent of Lessor, make any permanent structural alterations or additions to the lease area on the Property. Lessor shall not unreasonably withhold, condition or delay said consent.

If improvements are made, Lessee agrees that when completed, such improvements shall be free and clear of all claims for liens by mechanics or materialmen for and on account of labor and material, and Lessee indemnifies Lessor from and against any such costs, expenses and liabilities including, but not limited to, any and all liabilities from mechanic's, laborer's, or materialmen's liens.

Upon the expiration or termination of the term of this Lease, Lessee shall quit and surrender to Lessor the Property and any permanent improvements. Any temporary structures installed during the term of this Lease shall be removed by Lessee on or before the expiration or termination date of this Lease.

7. Taxes and Assessments. During the term of this Lease, Lessor shall be responsible for and shall pay all property taxes and assessments which may be assessed or levied upon the Property.

8. Utilities. During the term of this Lease, Lessee shall provide and pay the bills for all utilities, including but not limited to electricity and any other utility charges arising out of Lessee's use of the Property during the term of this Lease. Lessee shall cause a separate utility billing account to be created and separate meter(s) to be installed for any utilities it may use on the Property.

9. Insurance and Indemnity. Lessee warrants and covenants that at all times during the term of this Lease, the coverage provided by its General Liability Insurance Policy shall extend to the Property and the use of such as a public parking lot. Lessee shall furnish proof of such insurance upon Lessor's request.

Lessee further agrees that it will indemnify Lessor and save Lessor harmless from and against any and all claims, actions, damages, liability and expense in connection with the loss of life, personal injury and/or damages to property arising from or out of any occurrence in, upon or at the leased area of the Property, or the occupancy or use by Lessee of the Property or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, sublessees or concessionaires. In case Lessor shall, without fault on their part, be made a party to any litigation commenced by or against Lessee, then Lessee shall protect

and hold Lessor harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred or paid by Lessor in connection with such litigation.

10. Subrogation and Release. Lessor and Lessee release each other (including employees, agents, officers, officials and directors of each other) from all liability, whether for negligence or otherwise, in connection with a loss covered by any insurance policies which the releasor carries with respect to the Property or any interest or property therein or thereon (whether or not such insurance is required to be carried under this Lease), but only to the extent that such loss is collected under said insurance policies.

11. Personal Property and Improvements. Any equipment, temporary structures and other personal property installed in or attached to the Property by and at the expense of Lessee shall remain the property of the Lessee. Lessor agrees that Lessee, if not in default hereunder, shall have the right to remove any and all such equipment, temporary structures and other personal property which may be stored or installed on or attached to the Property; Lessee, however, shall upon such removal restore the Property to substantially the same condition in which it was prior to the installation or attachment of such equipment, temporary structures or other personal property, reasonable wear and tear excepted; further, Lessee shall remove any such equipment, temporary structures or other personal property on or before the expiration or termination date of this Lease, or any extension thereof.

12. Default. The happening of one or more of the following listed events (hereinafter referred to singularly as "event of default") shall constitute a breach of this Lease on the part of Lessee, namely:

- a. Failure of Lessee to pay any rents payable under this Lease; or

- b. Failure of Lessee to perform fully and promptly any act required of it in the performance of this Lease or otherwise to comply with any term or provision hereof.

Upon the happening of any event of default and failure of Lessee to cure or remove the same within fifteen (15) days after written notice to do so given by Lessors to Lessee, Lessors, at their election, may terminate this Lease by written notice of its election to do so given by Lessors to Lessee.

13. Expiration and Termination. Upon the expiration or termination of this Lease or any extension thereof, Lessee shall promptly surrender possession of and vacate the Leased Premises and deliver possession thereof to Lessors.

14. Subletting and Assignment. Lessee shall not sublet the Property or any part thereof or assign this Lease or any part thereof without the prior written consent of Lessor for parking lot use only.

15. Holding Over. Each holding over after the expiration of the term(s) hereof, with the consent of Lessor, shall be construed to be a tenancy from month-to-month with rental payable at a rate of one-twelfth ( $1/12$ ) of the yearly rental in advance and shall be on the terms and conditions herein specified so far as applicable.

16. No Waiver. No provision of this Agreement shall be deemed amended or waived unless such amendment or waiver is set forth in a writing signed by both parties.

17. Holidays. If any date set forth in this Agreement or computed pursuant to this Agreement falls on a Saturday, Sunday or national holiday, such date shall be deemed automatically amended to be the first business day following such weekend day or holiday.

18.    Notices.     Any notices, requests or other communication to be given by either party hereto shall be in writing and shall be sent by registered or certified mail, postage prepaid, addressed (until another address is supplied to the other party by the addressee) as follows:

NOTICE GIVEN TO LESSOR:  
David Fitch  
Fitch Lumber  
309 N. Greensboro St  
Carrboro, North Carolina 27510

NOTICE GIVEN TO LESSEE:  
Town Manager  
Town of Carrboro  
301 W. Main Street  
Carrboro, North Carolina 27510

For all purposes hereunder, a notice shall be deemed given on the date on which it is mailed.

19.    Successors.    Lessor and Lessee agree that all provisions hereof shall bind and inure to the benefit of all parties hereto, their respective heirs, legal representatives, assigns, and successor or successors.

20.    Entire Agreement. This writing contains a full, final and complete contract of the parties.

21.    Law.     This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina.

22.    Invalid Provisions. The invalidity or unenforceability of any particular provision of this Agreement shall not affect any other provisions hereof, and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

23. Attorney's Fees. In the event of any breach or default hereof by a party, the non defaulting party shall be entitled to recover its costs and expenses of litigation and settlement, including, without limitation, attorney's fees and expenses, court costs, settlement costs and experts' costs and fees.

24. Counterparts. This Lease may be executed in several identical counterparts, each of which shall be considered an original, but all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Agreement to be executed by duly authorized individuals or officers (as the case may be) and their seal, if any, to be hereunto affixed, and the Lessee's Town Council authorization having been duly given, as of the day and year first above written.



Town of Carrboro, LESSEE:

BY: \_\_\_\_\_  
Richard J. White III, Town Manager

Fitch Lumber Company, Inc., LESSOR:

BY: \_\_\_\_\_  
David Fitch, President

ATTEST:

\_\_\_\_\_  
Town Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Finance Director