

**RESOLUTION NO. 5-23-133
BOROUGH OF HIGHLAND PARK
COUNTY OF MIDDLESEX**

RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF HIGHLAND PARK, COUNTY OF MIDDLESEX, NEW JERSEY, AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT WITH NASSAU WOOD INDUSTRIES FOR USE OF THE PARKING LOT AT THE FORMER STOP AND SHOP

WHEREAS, the Borough of Highland Park is a public body corporate and politic of the State of New Jersey (the “**Borough**” or “**Licensee**”); and

WHEREAS, Nassau Wood Industries (the “**Licensor**” or “**Owner**”) owns or controls Block 3002, Lots 3, 4, 5, 6, 8, 30, and 37 in the Borough of Highland Park (the “**Property**”), which is the site of the former Stop and Shop; and

WHEREAS, the Borough is seeking temporary use of the parking lot on the Property (the “**Parking Area**”), for parking for Borough residents and visitors and to create community space for residents and visitors and to periodically hold community programs and events; and

WHEREAS, the Owner has agreed to grant the Borough access to the Parking Area in order for the Borough to commence these activities; and

WHEREAS, the Owner represents that this Agreement will not conflict with any other agreements related to the Property,

WHEREAS, Borough wishes to enter into a license agreement (the “**License Agreement**”), attached hereto as *Exhibit A*, with the Owner for the use of the Parking Area under the terms and conditions set forth therein,

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Highland Park as follows:

Section 1. Generally. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. Execution of License Agreement. The Borough Council hereby authorizes the Borough Administrator to execute the License Agreement, attached hereto as *Exhibit A*.

Section 3. Severability. If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.

Section 4. Availability of the Resolution. A copy of this Resolution shall be available for public inspection at the office of the Borough Clerk.

Section 5. Effective Date. This Resolution shall take effect immediately.

I, Jennifer Santiago, Borough Clerk of the Borough of Highland Park, New Jersey, do hereby certify the above to be a true copy of a resolution adopted by the Borough Council of said Borough on the May 2, 2023.

Jennifer Santiago, Borough Clerk

RECORD OF COUNCIL VOTES

Council Member	Ayes	Nays	Abstain	Absent
Canavera				
George				
Hale				
Hersh				
Kim-Chohan				

Exhibit A

LICENSE AGREEMENT

This License Agreement (the “**Agreement**”) is made as of the date of last execution (the “**Effective Date**”) between the **BOROUGH OF HIGHLAND PARK** (“**Licensee**” or “**Borough**”), a body corporate and politic of the State of New Jersey, having offices at 221 South 5th Avenue, Highland Park, New Jersey 08904, and **NASSAU WOOD INDUSTRIES** (“**Licensor**” or “**Owner**”), a Limited Partnership, with an address of /200 Palafox Place, Pensacola, Florida 32502, (each individually a “**Party**” and collectively the “**Parties**”).

WHEREAS, the Owner owns or controls certain real property in Middlesex County, New Jersey, Block 3002, Lots 3, 4, 5, 6, 8, 30, and 37 in the Borough of Highland Park (the “**Property**”); and

WHEREAS, the Borough is seeking temporary use of the parking lot on the Property (the “**Parking Area**”) for parking for Borough residents and visitors and to create community space for residents and visitors and to periodically hold community programs and events; and

WHEREAS, the Owner has agreed to grant the Borough access to the Parking Area in order for the Borough to commence these activities; and

WHEREAS, the Parking Area is further described in **Exhibit A**; and

WHEREAS, the Owner represents that this Agreement will not conflict with any other agreements related to the Property,

NOW THEREFORE, for good and valuable consideration and the mutual promises and covenants contained herein, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **Recitals**. The foregoing recitals are incorporated herein as if set forth at length.
2. **Term**. This Agreement shall commence on the Effective Date and terminate no later than one (1) year thereafter or upon the termination of this Agreement by either Party, which termination can be made for any reason or no reason at all, upon thirty (30) calendar days advance written notice to the other Party.
3. **Payment by the Borough**. In exchange for the access provided by this Agreement, the Borough agrees to pay Owner the sum of \$10.00 per month, which payment shall be made before the fifth day of each month of the Term. The first monthly payment shall be due on the Effective Date and the monthly payment shall be pro-rated for the first and last month of the Agreement.
4. **Activities**. The Borough shall have the right to use Parking Area for Borough parking for residents and visitors and to conduct various community programs and events. The Borough shall have the right to close entrance/exits and driveways into/out of the Parking Area off of Raritan Avenue at its discretion. The Borough shall also have the right to close off the Parking

Area for vehicle parking during community programs and events. The Borough will establish a covered seating area in the parking aisle along the Raritan Avenue frontage, similar to what was installed at the Farmers' Market parking lot near 212 Raritan Avenue. The seating and covered area will be removable and meet all safety and code standards.

5. **Right of Entry.** The Owner hereby grants the Borough including its employees, subcontractors and agents, as well as residents and visitors of the Borough, a limited, non-exclusive, non-transferable, non-assignable, revocable license to enter the Property, at the Borough's sole cost and expense and discretion, for the purposes set forth in Section 4 hereof. The access provided by this Agreement does not create any interest in, title, right of possession of the Property, or any rights as a tenant by the Borough.

6. **Maintenance.** The Borough will be responsible maintenance in the Parking Area during the term of the Agreement, to include snow removal, litter removal, and pothole repair.

7. **Lights.** The Owner agrees to maintain all light poles in the Parking Area, which shall be illuminated from Dusk until Dawn to promote safety in the Parking Area, but the Borough will be responsible to reimburse the Owner for the cost of the electricity to maintain such illumination.

8. **Insurance.** As a condition to entry onto the Parking Area, the Borough shall provide and maintain, at its sole cost and expense, commercial general liability insurance with combined single limit coverage of One Million Dollars (\$1,000,000) during the Term of this Agreement. The Borough shall include Owner as an additional insured on the Borough's liability insurance policy and provide Owner with an insurance certificate prior to the Effective Date.

9. **Indemnification.** The Borough shall save and hold harmless, protect, and indemnify the Owner, and their respective employees, directors, officers, contractors, subcontractors and licensees (collectively, the "**Indemnified Parties**") from and against any and all liabilities, obligations, damages, penalties, claims of any kinds, causes of action, costs, charges and expenses, including attorney's fees (collectively, the "**Claims**"), which may be imposed upon or incurred by or served against the Indemnified Parties by reason of any occurrence or accident arising out of the use of the Parking Area by the Borough, its employees, agents, or any member of the general public whether using the Licensor Property for the purpose set forth herein, or otherwise.

10. **Entire Agreement.** This Agreement constitutes the entire Agreement concerning the subject matter hereof and supersedes any and all prior representations, understandings, and agreements between the Borough and the Owner with respect to such subject matter. If there is a conflict between and among this Agreement and any other documents or representations, this Agreement shall be the final expression of the Borough's and the Owner's intent with respect to the Work. Any amendment to this Agreement shall be in writing and signed by both Parties.

11. **Assignment.** This Agreement may only be assigned with the written consent of the Parties, which shall not be unreasonably withheld, as to an assignment sought by Owner.

However, Owner may withhold consent of an assignment sought by the Borough for any reason or no reason.

12. **Notices.** Notices, other than a notice of default under this Agreement, shall be given by U.S. Mail and shall be simultaneously sent by e-mail. Notices of default shall be served by UPS or Federal Express and shall be simultaneously sent by email. Notice to each Party shall be as follows:

If to the Borough:

Borough of Highland Park
221 South 5th Avenue
Highland Park, New Jersey 08904
Attn: Teri Jover
Tel. No.: (732) 819-3789
E-mail: tjover@hpboro.com

with a copy to:

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Attn: Joseph P. Baumann, Esq.
Tel. No. 973-622-5259
E-mail: jbaumann@msbnj.com

If to the Owner:

Nassau Wood Industries, LP
200 Palafox Place
Pensacola, Florida 32502
Attn: [_____]
Tel: [_____]
E-mail: [_____]

13. **Governing Law and Jurisdiction.** The Parties agree that this Agreement shall be governed by and interpreted according to the laws of the State of New Jersey, without reference to the choice of law principles thereof. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Middlesex County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated thereby and to the laying of venue in such Court. Each Party hereto irrevocably waives any objection to the laying of venue or that any such action or proceeding brought in said Court has been brought in an inconvenient forum

14. **Waiver.** No waiver by a party of a breach of any of the terms, covenants or conditions of this Agreement will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. The

consent or approval by a party to or of any act by the other requiring consent or approval does not waive or render unnecessary the consent or approval to or of any subsequent similar acts.

15. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein, provided, however, that this Agreement shall be null and void in the event the provisions held illegal, invalid, or unenforceable would eliminate the Borough's indemnification (para. 9) of the Owner, or the Borough's obligation to provide insurance (para. 8) and to maintain the Parking Area (para. 6).

16. **Legal Authority.** The individuals who have executed this Agreement on behalf of the respective Parties expressly represent and warrant that (a) they are authorized to sign on behalf of such Party for the purpose of duly binding such Party to this Agreement and (b) the rights and obligations hereunder are valid, binding, and enforceable. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such counterpart shall, for all purposes, be deemed an original instrument, but all such counterparts together shall constitute but one and the same Agreement. Facsimile and electronic mail (in Portable Document Format "PDF") signatures of the undersigned Parties shall have the same force and effect as original signatures.

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IN WITNESS WHEREOF, the Parties have executed this Agreement on the date hereinbefore first indicated.

THE BOROUGH OF HIGHLAND PARK

By: _____

Name:

Title:

Date:

NASSAU WOOD INDUSTRIES LP

By: _____

Name: David Landa

Title:

Date:

EXHIBIT A
Parking Area Description

