

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“Memorandum”), effective this ____ day of _____ 2023 is entered into between the City of Aurora, an Illinois Municipal Corporation, 44 E. Downer Place, Aurora, Illinois, (hereinafter, the “City”) and Chicago Premium Outlets, LLC, located at 225 West Washington Street, Indianapolis, IN 46204 (hereinafter, “Partner”).

RECITALS

WHEREAS, the Aurora Police Department (hereinafter, “Department”) is a law enforcement organization of the City of Aurora, County of Kane, State of Illinois, responsible for the preservation of safety and security in the geographic area in which it has jurisdiction;

WHEREAS, Partner owns and operates Chicago Premium Outlets located at 1650 Premium Outlet Boulevard, Suite 150, Aurora, Illinois 60502 and is an organization, corporation, or business operating within the jurisdiction of the Department; and

WHEREAS, Partner operates a system of closed circuit surveillance cameras at Chicago Premium Outlets (“Mall Surveillance System”); and

WHEREAS, the objective of this Memorandum is to set forth the terms and conditions of the sharing of video through the Mall Surveillance System with the Department in the spirit of partnership for improved situational awareness and efficiency of emergency response by the Department; and

WHEREAS, this Memorandum establishes channels of communication and sharing of digital information and images (“Video Information”) from Partner’s Mall Surveillance System via software designed by Fusus (“Software”).

THEREFORE, in consideration of the premises, mutual promises, and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Department and Partner agree as follows:

I. PURPOSE & SCOPE

The purpose of this Memorandum is to set forth guidelines for the sharing of Partner’s Mall Surveillance System and Video Information with the Department via the Software.

II. RESPONSIBILITIES OF DEPARTMENT

- 2.1 The Department will be permitted to access portions of the Mall Surveillance System designated by Partner for fusion into the Software.
- 2.2 The Department agrees that it will only access the Mall Surveillance System under exigent circumstances, including, but not limited to emergency situations and suspected or threatened criminal activity, or with Partner’s written approval

with respect to holidays or other specific dates that reasonably warrant a heightened level of security as determined by the Department.

- 2.3 Subject to the paragraph 2.4, the Department will not share, access, or provide access to Partner's Mall Surveillance System or Video Information with any third party including but not limited to members of the public, any media or press outlet, any online media outlet (including any blogs or podcasts), or any other third party not directly employed by the Department or any other local, state or federal law enforcement agency, without the consent of the Chief of Police or his/her designee and without first notifying Partner in writing through hardcopy or electronic format. Further, the Department will ensure video access is limited to authorized personnel of the Department with a need to access the information.
- 2.4 As a public body, the City's records are governed by the Illinois Freedom of Information Act (5 ILCS 140/1), which provides that any public records in its possession are subject to inspection by the public. Therefore, unless a statutory exemption applies, records relating to this Memorandum are considered public records under FOIA and therefore not confidential. To the extent the Partner may be performing a governmental function on behalf of the City, records in Partner's possession that relate to this Memorandum, unless exempt by FOIA, may also be considered public records subject to inspection by the public. Therefore, Partner agrees to cooperate with the City in the event a FOIA request for such records is received and agrees to provide the City with the requested records within two (2) business days.
- 2.5 The Department will ensure that any employee responsible for access to Partner's Mall Surveillance System and Video information is informed of the confidentiality, and security of access outlined in the Memorandum. The Department will direct any inquiries related to Partner or Partner's video sources to the appropriate designee as indicated in Section VIII.

III. RESPONSIBILITIES OF PARTNER

- 3.1 Partner will appoint and identify to the Department at least one (1) representative who has technical knowledge about the Mall Surveillance System and who will serve as the Department's primary point of contact with respect to the Mall Surveillance System, the Software, the Video Information, and the terms and conditions set forth in this Memorandum. Partner will also provide the Department with an emergency contact protocol and contact person.
- 3.2 Typical configuration may require installation of hardware and/or software at Partner location, which hardware and/or software shall be purchased by Department and installed at no cost to Partner.

IV. VIDEO ACCESSIBILITY, RETRIEVAL, & OWNERSHIP

- 4.1 Subject to the terms and conditions of this Memorandum, Partner hereby grants to the Department, its officers, representatives, agents and employees a limited,

revocable license to access the Mall Surveillance System via the Software at no charge for the purposes stated herein. Video access is granted by Partner to video sources designated by Partner that are controlled by Partner. It is neither intended nor expected that Partner's cameras will be routinely monitored in real-time by the Department except for situations outlined in section 2.2 above.

- 4.2 The Department acknowledges and agrees that the Department's license to access, view, or share the video shall be limited to the public safety purposes described herein. Access to Mall Surveillance System and Video Information by the Department does not constitute commitment on the part of the Department that video will be viewed when requested by Partner.
- 4.3 The Department may only download video upon prior written approval from Partner. Timing and scheduling of such downloading shall be reasonably determined by Partner, in its sole and absolute discretion, taking into account any disruption of its business operations, the requested duration and scope of such access, and other similar considerations. Recognizing the public safety purposes of this Memorandum, Partner shall not unreasonably withhold such approval.
- 4.4 Video downloaded from Partner's camera system that is deemed pertinent to an ongoing investigation or inquiry is deemed as property/evidence of the Department for all intents and purposes.

V. DISCLAIMERS AND LIABILITIES

- 5.1 The Department has no duty to access the Mall Surveillance System nor to service or install any cameras on Partner's behalf nor on the Department's behalf. Partner further acknowledges that the Department's intent with respect to this Memorandum is solely for public safety purposes. The Department acknowledges that Partner retains sole ownership of, sole responsibility for, and exclusive control over the Mall Surveillance System and Video Information.
- 5.2 EXCEPT AS SPECIFICALLY SET FORTH OTHERWISE IN THIS MEMORANDUM, THE DEPARTMENT AND PARTNER MAKE NO REPRESENTATIONS OR WARRANTIES, EITHER EXPRESSED OR IMPLIED, OF ANY KIND WITH RESPECT TO THE MALL SURVEILLANCE SYSTEM OR THE SOFTWARE INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH WITHOUT LIMITING THE FOREGOING ARE DISCLAIMED BY BOTH PARTIES.
- 5.3 This Memorandum is not intended to and does not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between the parties. The rights and the obligations of the parties are limited to those expressly set forth in this Memorandum. Each party acknowledges that it is not a representative, employee, agent, or partner of any other party.

- 5.4 Each party shall be responsible for the negligent acts or omissions of its own agents and employees in the performance of their respective obligations under this Memorandum to the extent authorized by law. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity is applicable. Nothing herein shall be construed as consent by the City to be sued by third parties in any matter, whether arising out of this Memorandum or any other contract.

VI. TERM AND REMOVAL OF HARDWARE/SOFTWARE

- 6.1 The effective date (“Effective Date”) of this Memorandum shall be the date that the Memorandum is executed by the last to sign of the City or Partner. This Memorandum shall begin as of the Effective Date and shall continue for one (1) year, unless otherwise terminated as provided herein. This Memorandum will automatically renew for successive one (1) year terms, with a maximum of two (2) renewal periods, unless either party terminates this Memorandum as provided herein.
- 6.2 Any party may terminate this Memorandum at any time and for any reason by giving at least thirty (30) days’ written notice to the other party. Upon receipt of said notice, parties will work together to remove/deactivate any hardware and/or software and disable the Department’s access to the Mall Surveillance System within ten (10) days of the termination of this Memorandum.
- 6.3 Any and all necessary hardware/software required will be furnished and installed by, and, as appropriate, removed by Department at no cost to Partner, and if necessary, by a Partner-approved vendor.

VII. NO ASSIGNMENT

Neither party may assign or transfer all or any portion of this Memorandum or the rights and obligations granted hereunder without the prior written consent of the other party.

VIII. NOTICES

Notices provided for in this Memorandum, except for emergency related notices, must be given in writing and delivered via United States mail service, first class and certified, return receipt requested, with postage prepaid, or by reputable overnight carrier with delivery charges prepaid and proof of delivery service to be provided, and addressed as follows:

FOR THE DEPARTMENT:

City of Aurora Police Department
Chief of Police
1200 E. Indian Trail
Aurora, Illinois 60505

WITH COPY TO:

City of Aurora- Law Department
Corporation Counsel
44 E. Downer Place
Aurora, Illinois 60507

FOR PARTNER:

Chicago Premium Outlets, LLC
1650 Premium Outlet Blvd., Suite 150
Aurora, Illinois 60502
Attn: General Manager

WITH COPY TO:

Simon Property Group, L.P.
Attn: Legal Operations
225 West Washington Street
Indianapolis, IN 46204

Changes to these addresses must be in writing and delivered in accordance with the provisions of this Article. Notices delivered by mail are considered received three (3) days after mailing in accordance with this Article. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

IX. MISCELLANEOUS

- 9.1 No waiver or modification of this Memorandum or of any covenant, condition or limitation contained herein shall be valid unless it is reduced to written form and duly executed by the parties. No evidence of any waiver or modification of the terms herein shall be offered or received in evidence in any proceeding, arbitration, or litigation between the parties arising, in any manner, out of this Memorandum, unless such waiver or modification is in writing and duly executed by the parties.
- 9.2 The individuals executing this Memorandum each represent that they have the authorization to execute this Memorandum on behalf of their respective party.
- 9.3 This Memorandum contains the entire agreement between the parties. The parties acknowledge and agree that neither of them has made any representations with respect to the subject matter of this Memorandum or any representations inducing its execution and delivery except such representations as are specifically set forth in this writing, and the parties acknowledge that they have relied on their own judgment in entering into the same. The parties further acknowledge that any statements or representations that may have been made by either of them to the other are void and of no effect and that neither of them has relied on such statements or representations in connection with its dealings with the other.

9.4 This Memorandum shall be interpreted and construed in accordance with and governed by the laws of the State of Illinois. The parties agree and accept that jurisdiction of any controversies or legal issues arising out of this Memorandum, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the courts having jurisdiction over Kane County, Illinois. Both parties hereby agree to waive a jury trial in any such action and will proceed to a trial by judge, if necessary.

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IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have duly executed this Memorandum of Understanding as of the date first above written.

CHICAGO PREMIUM OUTLETS, LLC, a Delaware limited liability company

By: _____

Its: _____

Date: _____

CITY OF AURORA, an Illinois Municipal Corporation

Aurora Police Department Chief of Police

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