

PARKING LICENSE AGREEMENT

THIS PARKING LICENSE AGREEMENT (this "License") is made and entered into as of _____, 2017 (the "Commencement Date"), by and between **FIFTH THIRD BANK**, an Ohio banking corporation (the "Licensor") and **THE CITY OF AURORA, ILLINOIS** (the "Licensee").

1. **License of Licensed Premises.** Licensor hereby grants to Licensee a revocable license to use a portion of the parking lot located south of the intersection of S. Broadway and E. Downer Place in Aurora, Illinois, said portion being shown with cross-hatching on Exhibit A attached hereto and made a part hereof (the "Premises"). The property owned by Licensor that is shown on Exhibit A attached hereto and incorporated herein by this reference, and is adjacent to the Premises, is hereby referred to as the "Licensor Property." This License creates a revocable license only, and shall not be deemed to create an easement, irrevocable license, lease, fee interest or any other interest in the Premises or any portion thereof. Licensee accepts the Premises in its "as is" condition without any warranty or representation whatsoever from Licensor.

2. **Term.** The term of this License (the "Term") shall commence on the Commencement Date and shall expire on the date immediately preceding the second (2nd) anniversary of the Commencement Date. So long as, both as of the exercise date and as of the first day of the Extended Term (as hereinafter defined) this License is in full force and effect and no default has occurred hereunder, Licensor hereby grants to Licensee one (1) option to extend the initial Term for a period of two (2) years, beginning immediately upon the expiration of the initial Term ("Extended Term"), such option to be exercised by Licensee giving written notice of its exercise to Licensor at least nine (9) months prior to the expiration of the initial Term. Notwithstanding anything contained herein to the contrary, Licensor may terminate this License by delivering sixty (60) days' written notice of termination to Licensee.

3. **Fee.** Licensee agrees to pay to Licensor, as a fee for use of the Premises, the sum of \$10.00 for the initial Term, and an additional \$10.00 if Licensee exercises the Extended Term.

4. **Use of Premises; Improvements.** Licensee shall have the right to use the Premises solely for the parking of vehicles. Licensee shall not use the Premises for any other purpose. Without limiting the foregoing, Licensee shall not maintain, repair, service, wash, wax or clean vehicles on the Premises. Licensee, at its sole cost and expense, shall obtain any permits and authorizations from any applicable government authorities that are required for the use of the Premises as permitted hereunder. Licensee shall exercise its rights hereunder in strict accordance with all applicable recorded documents and all governmental laws, rules, codes, approvals and permits, and in a manner that does not impair or interfere with Licensor's use of the Licensor Property. No oversized vehicles (such as, but not limited to, motor homes, boats, trailers, or commercial trucks) shall be permitted on the Premises.

Licensee shall not make any improvements or alterations to the Premises without the written consent of the Licensor, which consent may be withheld in Licensor's sole and absolute discretion. Any such permitted improvements or alterations shall be made in a good and workmanlike manner and in conformance with governmental rules and ordinances pursuant to valid permits. All work shall be performed by licensed contractors, and shall be performed by Licensee outside of Licensor's banking/operating hours. Licensee shall not suffer or permit any mechanics' liens or other liens to be filed against the Premises or the Licensor Property.

Licensee shall, at Licensee's sole cost and expense, restripe all parking spaces located on the

Premises and on the Licensor Property in the manner shown on Exhibit B attached hereto and incorporated herein by this reference (the "Licensee Work") in accordance with this Article 4 and in accordance with plans and specifications prepared by Licensee and approved by Licensor in writing. Licensee shall not commence the Licensee Work until Licensor has approved such plans and specifications, and Licensee has provided written notice to Licensor that Licensee intends to commence the Licensee Work. Once Licensee has commenced the Licensee Work, Licensee shall complete the same within thirty (30) days thereafter. When performing the Licensee Work, Licensee shall first restripe all parking spaces on the Licensor Property prior to performing any work on the Premises, and once Licensee commences such work on the Licensor Property, Licensee shall complete the same within forty-eight (48) hours thereafter. The Licensee Work shall be performed only during those periods of time (i.e., weekends, holidays and off-business hours) that Licensor is not open for business on the Licensor Property. Furthermore, during the performance of the Licensee Work, if and for so long as any parking spaces located on the Licensor Property are unavailable or unusable to Licensor, Lessee shall provide temporary replacement parking for Licensor's use within one (1) block of the Premises.

Within sixty (60) days after the expiration or earlier termination of this License, Licensee shall, upon Licensor's request, and at Licensee's sole cost and expense, return the Premises and the Licensor Property to the condition the same were in as of the Commencement Date (collectively, the "Restoration Work"). If Licensee fails to timely complete the Restoration Work, Licensor may perform the Restoration Work at Licensee's sole cost and expense. If Licensor performs all or a portion of the Restoration Work, Licensee shall, within ten (10) days after written demand from Licensor, reimburse Licensor for all costs and expenses incurred by Licensor in performing the Restoration Work, and if Licensee fails to timely make such payment, Licensee hereby agrees that Licensor may offset and deduct such unpaid amounts from any sums owed by Licensor to Licensee (whether such sums arise from taxes, utility payments, license fees or otherwise).

5. **Maintenance; Insurance.** During the Term, Licensee shall, at Licensee's sole cost and expense, (i) keep the Premises and the Licensor Property free of trash, litter, debris, snow and ice, and in good condition and repair (including, without limitation, the performance of any necessary paving, repaving, sealing, resealing, resurfacing, pothole repair, seal-coating and parking space striping) (ii) maintain any and all landscaping located on the Premises and the Licensor Property and (iii) repair any damage to the Premises, the Licensor Property, or the improvements thereon, caused by Licensee or Licensee's employees, agents or invitees.

Licensor shall not be responsible for theft, loss or damage to any property, inventory, or equipment of the Licensee on the Premises (all of which shall be brought onto the Premises at the sole risk and responsibility of Licensee and Licensee's agents, employees, invitees or licensees) or for any injury to any of Licensee's employees, guests or invitees on the Premises. Licensor shall have no obligation to provide any security services with respect to the Premises. Licensee shall, at its sole cost and expense, carry and maintain commercial general public liability insurance insuring against all liability arising out of, by reason of, or in connection with the condition, use, occupancy or possession of, or any conduct or activity on, the Premises, with single limit of liability limit of not less than \$2,000,000, naming Licensor as an additional insured. Licensee shall provide that the policy or policies of insurance required hereunder shall be primary. Licensee shall furnish Licensor with a copy of its certificate of insurance prior to the Commencement Date. Licensee shall indemnify, defend and hold harmless Licensor, and its officers, directors, agents, representatives, members and employers harmless from and against all liens and encumbrances of any nature whatsoever which may arise in the exercise of Licensee's rights hereunder, and from any and all claims, causes of action, liabilities, costs and expenses (including reasonable attorneys' fees), losses or damages arising from Licensee's use of the Premises, any breach of this Licensee, or any act or failure to act of Licensee or Licensee's agents, employees or invitees.

6. **Assignment/Sublicense.** Licensee shall not have the right to sublicense any portion of the Premises, or assign, convey or transfer Licensee's interest in this License without the written consent of Licensor.

7. **Default and Remedies.** Upon any default by Licensee of any of Licensee's obligations under this License, Licensor shall provide Licensee five (5) days to cure such default after written notice from Licensor. Should Licensee fail to cure such default within the aforesaid time period, Licensor shall have the right to immediately terminate this License and/or to exercise any and all rights and remedies available to Licensor at law and/or in equity. Without limiting the foregoing, if Licensee fails to perform its obligations hereunder, Licensor may perform the same on Licensee's behalf, and in the event that Licensor does so, Licensee shall reimburse Licensor for all costs and expenses paid or incurred by Licensor in connection with such performance. Upon Licensor's termination of this License or the termination of Licensee's right to possession of the Premises, Licensee shall immediately vacate the Premises and remove all property from the Premises. Any property remaining on the Premises after such termination shall be deemed to be abandoned by Licensee and may be removed by Licensor. Licensee shall be obligated to reimburse Licensor for any reasonable attorneys' fees incurred by Licensor in connection with any action or proceeding by Licensor to collect or to enforce any of the provisions of this License or to secure any rights due Licensor under this License. Licensee shall pay to Licensor: (i) a late charge of five percent (5%) of any payment or fee that is not paid within five (5) days after such payment or fee is due and (ii) interest on any payment or fee that not paid within five (5) days after such payment or fee is due at the rate of ten percent (10%) per annum from its due date until paid. If Licensee fails to timely pay any sums due hereunder to Licensor, Licensee hereby agrees that Licensor may offset and deduct such unpaid amounts from any sums owed by Licensor to Licensee (whether such sums arise from taxes, utility payments, license fees or otherwise).

8. **Parking Enforcement.** During the Term, Licensee shall, at Licensor's direction, enforce all parking signage/rules that Licensor posts on the Licensor Property. Such enforcement shall include, as and when directed by Licensor, the ticketing of vehicles violating such signage/rules and the booting and/or towing of offenders.

9. **Miscellaneous.**

a. No failure by either Licensor or Licensee to insist upon the strict performance by the other of any covenant, agreement, term or condition of this License or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this License, but each and every covenant, condition, agreement and term of this License shall continue in full force and effect with respect to any other then existing or subsequent breach.

b. Time is of the essence of this License and of each provision.

c. This License may be executed in facsimile or other electronic format (including PDF) and in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

d. Each and all of the covenants, conditions and restrictions in this License shall inure to the benefit of and shall be binding upon the successors in interest and permitted assigns of Licensor and Licensee.

e. This License contains the entire agreement of the parties with respect to the matters

covered by this License and no other agreement, statement or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this License shall be binding or valid.

f. THIS LICENSE SHALL BE INTERPRETED AND CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED ENTIRELY IN THE STATE. THE PARTIES AGREE THAT VENUE FOR AND LEGAL ACTION INSTITUTED IN CONNECTION WITH THIS LICENSE SHALL BE PROPER EXCLUSIVELY IN ILLINOIS. THE PARTIES HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO, OR ARISING OUT OF THIS LICENSE.

g. Neither Licensee nor any person or entity entering the Premises by, through, or under Licensee shall cause or permit any "Hazardous Material" (as hereinafter defined) to be brought upon, or kept or used in or about the Premises or the Licensor Property. Licensee shall indemnify, defend, and hold the Licensor harmless from and against any and all claims, judgments, damages, penalties, fines, costs, expenses, liabilities, or losses that arise during or after the term of this License by reason of the presence of any Hazardous Material on or about the Premises or the Licensor Property due to the actions of Licensee or anyone claiming by through or under Licensee. The term "Hazardous Material" means any petroleum or petroleum products, any radioactive materials, and hazardous substance, material, or waste which is defined or listed or regulated by any local, state, or federal governmental authority including, without limitation, (i) any material or substance which is (A) designated as a "hazardous substance" under the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., (B) defined as "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., (C) identified as "hazardous constituents" in 40 CFR, Part 261, Appendix VIII, or (D) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq and (ii) polychlorinated biphenyls, asbestos, and any other substance subject to the National Emissions Standard for Hazardous Air Pollutants as found in 40 CFR 261.

h. If Licensee is awarded a money judgment against Licensor, then recourse for satisfaction of such judgment shall be limited to execution against Licensor's estate and interest in the Premises. No other asset of Licensor, any partner, director, member, officer or trustee of Licensor or any other person or entity shall be available to satisfy or be subject to such judgment, nor shall any such individual or other person or entity be held to have personal liability for satisfaction of any claim or judgment against Licensor or any such individual.

i. Nothing contained herein will be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership or of joint venture between the parties hereto.

j. The person executing this on behalf of Licensee represents and warrants that such person is duly authorized by the governing body of Licensee to execute and deliver this License on behalf of Licensee. The person executing this on behalf of Licensor represents and warrants that such person is duly authorized by the governing body of Licensor to execute and deliver this License on behalf of Licensor.

k. In the event any clause, sentence or portion of the terms, conditions, covenants and provisions of this License are deemed illegal, null or void for any reason, or are held by any court of competent jurisdiction to be so, the remaining portions of this License shall remain in full force and effect.

l. All notices required by this License or otherwise given by one party to the other must be in writing and delivered by personal delivery, by certified or registered mail or by recognized

overnight courier service to the addresses provided below:

To Licensee: City of Aurora

To Licensor: Fifth Third Bank
1701 Golf Road, 8th Floor
MD GRLM8E
Rolling Meadows, Illinois 60008
Attention: Randy Morrissey

With copies to: Fifth Third Bank
Fifth Third Center
38 Fountain Square Plaza
MD10ATA1
Cincinnati, Ohio 45263
Attn: Senior VP Enterprise Workplace Services

CBRE, Inc.
Lease Administration
38 Fountain Square Plaza
MD 10ATA2
Cincinnati, Ohio 45263

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this License for the purposes therein expressed the day and year first written above.

Licensor:

FIFTH THIRD BANK, an Ohio banking corporation

By: _____

Name: _____

Title: _____

FIFTH THIRD BANK, an Ohio banking corporation

By: _____

Name: _____

Title: _____

Licensee:

THE CITY OF AURORA, ILLINOIS

By: _____

Name: _____

Title: _____

EXHIBIT A

PREMISES/LICENSOR PROPERTY

EXHIBIT B

SITE PLAN