

**DONATION AGREEMENT**

**THIS DONATION AGREEMENT** (“Agreement”), is dated June 1, 2017, but made effective as of the Settlement Date (as defined hereafter), between **PNC BANK, NATIONAL ASSOCIATION**, a national banking association ("Donor"), having an office c/o PNC Realty Services, at The Tower at PNC Plaza, 22<sup>nd</sup> Floor, 300 Fifth Avenue, Pittsburgh, PA 15222, and **THE CITY OF AURORA**, an Illinois municipal corporation ("Donee"), having an address at office at 44 East Downer Place, Aurora, IL 60507. This Agreement is effective upon the delivery to both parties of a fully signed original ("Effective Date").

**WITNESSETH:**

WHEREAS, Donor is the owner of the land ("Land") located at 65 S. Broadway, Aurora, Illinois, 71-77 S. Broadway, Aurora, Illinois 60507, Tax Parcel Number 15-22-380-011, 15-22-380-012, 15-22-380-013, 15-22-380-014 and 15-22-380-015, as more particularly described on Exhibit A hereto and made a part hereof, and all buildings, personal property and improvements ("Improvements"), located on the Land (the Improvements, together with the Land, and the items described in paragraph 1(b), being hereinafter collectively referred to as the "Premises"); and

WHEREAS, Donor and Donee have entered into that certain Settlement Agreement (“Settlement Agreement”) dated June 1, 2017, but made effective as of the date the Settlement Agreement is executed by Donee (the “Settlement Date”), which date shall be no later than July 29, 2017.

WHEREAS, pursuant to the terms of the Settlement Agreement, Donor has agreed to donate the Premises to Donee and Donee desires to accept such donation of the Premises from Donor upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Donation and Acceptance.

(a) Donor agrees to donate to Donee, and Donee agrees to accept from Donor, the Premises. The Premises does not include any signage, logos, or other proprietary property of Donor.

(b) The donation shall include all right, title and interest of Donor in and to:

(i) All easements, rights-of-way, privileges, appurtenances and other rights, if any, pertaining to the Premises; and

(ii) All of the articles of personal property located at the Premises on the Closing Date in its “as-is” “where-is” condition on the Closing Date (as hereinafter defined in Article 4).

2. Donation. Donor and Donee agree that Donor is making a donation of the Premises to Donee for no purchase price or other charge.

3. Title.

(a) The Premises shall be conveyed subject to, and Donee hereby approves the matters set forth on Exhibit B attached hereto and made a part hereof (collectively, "Permitted Encumbrances").

(b) Donee has agreed to order and promptly deliver to Donor when received, a copy of a commitment (the "Title Commitment") to issue an ALTA 2006 owner's title insurance policy issued by a nationally-recognized title insurance company reasonably acceptable to Donor ("Title Company"), reflecting the status of title to the Land and Improvements. Donee shall be solely responsible for the costs of obtaining such Title Commitment and for the cost of obtaining any owner's title policy and any lender's title policy, as well as all title endorsements.

4. Closing Date. The closing of the transactions contemplated hereby ("Closing") shall take place in escrow with the Title Company or at such office as may be reasonably designated by mutual agreement of Donee and Donor. The date of the Closing ("Closing Date") shall be fourteen (14) days after the Settlement Date, subject to postponement by Donor through its election to utilize a cure period as provided in Article 11 hereof.

5. Pending City of Aurora Code Violation Lawsuit: Donee acknowledges that the Premises is subject to a code violation lawsuit filed by the City of Aurora in the Circuit Court of Kane County, Illinois captioned City of Aurora v. PNC Bank, Case No. 16 MR 387 (the "Code Violation Lawsuit"). Donee acknowledges and agrees that Donor's obligations to close this transaction is conditioned on the City of Aurora dismissing the Code Violation Lawsuit, with prejudice and without penalty, fine or cost to Donor, not less than three (3) business days prior to Closing. If the City of Aurora fails to dismiss the Code Violation Lawsuit, with prejudice and without penalty, fine or cost to Donor, not less than three (3) business days prior to Closing, Donor shall have the right to terminate this Agreement upon written notice to Donee, in which event, this Agreement and all of Donor's obligations herein, shall be terminated and deemed null and void and of no further force and effect.

6. Time of Essence. TIME SHALL BE OF THE ESSENCE IN THE PAYMENT OF ALL SUMS, PERFORMANCE OF ALL OBLIGATIONS, GIVING OF ALL NOTICES AND THE EXERCISE OF ALL RIGHTS UNDER THIS AGREEMENT.

7. Representations and Warranties of Donor.

(a) Donor represents, warrants and agrees that:

(i) Donor is a national banking association duly organized, validly existing and in good standing under the laws of the United States of America;

(ii) To the best of Donor's knowledge, there are no third party service, maintenance or similar contracts related to the ownership, operation, maintenance or management of the Premises other than those which may be terminated without penalty, and which Donor shall terminate in connection with the Closing.

(b) For the purposes of the representations and warranties of Donor set forth in this Agreement, the words "to the best of Donor's knowledge" shall be limited to being the actual knowledge and information without any inquiry or investigation or any duty to do so (as distinguished from, and to exclude, what is exclusively constructive knowledge or receipt of constructive notice) of those persons responsible for the current management and operation of the Premises and shall not include any information which Donor or its agents, counsel, directors, officers or employees, management companies or leasing agents, as a reasonably prudent person, should reasonably have known, and shall expressly exclude any state of facts or matters of which Donee has knowledge as of the Closing Date. The representations and warranties of Donor do not survive the Closing.

8. Affirmative and Negative Covenants of Donor.

(a) Donor shall, at its sole cost and expense:

(i) Promptly deliver to Donee copies of any notice received by Donor after the Effective Date (other than notices related to the Code Violation Lawsuit ) regarding all actions, suits, and other proceedings affecting the Premises, or the use, possession or occupancy thereof which may adversely affect the Premises; and

(ii) Promptly deliver to Donee copies of notices received by Donor after the Effective Date of releases of toxic substances or any actual condemnation of the Premises or any portion thereof given by or on behalf of any Federal, state or local agency.

(b) From the Effective Date to the Closing Date or termination hereof, Donor shall not enter into any lease or other occupancy arrangement for the Premises which is not terminable before Closing, without the prior written consent of Donee in each instance.

9. Apportionments.

(a) The following items shall be apportioned as of 11:59 PM of the day immediately preceding the Closing Date:

(i) At Closing, Donor will deposit with the Escrow Agent, funds sufficient to pay the unpaid portion of the 2016 and Donor's portion of the 2017 Real Estate Taxes, based on the 2016 real estate tax bills for the Premises. Donee shall be obligated to pay the 2017 real estate tax bills and Donor shall have no further obligation to pay same. The payment received by Donee at Closing to pay the 2016 and Donor's portion of the 2017 real estate taxes shall be final.

(ii) Charges for water, sewer rents, electricity, steam, gas and telephone, which are not metered; provided that if the consumption of any of such utilities is measured by meters, Donor at the Closing shall furnish a current reading of each meter or shall do so with reasonable promptness following the Closing, and shall be responsible for the payment of utilities until a final reading has been accomplished; and

(b) If on the Closing Date the Premises shall be affected by any special or other assessment for public improvements or otherwise which is or may become payable by Donor in

installments, of which the first installment is then a charge or lien, then, for purposes of this Agreement, all the unpaid installments of such assessment, which are to become due and payable after the Closing, shall be paid and discharged by Donee, and Donee shall be responsible for the payment of any and all future installments of assessments, whether or not the first installment thereof is then a charge or lien.

(c) Donee shall pay the costs of any transfer tax, and Donee shall pay all recording fees due in connection with the delivery or recording of the Deed. Donee shall pay all taxes and recording fees due in connection with Donee's mortgage (if any).

(d) Donee shall pay any closing fee or closing charge of the Title Company or settlement agent who closes the transaction.

(e) The provisions of this Article 9 shall survive the Closing.

10. Closing Documents.

(a) At the Closing, Donor, at its sole cost and expense, shall deliver or cause to be delivered to Donee the following, each of which shall be in form and substance in reasonable conformity with this Agreement:

(i) A Special Warranty Deed ("Deed") conveying to Donee fee simple absolute title to the Premises, free and clear of all liens and encumbrances other than Permitted Encumbrances and those set forth in the Title Commitment and not objected to by Donee or otherwise permitted hereunder, which Deed shall be in recordable form, duly executed by Donor or the record title holder and acknowledged;

(ii) A resolution from the Secretary or Assistant Secretary of Donor authorizing the officer signing the Deed to sell properties on behalf of Donor;

(iii) A bill of sale without warranty (other than that Donor has not previously conveyed or encumbered its interest, if any) conveying and transferring to Donee all right, title and interest of Donor in and to all of the personal property at the Premises;

(iv) An affidavit of title in a form reasonably acceptable to Donor;

(v) An affidavit and such other certificates or affidavits as Donee may reasonably request in order to establish that Donor is not a foreign person, as defined in Internal Revenue Code Section 1445(b)(2), as amended;

(vi) All keys to the Premises in the possession of Donor;

(vii) A duly executed settlement statement or closing statement, and

(b) At the Closing, Donee, at its sole cost and expense, shall deliver to Donor the following, each of which shall be in form and substance in reasonable conformity with this Agreement:

- (i) A duly executed settlement statement or closing statement;
- (ii) A resolution or consent of an authorized officer or member of Donee, authorizing the acceptance of the Premises and the execution of documentation in connection therewith;
- (iii) Such other affidavits and documents as are otherwise required to consummate the transaction contemplated by this Agreement;
- (iv) A duly executed and acknowledged copy of the Lease; and
- (v) A completed and executed Internal Revenue Service Form 8283 (Noncash Charitable Contribution) in form acceptable to Donor.

11. Brokerage. Donor and Donee each covenant, represent and warrant that it has had no dealings or communications with any broker or agent in connection with the consummation of this Agreement, and each covenants and agrees to pay, hold harmless and indemnify the other from and against any and all cost, expense or liability for any compensation, commissions or charges claimed by any broker or agent with whom the indemnifying party dealt with respect to this Agreement or the negotiation thereof. Donor shall pay the commission of Broker at Closing, if in fact the transaction closes, in accordance with the terms of a separate brokerage or listing agreement.

12. Condemnation and Destruction.

(a) Risk of loss to the Premises from fire or other casualty shall be borne by Donor until Closing. If the Premises or any portion thereof is damaged or destroyed by fire or other casualty prior to the Closing, which damage in either party's reasonable judgment materially affects the value of the Premises, and if Donor is unable or chooses not to restore, within ninety (90) calendar days following such casualty, the damaged portion of the Premises to a condition substantially equivalent to that which existed immediately prior to such casualty, either party may elect to terminate this Agreement. If either party elects to terminate this Agreement, it shall notify the other in writing within thirty (30) calendar days after Donee has received written notice of such damage or destruction from Donor (unless within such thirty (30) day period Donor shall have advised Donee of its intention to restore the damaged portion of the Premises as provided in the preceding sentence, in which case the Closing shall be extended for up to ninety (90) days following such casualty) and this Agreement shall be deemed to be terminated and the parties hereto shall have no further obligations to or recourse against each other with regard to the matters provided for herein except for the rights and obligations which expressly survive the termination hereof. If Donor does not restore the damaged portion of the Premises as provided above, and if neither party elects to terminate this Agreement as provided in this paragraph, then the transaction shall proceed as contemplated herein, in which event Donor shall assign to Donee all of Donor's right, title and interest in the insurance proceeds to be paid on the claim of loss.

(b) If prior to the Closing all or any material portion of the Premises, as reasonably determined by Donor, becomes the subject of a condemnation proceeding by a public or quasi-public authority having the power of eminent domain, Donor shall immediately notify Donee thereof in writing and either party may elect to terminate this Agreement. If either party elects to terminate this

Agreement, it shall so notify the other within thirty (30) calendar days after Donee has received written notice of such proceedings from Donor, and this Agreement shall be deemed null and void and the parties hereto shall have no further obligations to or recourse against each other with regard to the matters provided for herein except for the rights and obligations which expressly survive the termination hereof. If neither party shall elect to terminate this Agreement as provided in this paragraph, the transaction shall proceed as contemplated herein, in which event Donee shall be entitled to receive all proceeds of any award or payment in lieu thereof.

13. Representations and Warranties and Covenants of Donee. Donee represents and warrants the following:

(a) Both before and after the Closing, Donee shall not issue any press release or other publicity of any kind whatsoever with respect to this Agreement or any of the transactions contemplated hereby, without the prior written consent of Donor in each instance. Donor shall notify Donee of its consent or refusal within ten (10) business days after Donee's request for consent and Donee shall not have the right to issue the press release should Donor object to same. . Before the Closing, Donee agrees that it will keep confidential, and will make reasonable efforts to have the respective partners, employees, officers, directors, shareholders, agents, counsel, accountants and affiliates of Donee, keep confidential, the terms of this Agreement, and all information, records, materials and other data pertaining to the Premises which was acquired or learned from this Agreement or the negotiations relating thereto or arising out of the transactions contemplated hereby, except to the extent necessary to effect the transactions contemplated hereby, except as otherwise required by law. The provisions of this paragraph shall survive the Closing and the termination of this Agreement. This section is not intended to prohibit the release of information which is already public.

(b) Donee is an Illinois municipal corporation, tax exempt governmental entity duly organized, validly existing and in good standing under the laws of the State of Illinois and has the power and authority to enter into the Agreement and complete the transaction contemplated hereby. The officer executing this Agreement on behalf of Donee has the power and authority to bind Donee. Donee agrees to provide to Donor at closing, a completed and executed Internal Revenue Service Form 8283 (Noncash Charitable Contribution) in form acceptable to Donor.

(c) Donee hereby indemnifies, agree to defend, and hold Donor, its subsidiaries, affiliates, successors and assigns and their respective officers, directors and employees (the "Releases") harmless from and against any and all claims proceedings, suits, damages, liabilities, losses, costs, charges or expenses or any other liabilities of every nature, kind and description whatsoever (including, without limitation, reasonable attorney's fees and expenses, whether or not legal proceedings are commenced, and if legal proceedings are commenced, including fees and expenses incurred at trial and all levels of appeal) (the "Claims") incurred or suffered by any of the foregoing entities or persons by reason of, or resulting from or arising out of (i) any activity, including, without limitation, tests, inspections, studies and/or investigations performed or caused to be performed by Donee on the Premises, (ii) the Premises, other than (a) Claims which were caused by Releasees wilfull misconduct or gross negligence and which arose prior to the Closing Date or (b) third party personal injury Claims which arose prior to the Closing Date , (iii) any and all acts or omissions of Donee and iv) any Claim that Donor is liable, in any way, for any act, omission or

liability of Donee for any reason under any legal theory. This indemnity shall survive the execution of this Agreement, and shall not limit Donor's other rights of indemnification, subrogation or assignment, whether explicit, implied, legal or equitable, available under the Settlement Agreement of even date between Donor and Donee, under applicable law, or otherwise.

14. **Donor's Default.** If Donor shall default in performance of its obligations under this Agreement, which default remains uncured for five (5) business days after receipt of written notice from Donee, then Donee's sole and exclusive remedies shall be either to (i) terminate this Agreement, or (ii) seek specific performance.

15. **Donee's Default.**

If Donee shall default in performance of its obligations under this Agreement, or if the condition precedent set forth in Section 5 above is not complied with prior to Closing, the Donor shall have the right to terminate this Agreement upon written notice to Donee. A "default" by Donee under this Agreement includes, but is not limited to, failure to comply with the terms of this Agreement and any misrepresentation made by Donee to Donor. Donor shall not seek or obtain any money or other judgment against Donee or any disclosed or undisclosed partner, principal, officer or employee of Donee or any of the foregoing persons or entities., except as provided in subparagraph (b) hereof.

(b) Notwithstanding anything to the contrary contained in this Agreement, Donee agrees that (i) all indemnification obligations of Donee set forth in this Agreement and/or any other indemnification agreement delivered to Donor in connection with Donee's inspection of the Premises prior to or after the execution of this Agreement (collectively, the "Indemnification Obligations") shall survive the termination of this Agreement and the Closing and (ii) Donee shall not be exculpated from liability with respect to (x) a breach of subparagraph 12(a) or Article 26 hereof and/or (y) the Indemnification Obligations. Donee further agrees that Donor shall have full recourse against Donee and any other person or entity who breaches subparagraph 12(a) or Article 26 or who has Indemnification Obligations, and Donor shall have the ability to seek and obtain any money or other judgment against any of the foregoing persons or entities with respect to any such breach or Indemnification Obligation(s).

16. **Condition Of Premises: "As-Is, Where-Is".**

(a) Donee warrants, acknowledges and agrees with Donor that Donee is accepting the Premises and all personal property in an "AS IS/WHERE IS" condition, "WITH ALL FAULTS" (including and without limitation any and all faults and defects referenced or raised in the Code Violation Lawsuit) and with all physical latent or patent defects, and specifically and expressly without any warranties, representations or guarantees, either express or implied, of any kind, nature or type whatsoever from or on behalf of the Donor. Donee acknowledges that Donee has not relied and is not relying upon any information, document, sales brochures or other literature, maps or sketches, projection, pro forma statement, representation, guarantee or warranty (whether express or implied, or oral or written, material or immaterial) that may have been given by or made by or on behalf of the Donor.

(b) Donee hereby acknowledges that it shall not be entitled to, and shall not rely on the

Donor or its agents as to (i) the quality, nature, adequacy or physical condition of the Premises including, but not limited to, the structural elements, foundation, roof, appurtenances, access, landscaping, parking facilities, electrical, mechanical, HVAC, plumbing, sewage or utility systems, facilities or appliances at the Premises, if any; (ii) the quality, nature, adequacy or physical condition of soils or ground water at the Premises; (iii) the existence, quality, nature, adequacy or physical condition of any utilities serving the Premises or available at its boundaries; (iv) the development potential of the Premises, its habitability, merchantability of fitness, suitability or adequacy of the Premises for any particular purpose; (v) the zoning or other legal status of the Premises, including but not limited to, condemnation or threat of condemnation; (vi) the Premises' operational compliance with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions or restrictions of any governmental or quasi-governmental entity; (vii) the Premises' operational compliance with any applicable labor laws or building codes concerning labor and material used or incorporated into the Premises or any other labor or materials relating in any way to the Premises; or (viii) the condition of title to the Premises or the nature, status and extent of any right of way, lease, right of redemption, possession, lien, encumbrance, license, reservation, covenant, condition, restriction or any other matter affecting title to the Premises except as may be set forth in the owner's policy. In the event electrical, plumbing, water or heating services have been turned off or are not operating, Donor will not reactivate these systems prior to Closing.

(c) Donee acknowledges that it is Donee's responsibility to undertake such due diligence and to make such legal, factual and other inquiries and investigations as Donee deems necessary, desirable or appropriate with respect to acquiring the Premises. Such inquiries and investigations may include, but shall not be limited to, any oral or unrecorded leases and contracts pertaining to the Premises, the physical components of all portions of the Premises, the condition of the Premises (including the existence of any hazardous or toxic wastes or other contaminants), the existence of any wood destroying organisms on the Premises, such state facts as an accurate survey and inspection would show, the present and future zoning ordinances, resolutions and regulations of the city, county and state where the Premises is located and the value and marketability of the Premises.

(d) In the event that the local government requires an inspection of the Premises or a certificate of occupancy, Donee shall be responsible for performing such inspection and obtaining such certificate of occupancy. Donor shall have no responsibility or obligation to correct any violations or remedy any issues of non-compliance which may arise in connection with any such inspection or issuance of a certificate of occupancy including, without limitation, as required pursuant to the Code Violation Lawsuit.

(e) Donee expressly acknowledges that the Premises may contain mold or similar organisms and hereby agrees to assume any and all liability for or arising from any such mold, organism, or other similar environmental contaminant, and to release, hold harmless, and indemnify Donor, to the fullest extent allowed under applicable law, from any and all claims, causes of action, and costs, in law or equity, including but not limited to any personal injury, loss of property, or economic loss, that in any way relates to the presence of mold or similar organisms, or any other environmental contaminant on or in the Premises.

(f) Without in any way limiting the generality of the preceding subparagraphs (a) through (f), Donee specifically acknowledges and agrees that Donee hereby waives, releases and



discharges any claim it has, might have had or may have against the Donor with respect to the condition of the Premises, either patent or latent as well as Donee's ability or inability to obtain or maintain building permits, either temporary or final certificates of occupancy or other licenses for the use or operation of the Premises, the real estate taxes or assessments now or hereafter payable thereon, the compliance with any environmental protection, pollution or land use laws, rules, regulations or requirements, and any other state of facts which exists with respect to the Premises.

(g) The provisions of this Article shall survive the Closing.

17. Notices. All notices, requests, or other communications desired or required to be given under this Agreement shall be in writing and shall be sent by a party or by a party's attorney via (a) certified or registered mail, return receipt requested, postage prepaid, (b) national prepaid overnight delivery service, (c) by email or facsimile transmission (following with hard copies to be sent by national prepaid overnight delivery service) or (d) personal delivery with receipt acknowledged in writing, as follows:

If to Donor:

PNC Bank, National Association  
c/o PNC Realty Services  
The Tower at PNC Plaza  
300 Fifth Avenue  
22nd Floor  
Pittsburgh, PA 15222  
Attention: Dana Armstrong  
Telephone: (412) 762-3345  
Fax: (412) 762-5199  
Email: [dana.armstrong@pnc.com](mailto:dana.armstrong@pnc.com)

With a copy to:

Michael G. Balent, Esq.  
Chief Counsel—PNC Realty Services  
PNC Bank, N.A.  
Legal Department  
1600 Market Street—28<sup>th</sup> Floor  
Philadelphia, PA 19103  
Telephone: 215-585-5029  
Fax: 215-585-8713  
Email: [michael.balent@pnc.com](mailto:michael.balent@pnc.com)

With a copy to

James M. Crowley, Esq.  
221 N. LaSalle Street, Suite 1550  
Chicago, IL 60601  
Telephone: (312) 670-6900  
Fax: (312) 467-5926  
Email: [jcrowley@crowleylamb.com](mailto:jcrowley@crowleylamb.com)  
Mayor, City of Aurora

If to Donee:

444 East Downer Place  
Aurora, IL 60507  
Telephone: 630-256-3010  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to:

Jason A. Guisinger, Esq.  
Klein, Thorpe & Jenkins, Ltd.  
20 North Wacker, Ste 1660  
Chicago, IL 60606  
Telephone: 312-984-6462  
Fax: 312-984-6444  
Email: [jaguisinger@ktjlaw.com](mailto:jaguisinger@ktjlaw.com)

All notices shall be deemed given when actually received or refused by the party to whom the same is directed (except to the extent sent by certified or registered mail, return receipt requested, postage prepaid, in which event such notice shall be deemed given three (3) business days after the date of mailing). Each party may designate a change of address or supplemental addressee(s) by notice to the other parties, given at least ten (10) business days before such change of address is to become effective.

18. Entire Agreement, Basis of Acceptance of Premises.

(a) This Agreement contains all of the terms agreed upon between the parties with respect to the subject matter hereof and supersedes any and all prior written or oral understandings.

(b) Except as expressly set forth in this Agreement or in the documents to be delivered at Closing, Donor hereby expressly disclaims any and all warranties, express or implied, relating in any way to the Premises, including, without limitation, any warranty provided for under statutory or common law or the uniform commercial code, including but not limited to warranties of merchantability and fitness for a particular purpose. Both Donee and Donor are acting at arm's length to protect their own interests, and both Donee and Donor shall use their own independent business judgment concerning the donation of the Premises. Donee has completed to its satisfaction (or shall have completed by the Closing Date), all investigations, inspections and tests which Donee deems necessary in its sole discretion to determine, among other things: (i) the condition of the Premises, including, but not limited to, the soil condition of the Premises, the existence of any environmental condition, and the existence of patent or latent defects in construction of the Improvements on the Premises; (ii) the condition of title to the Premises, including, but not limited to, the status of all leases of the Premises (if any); (iii) the status of all building code, zoning and other applicable governmental requirements of whatever kind regarding the Premises or any intended use of the Premises, including, without limitation, the status of any permit, application, license, approval, certificate or other intangible right of whatever kind regarding the Premises; and (iv) the status and effect of all recorded covenants and restrictions relating to the Premises, it being agreed as set forth above that neither Donor nor any agent or representative of Donor shall give any warranty or make any representation regarding such matters, and Donor is not liable or responsible

for, or bound in any manner by, any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Premises or any part thereof. Upon Closing, and subject to the provisions of Paragraph 13 (c) above, Donee shall assume the risk of any adverse matters with respect to the Premises, including but not limited to, construction defects and adverse physical and environmental conditions, that may not have been revealed by Donee's investigations. Donee agrees that should any cleanup, remediation or removal of hazardous substances or other environmental conditions on the Premises be required after the date of Closing, insofar as Donor and Donee are concerned, Donor shall not have any responsibility for such cleanup, removal or remediation. Donee acknowledges that it agrees to accept conveyance of the Premises at Closing in its "as-is, where-is" condition as of the Closing Date, solely based upon its reliance on its own investigations, inspections and judgment.

(c) WITHOUT LIMITING THE PROVISIONS OF SUBPARAGRAPH (b) OF THIS ARTICLE AND NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DONEE HEREBY RELEASES DONOR AND (AS THE CASE MAY BE) DONOR'S OFFICERS, DIRECTORS, AFFILIATES, SUBSIDIARIES, PARENTS, PREDECESSORS, MEMBERS, SHAREHOLDERS, TRUSTEES, PARTNERS, EMPLOYEES, MANAGERS AND AGENTS, FROM ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES, ARISING FROM OR RELATING TO ANY DEFECT IN THE PREMISES, THE LEGAL STATUS OF ANY AGREEMENT WITH RESPECT THERETO, OR THE PHYSICAL CONDITION OF THE PREMISES OR ANY PART THEREOF, INCLUDING BUT NOT LIMITED TO ANY ENVIRONMENTAL CONDITION.

(d) The provisions of this Article shall survive the Closing.

19. Amendments. This Agreement may not be changed, modified or terminated except by an instrument executed by the parties hereto.

20. Waiver. No waiver by either party of any failure or refusal of the other party to comply with any of its obligations shall be deemed a waiver of any other or subsequent failure or refusal so to comply.

21. Successors and Assigns.

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Except as described below, Donee may not assign this Agreement or all or any part of its rights and obligations hereunder to one or more parties without the prior written consent of Donor which consent may be withheld or given in Donor's sole discretion. Donee shall have the right, however, with Donor's consent (not to be unreasonably withheld), to assign this Agreement to an entity owned or controlled by Donee. In such as case, Donor shall not withhold its consent so long as (i) Donee provides Donor with a copy of an assignment and assumption agreement for such assignment, reasonably acceptable to Donor; (ii) Donee provides Donor information reasonably requested by Donor to establish that the assignee is not a "Sanctioned Person" (as hereinafter defined) and Donor in fact establishes that the assignee is not a Sanctioned Person; and (iii) Donee

remains liable for all obligations hereunder through the Closing Date.

22. Article Headings. The headings of the various Articles of this Agreement have been inserted only for the purpose of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain, qualify or restrict any of the provisions of this Agreement.

23. Governing Law. THIS AGREEMENT SHALL BE INTERPRETED, AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO SHALL FOR ALL PURPOSES BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS APPLICABLE TO AGREEMENTS EXECUTED, DELIVERED AND PERFORMED WITHIN SUCH JURISDICTION.

24. Waiver of Jury Trial. IT IS MUTUALLY AGREED BY AND BETWEEN DONOR AND DONEE THAT THE RESPECTIVE PARTIES HERETO SHALL AND DO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS WAIVER AND HAS BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE. THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY BY THE PARTIES HERETO.

25. Waiver of Formal Tender. The requirement for formal tender of payment and deed is hereby waived.

26. No Recording. Neither party shall record this Agreement or any memorandum thereof without the prior written consent of the other party, which consent may be withheld in such party's sole discretion.

27. Compliance.

(a) Donee represents, warrants and covenants to Donor that (i) no Covered Entity is directly or indirectly controlled by a Sanctioned Person; (ii) each Covered Entity is in compliance with, and shall continue to comply with, all Anti-Terrorism Laws (as hereinafter defined); and (v) Donee is not acting hereunder and will not act hereunder for or on behalf of a Sanctioned Person.

(b) In the event that (i) any of the representations or warranties contained in subparagraph (a) above shall be inaccurate or incomplete, (ii) it is determined that any covenant set forth in subparagraphs (a) or (b) above has been breached, (iii) the information Donee provides under subparagraph (b) above is inaccurate or incomplete and/or (iv) Donor determines, in its good faith judgment, that completion of the donation of the Premises could violate any Anti-Terrorism Law or any other Law, then Donor shall have the right to terminate this Agreement whereupon Donor shall be released from any further liability under this Agreement.

(c) As used in this Article 27, the following terms shall have the meanings set forth below:

“Anti-Terrorism Laws” means any Laws relating to terrorism, trade sanctions programs and embargoes, import/export licensing, money laundering or bribery, and any regulation, order, or directive promulgated, issued or enforced pursuant to such Laws, all as amended, supplemented or replaced from time to time.

“Covered Entity” means (a) Donee and each direct or indirect subsidiary of Donee and (b) each Person (as hereinafter defined) that, directly or indirectly, is in control of a Person described in clause (a) above. For purposes of this definition, control of a Person means the direct or indirect (x) ownership of, or power to vote, 25% or more of the issued and outstanding equity interests having ordinary voting power for the election of directors of such Person or other Persons performing similar functions for such Person, or (y) power to direct or cause the direction of the management and policies of such Person whether by ownership of equity interests, contract or otherwise.

“Law” means any law(s) (including common law), constitution, statute, treaty, regulation, rule, ordinance, opinion, issued guidance, release, ruling, order, executive order, injunction, writ, decree, bond, judgment, authorization or approval, lien or award of or any settlement arrangement, by agreement, consent or otherwise, with any governmental authority, foreign or domestic.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“Sanctioned Person” means any individual person, group, regime, entity or thing listed or otherwise recognized as a specially designated, prohibited, sanctioned or debarred person, group, regime, entity or thing, or subject to any limitations or prohibitions (including but not limited to the blocking of Premises or rejection of transactions), under any Anti-Terrorism Law.”

## 28. Miscellaneous.

(a) If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision shall be fully severable; the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Agreement; and the remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from the Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible which is and shall be legal, valid and enforceable.

(b) This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes, and all such counterparts shall, collectively, constitute one agreement.

(c) In addition to the acts and deeds recited herein and contemplated to be performed, executed, and delivered by Donor and Donee, Donor and Donee agree to perform, execute, and deliver or cause to be performed, executed, and delivered at the Closing or after the Closing any and all such further and reasonable acts, deeds, and assurances as may be reasonably necessary to consummate the transaction contemplated hereby in accordance with this Agreement.

(d) If the time for performance of any of the terms, conditions and provisions hereof shall fall on a Saturday, Sunday or bank holiday, then the time of such performance shall be extended to the next business day thereafter.

(e) This Agreement may be signed by facsimile or electronic form of signature and such signature shall be fully binding. Upon request, such party shall provide an originally signed copy of the Agreement to the other party.

**[SIGNATURES ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement as of the day and year first above written.

WITNESS:

*[Handwritten Signature]*

DONOR:

PNC BANK, NATIONAL ASSOCIATION

By: *Kathleen A. Taylor*  
Name: *Kathleen A. Taylor*  
Title: *Vice President*

DONEE:

CITY OF AURORA, AN ILLINOIS MUNICIPAL CORPORATION

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Tax Identification Number: \_\_\_\_\_

## EXHIBITS

- A. Legal Description
- B. Permitted Encumbrances



**EXHIBIT A**

**LEGAL DESCRIPTION**

**THE LEGAL DESCRIPTION IS NOT WARRANTED OR GUARANTEED BY DONOR**

**PARCEL I**

The Northerly 1/2 of Lot 5 (except the Northerly 6 inches) in Block 13 of the Original Town of Aurora, on the East Side of Fox River, in the City of Aurora, Kane County, Illinois

**PARCEL II**

The Northerly 22 feet of Lot 4 in Block 13 of the Original Town of Aurora, on the East Side of Fox River, in the City of Aurora, Kane County, Illinois

**PARCEL III**

Lots 3, 4 and 5, and Lots 6, 7 and 8 (except the Westerly 40 feet of said Lots 6, 7 and 8) and the Easterly 20 feet of Lot 9 in H.H. Evans' Subdivision of the South 1/2 of Lot 5 and all of Lot 6 in Block 13 of the Original Town of Aurora, in the City of Aurora, Kane County, Illinois

**PARCEL IV**

The Westerly 40 feet of even width of Lots 6, 7, 8 and 9 in H.H. Evans' Subdivision of the South 1/2 of Lot 5 and all of Lot 6 in Block 13 of the Original Town of Aurora, in the City of Aurora, Kane County, Illinois

**PARCEL V**

Lots 1, 2, and 10 of the Easterly 47 feet of Lot 9 and all of the private alley in H.H. Evans' Subdivision of the South 1/2 of Lot 5 and all of Lot 6 in Block 13 of the Original Town of Aurora, on the East Side of Fox River, in the City of Aurora, Kane County, Illinois

P.I.N. 15-22-380-011; 15-22-380-012; 15-22-380-013; 15-22-380-014  
and 15-22-380-015

COMMONLY KNOWN AS: 77 S. Broadway, Aurora, Illinois 60505

**NOTE:** Donee shall have the right to use an updated legal description prepared by Donee's surveyor in the Deed for the transfer contemplated by this Agreement, provided (a) such survey is prepared by a surveyor licensed in the State in which the Premises are located; (b) the legal description and survey are subject to the reasonable approval of Donor; and (c) the survey is also certified to Donor and signed by the surveyor, with an original thereof to be provided to Donor. Any survey of the Premises desired by Donee shall be the responsibility of Donee, at Donee's sole cost and expense

## EXHIBIT B

### PERMITTED ENCUMBRANCES

1. Possible additional assessments for taxes, either prospective or retroactive, for new construction or for any major improvements, as well as for current year's taxes levied or to be levied and not yet certified.
2. Unrecorded easements, discrepancies, or conflicts in boundary lines, shortages in area and encroachments which an accurate and complete survey would disclose, or which are not shown by the public records.
3. Unfiled municipal claims.
4. Easements and rights granted for utilities.
5. Rights, public and private, in and to any portion of the Premises that lies within the right of way of any public street or alley abutting the Premises.
6. Zoning and building laws, ordinances, and regulations.
7. From the Closing Date and continuing thereafter for a period of five (5) years, the Premises shall not be used for the purpose of conducting or in connection with the business of a commercial bank, savings bank, savings and loan association, credit union or mortgage bank, or other financial services organization, including, without limitation the installation and operation of an automated teller machine or machines, and/or a night depository or safe deposit boxes. These restrictions shall appear in the deed to the Premises and may include statements regarding Donor's ability to enforce such restrictions by injunctive relief in addition to other rights and remedies available at law or in equity.

EXHIBIT C

Stipulation to Dismiss

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
KANE COUNTY, ILLINOIS

City of Aurora, a municipal corporation

Plaintiff,

v.

PNC Bank, NA, successor in interest to First of  
America Bank, et al.

Defendants.

Case No. 16 MR 387

STIPULATION TO DISMISS COMPLAINT

This stipulation by and between Plaintiff, **City of Aurora**, by and through its undersigned attorney and Defendant **PNC Bank, National Association**, by and through its undersigned attorneys, hereby stipulate and agree that the Complaint filed on or about March 30, 2016 by City of Aurora against PNC Bank, National Association in the captioned matter shall be dismissed with prejudice and without costs to any party pursuant to agreement by the parties hereto.

Plaintiff

Defendant

**City of Aurora**

**PNC Bank, National Association**

By: \_\_\_\_\_  
One of his attorneys

By: \_\_\_\_\_  
One of its attorneys

Jason Alayne Weingartz, Esq  
Klein, Thorpe & Jenkins, Ltd  
20 North Wacker Drive Suite 1660  
Chicago, Illinois 60606  
(312) 984-6462

James M. Crowley  
CROWLEY & LAMB, P.C.  
221 N. LaSalle Street, Suite 1550  
Chicago, Illinois 60601  
(312) 670-6900

**EXHIBIT D**

**Agreed Order on Stipulation to Dismiss**

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
KANE COUNTY, ILLINOIS**

City of Aurora, a municipal corporation

Plaintiff,

v.

PNC Bank, NA, successor in interest to First of  
America Bank, et al.

Defendants.

Case No. 16 MR 387

**AGREED ORDER**

This cause coming to be heard on the Stipulation to Dismiss Complaint, by and between Plaintiff, **City of Aurora** and Defendant **PNC Bank, National Association**, the court having jurisdiction of the Parties and subject matter and being fully advised of the premises:

IT IS ORDERED, that the Complaint filed on or about March 30, 2016 by City of Aurora against PNC Bank, National Association in the captioned matter, be and hereby is dismissed with prejudice and without costs to any party pursuant to agreement by the parties hereto.

Enter:

\_\_\_\_\_

Date:

\_\_\_\_\_

James M. Crowley  
CROWLEY & LAMB, P.C.  
221 N. LaSalle Street, Suite 1550  
Chicago, Illinois 60601  
(312) 670-6900