

LICENSE

THIS License Agreement (“License”), made on this ___ day of _____, 2017 by and between the City of Kansas City, Missouri (“Licensor” or “City”), and Western Auto Lofts Condominium Association, Inc., (“Licensee”), together the “Parties”.

WITNESSETH: That said Licensor hereby grants to said Licensee, a License to occupy and use, subject to terms and conditions hereinafter stated, the following premises (“Premises”), and legally described as follows:

All of that part of McGee Street and 21st Street lying under the McGee Street Viaduct, being a strip of land 73.0 feet in width, from the South Right of Way line of 21st Street, South +/- 178.0 feet, to a point on the North line of the Kansas City Terminal Railway Tracks property.

AND

All of that part of the East half of Grand Boulevard lying under the Grand Boulevard Viaduct, South of the South Right of Way line of 21st Street and North of the Kansas City Terminal Railway Tracks; also all of that part of the West one-half of Grand Boulevard, lying under the Grand Boulevard Viaduct, between a line drawn approximately 73 feet south of and parallel to the South Right of Way line of 21st Street and North of the Kansas City Terminal Railway Tracks.

AND

The Eastern half of Grand Boulevard lying under the Grand Boulevard Viaduct, from the South Right of Way line of 21st Street, to the North Right of Way line of 21st Street.

IT IS AGREED AS FOLLOWS:

1. TERM. The initial term of this License shall be for a period of fifteen (15) years, beginning on the “Commencement Date” of January 1, 2018 and ending December 31, 2032 (“**Initial Term**”). Upon expiration of the Initial Term and by consent of both parties, the License may be extended for four (4) additional terms, each of which to last ten (10) years (“**Option Term**” and collectively with the Initial Term, the “**Term**”). The Licensee shall notify City of its intent to extend each option by providing 90 days’ notice to City in the manner provided in Section 24 of this License. Upon completion of the Initial Term and four (4) Option Terms, this License shall end unless the terms are renegotiated and renewed by the Parties.

2. RENT. Shall be Four Thousand Eight Hundred Eighty-Four Dollars and Seventy Cents (\$4,884.70) annually. The first Rent payment shall be due on the Commencement Date and payment in each subsequent year shall be due on the anniversary of the Commencement Date at the following listed address or at such other place as Licensor shall designate in writing:

Public Works, Parking Services
City Hall-20th Floor
414 East 12th Street
Kansas City Missouri 64106

The amount of Licensee's annual rental payment shall be adjusted annually based on the percentage increase in the U.S. Department of Labor Bureau of Labor Statistics Consumer Price Index for Kansas City, MO-KS (all items-all urban consumers) issued by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI"). The annual rent adjustment shall be determined by multiplying the annual rent in effect immediately prior to such adjustment by a fraction the numerator of which is the semi-annual CPI published closest, but prior, to such anniversary date, and the denominator of which is the semi-annual CPI published closest, but prior, to the then immediately preceding anniversary date. If the CPI does not increase the rent shall remain the same as the previous year. If such index is not published by the Bureau of Labor Statistics or by another similar governmental agency at any time during the term of this License, then the most closely comparable statistics on the purchasing power of the consumer dollar of urban consumers as published by a responsible financial authority and reasonably selected by Licensor shall be utilized in lieu of such index. Licensor shall provide Licensee with written notice of the amount of the adjusted annual rent, together with an explanation of how the adjusted annual rent was calculated, no later than thirty (30) days prior to each anniversary of the Commencement Date. If Licensor fails to provide such notice at least thirty (30) days prior to an anniversary, the annual rent payment for the next year shall remain the same as for the prior year.

3. USE OF PREMISES. The Premises shall be used for parking for the exclusive use of unit owners and their tenants, guests, business invitees and contractors of Western Auto Lofts and no other use unless specifically authorized by the Licensor through its Director of Public Works.

The Premises are located under the McGee Street Viaduct and Grand Boulevard Viaduct ("Viaducts") and it is therefore, of the essence of this License Agreement that the Premises shall not be used by Licensee for any purpose or in any manner which might injure said viaducts or any of its supporting members.

No vehicles for the transportation of oils and fuels or other flammable liquid shall be permitted on the Premises, except as necessary for any repairs to be made to the surface area. No combustible building material shall be stored on the Premises. Licensee is operating adjacent to the Viaducts at its own risk and further stipulates that it, on behalf of itself and its successors, assigns and others claiming by, through or under it accepts the risk in the event either of said Viaducts collapses or is damaged regardless of cause. Licensee on behalf of itself and its successors, assigns and others claiming by, through or under it, waive any and all claims resulting from the collapse of or damage to the Viaducts regardless of cause. Licensee will be responsible to the City for damage to the Viaducts to the extent caused by the Licensee or its residents, tenants or licensees.

4. ENVIRONMENTAL PROVISIONS; HAZARDOUS SUBSTANCES AND WASTES. As used in this License, "Environmental Laws" means any present or future federal, state, or local statute, regulation, order, directive, or other requirement of a governmental

authority relating to the protection of public health, safety, and the environment. “Environmental Laws” include, by way of example and without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act, the Solid Waste Disposal Act Amendments and the Hazardous Solid Waste Amendments; the Used Oil Recycling Act; the Toxic Substance Control Act; the Clean Air Act; the Federal Water Pollution Control Act; the Hazardous Substance Control Act; the Emergency Planning and Community Right-to-Know Act; the Occupational Safety and Health Act; the Underground Tank Act of 1984, and any so-called “**Super-Fund**” or “**Super-Lien**” law; all Missouri State environmental protection and control, super lien and environmental clean-up statutes, with implementing regulations and guidelines and all local laws, regulations and ordinances. “**Hazardous Substances**” means any pollutant, hazardous material, hazardous substances or hazardous wastes, including mixtures, byproducts or constituents thereof, as such terms are defined in “Environmental Laws”.

Licensee hereby covenants and agrees to comply in all material respects with all applicable Environmental Laws or regulations in connection with its use/operations and occupancy of the Facilities.

Licensee agrees that it will not store, ship to, ship from, dispose, arrange for disposal, permit or generate any Hazardous Substances on the Premises without the expressed consent of the City. Licensee shall not store, ship to, ship from, dispose, arrange for disposal, permit or generate of any Hazardous Substances on any of the Premises in violation of Environmental Laws.

5. POSSESSION AT BEGINNING OF TERM. Licensors shall use due diligence to give possession of the Premises as nearly as possible at the beginning of the term of this License and rent shall abate pro rata for the period of any delay in so doing. Licensee shall make no other claim against Licensors for any such delay.

6. QUIET ENJOYMENT. Licensors covenants and agrees that the Licensee on paying the rents and observing and keeping the covenants, agreements and stipulations of this License agreement, on its part to be kept, shall lawfully, peacefully and quietly hold, occupy and enjoy said demised Premises during the demised term without hindrance, objection or molestation subject to Licensors’s right of entry, including entry to maintain and repair the Viaducts and supporting members or any other portion of the Premises as set forth in paragraph 8.

7. ACCEPTANCE, MAINTENANCE AND REPAIR. Licensee has inspected and knows the condition of the Premises and accepts the same in its present condition. Licensee shall keep the Premises and the approaches clean and free of trash and debris and return the Premises to the Licensors undamaged except for reasonable wear and tear and damages not caused by Licensee or its residents, tenants or licensees.

8. LICENSOR’S RIGHT OF ENTRY. Licensors or Licensors’s agent may enter the Premises at reasonable hours to examine the same; to do anything Licensors may be required to do hereunder or which Licensors may deem necessary for the good of the Premises, the Viaducts and public safety, including but not limited to maintenance, repair, construction, rehabilitation or

relocation of the Viaducts or the supporting members or any other portion of the Premises. Licensee acknowledges that such maintenance, repair construction, rehabilitation or relocation may cause displacement of Licensor's residents, tenants, invitees and guests and that any such displacement shall not be compensated; provided, however, Licensor agrees to use best reasonable efforts to minimize the length of time of such displacement.

In case of emergency for the immediate preservation of public peace, property, life, health, safety or morals, Licensor will use its best reasonable efforts to notify Licensee of any emergency as soon as practicable.

9. ALTERATIONS. Licensee shall have the right to secure the Premises (provided that Licensee provides Licensor with a means for access), repave and restripe the Premises, install lighting on the Premises, stripe and number parking spaces, install fences, gates, intercoms and security systems on the Premises, maintain pigeon deterrents, and otherwise make alterations consistent with the character of the Premises as a parking area. Except as permitted by the foregoing. Licensee shall not make any other alterations or additions in or to the Premises, without the prior written consent of Licensor. Such shall not be unreasonably withheld

10. SIGNS AND ADVERTISEMENT. Except for numbering of parking spaces, the installation of directional and other signs consistent with the operation of a parking area, and identification signs for the building, Licensee shall not put upon nor permit to be put on any part of Premises, any signs, billboards or advertising whatever, without written consent of Licensor. All signs must conform to the laws and regulations of the Licensor and any other applicable governing body.

11. RECYCLING. It is the established policy of the Licensor to promote environmentally sound business practices. The Licensee agrees, where reasonable and practicable to incorporate similar practices in its operation on the Premises including, but not limited to encourage recycling.

12. INSURANCE. LICENSEE shall procure and maintain in effect throughout the term of this License insurance policies with coverage not less than the types and amounts specified in this Section. LICENSEE must have:

(a) *Commercial General Liability Insurance Policy:* with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- (1) Severability of Interests Coverage applying to Additional Insureds
- (2) Contractual Liability
- (3) Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- (4) No Contractual Liability Limitation Endorsement

(5) Additional Insured Endorsement, ISO form CG20 10, current edition, or its equivalent.

(b) *Commercial Automobile Liability Insurance Policy*: with a limit of \$1,000,000 per occurrence, covering owned, hired, and non-owned automobiles. The Policy shall provide coverage on an “any auto” basis and on an “occurrence” basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with this License, by LICENSEE.

(1) All insurance policies required in this Section shall provide that the policy will not be cancelled until after the Insurer provides the CITY ten (10) days written notice of cancellation in the event that the cancellation is for LICENSEE’s nonpayment of premiums and thirty (30) days written notice of cancellation to CITY for all other reasons of cancellation.

(2) The Commercial General and Automobile Liability Insurance Policies specified above shall provide that CITY and its agencies, agents, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this License. LICENSEE shall provide to CITY at execution of this Contract a certificate of insurance showing all required endorsements and additional insureds.

(3) All insurance policies must be provided by Insurance Companies that have an A.M. Best’s rating of A-, V or better, and are licensed or approved by the State of Missouri to provide insurance in Missouri.

(4) Regardless of any approval by CITY, LICENSEE shall maintain the required insurance coverage in force at all times during the term of this License. LICENSEE’s failure to maintain the required insurance coverage will not relieve LICENSEE of its contractual obligation to indemnify the CITY pursuant to this Section of this License. In the event LICENSEE fails to maintain the required insurance coverage in effect, CITY may declare LICENSEE in default.

(5) In no event shall the language in this Section constitute or be construed as a waiver or limitation of the CITY’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

13. INDEMNITY AND PUBLIC LIABILITY. The Licensee shall defend, indemnify and hold harmless City and any of its agencies, officials, officers and employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys’ fees arising out of or resulting from all acts or omissions in connection with this License to the extent caused in whole or in part by Licensee or Licensee’s agents, regardless of whether or not caused in part by an act or omission, including negligence, of City, its agencies,

officials, officers or employees. Licensee is not obligated under this Section to indemnify City for the sole negligence of City.

The parties acknowledge that a portion of the Premises are located under the Grand Boulevard and McGee Street Viaducts, which are roadways, open to the public. Licensor may from time to time apply or cause to be applied various chemicals, salts, sand, asphalt or other materials (“**Treatments**”) to Grand Boulevard and McGee Streets. Licensee, on behalf of itself and its successors, assigns and others claiming by, through or under Licensee, waives any and all claims whether in equity or in law, that may, in whole or in part, arise from or be attributable to or be caused directly or indirectly by the application of Treatments to the roadways above the Viaducts. Except for Treatments applied as a result of current weather conditions or an emergency, Licensor agrees to give Licensee at least five (5) days advance written notice of any proposed application of Treatments to the Viaducts or any other work by Licensor or its contractors on the Viaducts

14. DAMAGE TO PROPERTY ON PREMISES. Licensee agrees that all property of every kind and description kept, stored or placed in or on the Premises shall be at Licensee’s sole risk and hazard and that Licensor shall not be responsible for any loss or damage to any of such property located on the Premises resulting from any cause, including fire, explosion, water stream, gas electricity or the elements, except when due solely to the intentional misconduct or gross negligence of Licensor or its contractors.

15. DANGEROUS CONDITIONS. The parties shall take all reasonably necessary precautions so as not to suffer or permit any unreasonably dangerous condition to pedestrians and/or motorists to be created, exist or continue. In the event City declares an unreasonably dangerous condition to exist, Licensee shall take all steps reasonably necessary and without delay to abate the condition to the extent Licensee has control over such unreasonably dangerous condition.

16. EMINENT DOMAIN. If the Premises or any substantial part thereof shall be taken by any competent authority (other than Licensor) under the power of eminent domain or be acquired for any public or quasi-public use or purpose, the term of this License shall cease and terminate upon the date when the possession of said Premises or the part thereof so taken shall be required for such use or purpose. If any condemnation proceeding shall be instituted in which it is sought to take or damage any part of Licensor’s building or the land under it or if the grade of any street or alley adjacent to the building is changed by any competent authority and change of grade makes it necessary or desirable to remodel the building to conform to the changed grade, either party shall have the right to cancel this License after having given written notice of cancellation to the other party not less than ninety (90) days prior to the date of cancellation designated in the notice. In either of said events, rent at the then current rate shall be apportioned as of the date of termination. No money or other consideration shall be payable by the Licensor to the Licensee for the right of cancellation.

17. COMPLIANCE WITH LAWS. Licensee shall comply with all laws, orders, ordinances and other requirement now or hereafter affecting the Premises or the use thereof, including those related to zoning and the Americans with Disabilities Act as amended from time

to time. Notwithstanding the foregoing, Licensee shall have no obligations under this License to make any repairs or improvements to the Viaducts.

18. ASSIGNMENT AND SUBLEASE. Licensee shall not assign, transfer, or encumber this License and shall not sublease the Premises or any part thereof or allow any other person to be in possession thereof without the prior written consent of Licensor. Notwithstanding the foregoing, Licensee shall have the right to assign or license parking spaces to its unit owners and residents.

19. SURRENDER AT END TERM. At the expiration of the term hereby created, the Licensor or his agent shall have the right to enter take possession of the Licensed Premises, and the Licensee agrees to deliver same without process of law, and the Licensee shall be liable to Licensor for any loss or damage, including attorney's fees and court costs incurred, as a result of Licensee's failure to comply with the terms of this Section.

20. DEFAULT. If default is made in the payment of any installment of rent on the due date thereof, and such failure continues for fifteen (15) days, or if Licensee shall default in the performance of any other provision of this License and such default (other than payment of rent) continues for sixty (60) days after Licensor provides written notice thereof to Licensee in accordance with Section 23, then the Licensor may terminate this License. Upon such termination, Licensor may re-enter the Premises and take possession thereof, with or without force or legal process and without notice or demand, the service of notice, demand or legal process being hereby expressly waived, and the Licensor may exclude Licensee from the Premises by whatever reasonable means necessary, without being liable to Licensee for any damages or for prosecution therefor. Licensor's rights in such event may be enforced by action in unlawful detainer or other proper legal action, and the Licensee expressly agrees, notwithstanding termination of this License and re-entry by the Licensor that the Licensee shall remain liable for a sum equal to six month's rent. However, if the default by Licensee of any provision of this License other than payment of rent is of such a nature that it cannot be cured within the aforementioned sixty (60) day period, provided that Licensee commenced the cure within such sixty (60) day period and thereafter diligently proceeds to complete such cure, such sixty (60) day period shall be extended for such period of time as is necessary in order to complete such cure, or if the Premises be vacated or abandoned, then in any such event.

With respect to any property of the Licensee which remains on the Premises at the time Licensor takes possession of the Premises pursuant to the Default provisions of this Section, Licensor may elect to offer such items at public or private sale, with or without notice, to the higher bidder for cash, and apply the proceeds of said sale to pay the costs of taking possession of and selling said property, then owed toward any debt owed by Licensee and/or toward repair of any damages to the Premises. Any excess of the proceeds of said sale over said costs, debt and/or damages shall be paid to Licensee. Any such sales shall bar any right of redemption by Licensee. This provision however, shall not apply to any licensed vehicles. Licensor shall have the right to tow any licensed vehicle that remains on the Premises at the time Licensor takes possession of the Premises pursuant to the Default provisions.

21. WAIVER. No consent or waiver, express or implied, by any party to this License or any breach or default by any other party in the performance of its obligations under this

License shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance of the same or any other obligations hereunder. Failure on the part of any party to complain of any act or failure to act or to declare any of the other parties in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights under this License. The parties reserve the right to waive any term, covenant, or condition of this License; provided, however, such waiver shall be in writing and shall be deemed to constitute a waiver only as to the matter waived and the parties reserve the right to exercise any and all of their rights and remedies under this License irrespective of any waiver granted.

22. BANKRUPTCY. Neither this License nor any interest therein nor in any estate hereby created shall pass to any trustee receiver in bankruptcy or to any order receiver or assignee for the benefit of creditors or otherwise by operation of law during the term of this License or any renewal thereof.

23. NOTICE. All notices required or permitted by this Agreement shall be in writing sent by regular U.S. mail, postage prepaid, or delivered by courier to the following:

If addressed to Licensee:

Western Auto Lofts Condominium Association, Inc.
Attn: President
2107 Grand Boulevard
Kansas City, MO 64108

If addressed to Licensor:

Parking Services
Public Works Department
20th Floor, City Hall
414 E12th Street
Kansas City MO 64106

All notices are effective on one (1) business day after being mailed by certified mail, return receipt requested, or upon receipt if delivered by a courier. Either party may provide the other party a change of address which change shall be effective ten (10) days after delivery.

24. COVENANTS TO RUN WITH THE PREMISES. The covenants herein contained shall run with the Premises hereby let and bind the heirs, executors, administrators, assigns, and acceptance of the rent from assignee of the License shall not release the Licensee from his obligation to pay rent and comply with the other conditions of this License.

25. NO PERSONAL LIABILITY. No member, manager, partner, or employee of Licensee shall have any personal liability for the obligations of Licensee under this Agreement.

26. NO PARTNERSHIP. It is expressly understood that the parties are not now, nor will they be, engaged in a joint venture, partnership or any other form of business relationship except as expressly set forth herein, and that no party shall be responsible for the

conduct, warranties, guarantees, acts, errors, omissions, debts, obligations or undertaking of any kind or nature of the other in performance of this Agreement. Licensee is not Licensor's agent and has no authority to take any action or execute any documents on behalf of City except and unless as specifically provided for in this License.

27. GOVERNING LAW. This Contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. The Licensee and Licensor: (1) shall submit exclusively to the jurisdiction of the state and federal courts located in Jackson County, Missouri and no other; (2) shall waive any and all objections to jurisdiction and venue; and (3) shall not raise forum non conveniens as an objection to the location of any litigation.

28. CONFLICTS OF INTEREST. Licensee certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Licensee or its contractors under this Agreement.

29. AUDIT. City shall have the right to audit this Agreement and all books, documents and records directly relating thereto. Licensee shall maintain all books, documents and records relating to this Agreement for a period of three (3) years after the date of final payment by City. The books, documents and records shall be made available to City within ten (10) days after City's written request. Licensee shall contractually require that its contractors comply with this section to the same extent as Licensee is required to comply.

30. SEVERABILITY OF PROVISIONS. Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties. In no event shall the obligations of Licensee to perform its obligations hereunder be deemed severable from the City's obligation under Section 3 of this Agreement.

31. HEADINGS; CONSTRUCTION OF AGREEMENT. The headings of each section of this License are for reference only. Unless the context of this License clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

32. ENTIRE AGREEMENT. This License Agreement contains the entire agreement between the parties, and no modification, amendment or cancellation of this License Agreement

shall be binding upon the parties unless evidenced by an agreement in writing signed by both the Licensor and the Licensee after the date hereof.

33. REPRESENTATIONS. The parties certify that they have the power and authority to execute and deliver this Agreement and to perform this Agreement in accordance with its terms.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, Licensee has caused this License Agreement to be signed by its duly authorized officer and Licensor has executed the same as of the day and year first above written.

LICENSEE:

WESTERN AUTO LOFTS
CONDOMINIUM ASSOCIATION, INC.

By: _____
Name: Delores Borel
Title: President

LICENSOR:

CITY OF KANSAS CITY, MISSOURI

By: _____
Name: Sherri McIntyre
Title: Director of Public Works

APPROVED AS TO FORM

By: _____
Name: _____
Title: Assistant City Attorney