



## Memorandum

To: Honorable Mayor and Members of the City Council  
CC: Members of Administration and Public Works Committee  
From: Luke Stowe, Interim Administrative Services Director  
CC: Michael Rivera, Interim Parking Manager  
Subject: Ordinance 164-O-19, Lease Agreement with Enterprise Rent-A-Car for Commercial Space in the City Owned Parking Garage at 1780 Maple Avenue  
Date: November 25, 2019

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### Recommended Action:

Staff recommends City Council adopt Ordinance 164-R-19, authorizing the City Manager to execute a ten (10) year lease with Enterprise Rent-A-Car for commercial space in the City owned parking garage at 1780 Maple Avenue. **An affirmative vote of two-thirds (2/3) of the elected Aldermen is required to adopt the Ordinance. City Manager requests suspension of the rules for Introduction and Action at the November 25, 2019 meeting as the lease renewal is scheduled to commence December 1, 2019.**

### Council Action:

For Introduction and Action

### Summary:

Enterprise currently rents one of three commercial storefronts (at 1780 Maple Avenue) and would like to enter into a new lease for one of the other office spaces. The new lease will be for an initial term of ten (10) years and one (1) five-year option to renew. Enterprise will pay at the rate of \$2,210 per month for the office space. The lease also includes fifteen (15) interior parking spaces for rental vehicles in the Maple Avenue Garage starting at \$1,350 per month, and fifteen (15) parking spaces on the exterior (western portion of the Garage Property – uncovered parking) starting at \$700 per month.

### Attachments:

[164-O-19 Authorizing Lease Agreement at Maple Avenue Garage with Enterprise Rent-A-Car](#)

**164-O-19**

**AN ORDINANCE**

**Authorizing the City Manager to Execute a New Lease Agreement with Enterprise Rent-A-Car for Commercial Space in the City Owned Parking Garage at 1800 Maple Avenue**

**WHEREAS**, the City of Evanston owns certain real property located at 1800 Maple Avenue, Evanston, Illinois 60201, which is improved with a public parking garage referred to as the Maple Avenue Garage and contains two commercial storefronts at the street level (the "Property"); and

**WHEREAS**, Enterprise Leasing Company of Chicago, LLC, a Delaware limited liability company d/b/a "Enterprise Rent-a-Car" currently rents one of three commercial storefronts, address 1810 Maple Avenue ("Premises"), and seeks to enter into a new lease with the City in one of the other commercial spaces at 1800 Maple Avenue; and

**WHEREAS**, the City Council has determined that the Property is not necessary to City operations and continuing to lease the Property to Enterprise Leasing Company of Chicago, LLC is in the City's best interests,

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS, THAT:**

**SECTION 1:** The foregoing recitals are hereby found as fact and incorporated herein by reference.

**SECTION 2:** Pursuant to Subsection 1-17-4-1 of the Evanston City Code of 2012, as amended (the "City Code"), the City Manager is hereby authorized and

directed to execute, on behalf of the City of Evanston, a long term lease agreement with an initial term of ten (10) years and one (1), five (5) year option to renew the lease agreement, between the City of Evanston and Enterprise Leasing Company of Chicago, LLC. The Lease Agreement shall be in substantial conformity with the Lease Agreement attached hereto as Exhibit "1" and incorporated herein by reference.

**SECTION 3:** Pursuant to Subsection 1-17-4-2-(B) of the Evanston City Code, 2012, as amended (the "City Code"), an affirmative vote of two-thirds ( $\frac{2}{3}$ ) of the elected Aldermen is required to accept the recommendation of the City Manager on the lease agreement authorized herein.

**SECTION 4:** If any provision of this ordinance or application thereof to any person or circumstance is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this ordinance is severable.

**SECTION 5:** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

**SECTION 6:** The findings and recitals contained herein are declared to be prima facie evidence of the law of the City and shall be received in evidence as provided by the Illinois Compiled Statutes and the courts of the State of Illinois.

**SECTION 7:** This ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

Ayes: \_\_\_\_\_

Nays: \_\_\_\_\_

Approved:

Introduced: \_\_\_\_\_, 2019

\_\_\_\_\_, 2019

Adopted: \_\_\_\_\_, 2019

\_\_\_\_\_  
Stephen H. Hagerty, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Devon Reid, City Clerk

\_\_\_\_\_  
Michelle Masoncup, Corporation Counsel

**EXHIBIT 1**  
**LEASE AGREEMENT**

## LEASE

THIS LEASE AGREEMENT is made by and between **City of Evanston** ("**Landlord**"), an Illinois municipal corporation and **Enterprise Leasing Company of Chicago, LLC**, a Delaware limited liability company d/b/a Enterprise Rent-A-Car ("**Tenant**").

WITNESSETH:

### **1. PREMISES**

(a) Property. Landlord is the fee simple owner of certain real property at 1800 Maple Avenue, Evanston, Illinois 60201, which is the public parking facility commonly known as the "**Maple Avenue Garage**" legally described in **Exhibit "A"** attached hereto and incorporated herein (the "**Garage Property**"). The Garage Property contains three commercial units on the ground level and Landlord agrees to lease one of these units to Tenant, with the common address of 1800 Maple Avenue, Evanston, Illinois 60201, which is approximately 728 square feet (the "**Premises**"). Landlord does hereby demise and lease the Premises to Tenant, for Tenant's exclusive use and control, together with all appurtenances thereto, pursuant to the terms and conditions of this Lease.

(b) Parking. This Lease does include the lease of fifteen (15) parking spaces for rental vehicles in the Maple Avenue Garage as part of the rental rate. The rental rate for the lease of these spaces is outlined in Paragraph 3 below.

### **2. TERM**

(a) Primary Term. Subject to the provisions of this Lease, the "**Primary Term**" shall be a ten (10) year term, commencing on December 1, 2019 ("**Commencement Date**") and shall end at 11:59 p.m. on November 30, 2029 except as otherwise terminated as provided herein.

(b) Extended Terms. Provided Tenant is not otherwise in default beyond any applicable cure period, Tenant shall have one (1) option ("**Extension Option**"), to extend the lease for a five (5) year period, November 1, 2029 – October 31, 2034 ("**Extension Term**") upon the same terms, covenants and conditions as herein provided, including the rent rates with the 5% increase every year. Such Extension Option shall be reviewed and approved by the parties in writing, Tenant shall notify Landlord in writing at least sixty (60) days' prior to the then current expiration date of the Primary Term that it does not elect to extend such Term. The Primary Term together with the Extension Term is referred to herein collectively as the "**Term**".

(c) Termination Right. Anything in this Lease to the contrary notwithstanding, Landlord may terminate this lease at any time during the Primary and Extended Term upon not less than 12 months prior written notice to the other party.

### **3. RENT**

(a) **Premises Rent.** On the Commencement Date, and subject to the terms of this Lease, Tenant agrees to pay to Landlord: (i) Premises Rent (herein so called) described below at the rate of **\$2,210 per month** for the Premises; and (ii) all other charges due from Tenant to Landlord hereunder as “**Additional Rent**” (herein so called), which is the NE Car Park Corral rental and the Exterior Car Parking rental. The Premises Rent and the Additional Rent is set forth in the table outlined in Paragraph 3(d), payable in one check as Total Rent.

(b) **Parking Spaces.** Tenant is permitted to utilize the northeast portion of the garage to store vehicles (“NE Car Park Corral”), Tenant will pay for use of this area at the rate for 15 spaces as outlined in the chart below in Section 3(d). The rental rate for use of the NE Car Park Corral is based on the current market rate for a parking space per month, \$90 and therefore the rate is \$1,350 (15 X \$90) for the year. The table in Paragraph 3(d) below provides the increases in the rates during the Term. Tenant acknowledges and agrees that another commercial tenant will be utilizing 2 spaces in the NE Car Park Corral that will be marked for their use.

Tenant will also be provided 2 spaces in the southeast portion of the garage (“SW Car Spaces”) for 30-minute parking. Tenant may not block their use of these spaces by any means. The SW Car Spaces will be marked for 30 minute parking only for Enterprise customers and enforced as such; Tenant’s users may not utilize the spaces for a longer period of time. If Tenant has overflow of cars that need to be parked in the garage and does not have sufficient parking spaces for said vehicles, Tenant may purchase monthly pre-paid tickets that may be utilized for a 48 hour time period at market rates.

(c) **Exterior Car Parking.** Tenant is also permitted to park up to 15 cars on the western portion of Garage Property, which abuts the Maple Avenue Garage and an outside area, not covered spaces. Landlord will mark the Exterior Car Parking area to delineate the area where Tenant may park its vehicles. The Exterior Car Parking area may not be utilized from Saturday 12:01 a.m. to Saturday 7:00 p.m., Landlord utilizes the Exterior Car Parking area for the Saturday farmers market. Landlord leases the Exterior Car Parking area at the rate of \$700 per month, which will be increased by 5.0% every year during the Term and Extended Term. The rental fee for the Exterior Car Parking will be in addition to the Rent and payable at the time remittance to the City, as notated in the chart below.

(c)

Period	Effective Date	End Date	Monthly Rent	Exterior Parking	Interior Parking	Total Rent
Y1 Rent	11/1/2019	10/31/2020	\$2,210	\$700	\$1,350	\$4,260
Y2 Rent	11/1/2020	10/31/2021	\$2,276	\$735	\$1,350	\$4,361
Y3 Rent	11/1/2021	10/31/2022	\$2,344	\$772	\$1,425	\$4,541
Y4 Rent	11/1/2022	10/31/2023	\$2,414	\$811	\$1,425	\$4,650

Y5 Rent	11/1/2023	10/31/2024	\$2,486	\$852	\$1,425	\$4,763
Y6 Rent	11/1/2024	10/31/2025	\$2,561	\$895	\$1,425	\$4,881
Y7 Rent	11/1/2025	10/31/2026	\$2,638	\$940	\$1,425	\$5,003
Y8 Rent	11/1/2026	10/31/2027	\$2,717	\$987	\$1,425	\$5,129
Y9 Rent	11/1/2027	10/31/2028	\$2,799	\$1,036	\$1,425	\$5,260
Y10 Rent	11/1/2028	10/31/2029	\$2,883	\$1,088	\$1,425	\$5,396

(ii) Late Fee. In the event any sums required hereunder to be paid are not received by Landlord on or before the date the same are due, then, Tenant shall on demand pay a service charge of Two Hundred Dollars (\$200) per month until paid.

(e) Time and Place of Payment. Tenant shall pay to Landlord Total Rent in advance, in equal monthly installments, and without prior notice, setoff (unless otherwise expressly permitted herein) or demand, except as otherwise specifically provided herein, on or before the first (1<sup>st</sup>) day of each calendar month during the Term hereof via ACH payments or via check to the City of Evanston.

City of Evanston  
Attn: Collector's Office  
2100 Ridge Avenue  
Evanston, IL 60201

#### **4. FIXTURES**

All trade fixtures and equipment installed by Tenant in or on the Premises (including furniture, satellite communication dish and equipment, registers, other equipment, shelving and signs) shall remain the property of Tenant and Tenant may remove the same or any part thereof at any time prior to or at the expiration or earlier termination of this Lease. Tenant shall repair at its own expense any damage to the Garage Property or Premises caused by the removal of said fixtures or equipment by Tenant. This provision shall expressly survive the termination or expiration of this Lease.

#### **5. USE OF PREMISES**

(a) Permitted Use. Tenant shall have the right, subject to applicable Federal, State and local laws and the terms of this Lease, to use the Premises for the following purpose(s): to run a commercial rental vehicle business and related functions to run the rental business (herein collectively "**Permitted Use**").

(b) Tenant Exclusive Use of Premises. Landlord covenants and agrees that it has no rights to use, modify, alter or lease any portion of the Premises other than as expressly provided in this Lease.



## **6. IMPROVEMENTS AND MAINTENANCE**

(a) Tenant accepts the Premises in as-is condition, and acknowledges that the Landlord has made no representations to the condition or has made any repairs to same except as provided in this Lease. The Landlord or Landlord's staff or other representatives have made no representations or assurances that it will alter or remodel the Premises and all renovations will be at Tenant's sole cost and expense. Notwithstanding the foregoing, Landlord agrees to install a 4-inch sewer drain and sewer hookups for a single use bathroom facility. Landlord will make these rough-in improvements prior to Tenant taking possession of the Premises. Tenant will finish the work necessary to construct a bathroom facility within 3 months of Commencement Date at its own expense.

(b) Maintenance Responsibilities of Tenant:

(i) HVAC system for the Premises, interior sprinkler and fire safety system within the Premises, and other interior fixtures.

(ii) Tenant cannot dispose of construction building materials in the standard refuse containers and must arrange for special pick-ups and containers for said materials. A refuse container for regular refuse will be located at the Premises in reasonable proximity to the Premises. Tenant will contract to have trash hauled from such container with reasonable frequency. Tenant is responsible for snow, ice removal and leaf removal and general upkeep of the exterior directly in front and in back of the Premises.

(iii) The Tenant will at all times maintain all of the Premises in a clean, neat and orderly condition. The Tenant will not use the Premises in a manner that will violate or make void or inoperative any policy of insurance held by the Landlord. The Tenant shall pay the Landlord for overtime wages for staff and for any other related expenses incurred in the event that repairs, alterations or other work in the Premises required or permitted hereunder are not made during ordinary business hours at the Tenant's request.

(iv) Tenant will keep the interior non-structural portions of the Premises, including all interior, non-structural walls, surfaces and appurtenances (other than systems and any other items that Landlord is required to maintain pursuant to Section 7(c), in good repair. Tenant shall be responsible for repairs, damages and losses for damages sustained outside the Premises attributable to Tenant's negligence or intentional misconduct. Tenant agrees to use good faith efforts to report such damage in writing to the Director of Public Works or her designee, by the next City of Evanston business day, after discovery of such damage by Tenant.

(v) Tenant shall yield the Premises back to Landlord, upon the termination of this Lease, whether such termination shall occur by expiration of the Term, or in any other manner whatsoever, in the same condition of cleanliness and repair as at the date

of the execution hereof, loss by casualty and reasonable wear and tear accepted. Except to the extent any of the following is Landlord's obligation pursuant to Section 7(c), Tenant shall make all necessary repairs and renewals upon Premises and replace broken fixtures with material of the same size and quality as that broken. If, however, the Premises shall not thus be kept in good repair and in a clean condition by Tenant, as aforesaid, Landlord may enter the same, or by Landlord's agents, servants or employees, without such entering causing or constituting a termination of this Lease or an interference with the possession of the Premises by Tenant, and Landlord may replace the same in the same condition of repair and cleanliness as existed at the date of execution hereof, and Tenant agrees to pay Landlord, in addition to the rent hereby reserved, the expenses of Landlord in thus replacing the Premises in that condition. Tenant shall not cause or permit any waste, misuse or neglect of the water, or of the water, gas or electric fixtures.

(vi) Tenant will keep all leasehold improvements in compliance with all laws and regulations during the entire Term of this Lease, except for repairs required of the Landlord to be made and damage occasioned by fire, hurricane or other causes as provided for in this Lease.

(c) Landlord shall maintain and repair the exterior (except for improvements made by Tenant) and all structural and load bearing columns and walls of the Maple Avenue Garage including the roof membrane, roof structure, and the roof covering, the outside walls (excluding the sign fascia attached to the front of the Premises), all buried utilities up to the point of entry into Tenant's Premises, and the foundations of the Maple Avenue Garage in good condition and repair throughout the Term of this Lease. Landlord shall also be responsible for all capital expenses relating to the maintenance and repair of the exterior portions of the Maple Avenue Garage and damages caused by Landlord, its agents, employees, licensees or contractors. Tenant will pay a proportional cost, based on its square footage of the Premises, for any roofing repairs or membrane replacement, when it shall become necessary during the Term or Extended Term.

## **7. PAYMENT OF TAXES**

(a) Definition. For purposes hereof, "**Taxes**" shall mean Leasehold property taxes and "**Assessments**" shall mean assessments, general and special, foreseen and unforeseen, for public improvements levied or assessed against the Premises and the improvements thereon for that portion of the Term (as defined herein).

(b) Payment. Landlord represents and warrants to Tenant that the Garage Property is currently exempt from Taxes and Assessments. Tenant shall continue to pay all Taxes and Assessments before any fine, penalty, interest or cost may be added thereto, become due or be imposed by operation of law for the nonpayment of late payment thereof.

(c) Prorations. At the end of the Term, Taxes and Assessments to be paid by

Tenant shall be prorated based on the portion of the fiscal tax year in which this Lease is in effect.

(d) Personal Property Taxes. Tenant shall pay before delinquency any and all taxes and assessments levied or assessed and becoming payable during the Term, against Tenant's personal property located upon the Premises.

## **8. DAMAGE AND DESTRUCTION**

(a) Casualty. If the Premises shall be damaged by fire or other casualty ("**Casualty**"), Landlord shall, within one hundred eighty (180) days after such damage occurs (subject to being able to obtain all necessary permits and approvals, including, without limitation, permits and approvals required from any agency or body administering environmental laws, rules or regulations, and taking into account the time necessary to effectuate a satisfactory settlement with any insurance company) repair such damage at Landlord's expense and this Lease shall not terminate. Notwithstanding (i) any other provisions of the Lease to the contrary, and (ii) any legal interpretation that all improvements become part of the realty upon being attached to the Premises, following a Casualty, the Landlord shall be responsible only for restoring the Premises to building standard levels of improvement, and the tenant shall be responsible for insuring and replacing the above building standard levels of improvement, and the tenant shall be responsible for insuring and replacing the above building standard tenant improvements or betterments that made the Premises "customized" for Tenant's use. Customized improvements include, but not limited to: bullet proof glass, alarm censored doors, wood flooring, and custom cabinetry. Except as otherwise provided herein, if the entire Premises are rendered untenable by reason of any such damage, all Fixed Minimum Rent and Additional Rent shall abate for the period from the date of the damage to the date the damage is repaired and Landlord obtains a Certificate of Occupancy for Tenant, and if only a part of the Premises are so rendered untenable, the Fixed Minimum Rent and Additional Rent shall abate for the same period in the proportion that the area of the untenable part bears to the total area of the Premises; provided, however, that if, prior to the date when all of the damage has been repaired, any part of the Premises so damaged are rendered tenable and shall be used or occupied by or through Tenant, then the amount by which the Fixed Minimum Rent and Additional Rent abates shall be apportioned for the period from the date of such use or occupancy to the date when all the damage has been repaired.

(b) Repair to Leasehold Improvements. Landlord shall have no obligation to repair damage to or to replace any leasehold improvements, Tenant's personal property or any other property located in the Premises, and Tenant shall within thirty (30) days after the Maple Avenue Garage is sufficiently repaired so as to permit the commencement of work by Tenant, commence to repair, reconstruct and restore or replace the Premises (including fixtures, furnishings and equipment) and prosecute the same diligently to completion.

(c) Termination Right. Notwithstanding any provision contained herein to the contrary, Tenant shall have the option and right to terminate this Lease if, (a) the Premises shall be so damaged by Casualty that it cannot be fully repaired within one hundred eighty (180) days after the date of damage; (b) during the last eighteen (18) months of the Term of this Lease, the Maple Avenue Garage is damaged by a Casualty in amount exceeding thirty-three and one-third percent (33.33%) of the square footage of the Premises, provided that, in such event, such termination of this Lease shall be effected by written notice within ninety (90) days of the happening of the Casualty causing such damage. This provision shall expressly survive the termination or expiration of this Lease.

## **9. INSURANCE**

(a) Tenant shall keep in full force and effect during the Term special form coverage insurance covering Tenant's leasehold improvements, trade fixtures, merchandise and other personal property from time to time in, on or upon the Premises for the full replacement value insuring against physical loss or damage generally included in the classification of "all risk" coverage.

(i) Said insurance shall be written by a company or companies licensed to do business in the state in which the Premises is located and rated Class A XII or better in Bests Key Rating Guide of Property-Casualty Insurance Companies.

(ii) Said insurance shall be in an amount of the full replacement value with a deductible in Tenant's reasonable discretion, which deductible Tenant shall be paid at Tenant's sole cost and expense. The insurance is to cover, in addition to any personal property at the Premises, the above building standard leasehold improvements and betterments incorporated into the premises, whether or not initially installed and/or paid for by the Tenant. The Tenant's aggregate coverage amount must be an amount sufficient to cover both the tenant's personal property at the Premises and the leasehold improvements. So long as the Lease is not terminated pursuant to Paragraph 9 for a casualty, the proceeds of tenant's insurance policy with respect to the tenant improvements shall be used to restore and replace the same.

(b) Tenant agrees to maintain a policy or policies of commercial general liability insurance written by an insurance carrier rated at least Class A or better in Bests Key Rating Guide of Property-Casualty Insurance Companies and licensed to do business in the state in which the Premises is located which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence. Said policy or policies shall provide, among other things, blanket contractual liability insurance. Tenant's policy shall cover the Premises and the business operated by Tenant and shall name Landlord as an additional insured. Landlord is self-insured up to \$1.25 Million and agrees to maintain an excess policy or policies of commercial general liability insurance over the self-insured limit

written by an insurance carrier with a rating at least Class A or better in the Bests Key Rating Guide and licensed to do business in the state in which the Premises is located which shall insure against liability for injury to and/or death of and/or damage to personal property of any person or persons, with policy limits of not less than \$2,000,000.00 combined single limit for injury to or death of any number of persons or for damage to property of others not arising out of any one occurrence. Landlord's policy shall name Tenant as an additional insured. Subject to the terms of Paragraph 9(a), Landlord shall maintain casualty insurance covering the entire Maple Avenue Garage and any alterations, improvements, additions or changes made by Landlord thereto in an amount not less than their full replacement cost from time to time during the Term, providing protection against any peril included within the classification of "all risks".

(c) Each of the parties hereto agrees to maintain and keep in force, during the Term hereof, all Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts.

(d) Within thirty (30) days after written request, each of the parties agrees to deliver to the other a certificate of insurance as evidence that the policies of insurance required by this Section 10 have been issued and are in effect.

(e) Waiver of Subrogation. Neither Landlord nor Tenant shall be liable to the other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure or other tangible property, or any resulting loss of income for property or general liability losses, even though such loss or damage might have been occasioned by the acts or omissions of such party, its agents, contractors or employees. Landlord or Tenant shall look exclusively to the proceeds of insurance carried by it or for its benefit in the event of any damage or destruction to its property located on the Premises. Notwithstanding anything to the contrary contained herein, Landlord and Tenant hereby release and waive any and all rights of recovery, claim, action or cause of action, against the other, or its respective directors, shareholders, officers, agents, invitees and employees, for any loss or damage that may occur to the property or the equipment, fixtures and improvements comprising any part of the Premises, by reason of fire, the elements, or any other cause which could be insured against under the terms of an "all risk" fire insurance policy, in the state where the Premises is located, regardless of cause or origin, including negligence of the parties hereto, their agents, officers, invitees and employees. Subject to the provisions of the Lease, no insurer of a party hereunder shall ever hold or be entitled to any claim, demand or cause of action against Tenant by virtue of a claim of loss paid under any such insurance policies, whether such insurer's claim be in the nature of subrogation or otherwise. The waivers provided pursuant to this paragraph shall not operate to the extent that they would void coverage under the provisions of any policy of insurance.

## **10. INDEMNIFICATION**

(a) Indemnification of Landlord. Except as otherwise provided in this Lease and subject to Section 10(e), and except to the extent caused by the negligence or willful misconduct of Landlord, or its agents, employees or contractors, or by the breach of this Lease by Landlord, Tenant shall protect, defend, indemnify and save Landlord and its officers, directors, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from (i) any matter, condition or thing that occurs in the Premises, which is not the result of Landlord's negligence or willful misconduct, (ii) any negligence or willful misconduct of Tenant, or its agents, employees or contractors; or (iii) Landlord's breach occasioned wholly or in part by any act, omission of Tenant, its agents, employees, contractors or servants. The provisions of this Section shall survive the expiration or earlier termination of this Lease only with respect to any damage, injury or death occurring before such expiration or earlier termination.

(b) Indemnification of Tenant. Except as otherwise provided in this Lease and subject to Section 10(e), and except to the extent caused by the negligence or willful misconduct of Tenant, or its agents, employees or contractors, or by the breach of this Lease by Tenant, Landlord shall protect, defend, indemnify and save Tenant and its officers, directors, agents, attorneys, and employees harmless from and against any and all obligations, liabilities, costs, damages, claims and expenses of whatever nature arising from any act, omission or negligence of Landlord, its agents, employees, contractors or servants; The provisions of this Section shall survive the expiration or earlier termination of this Lease only with respect to any damage, injury or death occurring before such expiration or earlier termination.

## **11. EXERCISE OF EMINENT DOMAIN**

(a) Taking. An appropriation or taking under the power of eminent domain of all, or a portion, of the Property, are sometimes hereinafter called a "taking."

(b) Total Taking of the Garage Property. If all of the Garage Property shall be taken this Lease shall terminate and expire as of the date of vesting of title in, or taking of actual physical possession of the Garage Property by, the condemnor, and Landlord and Tenant shall thereupon be released from any and all further liability hereunder except to the extent any such liability hereunder expressly states that it shall survive the termination of this Lease. In such event, Tenant shall be entitled to participate in any condemnation award so as to be compensated for the cost of relocation, removal and decrease in value, as a result of such taking of Tenant's fixtures, equipment and stock-in-trade located in the Premises, goodwill and any other items to which Tenant is entitled under applicable law, and, the value of the leasehold of which Tenant is being deprived for the remainder of the Term hereof so long as any such award made to Tenant shall not reduce any award which may be obtained by Landlord. Nothing in this Section shall be construed as a waiver by Landlord of any rights vested in it by law to recover damages from a condemnor for the taking of its right, title, or interest in the

Garage Property.

(c) Partial Taking.

In the event of the taking of:

(i) any portion of the Garage Property, so that the remainder thereof is not reasonably adapted to the continued leasing of the Premises by Tenant; or

(ii) access, whether by a taking or otherwise, of the Garage Property or a portion thereof to adjoining thoroughfares, so that all accessibility is substantially or materially restricted and as a result the continued leasing of the Garage Property by Tenant will become impracticable or unprofitable in Tenant's sole discretion; then Tenant shall have the right to cancel and terminate this Lease as hereinafter provided. Within ninety (90) days after receipt by Tenant from Landlord of written notice that a condemnation action has been commenced, Tenant may, by written notice to Landlord, notify Landlord of its election to terminate this Lease, whereupon the parties shall be released from any and all further obligations under this Lease except to the extent any such obligation hereunder is expressly provided hereunder that the same shall survive the termination of this Lease and Tenant shall share any award or sale price as provided in Section 12(b) hereof.

(d) Notice of Proceedings. Upon service on either party hereto of any legal process in connection with any condemnation proceedings, the party so served shall give immediate notice thereof to the other party hereto.

(e) Temporary Taking. In the event of a taking of the Garage Property, or any portion thereof, for temporary use (specifically one not exceeding one hundred twenty (120) days in duration), without the taking of the fee simple title thereto, this Lease shall remain in full force and effect, except for Tenant's payment of Fixed Minimum Rent which shall be proportionally abated for any period during which Tenant cannot operate its business from the Premises in the same manner as prior to such temporary taking. All awards, damages, compensation and proceeds payable by the condemnor by reason of such taking relating to the Premises, for periods prior to the expiration of the Lease shall be payable to Tenant. All such awards, damages, compensation and proceeds for periods after the expiration of the Lease shall be payable to Landlord.

(f) Lease Prevails. In the event of any taking, the rights and obligations of the parties shall be determined by this Lease and Landlord and Tenant waive any rights at law to the contrary.

## **12. UTILITIES**

Tenant shall pay during the Term hereof directly to the appropriate utility company or governmental agency all gas, electric, water, and telephone charges in connection with its occupancy and use of the Premises, including all costs of operating and maintaining

all equipment therein, all business licenses and similar permit fees but excluding any installation costs, tap fees and/or connection fees or charges, all of which shall be paid by Landlord. All utilities shall be paid pursuant to separate meters measuring Tenant's consumption of utilities from the Premises, which meter fee shall be Landlord's obligation at its sole cost and expense. Landlord shall not be liable to Tenant for damages or otherwise (i) if any utilities shall become unavailable from any public utility company, public authority or any other person or entity supplying or distributing such utility, or (ii) for any interruption in any utility service (including, but without limitation, any heating, ventilation or air conditioning) caused by the making of any necessary repairs or improvements or by any cause beyond Landlord's reasonable control, and the same shall not constitute a default, termination or an eviction. Notwithstanding the foregoing, in the event an interruption with such utility services shall continue for more than five (5) consecutive days, and if such interruption is not caused in part by Tenant, and if as a result of such interruption Tenant is unable to operate in the Premises and in fact does not operate in the Premises, then Fixed minimum Rent and all other rent and charges shall abate for the entire period of interruption. Tenant assures Landlord that it shall arrange for an adequate supply of electricity to the Premises and it shall pay for any increased voltage and any additional wiring required addressing the increased capacity.

### **13. COVENANTS AGAINST LIENS**

Tenant covenants and agrees that it shall not, during the Term hereof, suffer or permit any lien to be attached to or upon the Garage Property or the Premises by reason of any act or omission on the part of Tenant or its agents, contractors or employees. In the event that any such lien does so attach, and (i) is not released within thirty (30) days after notice to Tenant thereof, or (ii) if Tenant has not bonded such lien within said thirty (30) day period, Landlord, in its sole discretion, may pay and discharge the same and relieve the Premises or the Garage Property therefrom, and Tenant agrees to repay and reimburse Landlord upon demand for the amount so paid by Landlord and for other reasonable costs incurred by Landlord in discharging and relieving said lien. The Tenant will hold the Landlord harmless from all claims, liens, claims of lien, demands, charges, encumbrances or litigation arising out of any work or activity of Tenant on the Premises. Tenant will, within sixty (60) days after filing of any lien, fully pay and satisfy the lien and reimburse Landlord for all resulting loss and expense, including a reasonable attorney's fees. Provided, however, in the event that Tenant contests any lien so filed in good faith and pursues an active defense of said lien, Tenant shall not be in default of this paragraph. However, in the event of any final judgment against Tenant regarding such lien, Tenant agrees to pay such judgment and satisfy such lien within 60 days of the entry of any such judgment.

### **14. ASSIGNMENT AND SUBLETTING**

Tenant will have the right to assign its interest in this Lease or sublet all or any portion of the Premises to any entity wholly owned or controlled by Tenant or its parent corporation, or to a successor by merger or consolidation, or to any entity that acquires



all or substantially all of Tenant's assets or stock. The use of the Premises by such assignee or sublessee will be in accordance with the provisions of Section 5. Tenant will remain liable for the performance of the obligations of Tenant pursuant to this Lease. Any other assignment or subletting will require Landlord's consent, which consent will not be unreasonably withheld, conditioned or delayed.

## **15. NOTICES**

Any notices required to be given hereunder, or which either party hereto may desire to give to the other, shall be in writing. Such notice may be given by reputable overnight delivery service (with proof of receipt available), personal delivery or mailing the same by United States mail, registered or certified, return receipt requested, postage prepaid, at the following addresses identified for Landlord and Tenant, or to such other address as the respective parties may from time to time designate by notice given in the manner provided in this Section.

If to the Landlord:

with a copy to:

City Manager  
2100 Ridge Avenue  
Evanston, IL 60201

Corporation Counsel  
2100 Ridge Avenue  
Evanston, IL 60201

If to Tenant:

Enterprise Leasing Company of Chicago, LLC  
1050 N. Lombard Road  
Lombard, IL 600148  
Attention : Vice President/General Manager

With a copy to:

Enterprise Holdings Inc.  
600 Corporate Park Blvd.  
St. Louis, Mo 63105  
Attention: Real Estate Department

For purposes of this Lease, a notice shall be deemed given upon the date of actual receipt thereof or the date of proof of rejection thereof if delivered by hand or overnight courier service.

## **16. RIGHT TO GO UPON PREMISES**

Landlord hereby reserves the right for itself or its duly authorized agents and representatives at all reasonable times during business hours of Tenant upon at least forty-eight (48) hours prior notice to Tenant and accompanied by a representative of Tenant (which may be the store manager or assistant manager) to enter upon the Premises for the purpose of inspecting the same and of showing the same to any

prospective purchaser or encumbrance or tenant, and for the purpose of making any repairs which Landlord is required hereunder to make on the Garage Property, but any such repairs shall be made with all due dispatch during normal construction trade working hours, and in such manner as to minimize the inconvenience to Tenant in the conduct of its business, it being agreed that in the event of a necessity of emergency repairs to be made by Landlord, Landlord may enter upon the Premises forthwith to effect such repairs. Landlord will make every effort to relocate tenant to avoid temporary closure of business. Notwithstanding the foregoing, in the event that due to an entry by or on behalf of Landlord into the Premises, Tenant's use is materially interfered with and Tenant, from the standpoint of prudent business management, cannot open and operate the Premises for business for two (2) consecutive days, all Fixed Minimum Rent and other charges payable by Tenant hereunder shall equitably abate commencing after such second (2<sup>nd</sup>) day, and continuing until such repairs are completed, unless such entry is required as a result of Tenant's negligence or intentional misconduct

## **17. DEFAULT**

### **(a) Tenant Default.**

(i) Events of Default. Including, but not limited to, the following events shall be deemed to be an "event of default" hereunder by Tenant subject to Tenant's right to cure:

a. Tenant shall fail to pay any item of Fixed Minimum Rent per Section 3 at the time and place when and where due and does not cure such failure within ten (10) business days after receipt of notice from Landlord of such failure;

b. Tenant shall fail to comply with any other term, provision, covenant or warranty made under this Lease or if any of Tenant's representations and warranties made under this Lease are determined to be untrue, either when made or at any time during the Term, by Tenant, and Tenant shall not cure such failure within thirty (30) days after Landlord's written notice thereof to Tenant. In the event Tenant cannot comply with such term, provision, or warranty, within said thirty (30) day period, Tenant shall not be in default if Tenant is diligently and continuously making an effort to comply with such term, provision, covenant or warranty and Tenant completes the cure of the default; or

c. Tenant shall make a general assignment the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy.

(ii) Remedies. Upon the occurrence of an event of default, Landlord may, so long as such default continues, as permitted by law and subject to Landlord's obligation to use good faith efforts to mitigate damages, either:

a. terminate this Lease by written notice to Tenant, which written notice shall specify a date for such termination at least fifteen (15) days after the date of such written termination notice and such termination shall be effective as provided in such written notice unless Tenant shall cure such default within such notice period, or not terminate this Lease as a result of the default of Tenant. If Tenant shall fail to surrender the Premises upon such termination, Landlord may thereupon, reenter the Premises, or any part thereof, and expel or remove therefrom Tenant and any other persons occupying the same, using such means provided by law;

b. without terminating this Lease, Landlord may evict Tenant (by any means provided by law) and let or relet the Premises or any or all parts thereof for the whole or any part of the remainder of the Term hereof, or for a period of time in excess of the remainder of the Term hereof, and out of any rent so collected or received, Landlord shall first pay to itself the expense of the cost of retaking and repossessing the Premises and the expense of removing all persons and property therefrom, and shall, second, pay to itself any costs or expenses sustained in securing any new tenant or tenants (provided that such amount shall not include any amounts incurred to restore the Premises to more than the condition originally delivered to Tenant), and shall third, pay to itself any balance remaining, and apply the whole thereof or so much thereof as may be required toward payment of the liability of Tenant to Landlord then or thereafter unpaid by Tenant; each party shall use commercially reasonable efforts to mitigate its damages in the event of default by the other party, or

c. pursue such other remedies as are available at law or in equity.

(b)Landlord Default. Should Landlord default in the performance of any covenant, provision, warranty, condition or agreement herein, or if any of Landlord's representations and warranties made under this Lease are determined to be untrue, either when made or at any time during the Term, and such default in the case of any failure by Landlord to pay any sum required to be paid to Tenant hereunder, continues for ten (10) business days after notice thereof from Tenant, or in case of any non-monetary default, continues for thirty (30) days after receipt by Landlord of written notice thereof from Tenant (except as otherwise provided herein), or if the default of Landlord is of a type which is not reasonably possible to cure within thirty (30) days, if Landlord has not commenced to cure said default within said thirty (30) day period and does not thereafter diligently prosecute the curing of said default to completion (except as otherwise provided herein), Tenant in addition to any and all other remedies which it may have at law and/or in equity including the right to seek injunctive relief without posting a bond or the obligation to prove irreparable harm, may pay or perform any obligations of Landlord hereunder and deduct the cost thereof from each installment of annual Fixed Minimum Rent payable pursuant to the terms of this Lease; provided, however, in no event shall the amount of any such deduction exceed ten percent (10%) of the Fixed Minimum Rent payable on a monthly basis; provided, further, Tenant shall not have the right to terminate this Lease except as expressly permitted herein.

## **18.SIGNS**

Tenant may keep its existing signage at the Premises. If Tenant seeks to replace the sign, Tenant acknowledges that there are limitations from the City of Evanston Municipal Code of 2012, as amended, and the Code governs the application process and the details regarding size, type, and number of signs and Tenant agrees to be bound by such ordinances. Landlord cannot make representations in a lease agreement that Tenant shall be entitled additional signage, a certain number of signs and/or dimensions of proposed signage, because the Tenant must make an application to the Sign Review Board, as provided by Code, but Landlord will not withhold, condition or delay its consent to a sign over the new entrance to the Premises which complies with applicable laws.

## **19.REPRESENTATIONS AND WARRANTIES**

(a) Landlord represents, warrants and covenants to Tenant that, to Landlord's knowledge, the following is true as of the Effective Date:

- (i) all of the Premises is zoned for commercial purposes, and the Permitted Use is permitted under the applicable zoning designation, and that the Premises and Garage Property are presently properly subdivided in conformity with all applicable laws;
- (ii) Landlord is the fee simple owner of the Premises;
- (iii) the Premises is subject to no restrictions or continuing regulations of any kind or nature whatsoever incompatible with the Permitted Use and that there are no restrictions in any agreement by which Landlord is bound (including, but not limited to, Landlord's insurance policies) which would adversely affect Tenant's right to use the Premises for the Permitted Use during the Term;
- (iv) the Premises are in good working order and condition, the roof is watertight and all utility systems are functional;
- (v) there are no exceptions to title with respect to and/or encumbrances on the Premises which would interfere with Tenants proposed use of the Premises;
- (vi) Landlord has no notice of any proposed Assessments other than as reflected on the current tax bill;
- (vii) Landlord has not used, discharged, dumped, spilled or stored any Hazardous Substances on or about the Premises, whether accidentally or intentionally, legally or illegally, and has received no notice of such occurrence and has no knowledge that any such condition exists at the Premises;

- (viii) Landlord has no knowledge of any condition that would preclude Tenant from obtaining all Tenant's permits and licenses necessary for Tenant to open for business and operate for the Permitted Use;
  - (ix) if Landlord is a corporation, limited liability company, partnership or trust, Landlord covenants that it is duly constituted under the laws of the state of its organization, and that its officer, member, manager, partner or trustee who is acting as its signatory in this Lease is duly authorized and empowered to act for and on behalf of the entity or trust; and
  - (x) there are no judicial, quasi-judicial, administrative or other orders, injunctions, moratoria or pending proceedings against Landlord or the Garage Property which preclude or interfere with, or would preclude or interfere with, the construction contemplated herein or the occupancy and use of the Premises by Tenant for the purposes herein contemplated.
  - (xi) no third party has the right to object to Tenant's tenancy hereunder, prohibit the selling of any products sold by Tenant or the uses allowed herein or the right to consent to any feature of the Premises or Tenant's signage.
  - (xii) there are no mortgages, prime leases, deeds to secure debt, deeds of trust, or other instruments in the nature thereof, affecting Landlord or its interest in the Premises.
- (b) All representations and warranties, covenants and indemnities contained in this Lease shall survive the expiration or earlier termination of this Lease.
- (c) Deliveries. Subject to governmental regulations, Tenant shall have the right to accept deliveries and unload merchandise in its designated loading area adjacent to the front of the Premises, during 9:00 a.m. to 6:00 p.m. seven (7) days a week.

## **20. HOLDING OVER; END OF TERM**

- (a) If Tenant shall hold possession of the Premises after the expiration or termination of this Lease, at Landlord's option (i) Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month at one hundred twenty five percent (125%) of the Fixed Minimum Rent in effect upon the expiration or termination of the immediately preceding term or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over.
- (b) Upon the expiration or sooner termination of this Lease, Tenant shall surrender the Premises to Landlord in as good order, condition and repair as when received by Tenant; ordinary wear and tear, casualty and condemnation excepted. This provision shall expressly survive the termination or expiration of this Lease.

(c) With the exception of Tenant's motor vehicles, any property, equipment, or product remaining in the Premises upon expiration of this Lease shall be considered abandoned and property of the Landlord.

## **21. EXPENSES OF ENFORCEMENT**

The Parties shall bear its own costs, charges, expenses and attorney's fees, and any other fees incurred in the event of a dispute between the Parties. Neither Party may seek recovery of expenses of enforcement of obligations under this Lease.

## **22. SUCCESSORS IN INTEREST**

Each and all of the covenants, agreements, obligations, conditions and provisions of this Lease shall inure to the benefit of and shall bind the successors and permitted assigns of the respective parties hereto.

## **23. REMEDIES ARE CUMULATIVE**

Remedies conferred by this Lease upon the respective parties are not intended to be exclusive, but are cumulative and in addition to remedies otherwise afforded by the law.

## **24. QUIET POSSESSION**

Upon payment by the Tenant of the minimum, percentage and additional rent and all other sums due hereunder and upon the observance and performance of all covenants, terms and conditions on Tenant's part to be observed and performed, Tenant shall peaceably and quietly hold and enjoy the Premises for the Term of this Lease without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject nevertheless, to the terms and conditions of this Lease.

## **25. ALTERATION**

(a) Changes Required by Law. Any structural changes, alterations or additions in or to the Premises which may be necessary or required by reason of any law, rule, regulation or order promulgated by competent governmental authority shall be made at the sole cost and expense of Landlord, including but not limited to asbestos removal and disposal and interior and exterior compliance with the Americans with Disabilities Act (ADA) etc. Notwithstanding the foregoing, if any such changes, alterations or additions are required as a result of improvements made by Tenant during the Term hereof or due to Tenant's use of the Premises, such changes, alterations or additions shall be made at the sole cost and expense of Tenant. Tenant may contest the validity of any such law, rule, regulation or order, but shall indemnify and save Landlord harmless against the consequences of continued violation thereof by Tenant pending such contest.

(b) Alterations During Term. Tenant shall be permitted to perform interior, nonstructural alterations to the Premises and to revise the interior layout of the Premises. Tenant shall obtain Landlord's written consent to any other alterations or construction which affects the structural nature of the Premises, which consent shall not be unreasonably withheld, conditioned or delayed.

## **26. HAZARDOUS SUBSTANCES**

(a) Tenant agrees that, except as herein set forth, it shall not generate, use, store, handle or dispose of on or transport over the Premises any Hazardous Substances (defined below) in violation of any Environmental Laws (defined below), except as such incidental amounts of Hazardous Substances as may be required for Tenant to conduct the Permitted Use.

(b) If, at any time during the Term, Hazardous Substances are found in the Premises or at the Premises, then, in such event:

(i) with regard to any Hazardous Substances existing, or future Hazardous Substances, on the Garage Property prior to the Commencement Date and throughout the Term of the Lease or that Landlord shall have caused, Landlord shall remove same, in compliance with applicable Environmental Laws, at Landlord's sole cost and expense. Landlord shall defend, indemnify, and hold Tenant harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which Tenant may suffer as a result of any claim, suit or action regarding any such Hazardous Substances (whether alleged or real) and/or regarding the removal and clean-up of same or resulting from the presence of such Hazardous Substances. The representation, warranty and indemnity of Landlord described in this subsection shall survive the termination or expiration of this Lease.

(ii) with regard to any Hazardous Substances caused by Tenant or its agents, contractors or employees, Tenant shall remove same, in compliance with applicable Environmental Laws, at Tenant's sole cost and expense. Tenant shall defend, indemnify, and hold Landlord harmless from and against any and all costs, damages, expenses and/or liabilities (including reasonable attorneys' fees) which Landlord may suffer as a result of any claim, suit or action regarding any such Hazardous Substances (whether alleged or real) present due to Tenant and/or regarding the removal and clean-up of same or resulting from the presence of such Hazardous Substances. The representation, warranty and indemnity of Tenant described in this subsection shall survive the termination or expiration of this Lease.

(c) In the event that during the Term of this Lease, Tenant is prevented from performing Tenant's Work and/or Tenant shall be unable to operate for a period of thirty (30) days or more for the Permitted Use at the Premises and ceases operating at the Premises as a result of the existence or remediation of Hazardous Substances located at the Premises which were not caused by Tenant or its agents, contractors or employees, then Fixed Minimum Rent, Additional Rent and all other charges due hereunder shall

equitably abate, in accordance with the portion of the Premises used by Tenant, until such time as Tenant is able to resume the performance of Tenant's Work and/or the operation of its business in the Premises. If Fixed Minimum Rent and other charges shall be so abated for a period of three hundred sixty-five (365) days, Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to Landlord.

(d) The term "**Hazardous Substance**" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under any Environmental Law (as defined below); (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos and any asbestos containing materials; and/or (iv) substances known to cause cancer and/or reproductive toxicity. The term "**Environmental Law**" shall mean any federal, state or local law, statute, ordinance, rule, regulation, order, consent, decree, judgment or common-law doctrine, interpretation thereof, and provisions and conditions of permits, licenses, plans, approvals and other operating authorizations whether currently in force or hereafter enacted relating to health, industrial hygiene or the environmental conditions on, under or about the Premises or the Garage Property, as such laws are amended and the regulations and administrative codes applicable thereto. It is the intent of the parties hereto to construe the terms "Hazardous Substance" and "Environmental Law" in their broadest sense.

## **27. GENERAL CONDITIONS**

(a) Time is of the essence of this Lease. Any deadlines in this Lease which cannot be met because of delays caused by governmental regulations, inability to procure labor or materials, strikes, acts of God, or other causes (other than financial), beyond the control of Landlord or Tenant ("**Force Majeure**") shall be extended by the amount of time caused by such delays; provided, however, the payment of rent shall not be excused. Notwithstanding anything herein to the contrary, the failure by Landlord to construct the Premises according to building code and/or to receive timely inspections by the necessary authorities due solely to the negligence, misconduct or financial inability of Landlord or Landlord's contractors, employees or representatives shall not constitute Force Majeure. In order for Landlord to claim the occurrence of Force Majeure, Landlord must have notified Tenant in writing of such occurrence within twenty (20) business days after the initial occurrence.

(b) No waiver of any breach of the covenants, agreements, obligations and conditions of this Lease to be kept or performed by either party hereto shall be construed to be a waiver of any succeeding breach of the same or any other covenant, agreement, obligation, condition or provision hereof.

(c) Tenant shall not be responsible for the payment of any commissions in relation to the leasing transaction represented by this Lease. Landlord and Tenant each covenant that they have not dealt with any real estate broker or finder with respect to this Lease (herein collectively "**Brokers**"). Each party shall hold the other party harmless from all



damages, claims, liabilities or expenses, including reasonable and actual attorneys' fees (through all levels of proceedings), resulting from any claims that may be asserted against the other party by any real estate broker or finder with whom the indemnifying party either has or is purported to have dealt, except for the Brokers.

(d) The use herein of any gender or number shall not be deemed to make inapplicable the provision should the gender or number be inappropriate to the party referenced. All section headings, titles or captions contained in this Lease are for convenience only and shall not be deemed part of this Lease and shall not in any way limit or amplify the terms and provisions of this Lease.

(e) Landlord and Tenant have negotiated this Lease, have had the opportunity to be advised respecting the provisions contained herein and have had the right to approve each and every provision hereof; therefore, this Lease shall not be construed against either Landlord or Tenant as a result of the preparation of this Lease by or on behalf of either party.

(f) If any clause, sentence or other portion of this Lease shall become invalid or unenforceable, the remaining portions thereof shall remain in full force and effect.

(g) Wherever in this Lease Landlord or Tenant is required to give consent, such consent shall not be unreasonably withheld, conditioned or delayed except to the extent otherwise expressly provided herein.

(h) If the time for performance of any obligation or taking any action under this Lease expires on a Saturday, Sunday or legal holiday, the time for such performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. If the day on which rent or any other payment due hereunder is payable falls on a Saturday, Sunday or on a legal holiday, it shall be payable on the next succeeding day which is not a Saturday, Sunday or legal holiday.

(i) Landlord hereby agrees that it shall maintain all confidentiality with regard to entering into this Lease, the opening for business by Tenant in the Premises and any financial information contained hereunder or obtained from Tenant during the Term of this Lease, other than disclosures to necessary third parties and Landlord shall not release any material whatsoever to the press or any news media without the prior written approval of Tenant, which approval may be withheld in Tenant's sole discretion.

(j) Each covenant hereunder of Landlord, whether affirmative or negative in nature, is intended to and shall bind the Landlord and each successive owner of the Premises and their respective heirs, successors and assigns.

(k) There shall be no personal liability on Landlord, its elected officials, officers, employees, agents, or any successor in interest with respect to any provisions of this Lease, or amendments, modifications or renewals hereof. Tenant shall look solely to the then owner's interest in the Premises (including but not limited to any insurance

proceeds, rents, or judgments) for the satisfaction of any remedies of Tenant in the event of a breach by Landlord of any of its obligations hereunder.

(l) Landlord hereunder shall have the right to assign, sell or transfer Landlord's interest in this Lease or the Premises with consent of Tenant, which shall not be unreasonably withheld. In the event of any such transfer, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer.

(m) The parties agree this Lease shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be in the Circuit Court of Cook County, Illinois.

(n) This Lease shall become effective on the day that this Lease shall be executed by the last of the parties hereto to execute this Lease (herein "**Effective Date**").

(o) There are no oral agreements between the parties hereto affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, letters of intent, lease proposals, brochures, agreements, representations, promises, warranties and understandings between the parties hereto or displayed by Landlord to Tenant with respect to the subject matter thereof, and none thereof shall be used to interpret or construe this Lease. This Lease cannot be changed or terminated except by a written instrument subsequently executed by the parties hereto.

## **28. SUBORDINATION**

This Lease and all rights of Tenant hereunder are and shall be subject and subordinate to the lien of any mortgage, prime lease, deed to secure debt, deed of trust, or other instrument in the nature thereof, which may now or hereafter affect Landlord or its interest in the Premises; provided, however, that the foregoing subordination shall with respect to any future debt, mortgage, prime lease, deed of trust or other instrument only, be conditioned upon the holder of such mortgage, deed to secure debt, deed of trust, or other instrument in the nature thereof providing Tenant with a non-disturbance agreement to Tenant on such lender's or prime landlord's standard form with mutually agreed upon changes with Tenant. If the holder of any mortgage, deed to secure debt, deed of trust or other instrument in the nature thereof shall hereafter succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action, termination of a prime lease or delivery of a new lease, then Tenant shall attorn to and recognize such successor as landlord under this Lease and such successor shall not disturb Tenant of its possession of the Premises as long as Tenant is not in default under the Lease and this Lease shall continue in full force and effect as a direct lease between such successor landlord and Tenant, subject to all of the terms, covenants and conditions of this Lease. Tenant and Landlord's successor shall promptly execute and deliver any reasonable instrument that may be necessary to evidence such subordination, nondisturbance and attornment.

**29. WAIVER OF LANDLORD'S LIEN**

Landlord will not claim or have a lien of any kind, be it contractual or statutory, on or against Tenant's motor vehicles for non-payment of Rent, default by Tenant or any other reason, and Landlord hereby waives all such liens available to Landlord.

**30. RESTRICTIVE COVENANT**

With the exception of the Landlord's current agreement with I-Go and any renewal or new lease agreements with I-Go or an affiliated entity of I-GO, in the parking garage, in consideration of the rent, during the term hereof and any term extensions, neither Landlord nor any persons associated and/or affiliated with Landlord including, but not limited to partnerships in which a member of Landlord is a partner therein ("Landlord's Affiliates") shall permit or make a lease with or grant a right to any other person, corporation, partnership or entity engaged in such business which would permit the use of any portion of the Parking Garage for vehicle rental or leasing. In the event of any violation of this section by Landlord then, in addition to any other rights the Tenant may have at law or equity, Tenant's rent and all other charges under this Lease shall thereafter abate and Tenant shall also have the right to terminate this Lease upon 30 days written notice and without further obligation of rent. Furthermore, provided the Lease has not been terminated by virtue of Tenant default, Landlord agrees not to permit any portion of the Parking Garage to be used for vehicle rental or Leasing purposes for a period of 12 months following the expiration or earlier termination of this lease by Tenant. This provision shall survive the expiration of this Lease.

**[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]**

IN WITNESS WHEREOF, the respective parties hereto have executed this Lease by officers or agents thereunto duly authorized and the effective date is the date executed by the City.

Landlord:

**CITY OF EVANSTON,**  
An Illinois municipal corporation

By:

\_\_\_\_\_  
Name: Erika Storlie  
Title: Interim City Manager

Dated: \_\_\_\_\_, 2019

Tenant:

**ENTERPRISE LEASING COMPANY OF  
CHICAGO, LLC**  
A Delaware Limited Liability Company

By:

\_\_\_\_\_  
Name: Jeffrey D. Wilder  
Title: Vice President/General Manager

Dated: \_\_\_\_\_, 2019

**EXHIBIT A**  
**LEGAL DESCRIPTION**

PART OF LOT 4 OF THE CHURCH MAPLE RESUBDIVISION BEING A RESUBDIVISION OF PART OF DEMPSTER'S SUBDIVISION OF BLOCK 66 OF THE VILLAGE OF EVANSTON, COOK COUNTY, ILLINOIS, PART OF THE CHICAGO AND NORTHWESTERN RAILROAD RIGHT OF WAY (FORMERLY CHICAGO, MILWAUKEE AND ST. PAUL RIGHT OF WAY); PART OF BLOCK 18 IN THE VILLAGE OF EVANSTON; ALL OF BLOCKS 2 AND 3 IN THE CIRCUIT COURT SUBDIVISION IN PARTITION OF LOT 22 IN THE COUNTY CLERK'S DIVISION OF UNSUBDIVIDED LANDS; AND PART OF VACATED CLARK STREET AND EAST RAILROAD AVENUE; BEING IN THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 18, TOWNSHIP 41 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS.