

**MEMORANDUM OF UNDERSTANDING FOR TEMPORARY LICENSE FOR
USE OF PORTION OF PARKING LOT FOR COMMUTER PARKING SPACES
(Elmhurst Memorial Hospital Lot)**

This Memorandum of Understanding for a Temporary License for Use of a Portion of Parking Lot for Commuter Parking Spaces ("License" or "Agreement") is made and entered into as of this __ day of August, 2023 by and between the Helen M. Plum Memorial Library District ("Licensor"), an Illinois library district, and the Village of Lombard ("Licensee" or "Village"), a non-home rule Illinois municipal corporation. Licensor and Licensee are hereinafter sometimes referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, Licensor is the holder of the dominant estate under an Easement Grant and Agreement, dated _____, 2004, recorded with the DuPage County Recorder of Deeds as document #R-_____ (the "Easement Agreement"), which grants the Licensor, among other rights, a parking easement for the non-exclusive right to use of portion of the real property commonly known as 24 West Maple, which property legally described in Exhibit A attached hereto and made a part hereof ("Parking Lot") for parking purposes; and

WHEREAS, Elmhurst Memorial Healthcare, an Illinois not-for-profit corporation ("Hospital"), is the servient estate with respect to the Easement Agreement and is being made a party to this Agreement for the sole and limited purpose of consenting to the grant of a parking license hereunder; and

WHEREAS, Licensor agrees to temporarily license forty-four (44) parking spaces in the Parking Lot, as depicted in Exhibit B attached hereto and made a part hereof ("Licensed Premises"), to Licensee for a term of August 15, 2023 to the earlier of December 31, 2023, or the date that the property commonly known as 110 W. Maple, Lombard, Illinois is conveyed by the Licensor to the Lombard Park District ("Term"), to allow Licensee to use the parking lot for its commuter parking purposes (the "Licensed Purposes"), subject to the terms of this Agreement; and

WHEREAS, Licensee agrees to temporarily license Licensed Premises, subject to the terms of this Agreement;

WHEREAS, Licensor and Licensee are authorized to enter into this Agreement pursuant to the intergovernmental cooperation powers granted by Article VII, Section 10(a) of the Illinois Constitution of 1970, the Illinois Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and the applicable provisions of Illinois Municipal Code, including Article 11, Division 71 (Off-Street Parking) of the Illinois Municipal Code (65 ILCS 5/11-71 *et seq.*).

IN CONSIDERATION OF the recitals and the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt of which is acknowledged, and pursuant to the Village's statutory authority and powers, the Parties agree as follows:

The above recitals are incorporated herein by reference as material terms on this Agreement.

Section 1. Licensed Premises. Licensor agrees to license to Licensee forty-four (44) parking spaces, together with the necessary drive isles and access rights, within the Parking Lot, as shown on the Site Plan for the Licensed Premises, as depicted in Exhibit B hereto, solely for the purposes of carrying out the Licensed Purposes and for no other use. Licensor specifically reserves sufficient easements and use and other rights to the Licensed Premises in total, whether licensed or otherwise, including but not limited to emergency repairs and routine maintenance, provided that said rights and easements retained by Licensor do not significantly limit, restrict or prevent Licensee's conduct of the Licensed Purposes.

Section 2. Licensee Improvements and Use of Licensed Premises.

- A. The Licensed Premises shall be used by the Licensee for Licensed Purposes and for no other use. Licensee shall restrict its use to such purposes and shall not permit the use of the Licensed Premises for any other purpose or activities without the prior written consent of the Licensor, which may be withheld.
- B. Licensee shall comply with all federal, state and local laws, including accessibility rules and regulations for use by individuals with disabilities, as applicable to the conduct of the Licensed Purposes and its use of the Licensed Premises and other Licensor property.
- C. Licensee shall promptly obtain and maintain at all times, at its cost and expense, any required licenses, certificates, variations of the zoning laws, or any other legal authorization required for it to carry out the Licensed Purposes for use of the Licensed Premises.
- D. Licensor is not responsible for providing any supervision for, and shall have no responsibility or liability connected directly or indirectly with, Licensee's activities contemplated by this Agreement whether or not generally or specially permitted by Licensor hereunder.
- E. To the extent necessary as determined by Licensee, the Licensee, at its cost, agrees to re-paint parking space markings within the Licensed Premises.
- F. Licensee, at its cost, shall remove all existing signage of the Licensor related to the Licensed Premises and install any necessary parking signage on the Licensed Premises to advise commuter parkers of the commuter parking spaces that are available for their use. In addition, Licensee shall post signage on the Licensed Premises that informs users of the commuter parking spaces in the Licensed Premises that such use is "at their own risk" in regard to theft of vehicles or theft of personal property from vehicles left inside the vehicles.
- G. Licensee, at its cost, agrees to perform all litter/debris, snowplowing and salting activities on an as-needed basis within the Licensed Premises.
- H. Licensee, at its cost, will maintain the Licensed Premises in good condition and operate the same in an economical and efficient manner.
- I. The Village shall have the right to enforce its parking ordinances on the Licensed Premises.

Section 3. Term. The term of this Agreement shall commence on August 15, 2023 and terminate on the earlier of December 31, 2023, or the date that the property commonly known as 110 W. Maple, Lombard, Illinois is conveyed by the Licensor to the Lombard Park District ("Term"). The Term of this Agreement may be extended by mutual agreement of the Parties as set forth in an executed addendum to this Agreement.

Section 4. Termination of Agreement. Upon termination of this Agreement, by expiration or otherwise, or upon any termination of Licensee's right to possession without termination of this Agreement, Licensee shall immediately, peaceably and quietly surrender to Licensor possession of and vacate the Licensed Premises, and Licensee shall return the Licensed Premises to Licensor in as good a condition as existed when Licensee took possession, except for reasonable wear and tear and any damage not caused by or attributable to the fault of Licensee or the commuter parkers. Licensee grants to Licensor full right to enter the Licensed Premises in the event of any such termination and/or full license to enter the Licensed Premises at any other time to inspect said Licensed Premises. In the event of the termination of this Agreement for any reason, Licensee, at its cost, shall remove all installed signage within ten (10) calendar days of the termination date. Licensee may, but need not, remove any alterations, additions or improvements it has made to the Licensed Premises if, in the sole determination of Licensor, they can be removed without damage to the Licensed Premises and have not been permanently affixed to the Licensed Premises.

Section 5. Licensor's and Licensee's Right to Terminate Agreement

- A. Licensee reserves the right to terminate this Agreement during the Term upon thirty (30) calendar days prior written notice to Licensor. Licensee shall vacate the Licensed Premises on said termination date in conformance with the terms of this Agreement.
- B. Licensor agrees to not terminate this Agreement prior to the expiration of the Term, other than for a breach of this Agreement by Licensee, where Licensee fails to cure the breach as provided for in this Agreement.

- C. In the event of a breach of this Agreement by either Party, the non-breaching Party shall deliver written notice to the breaching Party, who shall have thirty (30) calendar days to cure the breach. If the breaching Party commences and actively pursues remedial actions to cure the breach during the 30-day cure period, and if the timeframe to cure the breach is reasonably expected to exceed the 30-day period, the breaching Party shall have additional time to cure the breach, provided that the remedial actions are actively pursued.

Section 6. Alterations by Licensee. Licensee shall not make or permit or cause others to make any alterations to the Licensed Premises without Licensor's prior written consent, which may be withheld.

Section 7. Condition of Premises Upon Possession.

- A. Licensee acknowledges and covenants that its agents, representatives and/or employees have examined the Licensed Premises prior to Licensee's entry into this Agreement, and will again examine the Licensed Premises prior to commencing use thereof. Licensee's commencement of use of the Licensed Premises shall constitute Licensee's acknowledgement and agreement that Licensee has received the Licensed Premises in good order and repair and Licensee is satisfied with the condition of the Licensed Premises.
- B. Licensee acknowledges and covenants that agents, representatives and/or employees of Licensor have not made any representations to Licensee as to the suitability of the Licensed Premises for the Licensed Purposes, or to the condition of or repairs to the Licensed Premises or other property of Licensor and that no agreements or promises have been made by Licensor to alter, repair or improve the Licensed Premises or other property of Licensor prior to the execution of this Agreement that are not included herein.

Section 8. Quiet Enjoyment.

- A. Licensee shall not commit, or suffer to be committed, any nuisance or other act or thing against public policy, or which may disturb the quiet enjoyment of Licensor or any other Licensee or any licensee of Licensor in the use of the portions of Licensor's other property not Licensed to Licensee under this Agreement. Licensee agrees not to deface or damage the Licensed Premises or other Licensor property in any manner.
- B. Licensor shall not commit, or suffer to be committed, any nuisance or other act or thing against public policy, or which may disturb the quiet enjoyment of Licensee in the use of the Licensed Premises, except as permitted under this Agreement.

Section 9. Covenant to Hold Harmless/No Waiver of Tort Immunity.

- A. Licensee shall defend, indemnify and hold Licensor harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury, illness or death or damages of any kind caused by, resulting from, arising out of or occurring in connection with the performance of any activities or obligations under this Agreement; but only in proportion to and to the extent such injury or damages are caused by or result from the negligent or willful acts or omissions of Licensee, including its officials, agents, employees, contractors and invitees.
- B. Licensor shall defend, indemnify and hold Licensee harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury, illness or death or damages of any kind caused by, resulting from, arising out of or occurring in connection with the performance of any activities or obligations under this Agreement; but only in proportion to and to the extent such injury or damages are caused by or result from the negligent or willful acts or omissions of the Licensor, including its officials, agents, employees, contractors and invitees.
- C. Nothing contained in this Agreement, is intended to constitute, nor shall constitute, a waiver of the defenses available to the Parties under the Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 ILCS 10/1-101 et seq.) with respect to claims by third parties.

Section 10. Insurance. As part of the indemnification required by this Agreement, but without limiting the same, Licensee agrees to carry, during the life of this Agreement, at its expense, general liability insurance, including, but not limited to coverage for bodily injury, illness and death, and property damage written on the comprehensive form, in the amount not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate and not less than \$1,000,000.00 for property damage per occurrence with an excess coverage policy or an umbrella coverage policy in an amount not less than \$3,000,000.00 that covers all claims covered by the general liability insurance policy. At the time of execution of this Agreement, Licensee shall furnish to Licensor copies of certificate(s) of insurance, insurance policies and endorsements (issued on the ISO CG 20 10 form) that contain the insurer(s) written confirmation that the nature, scope, duration and amount of insurance coverage meets the requirements of this Agreement and which shall remain in effect for all aspects of this Agreement for both ongoing and completed operations. The certificate(s) of insurance, endorsements and policies shall name the "Western Springs Service Club, its officials, president and board members, appointed and elected officials, members, volunteers, agents, and employees" as additional insureds as required by the indemnification provisions of this Agreement. During the Term of this Agreement, Licensee shall also maintain a Worker's Compensation Insurance Policy with coverage in the statutory amount conforming to the current laws of the State of Illinois and shall furnish on an annual basis to Licensor, a copy of the certificate of insurance evidencing such coverage. Licensee's insurance coverage shall be primary to any insurance coverage of Licensor, but only for claims arising under matters covered by this Agreement.

In addition, should any of the above-described insurance policies be canceled before the expiration date thereof, Licensee is required to provide notice to the at least sixty (60) days prior to the cancellation date. In the event of the cancellation of any insurance policy required herein, or upon Licensee's failure to procure said insurance, Licensor shall have the right to terminate this Agreement.

Section 11. Transfer of Licensee's Interest. Licensee shall not assign this Agreement, nor sublet or grant any rights of possession or use of all or any part of the Licensed Premises by persons other than Licensee, its servants and agents.

Section 12. Access to Licensed Premises.

- A. Licensor reserves the right to enter upon the Licensed Premises at all reasonable hours for the purpose of inspecting the same, or of making repairs, additions or alterations to the Licensed Premises, as long as said activities do not interfere with the Licensed Purposes.
- B. Licensee shall have the exclusive use, control and operation of the Licensed Premises, except as outlined herein for Licensee during the Term of this Agreement.

Section 13. Security. The Parties agree that the use of commuter parking spaces on the Licensed Premises by commuters is "at their own risk" in regard to theft of vehicles or theft of personal property from vehicles left inside the vehicles, and appropriate signage will be posted informing them of that fact.

Section 14. Damage to or Destruction of Licensed Premises.

- A. In the event of a partial or total destruction of the Licensed Premises by fire or other casualty during the Term of this Agreement which renders the Licensed Premises untenable, unfit or inaccessible for use by Licensee for the Licensed Purposes, Licensor shall forthwith repair the affected portion(s) of the Licensed Premises within a period of due diligence unless Licensor elects to terminate this Agreement as hereinafter set forth. Should Licensor decide to repair and restore the Licensed Premises, such action shall be completed within sixty (60) calendar days from the date of partial or total destruction and this Agreement shall not terminate.
- B. If Licensor fails to restore the Licensed Premises to a tenantable condition within sixty (60) calendar days from the date of such partial or total destruction, Licensee has the option of terminating this Agreement by giving written notice to Licensor within ninety (90) calendar days from the date of such destruction.
- C. In the event that the Licensed Premises is destroyed by fire or other casualty to the extent that the cost of repairing and restoring the Licensed Premises would exceed twenty-five percent (25%) of the replacement cost thereof, whether the Licensed Premises is damaged or not, Licensor may elect to

terminate this Agreement by giving notice to Licensee within sixty (60) calendar days after the occurrence of such destruction.

- D. During the time period that the Licensed Premises is not usable, Licensee, at its option, may secure and use alternate parking spaces, and may terminate this Agreement at any time upon written notice.

Section 15. Superseding Governmental Acts. If, after the execution of this Agreement, a valid law, ordinance, regulation, statute or administrative order is enacted or issued that prohibits Licensee from using the Licensed Premises for the purposes described herein and contemplated by the Parties, then this Agreement shall automatically terminate. If such a governmental act is made on behalf of Licensor, the provisions of Section 5 (Termination of Agreement) of this Agreement shall apply.

Section 16. Remedies Cumulative. All remedies hereinbefore and hereafter conferred on Licensor shall be deemed cumulative and not exclusive of the other, or of any other remedy conferred by law.

Section 17. Effect of Waiver. The waiver by Licensor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition on any subsequent breach of the same or any other term, covenant or condition herein contained. None of the terms, covenants or conditions of this Agreement can be waived by either Licensor or Licensee, except by appropriate written instrument.

Section 18. Construction of Agreement. Both Parties have participated with legal counsel in the negotiation and drafting of this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning and not strictly for or against either Licensor or Licensee. Paragraph headings in this Agreement are for convenience only and are not to be construed as a part of this Agreement in any way defining, limiting or amplifying the provisions hereof. Time is of the essence of this Agreement and of every term, covenant and condition hereof. The words "Licensor" and "Licensee", as herein used, shall include the plural as well as the singular. The neuter gender includes the masculine and feminine. Whenever this Agreement requires the approval or consent of Licensor for the taking of any action by Licensee, it is understood that such approval or consent may be granted or withheld at the sole discretion of Licensor.

Section 19. Prior Understandings. This Agreement supersedes and takes precedence over any and all previous agreements executed by the Parties, except for the Easement Agreement, which the Parties acknowledge remains in full force and effect and that they are, and will hereafter continue to be, subject to the terms and conditions the Easement Agreement..

Section 20. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

Section 21. No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a Party to this Agreement, or to acknowledge, establish or impose any legal duty to any third party.

Section 22. Employment Status. This Agreement shall not create a joint venture, partnership or employment relationship between the Parties. At all times and for all purposes under this Agreement, the employees or volunteers of Licensee shall be employees or volunteers of Licensee, not employees or volunteers of Licensor, and shall not be joint employees or joint volunteers of the Parties. Licensee shall pay all salaries, employment benefits, workers compensation insurance, health insurance, employment taxes and withholdings, and other employment obligations to its employees who work at the Licensed Premises. Licensee and its employees shall not be considered as having employee status with Licensor, nor shall Licensor withhold any sums for the payment of income taxes, or FICA taxes, nor shall Licensee, and its employees, be entitled to participate in any health, pension, retirement or other employment benefit plans, arrangements or distributions offered or provided by Licensor to its the regular employees.

- A. **Workers Compensation and Unemployment Insurance.** Licensee shall have the sole obligation to provide its employees covered under this Agreement with health insurance, to make all payments which may be due under the Workers Compensation Act in order to maintain full coverage at the statutory amounts and to pay all required unemployment insurance payments and to meet any and all other obligations which an employer may have under local, State or Federal laws.
- B. **Responsibility for Statutory Employment Benefits.** In regard to its employees and the activities they perform under this Agreement, Licensee is responsible for all liabilities and obligations under the Fair Labors Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the Illinois Unemployment Insurance Act (820 ILCS 405/1, *et seq.*) and the Illinois Workers Compensation Act (820 ILCS 305/1, *et seq.*).

Section 23. Mutual Cooperation. Licensor and Licensee agree to cooperate, including maintaining open, regular communications and conducting face-to-face meetings with each other as needed, to ensure that the purposes of this Agreement are being met.

Section 24. Notices. All notices, demands or other writings in this Agreement provided to be given, made or sent by either Party to the other Party shall be in writing and shall be deemed to have been fully given by either: (i) a reputable overnight courier; (ii) electronic (email or facsimile) transmission with transmission verification included thereon; (iii) delivering or causing to be hand-delivered a written copy thereof; or (iv) by sending a written copy thereof by depositing the same in the United States mail, certified or registered, postage prepaid, return receipt requested, and addressed to Licensor or Licensee as follows:

To Licensee: Village of Lombard
 Attn: Village Manager
 255 E. Wilson Avenue
 Lombard Illinois 60148
 Fax: (708) 246-0284
 Email: niehausS@villageoflombard.org

To Licensor: Helen M. Plum Memorial Library District
 Attn: Executive Director

Phone:
 Fax:
 Email:

To Hospital:

Notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one (1) business day after deposit with an overnight courier, as evidenced by a receipt of deposit; or (c) four (4) business days following deposit with the United States Postal Service, via certified mail, return receipt requested, as evidenced by a return receipt. Additionally, notices sent by any means (e.g., facsimile, email, etc.) shall be effective upon written acknowledgment by either Party that confirms both the transmission and receipt of the notice. All notices and communications pertaining to this Agreement shall be sent to the Parties at the Parties' current business addresses (if different from above) or at the aforementioned addresses unless subsequently changed by written notice given in the manner provided herein.

Section 25. Incorporation. Each of the above Whereas paragraphs are incorporated into this agreement as material terms.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers, with the foregoing Agreement being effective as of the date of the last signatory below, which date shall be entered on page 1 hereof.

HELEN M. PLUM MEMORIAL LIBRARY DISTRICT

By: Allison Foye Date: August 22, 2023.
Name: _____
Title: President

VILLAGE OF LOMBARD:

By: Keith T. Giagnorio Date: August 17 2023.
Name: Keith T. Giagnorio
Title: Village President

ELMHURST MEMORIAL HEALTHCARE:

By: _____ Date: _____ 2023
Name
Title:

EXHIBIT A
Legal Description of 24 W. Maple

Lot 1 in the Village of Lombard Maple Street Parking Lot Plat of Consolidation, being a subdivision of Lots 15 to 21, inclusive, in Caverno's Subdivision, a resubdivision of part of the Northeast 1/4 of Section 7, Township 39 North, Range 11, East of the Third Principle Meridian, according to the plat thereof recorded May 17, 1992 as document number 108107, DuPage County, Illinois.

P.I.N.: 06-07-213-016

Common Address: 24 West Maple Street, Lombard, Illinois

EXHIBIT B
Site Plan for the Licensed Premises

