



CITY OF BETHLEHEM  
OFFICE OF THE CITY SOLICITOR

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INTEROFFICE MEMORANDUM

To: Louise M. Kelchner, City Clerk  
From: William P. Leeson, Esq., City Solicitor  
Re: Parking Lot Lease Agreement  
Lessor: City of Bethlehem  
Lessee: Bethlehem Parking Authority  
Premises: 920 Wyandotte Street and 121 W. Union Boulevard  
Date: April 5, 2017

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Attached is a proposed Resolution and associated Parking Lot Lease Agreement for Council's consideration.

Please place this matter on City Council's agenda for review and appropriate action.

A handwritten signature in black ink, appearing to read "William P. Leeson".

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William P. Leeson, Esq., Solicitor

Cc: Robert J. Donchez, Mayor  
Michael Alkhal, Public Works  
Kevin Livingston, Bethlehem Parking Authority  
James L. Broughal, Esq.

RESOLUTION NO. 2017-\_\_\_\_\_

Authorization For Parking Lot Lease Agreement

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute a Parking Lot Lease Agreement and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, with the Bethlehem Parking Authority for parking lots located at 920 Wyandotte Street and 121 W. Union Boulevard, all in accordance with the Parking Lot Lease Agreement made a part hereof.

Sponsored by \_\_\_\_\_

\_\_\_\_\_

ADOPTED by Council this                  day of    , 2017.

\_\_\_\_\_

President of Council

ATTEST:

\_\_\_\_\_

City Clerk

## PARKING LOT LEASE AGREEMENT

***THIS PARKING LOT LEASE AGREEMENT*** (This "Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between ***CITY OF BETHLEHEM***, a City of the Third Class, with an address of 10 East Church Street, Bethlehem, Pennsylvania 18018 ("Lessor"), and the ***BETHLEHEM PARKING AUTHORITY***, a Pennsylvania parking authority existing under the Laws of the Commonwealth of Pennsylvania, with an address at 85 West North Street, Bethlehem, Pennsylvania 18018 ("Lessee").

### R E C I T A L S:

- A. Lessor is the record owner of certain property located in the City of Bethlehem, Northampton County, Pennsylvania, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Demised Premises").
- B. Lessee is responsible for the administration and management of off-street and on-street parking for the City of Bethlehem, Pennsylvania (the "City").
- C. The Demised Premises is currently zoned for and, with certain improvements, will be suitable for use as a public parking lot, and the Demised Premises is located in an area where there is or will be, in the immediate future, a need for additional offstreet parking for the public.
- D. Lessor and Lessee (collectively, the "Parties") desire to enter into this Lease, by which Lessor will lease to Lessee the Demised Premises to establish, operate, and maintain a surface public parking lot for offstreet parking and such other uses are approved in writing by Lessor in its sole and absolute discretion.

### A G R E E M E N T S:

***NOW, THEREFORE***, in consideration of the above recitals, which are incorporated herein by reference, and in further consideration of the mutual promises set forth below and intending to be legally bound hereby, the Parties agree as follows:

1. Demise of Premises. Lessor agrees to lease the Demised Premises to Lessee solely for use as a surface public parking lot and for no other purpose, except for other uses as are in accordance with applicable zoning regulations and consented to in writing by Lessor, in Lessor's sole and absolute discretion. Lessee shall promptly make all of the Lessee improvements to the Demised Premises at Lessee's sole cost and expense and shall operate, manage, maintain, and repair the Demised Premises and the improvements at Lessee's sole cost and expense and in accordance with the terms and conditions hereinafter set forth.

2. Lease Term. The term of this Lease shall be for twenty-five (25) years, commencing on the 1<sup>st</sup> day of May, 2017 and ending on the 1<sup>st</sup> day of May, 2042, unless otherwise terminated earlier as provided in this Lease (the "Lease Term"). At the end of the Lease Term unless previously terminated by Lessor, this Lease shall continue on a year to year basis until terminated by either Lessor or Lessee upon ninety (90) days prior written notice to the other.

3. Rent.

(a) This Lease is intended to be a "triple net" lease, and, except as may be specifically provided herein, all costs of ownership, operation, and maintenance of the Demised Premises, including without limitation all operating costs, and insurance costs are intended to be borne by Lessee. The obligations of Lessee shall be separate and independent covenants and agreements, and the Rent and all other charges and sums payable by Lessee hereunder shall commence to accrue on the date hereof and shall continue to be payable in all events unless the obligation to pay the same shall be terminated or abated pursuant to an express provision of this Lease. Rent and other charges and sums payable hereunder shall be payable in lawful money of the United States and delivered to Lessor at Lessor's address set forth in Section 14(j) or at such other place as Lessor may from time to time direct by written notice to Lessee.

(b) Lessee shall pay to Lessor on the date hereof and at each annual anniversary hereafter during the Lease Term, without demand or notice, equal installments of Ten and 00/100 Dollars (\$10.00) ("Fixed Minimum Rent").

(c) Lessee shall promptly pay to Lessor, as and when the same become due and payable, all sums required to be paid by Lessee to Lessor pursuant to the provisions of this Lease, other than Fixed Minimum Rent, including, without limitation, any utilities that may be supplied in Lessor's name to or serving the Demised Premises during the Lease Term, and prior and subsequent thereto if relating to Lessee's use and/or occupancy of the Demised Premises (collectively, "Additional Rent").

4. Improvements by Lessee.

(a) Lessee may make improvements, including, by way of example and not limitation, resurfacing the parking lot and striping the parking lot to indicate parking spaces and the installation of parking meters (the "Lessee Improvements"). The Lessee Improvements shall be made at Lessee's sole cost and expense.

(b) All improvements to the Demised Premises, including improvements existing on the date of commencement of this Lease, the Lessee Improvements, and any other improvements installed, repaired, or altered during the Lease Term, excepting, however, any revenue collecting equipment, including but not limited to, pay stations installed on the Demised Premises (collectively, the "Improvements"), including but not limited to fencing and car stops, shall remain part of the Demised Premises, and title thereto shall remain solely with Lessor.

(c) Lessor agrees to waive any and all costs and fees associated with the construction of the Lessee Improvements and/or maintenance of the Lessee Improvements by the Lessee.

5. Operation and Management. Lessee shall perform and comply with the following obligations at Lessee's sole cost and expense:

(a) Lessee shall staff the Demised Premises by adequate personnel at all times so as to ensure the proper operation of the Demised Premises and all vehicles parked there, to efficiently and properly operate the Demised Premises as a surface parking lot for off-street parking, to maintain the Demised Premises in good condition and in a safe, clean and orderly manner, free from all refuse, ice, sleet, snow and standing water.

(b) Lessee shall charge customers for parking at the Demised Premises at rates comparable to those charged by other off-street public parking lots in the City of like character and quality.

(c) Lessee shall provide all necessary materials in connection with the operation of the Demised Premises as an off-street public parking lot, including, by way of example and not limitation, parking meters, tickets and receipts, if required.

(d) Lessee shall not permit the use of the Demised Premises for the parking or storage of any motor vehicle that is abandoned, unlicensed, or in derelict condition, or any trailer or other equipment, other than passenger motor vehicles. Lessee shall not use the Demised Premises for any other purpose without the prior written consent of Lessor, which may be granted or withheld in Lessor's sole and absolute discretion. Lessee shall post appropriate signs at all points of ingress and egress to the Demised Premises, all in accordance with all applicable Laws.

6. Maintenance and Repair. Lessee shall maintain all portions of the Demised Premises in good repair at all times during the Lease Term. Lessee shall promptly make or cause to be made all repairs, structural or nonstructural, anticipated or unforeseen, necessary to keep the Demised Premises and Improvements in safe, good and lawful order and condition. Any alteration, addition, or improvement made to the Demised Premises, other than Lessee Improvements, shall require the prior written consent of Lessor. Lessee shall maintain the Demised Premises in a clean, uncluttered, neat, sanitary, and safe manner and keep the Demised Premises free from any nuisance, filth, debris, snow, and/or ice. Lessee's obligations under this Section 6 shall be performed by Lessee at Lessee's sole cost and expense.

7. Insurance. Lessee assumes liability for damage to the Demised Premises, regardless of the cause thereof. Except as otherwise provided herein. Lessee expressly waives and releases Lessor from all claims against Lessor and agrees to hold Lessor harmless for any loss resulting from damage or loss to Lessee's property and/or property of any invitee, subsidiary, or affiliate of Lessee in, upon or about the Demised Premises,

regardless of cause. Lessee shall secure, pay for and maintain, at its sole cost and expense, the following policies in full force and effect during the term of this Lease:

(a) Workers Compensation. Affording coverage under the Workers Compensation laws of the Commonwealth of Pennsylvania and Employers liability coverage subject to a limit of no less than \$1,000,000.00 each employee, \$1,000,000.00 each accident, and \$1,000,000.00 policy limit.

(b) Commercial General Liability Insurance. For limits of \$1,000,000.00 per occurrence of Bodily Injury and Property Damage, \$1,000,000.00 per occurrence of Personal & Advertising Injury, \$100,000.00 Fire Damage and \$2,000,000.00 General Aggregate limit per location. The policy shall be written on an occurrence basis with no deductible and include coverage extension that may be required by Lessor. Policy shall be endorsed to name Lessor as "Additional Insured." Definition of Additional Insured shall include all partners, officers, directors, employees, agents and representatives of the named entity including its managing agent. Further, coverage for Additional Insured shall apply on a primary basis irrespective of any other insurance, whether collectible or not.

8. Utilities. Lessee, at its sole expense, shall cause all utilities for the Demised Premises to be in its name, shall pay for all utilities supplied to the Demised Premises during the Lease Term, and agrees to hold Lessor harmless from the payment of such utilities, including rents, rates, and charges for electricity, lighting systems, and other utilities that may be supplied to or serving the Demised Premises during the Lease Term.

9. Surrender of Demised Premises. Except as may be otherwise provided in this Lease, Lessee shall, upon the expiration or termination of this Lease for any reason whatsoever, surrender to Lessor the Demised Premises and all Improvements in good order, condition, and repair. Anything not part of or affixed to the realty may and, upon demand of Lessor, shall be removed from the Demised premises by Lessee at Lessee's sole cost and expense, and any resultant damage to the Demised Premises or any Improvements shall be repaired by lessee at Lessee's sole cost and expense. If Lessee shall hold over beyond the expiration or termination of the Lease Term, Lessee shall become a month-to-month tenant.

10. Environmental Matters.

(a) Lessee covenants and agrees that Lessee and the employees, agents, contractors, invitees, and permitted subtenants and assigns, if any, shall not use, maintain, or store (except in de minimis amounts and in strict compliance with all applicable Laws), and shall not release, discharge, spill, or dump any petroleum, petroleum by-product, or any other substance identified by or regulated under any applicable Laws as a "hazardous substance," "hazardous material", "hazardous waste", "extremely hazardous waste", "pollutant", "contaminant," "toxic substance," or other

similar substance (collectively, "Hazardous Substances") from, at, on, under, or about the Demised Premises.

(b) Lessor shall indemnify, protect, defend and hold Lessee, its agents, employees, and invitees harmless from and against any and all damages, liabilities, judgments, costs, claims, liens, expenses, penalties, permits and reasonable attorneys' and consultants' fees arising out of or involving any Hazardous Substances (as hereinafter defined) located on the Demised Premises prior to the commencement of this Lease.

11. Acceptance of Demised Premises. by entering into this Lease and taking possession of the Demised Premises, Lessee (a) accepts the Demised Premises in the condition existing on the date hereof in its "as is, where is" physical condition; (b) agrees that Lessor shall not be responsible for any defective condition in the Demised Premises or any Improvements; and (c) agrees that neither Lessor nor any other Lessor Indemnified Person shall be responsible or liable to Lessee or any other person claiming by, through, or under Lessee for any injury, loss or damage to any person, the Demised Premises, the Improvements, or any property of Lessee or any other person due to the condition of the Demised Premises at any time during the Lease Term.

12. Default and Remedies.

(a) Events of Default. Upon the occurrence, at any time during the Lease Term, of any one or more of the defaults provided below and expiration of the applicable time allowed for correction therefore (each an "Event of Default"), (a) Lessor shall have the right to give Lessee written notice of Lessor's intention to terminate this Lease on a date specified in such notice, which date shall be at least fifteen (15) days following the date of giving such notice; (b) on said specified date, Lessee's right to possession of the Demised Premises shall cease, and Lessee shall peaceably and quietly surrender to Lessor the Demised Premises and Improvements in good condition; and (c) this Lease shall thereupon be terminated:

(i) If Lessee shall make an assignment for the benefit of its creditors;

(ii) If any petition shall be filed against Lessee in any court in bankruptcy, reorganization, or insolvency proceedings, and Lessee shall thereafter be adjudicated bankrupt; or if any such proceeding shall not be dismissed within sixty (60) days following the institution thereof; or if any such petition shall be so filed by or on behalf of Lessee or with the consent of Lessee;

(iii) If, in any proceeding, a receiver, manager, trustee, or liquidator is appointed for all or any portion of Lessee's property, and such appointment shall not be discharged within sixty (60) days following the appointment thereof;

(iv) If Lessee shall fail to pay when the same becomes due and payable any installment of Rent, any portion thereof, or any utilities, insurance, or any

other charge or sum required to be paid by Lessee as provided in this Lease, and such failure shall continue for fifteen (15) days following written notice thereof from Lessor; or

(v) If Lessee shall fail to perform or observe any other of its obligations under this Lease and such failure shall continue for thirty (30) days following written notice thereof from Lessor, except for conditions of the Demised Premises requiring substantial repair, in which event said period for correction shall be a reasonable period of time, but not to exceed ninety (90) days.

(b) Repossession. In the event of termination under Section 12(a) or as otherwise permitted by law, or if any Event of Default shall continue beyond the expiration of any period correction, Lessor may enter upon the Demised Premises and Improvements, and repossess and enjoy the same by summary proceedings or other lawful means, and in any such event neither Lessee nor any person claiming through or under Lessee by virtue of any statute or of any order of any court shall be entitled to possess or to remaining possession of the Demised Premises or Improvements, but shall forthwith surrender the Demised premises and Improvements. Lessor shall incur no liability to any person for or by reason of any such entry, repossession, or removal of Lessee or any person claiming through or under Lessee.

13. Lessee Representations.

(a) Organization and Power. Lessee is duly organized, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania and is in compliance with Laws applicable to doing business in the Commonwealth of Pennsylvania. Lessee's execution, delivery, and performance under this Lease are duly authorized and do not require the consent or approval of any other party or governmental authority that has not been obtained. This Lease has been duly executed, constitutes the legal, valid, and binding obligations of Lessee, and is enforceable in accordance with its terms.

(b) Compliance with Laws. Lessee has all requisite licenses, permits, franchises, qualifications, certificates of occupancy, or other governmental authorizations to lease and operate the Demised Premises as herein required.

(c) Other Agreements; Defaults. To Lessee's knowledge, Lessee is not a party to any agreement or instrument or subject to any court order, injunction, permit or restriction that is reasonably likely to materially and adversely affect the Demised Premises or the business, properties, assets, operation, or condition (financial or otherwise) of Lessee. To Lessee's knowledge, lessee is not in violation of any agreement where such violation would be reasonably likely to have a material adverse effect on the Demised Premises, Lessee, or Lessee's business, properties, assets, operations, or condition (financial or otherwise).



(d) Litigation. there is no litigation, administrative proceeding, investigation, or other legal action (including any proceeding under any bankruptcy or insolvency Laws) pending or, to Lessee's knowledge, threatened against Lessee that, if adversely determined, would be reasonably likely to have a material adverse effect on the Demised Premises, Lessee, or Lessee's business, properties, assets, operations, or condition (financial or otherwise).

14. General Provisions.

(a) Governing Law. This Lease shall be governed by and construed under the laws of the Commonwealth of Pennsylvania.

(b) Compliance with Laws. Lessee shall, at its sole cost and expense, comply with all requirements of all municipal, State, and federal authorities now in force or that may hereafter be in force pertaining to the Demised Premises and faithfully observe in the use of the Demised Premises all municipal, State, and federal ordinances, statutes, laws, and regulations now or hereafter in force, whether or not any of the foregoing were foreseeable at the time of the execution of this Lease (collectively "Laws").

(c) Entire Agreement. This Lease contains all the promises, agreements, conditions, understandings, and representations between the Parties with respect to the Demised Premises. There are no promises, agreements, conditions, understandings, or representations, either oral or written, between the Parties hereto other than as set forth in this Lease. This Lease shall not be altered, amended, or modified unless reduced to writing and signed by the Parties.

(d) Lessor Authority. Lessor has fee simple title to the Demised Premises and has the power and authority to execute and deliver this Lease and to carry out and perform all covenants to be performed by Lessor hereunder.

(e) Subletting and Assignment; Successors and Assigns. Lessee shall not directly or indirectly assign this Lease or any interest in this Lease, or sublet the Demised Premises or any part thereof to any person or entity, without the prior written consent of Lessor, in each instance, which consent may be given or withheld in Lessor's sole and absolute discretion. Under no circumstances may Lessee encumber, pledge, hypothecate or mortgage its interest under this Lease or in the Demised Premises or any part thereof. This Lease and all of the covenants, conditions, and agreements contained herein shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

(f) Quiet Enjoyment. So long as Lessee performs all of the covenants and conditions of this Lease, it shall have peaceful and quiet enjoyment of the Demised Premises for the lease term, free of interference from Lessor or those claiming through or under Lessor.

(g) No Waiver. No delay, waiver, omission, or forbearance by Lessor in exercising any right, option, or power arising out of any Lessee breach or default of any term, provision, or covenant contained herein shall be deemed a waiver by Lessor of such right, option, or power as against Lessee or for any subsequent Lessee breach or default.

(h) Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

(i) Headings, Number, and Gender. The Section headings of this Lease are for convenience only, are not a part of this Lease, and do not in any way limit or amplify the terms and provisions of this Lease. When required by the context, the singular shall include the plural, the plural shall include the singular, the masculine gender shall include the feminine and neuter genders, and "person" shall include corporation, partnership, limited liability company, firm, association, or any other legal entity.

(j) Notice. Any approval, consent, notice, or request required or permitted to be given under this Lease shall be in writing and shall be mailed by certified mail, postage prepaid, return receipt requested, sent by reputable overnight courier service, or personally delivered to a representative of the receiving Party, or sent by electronic mail (E-mail) or facsimile transmission (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 14(j)). All such communications shall be mailed, sent, or delivered, addressed to the Party for whom it is intended at its address set forth below.

To Lessor: City of Bethlehem  
City Hall  
10 East Church Street  
Bethlehem, PA 18018  
Attn: Michael Alkhal, Director of Public Works  
Facsimile #: 610-865-7331  
E-Mail: [malkhal@bethlehem-pa.gov](mailto:malkhal@bethlehem-pa.gov)

With a copy to: City of Bethlehem Solicitor  
City Hall  
10 East Church Street  
Bethlehem, PA 18018  
Attn: William P. Leeson, Esq.  
Facsimile #: 610-865-7205  
E-Mail: \_\_\_\_\_

To Lessee: Bethlehem Parking Authority  
85 West North Street  
Bethlehem, PA 18018  
Attention: Kevin Livingston, Executive Director  
Facsimile #: 610-865-7124  
E-Mail: [kevin@bethpark.org](mailto:kevin@bethpark.org)

With a copy to: Broughal & DeVito, L.L.P.  
38 West Market Street  
Bethlehem, PA 18018  
Attention: James L. Broughal, Esq.  
Facsimile #: (610) 865-0969  
E-Mail: [jimbroughal@broughal-devito.com](mailto:jimbroughal@broughal-devito.com)

Any communication so addressed and mailed, sent, or delivered shall be deemed to be given when actually delivered to the address of the intended recipient Party and receipted for by, or actually received by, such Party. If given by facsimile or E-mail, a notice shall be deemed given and received when the E-mail or facsimile is transmitted to the intended recipient Party's E-mail address or facsimile number specified above and confirmation of complete receipt is received by the transmitting party during normal business hours, or on the next business day if not confirmed during normal business hours, and an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as provided in this Section 14(j). A Party may designate a change of address by notice to the other by giving at least ten (10) days' prior notice of such change of address.

***IN WITNESS WHEREOF***, the Parties have executed this Lease the day and year first above written.

LESSOR:

ATTEST:

CITY OF BETHLEHEM

\_\_\_\_\_  
City Controller

By: \_\_\_\_\_  
Robert J. Donchez,  
Mayor

LESSEE:

ATTEST:

BETHLEHEM PARKING AUTHORITY

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

**"Demised Premises"**

Northampton County Parcel ID. Nos:

**P6SW3C 2 2 0204E (920 Wyandotte Street)**

**P6NW2B 11 1 0204E (121 W. Union Boulevard)**