

1<sup>st</sup> Reading 1-4-2022  
2<sup>nd</sup> Reading 1-18-2022

Received electronically 12/28/2021  
PMMiller@ci.auburn.in.us

**RESOLUTION NO. 02-2022**

**A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF AUBURN  
APPROVING THE LEASE WITH OPTION TO PURCHASE REAL ESTATE PARKING  
LOT LOCATED AT 5<sup>th</sup> AND MAIN STREET IN THE CITY OF AUBURN, INDIANA**

**SUMMARY**

This Resolution calls for the City of Auburn to authorize the Mayor of the City of Auburn, Indiana, to negotiate and enter into a lease with the option to purchase on behalf of the City of Auburn, Indiana, certain real estate located near 5<sup>th</sup> and Main Street in the City of Auburn, Indiana on the West side of Main Street.

The Parcel ID Numbers associated with the real estate are:

Parcel ID Number 18-06-29-379-011

A paved parking lot

Located on the west side of Main Street and north side of 5<sup>th</sup> Street in the City of Auburn, Indiana and currently owned by CAPX, LLC.

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WHEREAS, the Common Council for the City of Auburn, Indiana (“Council”) has the power to purchase real property for the benefit of the City of Auburn, Indiana (“City”); and

WHEREAS, Indiana Code 36-1-10.5-5, et. seq, provides authority to the Council to purchase or acquire property for the benefit of the City; and

WHEREAS, the City of Auburn to redevelop and expand the scope of the City of Auburn, Indiana, including providing for parking in the City of Auburn and specifically in the downtown area of the City and to assist in providing more off-street parking within downtown for businesses and merchants in the area of the City of Auburn, Indiana; and

WHEREAS, the City has determined the sum of Ninety-Seven Thousand Dollars (\$97,000.00) is a fair and reasonable price to purchase said real estate; and

WHEREAS, the funds to purchase the property will come from the City Executive Department’s discretionary CEDIT account; and

WHEREAS, the location of the lot is the corner of 5<sup>th</sup> and Main Street in Auburn, Indiana and is located South side of 5<sup>th</sup> Street and the West side of Main Street and includes the entire parcel, which is currently used as a parking lot; and

WHEREAS, the acquisition of the real property parcel identification number 18-06-29-379-011 necessary for the completion of the above-referenced project.

**LEGAL DESCRIPTION TO BE PROVIDED AS PART OF CLOSING.**

Paved parking lots located west of Main Street and North of 5<sup>th</sup> Street in the City of Auburn, Indiana and owned by CAPX, LLC


**NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF AUBURN, INDIANA, AS FOLLOWS:**

1. The Council, after reviewing the documents associated with said real estate, hereby approves the same;
2. The Council declares that the offer to lease with option to purchase is within the parameters of the fair market value and is fair and reasonable when considering the rental and loss of use of the real estate associated therewith;
3. The purpose of the purchase is to develop parking for the downtown area, in combination with other parcels in the vicinity.
4. The attached Exhibit "1" represents the document that will be used to negotiate the lease with option to purchase.

**BE IT FURTHER RESOLVED**, that the City of Auburn Common Council herein authorizes the Mayor of the City of Auburn, Indiana, to offer and negotiate a purchase agreement consistent with this Resolution and the Exhibit "1" attached to said Resolution hereto and to execute all other necessary documents required in the negotiation and acquisition of said real estate.

**PASSED AND ADOPTED** by the Common Council of the City of Auburn, Indiana, this 18 day of January, 2022.

  
\_\_\_\_\_  
**JAMES FINCHUM**  
Councilmember

**ATTEST:**  
  
\_\_\_\_\_  
**PATRICIA M. MILLER**  
Clerk-Treasurer

Auburn City Attorney  
12/28/2021

1<sup>st</sup> Reading \_\_\_\_\_  
2<sup>nd</sup> Reading \_\_\_\_\_

Presented by me to the Mayor of the City of Auburn, Indiana, this 18 day of January, 2022.

  
PATRICIA M. MILLER  
Clerk-Treasurer

APPROVED AND SIGNED by me this 18 day of January, 2022.

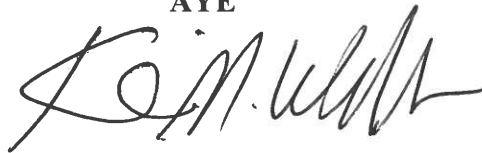
  
MICHAEL D LEY, Mayor

VOTING:

AYE

NAY

Kevin Webb



Jim Finchum



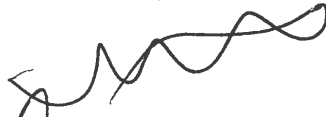
Denny Ketzenberger



Dennis K Kruse II



Natalie Dewitt



David Bundy



Michael Walter

Auburn City Attorney  
12/28/2021

**EXHIBIT “1”**

**LEASE AGREEMENT WITH OPTION TO PURCHASE**

THIS LEASE AGREEMENT WITH OPTION TO PURCHASE (“Agreement”) is entered into as of January 18, 2022, (“Effective Date”) by and between CAPX, LLC, an entity doing business in the State of Indiana, and the owner of the real estate referenced in this agreement (the “Landlord” and also referred to as the Seller or in the combination as Landlord/Seller), and THE MUNICIPAL CITY OF AUBURN, INDIANA (the “Tenant” and referred to as the Buyer or in the combination as Tenant/Buyer).

**I. LEASE AGREEMENT:**

1. Lease. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain real property consisting of the lot” located on 5<sup>th</sup> Street between Main and Jackson Streets, as more particularly described on **Exhibit “A”** attached hereto, together with Landlord’s claims by deed, limitations, or otherwise, and all easements and rights-of-way thereon, and all rights and appurtenances pertaining thereto, if any (“Land”),

This Lease is granted for, among other things, the purpose of enabling and permitting Tenant to provide to businesses, visitors and/or the general public, off-street public parking to the close proximity of downtown Auburn, Indiana.

The terms of the Lease will be merged with and to the extent applicable in this document for the purchase option that is delineated further in this document.

2. Term of Lease. This Lease shall be effective upon the Effective Date. The expiration date shall be December 31, 2022, or upon the completion of the sale of the real estate, whichever occurs first, and at such time, if ever, that Tenant or its successors or assigns acquire such tract from Landlord pursuant to the Option(s) to Purchase granted in **Section II** below.
3. Use. Tenant may occupy and use the Leased Premises during the Term of the Lease for public parking purposes for the downtown Auburn, Indiana, business area.
4. Deposit; Lease Payments. Tenant shall pay a lease payment to the Landlord in the amount of \$6,000.00 for immediate use and possession and \$6,000.00 to engage and secure a rental period of up to December 31, 2022 for a total of \$12,000.00. The \$12,000.00 payment shall allow the Tenant to have control of the parking lot for parking purposes immediately and will also serve to satisfy the immediate loss of parking by the Landlord, who allows certain individuals to have access to said lot. Payments of said \$12,000.00 shall be made within thirty (30) days of this Lease being approved and

executed. Thereafter, Tenant may exercise the option to purchase the real estate for the option purchase price of \$97,000.00 based on the average of two (2) appraisals, at any time after June 1, 2022. The lease shall begin upon execution of this agreement by the parties and run until the option to purchase is exercised. If the Option to Purchase is not exercised, within 12 months of the execution of this agreement, the Option portion of the agreement shall terminate and all rental payments shall be considered the liquidated damages. The total option purchase price and rental payment(s) made as further described herein shall equal a total of \$109,000.00, which includes the lease / rental payment described herein.

5. Taxes. Landlord shall be responsible for all real estate and public improvement taxes, ad valorem taxes, and similar taxes and assessments against the Leased Premises, until said time as the purchase option is completed and the property is closed upon.
6. Maintenance, Repair Alterations, Liens, and Signage. Tenant/Buyer, at its expense, may make any alterations, changes, improvements, or additions to the Leased Premises to prepare and make the Leased Premises suitable for Tenant's/Buyer's contemplated use. Any alterations, changes, improvements or additions to the Leased Premises shall remain with the Leased Premises upon termination of the Lease unless the same can be removed without materially damaging the Leased Premises. All alterations, changes, improvements, or additions must have the express written approval of the Landlord/Buyer.

Upon the execution of the Lease, the City of Auburn, Indiana shall be responsible for all snow removal of the lot, and sidewalks adjacent thereto, and shall keep plow the lot when necessary.

Tenant/Buyer shall have the right to display such signage on the Leased Premises as Tenant/ Buyer desires provided that such signage shall, in all respects, comply with all applicable laws and restrictions, and Tenant/Buyer shall be solely responsible for obtaining any required permit or governmental approvals.

Tenant will keep the Leased Premises free and clear of all mechanics and materialmen's liens and other liens on account of work done for or by Tenant or persons claiming under it. Should any such lien be filed against the Leased Premises, Tenant/Buyer shall, within thirty (30) days of written notice from Landlord/Seller of the filing of the lien, fully discharge the lien by settling the claim which resulted in the lien or by bonding or insuring over the lien in the manner prescribed by the applicable lien law.

7. Insurance.

(a) Tenant's Insurance. During the Term of this Lease, Tenant/Buyer shall procure and maintain in full force and effect (i) Tenant insurance covering Tenant's/Buyer's contents/property located on Leased Premises and also general liability insurance in a manner that is similar to other parking lots covered under the City of Auburn's insurance

Policy, (ii) with respect to the Leased Premises comprehensive general liability insurance in a minimum amount of \$1,000,000.00 per occurrence with Landlord/Seller and its Lender as additional insureds. Each policy obtained by Tenant/Buyer shall provide that the insurer shall give to Landlord/Seller thirty (30) days written notice prior to any cancellation of the policy, and must be issued by a company authorized to do business in the State of Indiana. The Landlord/Seller shall maintain insurance on the premises as to liability issues, until said period that the option purchase is exercised.

(b) Notwithstanding anything in this Lease to the contrary, as long as their respective insurers so permit, Landlord/Seller and Tenant/Buyer will cause their respective insurance carriers to waive any and all rights of recovery, claim, action or causes of action against the other and their respective trustees, principals, beneficiaries, partners, members, officers, directors, agents, advisors, shareholders, and employees, for any loss or damage that may occur to Landlord/Buyer or Tenant/Tenant or any party claiming by, through or under Landlord/Seller or Tenant/Buyer, as the case may be, with respect to Tenant's/Buyer's property, the Leased Premises, any additions or improvements to the Leased Premises, or any contents thereof.

8. Delivery and Quiet Enjoyment. Landlord/Seller shall deliver the Leased Premises on the respective Commencement Dates free of any parties in possession and shall provide Tenant with quiet enjoyment without interference thereafter during the Term.
9. Title. Landlord/Seller warrants further that no third party has superior title or interest in the Leased Premises, and that no prior or existing interest shall interfere with the terms of the subject Lease. Landlord represents and warrants to Tenant/Buyer that — as of the Effective Date – other than the mortgages and security agreements there will be no monetary liens of any type whatsoever encumbering the Leased Premises.
10. Damage, Destruction, or Condemnation.

(a) If at any time during the Term, all or any portion of the Leased Premises shall be damaged or destroyed by fire or other casualty, Landlord/Seller shall repair the damage within a reasonable period. If the damage is not repaired within one hundred twenty (120) days after the casualty, Tenant/Buyer may elect to give notice to Landlord of Tenant's/Buyer's intent to purchase the Property pursuant to the terms of Section II of this Agreement, except that the purchase price will be reduced by an amount necessary to restore the Leased Premises to its prior condition.

(b) (i) If at any time during the Term all of the Leased Premises shall be subject to a "taking" or be condemned under a power of eminent domain or by any conveyance in lieu thereof, this Agreement shall terminate and expire on the date of such taking and the Rent and other sums payable to Landlord shall be apportioned and paid by Tenant/Buyer to Landlord/Seller to the date of such taking.

(ii) If, at any time during the Term, less than substantially all of the Leased Premises shall be taken in condemnation proceedings or by any right of eminent domain, or by any conveyance in lieu thereof, the Rent shall be equitably abated and Landlord/Seller shall commence and thereafter proceed with reasonable diligence to repair, alter and restore the remaining part of the Leased Premises so as to constitute completed improvements, subject to such changes or alterations as Landlord/Seller and Tenant/Buyer agree to make.

(iii) Notwithstanding anything to the contrary, Tenant/Buyer shall have the right to make a separate claim against the condemning authority for the reasonable value of Tenant's/Buyer's leasehold estate, trade fixtures, furniture, personal property, interruption and/or dislocation of business in the Leased Premises, loss of good will and for moving and remodeling expenses and the depreciated book value of any leasehold improvements made by Tenant/Buyer on or to the Leased Premises. If Tenant/Buyer cannot by law make a separate claim and Tenant's/ Buyer's claim must be embodied in Landlord's/Seller claim for a condemnation award, to the extent Landlord's/Seller award includes an award for the items set forth in this **Section 11**, Landlord/Seller shall pay over such portion of the award to Tenant/Buyer

All repairs, alterations or restorations undertaken by Landlord/Seller pursuant to this **Section 11** shall be completed diligently in a good and workmanlike manner and Landlord will assign any warranties relating thereto to Tenant/Buyer.

11. Landlord Right of Access. Landlord/Seller has the right with no less than 24 hours' notice to Tenant/Buyer, bona fide emergencies excepted, to enter the Leased Premises periodically for inspection or in connection with the improvement or repair.
12. Indemnification, Defense and Hold Harmless Obligations. Except for the negligence or willful misconduct of Landlord, its employees and agents, and to the extent permitted by law, Tenant/Seller agrees to indemnify, defend and hold harmless Landlord/Seller and its officers, directors, members and employees (each, a "Landlord Party") from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in the Leased Premises or caused by Tenant's/Buyer's use and operation of the Leased Premises or the Property. If any action or proceeding is brought against any Landlord/Seller Party by reason of any such claim, then Tenant/Buyer, upon notice from Landlord/Seller, shall defend the claim at Tenant's/ Buyer's expense with counsel of Tenant's/Buyer's choice. Except for the gross negligence or willful misconduct of Tenant/Buyer, its employees and agents, and to the extent permitted by law, Landlord agrees to indemnify, defend and hold harmless Tenant/Buyer and its officers, directors, members and employees (each, a "Tenant Party") from and against any and all losses, liabilities, damages, costs and expenses (including reasonable attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of



property occurring in the Leased Premises or arising from Landlord's breach of any of its obligations hereunder. If any action or proceeding is brought against any Tenant Party by reason of any such claim, then Landlord, upon notice from Tenant, shall defend the claim at Landlord's/Seller's expense with counsel of Landlord's/Seller's choice.

13. Lease Defaults; Remedies.

- (a) Except as specifically provided herein, in the event of any default by Landlord/Seller or Tenant/Buyer in its respective obligations under this Lease, the other party shall not have the right to bring any action or make any claim because of such default until the defaulting party fails to cure such default within (i) thirty (30) days after receipt of written notice of any non-monetary default from the non-defaulting party, or (ii) fifteen (15) days after receipt of written notice of any monetary default from the non-defaulting party. However, if the default is of such nature that it cannot readily be cured within such thirty (30) day period, an action or claim may not be brought by the non-defaulting party so long as the defaulting party commences to cure such default within such thirty (30) day period and diligently pursues such cure continuously thereafter.
- (b) In the event of a default by Tenant/Buyer of its obligations hereunder that Tenant/Buyer does not cure within the period set forth in **Section 14(a)** above, Landlord's remedies for Tenant's/ Buyer's default are to sue for damages and/or pursue any other remedy that Landlord/ Seller may have at law or in equity.
- (c) In the event of a default by Landlord/ Seller of its obligations hereunder that Landlord/Seller does not cure within the period set forth in **Section 14(a)** above, Tenant's/Buyer's remedies for Landlord's/Seller's default are to sue for damages and/or pursue any other remedy that Tenant / Buyer may have at law or in equity.
- (d) It is not a waiver of default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this Lease or provided by law. Landlord/Seller and Tenant/Buyer have a duty to mitigate damages.

**II. OPTION TO PURCHASE:**

The undersigned (herein called "Tenant/Buyer") offers to purchase and exercise the Option to Purchase the Real Estate that is leased under this agreement and the parties for the Option Agreement shall be considered the Tenant/Buyer and the Landlord/Seller upon the terms and conditions set forth below, the following described real estate situate in DeKalb County, State of Indiana, whose description is:

Required mailing address is: **Municipal City of Auburn, Indiana, City Hall PO Box 506, 210 E 9<sup>th</sup> Street, Auburn, Indiana 46706.**

**TERMS AND CONDITIONS ASSOCIATED WITH THE  
OPTION TO PURCHASE**

The terms and conditions of this Agreement are as follows:

For purposes of the option the Landlord shall be interchangeably referred to and act as the Seller and the Tenant shall be interchangeably referred to and act as the Buyer.

14. Option Purchase Price of Terms. THE OPTION TO PURCHASE PRICE SHALL BE \$97,000.00 (Option Purchase Price).  
Cash. The entire Purchase Price shall be paid in cash.

Tenant/Buyer Mailing Address for Tax Statements. Tenant/Buyer certifies that the real estate property tax statements should be mailed to:

Name: The City of Auburn  
Address: 210 E Ninth St  
P.O. Box 506  
Auburn, Indiana 46706

15. Taxes and Assessments. Taxes shall be prorated to date of closing then Tenant/Buyer shall assume and pay the taxes upon the Real Estate due and payable in subsequent tax years, if applicable, however, it is anticipated that the sale shall result in the exemption of the real estate as the City of Auburn, Indiana is a non-taxable entity. If the tax rate is not finalized, the last rate and value shall be used in this computation.

Landlord/Seller shall pay any assessments or charges upon or applying to the Real Estate for public or municipal improvements or services which on the date of this Agreement are constructed or installed on or about the Real Estate or are serving the Real Estate.

16. Possession. Possession of the Real Estate shall be delivered to Tenant/Buyer at closing. Rents, if any, shall be prorated as of the date of closing. Insurance shall be cancelled as of the date of closing.
17. Improvements and Fixtures. This offer includes all improvements and permanent fixtures used in connection with the Real Estate.
18. Use. Tenant/Buyer executes this Agreement subject to the present use permitted by the appropriate Plan Commission.

19. Acceptance. If this Option to Purchase is exercised in writing within thirty (30) days of the end of the term of the lease set forth herein, which shall run and be in effect until the Option to Purchase is exercised and shall constitute an Agreement between Tenant/Buyer and Landlord/Seller binding and inuring to the benefit of them and their respective heirs and personal representatives and officers or shareholders.
20. Survey. In the event that a survey is required, it shall be assumed by and be the expense of Tenant/Buyer.
21. Title Evidence. Prior to closing, Landlord/Seller shall furnish at the expense of the Tenant/Buyer a commitment for an owner's policy of title insurance in the amount of the purchase price. Tenant/Buyer may have the title evidence examined by an attorney and will submit legal opinion thereon without unreasonable delay. Landlord/Seller shall have a reasonable time to meet such requirements, if any, as may be necessary to render marketable title to the real estate according to the Standards of Marketability of Title as adopted by the local Bar Association.
22. Closing. This transaction shall be closed as soon as said Option to Purchase is exercised and as soon title to the real estate meets necessary legal requirements and is in compliance with the provisions set forth in this agreement. At closing, Tenant/Buyer shall make payment of the purchase price as above provided and Landlord/Seller shall deliver to Tenant/Buyer proper evidence of conveyance which shall include a Closing Affidavit and a General Warranty Deed.

Landlord/Seller shall assume the risk of loss or damage to the real estate and all improvements thereon until the delivery of the instrument of conveyance. In the event the real estate and all improvements thereon cannot be conveyed or contracted to be conveyed to Tenant/Buyer in substantially their present condition, usual wear and tear expected, this Agreement, at Tenant/Buyer's election, shall not be binding upon Tenant/Buyer and all earnest money deposited hereunder, if any, shall be returned to Tenant/Buyer without delay.

23. Miscellaneous. Tenant/Buyer has personally inspected and examined the Real Estate and makes this offer in good faith. All the terms and conditions are stated herein, there being no verbal agreements.

Headings are inserted for convenience only and do not constitute a part of this Agreement. Whenever necessary and where the context admits, the singular terms

“Tenant/Buyer” and “Landlord/Seller” and their related pronouns include the plural, the masculine, and the feminine.

24. Other Terms. Landlord/Seller acknowledges receipt of the above earnest money to be applied according to the terms of the contract.

### **III. MISCELLANEOUS PROVISIONS:**

25. Waiver of Lien. Landlord/Seller waives any and all rights, statutory or otherwise, to Landlord’s lien on Tenant’s/Buyer’s personal property.
26. Entire Agreement. This Agreement and any addenda or exhibit thereto constitute the entire agreement between Landlord and Tenant and supersede all previous agreements between Landlord and Tenant. No prior written or prior or contemporaneous oral promises or representations shall be binding between Landlord and Tenant. Section captions herein are for convenience only and neither limit nor amplify the provisions of this Agreement.
27. Further Instruments. Landlord/Seller will, whenever and as often as it shall be reasonably requested to do so by Tenant/Buyer, and Tenant/Buyer will, whenever and as often as it shall be reasonably requested to do so by Landlord, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, any and all instruments and documents as may be reasonably necessary in order to complete the transactions herein provided and to carry out the intent and purposes of this Agreement.
28. Commissions. Each party hereto agrees to indemnify and hold harmless the other party from and against any and all liabilities, costs, damages, and expenses of any kind or character arising from any claims for brokerage or finders’ fees, commissions, or other similar fees in connection with the transactions covered by this Agreement insofar as such claims shall be based upon alleged arrangements or agreements made by such party or on their behalf.
29. Time. Time is of the essence with respect to the performance of all obligations provided in this Agreement and the consummation of all transactions contemplated by this Agreement.
30. Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

31. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.
32. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and the invalid, illegal or unenforceable provision shall be reformed to the minimum extent necessary to make the provision valid, legal, and enforceable.
33. Construction. The parties acknowledge that each party and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.
34. Notices. Any notice which may or shall be given under the Agreement shall be in writing and shall either be delivered by hand or sent by United States mail, registered or certified or by Federal Express or a similar courier service, postage prepaid, addressed to the parties hereto at the respective addresses provided below. Such addresses may be changed from time to time by either party giving notice as provided above. Notice shall be deemed delivered when received by the addressee (if delivered by hand), when postmarked (if sent by mail), or twenty-four (24) hours after delivery to the courier service for overnight delivery.

**TENANT/BUYER:**

Name: The City of Auburn  
C/O the Mayor of Auburn, Indiana  
And Clerk-Treasurer City of Auburn, Indiana

Address: 210 E. Ninth St. (both Mayor and Clerk-Treasurer Address)  
P.O. Box 506  
Auburn, Indiana 46706

With a copy to: W. Erik Weber, Esq  
Auburn City Attorney  
Mefford, Weber and Blythe, PC  
130 East Seventh Street  
Auburn, Indiana 46706

**LANDLORD/SELLER:**

Name: CapX LLC  
C/O David Motter, Member  
Address: 15724 County Road I  
Bryan, Ohio 43506

By written notice, said representatives and address set forth above may be modified.

35. Amendments and Survival. This Agreement will not be amended, changed, or extended except by written instrument signed by both parties hereto. The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, heirs, and assigns.
36. Subletting or Assignment. Tenant/ Buyer shall not assign this Lease or sublet the Leased Premises, or any part thereof without the consent of the Landlord in writing, which consent Landlord agrees it will not unreasonably withhold, delay or condition; provided, however, Landlord's consent shall not be required in the event of an assignment or subletting by Tenant to an affiliated entity. In no event of assignment will Tenant be released from any duties or liabilities under this Agreement. The parties understand that upon the execution of the lease portion of this agreement, the City will begin utilizing the real estate at for some form of parking for the general public and the Landlord shall retain one (1) reserved space for use at his discretion during the term of the lease period.
37. Memorandum of Lease and Option. Promptly upon the request of Tenant, Landlord agrees to execute and acknowledge a "Memorandum of Lease, Option" in form satisfactory to Tenant and sufficient for recording in the Conveyance Records of the DeKalb County Recorder, located at the Courthouse, 100 South Main Street, Auburn, Indiana 46706 and will contain a provision acknowledging that the Memorandum of Lease and Option to Purchase will be automatically released if the Lease is either rightfully terminated by a party having a right to so terminate as provided herein, the Lease expires or Tenant purchases the Property.
38. Attorneys' Fees. In the event of any dispute in connection with this Agreement, the prevailing party shall be entitled to receive its reasonable attorneys' fees from the losing party.
39. Estoppel Certificates. Tenant/Buyer and Landlord/Buyer shall each, at any time and from time to time, within twenty (20) days after written request therefore by the other party certify to the best of their knowledge, in a written instrument duly executed, to the requesting party: (a) as to whether this Agreement has been supplemented or amended; (b) as to the validity and force and effect of this

Agreement in accordance with its terms as then constituted; (c) as to the existence of any default by the requesting party pursuant to this Agreement; (d) as to the existence of any offsets, counterclaims or defenses on the part of the party so certifying; (e) as to the Commencement Date and the expiration date of the Term of the Lease; and (f) as to the amounts of Rent payable under the Lease.

40. The Landlord/Seller shall retain the use of one (1) parking spot which shall continue in perpetuity and be assignable by the Landlord/Seller for usage. This usage shall be for the life of the lease and shall be further secured and a continuing condition and benefit that shall run with the land upon the sale being made to the City of Auburn, Indiana.
41. Landlord's / Seller's Covenants, Representations and Warranties. Landlord/Seller represents and warrants to Tenant that:
- (a) Landlord has all requisite power and authority to own the Property (including, but not limited to, the Leased Premises), enter into this Agreement, and consummate the transactions contemplated in this Agreement. Landlord has duly authorized the execution and delivery of this Agreement such that all documents to be executed by Landlord are its valid, legally binding obligations and are enforceable against it in accordance with their terms.
  - (b) The persons executing this Agreement and any and all documents on behalf of Landlord have the legal power, right, and actual authority to bind Landlord.
  - (c) Landlord is, or will be on the Commencement Date, the sole owner of good and marketable, fee simple title to the Property, free and clear of any encumbrances, except the Permitted Encumbrances.
  - (d) Landlord's execution of this Agreement and its consummation of the transaction do not breach any agreement or constitute a default or a condition that would ripen into a default under any agreement to which Landlord is a party or by which all or part of the Property are bound. Furthermore, Landlord's execution of this Agreement and its consummation of the transaction do not violate any order, rule, or regulation applicable to Landlord or the Property of any court or any federal, state, or municipal regulatory body or administrative agency or other governmental body.
  - (e) No representation, warranty, or statement of Landlord in this Agreement or in any document or information furnished to Tenant misstates or omits

any material fact necessary to make the statements or facts contained therein not misleading.

42. Tenant's / Buyer's Covenants, Representations and Warranties. Tenant/Buyer represents and warrants to Landlord/Seller that:

- (a) Tenant/Buyer has all requisite power and authority to enter into this Agreement, and consummate the transactions contemplated in this Agreement. Tenant has duly authorized the execution and delivery of this Agreement such that all documents to be executed by Tenant/Buyer are its valid, legally binding obligations and are enforceable against it in accordance with their terms.
- (b) The persons executing this Agreement and any and all documents on behalf of Tenant/Buyer have the legal power, right, and actual authority to bind Tenant/Buyer.
- (c) Tenant's/Buyer's execution of this Agreement and its consummation of the transactions do not breach any agreement or constitute a default or a condition that would ripen into a default under any agreement to which Tenant is a party. Furthermore, Tenant's/Buyer's execution of this Agreement and its consummation of the transactions do not violate any order, rule, or regulation applicable to Tenant/Buyer of any court or any federal, state, or municipal regulatory body or administrative agency or other governmental body.
- (d) No permission, approval, or consent by third parties or governmental authorities is required for Tenant/Buyer to consummate the transactions contemplated by this Agreement.
- (e) No representation, warranty, or statement of Tenant/Buyer in this Agreement or in any document or information furnished to Landlord misstates or omits any material fact necessary to make the statements or facts contained therein not misleading.

43. Governing Law.

THIS AGREEMENT, AND ALL QUESTIONS RELATING TO ITS VALIDITY, INTERPRETATION, PERFORMANCE AND ENFORCEMENT, INCLUDING, WITHOUT LIMITATION, PROVISIONS CONCERNING LIMITATIONS OF ACTION, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF INDIANA (EXCLUSIVE OF THE CONFLICT OF LAW PROVISIONS THEREOF) APPLICABLE TO AGREEMENTS MADE AND TO BE PERFORMED IN ENTIRETY WITHIN SUCH STATE.



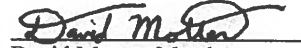
The parties herein have received the appropriate approval from the governing bodies of each entity in order to make this document effective.

**SO AGREED HEREIN AS FURTHER SET FORTH.**

This Lease Agreement with Option to Purchase is executed to be effective upon approval by all authorized parties associated with this transaction.

**LANDLORD/SELLER:**

**CAPX LLC**



David Motter, Member  
15724 County Road I  
Bryan, Ohio 43506

**TENANT/BUYER**

**THE CITY OF AUBURN, INDIANA**



The Honorable Michael D. Ley  
Mayor, City of Auburn, Indiana  
210 E. Ninth St  
P.O. Box 506  
Auburn, Indiana 46706

Auburn City Attorney  
12/28/2021

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1<sup>st</sup> Reading \_\_\_\_\_

2<sup>nd</sup> Reading \_\_\_\_\_

Exhibit "A"

DEKALB COUNTY PARCEL ID NUMBER Parcel ID Number 18-06-29-379-011

Paved parking lot.

Located on the west side of Main Street and north side of 5th Street in the City of Auburn, Indiana and currently owned by CAPX, LLC.

Legal Description to be provided for the sale from CAPX, LLC to CITYOF AUBURN, INDIANA as part of closing.