

**AMENDMENT AND EXTENSION OF LEASE AGREEMENT
BETWEEN THE CITY OF NAPERVILLE
AND PARTNERS IN PERFORMANCE LLC**

DATE OF LEASE	TERM OF LEASE	MONTHLY RENT
March 8, 2017	Beginning – March 8, 2017	\$2000.00 to 12-31-17
	Ending – December 31, 2017	<u>\$2,040.00 - beginning</u>
	<u>June 30, 2018</u>	<u>1-1-18</u>

LOCATION OF PREMISES: The garage building located at 420 N. Center Street, Naperville, IL 60563 and five (5) parking spaces located on the north side of the garage building (as designated by Lessor).

USE AND PURPOSE: Auto repair shop

LESSOR: City of Naperville
Attn: William Novack [City Liaison]
Director of T.E.D.
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

LESSEE: Partners in Performance LLC
Attn: James J. Tomisek
21308 W. Creston Court
Plainfield, IL 60544

In consideration of the mutual covenants and agreements herein stated, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor solely for the above purpose the premises designated above (the "Premises"), together with the appurtenances thereto, for the above Term unless otherwise terminated as provided herein.

1. SECURITY DEPOSIT/RENT:

Lessee shall pay Lessor two thousand dollars per month rent ("Rent") for use of the Premises. Except as provided below, Lessee shall pay said Rent monthly in advance of the first day of the month, at the Lessor's address stated above. Said Rent amount shall increase to \$2,040.00 per month beginning with the January 2018 Rent payment.

The first month's Rent for March of 2017 (pro-rated beginning on March 8, 2017) shall be paid by Lessee to Lessor at Lessor's address stated above prior to Lessee occupying the Premises.

Two thousand dollars (\$2,000.00) of the last month's rent, for December of 2017 June of 2018, shall be has been paid by Lessee to Lessor at Lessor's address stated above prior to Lessee occupying the Premises and shall be considered a security deposit ("Security Deposit") which may be used as provided herein. The forty-dollar (\$40.00) balance shall be paid by Lessee in advance of June 1, 2018.

Lessee shall pay a fifty dollar (\$50) per day charge for each day the Rent payment is late.

2. CONDITION OF PREMISES:

Lessee has examined and knows the condition of the Premises and has received same in good order and repair, acknowledges that no representations as to the condition and repair thereof, acknowledges that it is taking and leasing the Premises in an "AS IS, WHERE AS" condition and no agreements or promises to decorate, alter, repair, improve or maintain the Premises have been made by Lessor. Lessee will keep and maintain the Premises in good, clean, sightly and healthy condition during the term of this Lease and upon termination of this Lease will yield up the Premises to Lessor in good condition and repair.

3. LESSEE NOT TO MISUSE, SUBLET, OR ASSIGN:

Lessee will not allow the Premises to be used for any purpose other than that herein before specified. Lessee will not allow the Premises to be occupied in whole, or in part, by any other person or entity, and will not sublet the same of any part thereof, nor assign this Lease. Lessee will not permit any transfer by operation of law the interest in the Premises acquired through this Lease, and will not permit the Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the property on which the Premises is situated or increase the fire hazard of the building or disturb other tenants on the property (including the building located at 190 East 5th Avenue, Naperville) or the neighborhood, nor permit any damage to, alteration of, or addition to any part of the Premises. Lessee shall ensure that no environmental contamination of any kind occurs on the Premises.

4. MECHANICS LIEN

Lessee will not permit any mechanic's lien or liens to be placed on the Premises during the Term hereof, and in case of the filing of such lien(s) either during the Term of the Lease or thereafter, Lessee will promptly pay same.

5. INDEMNITY FOR ACCIDENTS, CLAIMS AND DAMAGES

Lessee shall defend (with legal counsel approved by Lessor, which approval shall not be unreasonably withheld), indemnify, and hold harmless the Lessor, City of Naperville, and its officers, agents, employees, and representatives from and against any cost, liability, judgment, expenses, attorneys' fees, claims, actions or damages of any kind, including but not limited to personal injury, death, property damage, and any mechanics or other lien or encumbrance of any kind, arising out of any act or omission of Lessee or its employees, agents, representatives, invitees, and contractors, including but not limited to Lessee's use of the Leased Premises or any activity done or permitted by Lessee or by Lessee's employees, agents,

representatives, invitees, contractors, or lessees in, on or about the Leased Premises and any negligent, intentional, tortious, and/or illegal act or omission of Lessee or its employees, agents, representatives, invitees, contractors, or lessees. The defense and indemnity provided herein is independent of and shall not be limited by reason of the enumeration of any insurance coverage which Lessee has obtained. Nothing contained herein shall be construed as a limitation or waiver of defenses available to the Lessor and its officers, agents, and employees, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

6. LESSEE INSURANCE REQUIREMENTS:

During the Term of this Lease, Lessee shall insurance for the occupancy and operations in the Premises as set forth on **Exhibit A** attached hereto and made part hereof.

Proof of such insurance coverage shall be provided to the City Liaison prior to occupancy of the Leased Premises. Lessee shall provide to Lessor certified copies of all insurance policies required within ten (10) days of Lessor's written request for said copies.

Lessee shall provide Lessor with evidence that insurance as required herein is maintained.

Failure to comply with the insurance provisions set forth or referenced herein shall be grounds for immediate termination of this Lease.

7. NON-LIABILITY OF LESSOR:

Except as provided by Illinois law, Lessor shall not be liable for any damage occasioned by failure to keep the Premises in repair, nor for any damage done or occasioned by Lessee's Lessee's use, occupancy and operations in or on the Premises, nor for any damages arising from the acts or neglect of any owners, tenants or occupants of adjacent or contiguous property.

8. ACCESS TO PREMISES:

Lessee shall allow Lessor free access to the Premises for purposes of examining the Premises from time to time prior to the expiration or termination of this Lease.

9. UTILITY CHARGES:

Lessee shall timely pay for all water, gas, electric, heat, sewer charges and telephone service and all other services and utilities supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Lessee, Lessee shall pay its reasonable proportion, to be determined by Lessor, of all charges jointly metered with other leased premises of the building of which the Premises is a part.

10. SURRENDER OF PREMISES:

Lessee shall quit and surrender immediate possession of the Premises to Lessor on ~~December 31, 2017~~ June 30, 2018 or upon earlier termination as provided herein. The

Premises shall be left in broom clean condition with all personal property removed therefrom. Lessee may remove any and all appurtenances from the Leased Premises so long as the structural integrity and safe condition of the garage building remains fully intact. Any personal property remaining on the Premises on ~~on December 31, 2017~~ on June 30, 2018 shall be deemed abandoned and the City may dispose of it or make use of it as it sees fit. Any costs for cleaning of the Premises or removal of personal property will be Lessor's sole responsibility. Lessor may use the Security Deposit for that purpose as it deems appropriate. If the Security Deposit is not sufficient, or is used for other purposes permitted herein, the City may invoice Lessee for the costs above plus all costs of enforcement. Payment in full shall be due from Lessee within thirty (30) days of receipt of an invoice therefor.

11. LESSEE'S RIGHT TO TERMINATE:

Lessee shall have the right to terminate this Lease at any time by giving thirty (30) days prior written notice to Lessor.

12. LESSOR'S RIGHT TO TERMINATE AND REMOVE LESSEE:

In the event that Lessor determines that there is a breach of this Lease Agreement, Lessor may terminate this Lease Agreement by giving five (5) days prior written notice.

If Lessee fails to timely pay Rent as provided herein, or to pay any other sums due hereunder, or fails to faithfully comply with each term and condition of this Lease Agreement, Lessor may at any time thereafter at its election terminate this Lease Agreement and reenter the Premises with or (to the extent permitted by law) without notice and remove Lessee or any persons occupying the same, and all personal property remaining on the Premises, without prejudice to any remedies that might otherwise be used for arrears of rent or any other obligations of the Lessee under this Lease.

13. FIRE AND CASUALTY:

In case the Premises are rendered uninhabitable during the Term of this Lease by fire or other casualty, Lessor at its option may terminate this Lease effective immediately or upon such other date as Lessor, in its sole discretion, determines.

14. SEVERABILITY:

Wherever possible each provision of this Lease shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under any applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of this Lease or any such provision of this Lease.

15. **SECURITY DEPOSIT:**

Lessor shall mail Lessee's Security Deposit to Lessee at the address provided for in Section 19 below on or before ~~December 31, 2017~~ July 31, 2018 so long as Lessee has faithfully and fully complied with the provisions of this Lease Agreement, including but not limited to payment of Rent and vacation of the Premises ~~on December 31, 2017~~ by June 30, 2018 (or prior to that if this Lease Agreement is terminated prior to that date).

Lessor shall be entitled to retain the Security Deposit in the event that: (i) Rent is not timely paid; (ii) Lessee fails to vacate the Premises in the manner described herein ~~on December 31, 2017~~ by June 30, 2018 (or prior to that if this Lease Agreement is terminated prior to that date); (iii) Lessee has damaged the Premises (in which case Lessor shall notify Lessee of the damages in question and specify the basis for retention of the Security Deposit); (iv) or for any other breach hereunder. Retention of the Security Deposit shall not be Lessor's sole remedy, but shall be cumulative of any other remedies in equity or at law which are available to Lessor for Lessee's breach or breaches of this Lease Agreement.

16. **LESSEE TO VACATE; HOLDOVER RENT:**

LESSEE SHALL VACATE AND TENDER FULL AND COMPLETE POSSESSION OF THE PREMISES ON ~~DECEMBER 31, 2017~~ JUNE 30, 2018 OR EARLIER IF THIS LEASE AGREEMENT HAS BEEN TERMINATED AS PROVIDED HEREIN.

If Lessee fails to vacate and tender full and complete possession of the Premises ~~on December 31, 2017~~ by June 30, 2018, or earlier if this Lease has been terminated as provided herein, Lessee shall pay Lessor one hundred dollars (\$100) a day as holdover rent for each day that Seller remains in possession of the Premises (the "Holdover Rent") until Lessee tenders to Lessor full and complete possession of the Premises. Notwithstanding the foregoing or Lessee's payment of Holdover Rent, Lessor shall have the right to file a forcible entry and detainer proceeding to evict Lessee and secure full and complete possession of the Premises upon the end of the Term or earlier termination of this Lease.

17. **INTEREST/ATTORNEYS' FEES AND COSTS:**

17.1 Where amounts due to the Lessor are not timely paid, the Lessor shall be entitled to interest from the date such payment was due through the date of actual payment at a rate of LIBOR plus two (2) basis points.

17.2 Lessee shall pay Lessor's attorneys' fees (whether in-house or outside counsel), including but not limited to reasonable costs and expenses, for any action taken by Lessor to enforce any of the provisions of this Lease Agreement including but not limited to enforcement of the payment of Rent or Holdover Rent, recovery possession of the Premises, filing of a forcible entry and detainer proceeding to evict Lessee and secure full and complete possession of the Premises upon the end of the Term or earlier termination of this Lease, and payment of real property taxes as provided herein. Said payment shall be made in fully by Lessee within thirty (30) days of receipt of a bill therefor.

18. CHOICE OF LAW AND VENUE:

This Lease Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

19. NOTICE:

Any notice or demand hereunder from one Party to another Party shall be deemed duly served if mailed by prepaid registered or certified mail addressed to the individuals identified below.

IF TO THE LESSOR:

William Novack [**City Liaison**]
Director of T.E.D.
City of Naperville
400 S. Eagle St.
Naperville, IL 60540

WITH COPIES TO:

City Attorney, City of Naperville
400 South Eagle Street
Naperville, Illinois 60540

IF TO THE LESSEE:

Partners in Performance LLC
Attention: James J. Tomisek
420 N. Center Street
Naperville, IL 60563

20. REAL PROPERTY TAXES:

Lessee shall be solely liable to pay any real property taxes, if assessed, to the extent that such taxes result from Lessee's use of the Premises during the term of this Lease Agreement. Lessee shall pay the same within thirty (30) days of receipt of a bill therefor from the City.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the dated stated above and the signors below are officers or representatives authorized to execute this Lease for and on behalf of the respective party.

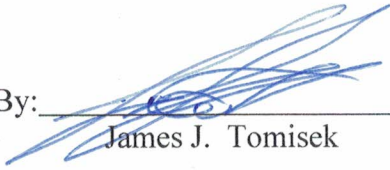
LESSOR/CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

By: _____
Pam Gallahue, Ph.D.
City Clerk

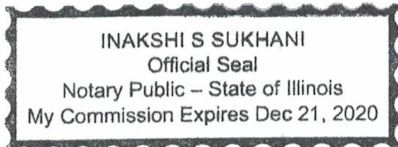
LESSEE: PARTNERS IN PERFORMANCE LLC


By: 
James J. Tomisek

State of Illinois)
)
County of DuPage)

The foregoing instrument was acknowledged before me by James J. Tomisek this 06th day of NOV, 2017 who appeared before me this day in person and acknowledged that as managing member of Partners in Performance LLC he signed and delivered this instrument pursuant to authority given to him in that capacity as his free and voluntary act and as the free and voluntary act of said limited liability company.

- seal -




Notary Public INAKSHI S. SUKHANI
Commission Exp. - Dec 21, 2020