

Contract No.: _____

**PARKING LICENSE AGREEMENT
TOWNE CENTER GARAGE**

THIS PARKING LICENSE AGREEMENT (the "**Agreement**") is made and entered into effective as of the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and **GRANDIN CO., LTD**, an Ohio limited liability company, whose principal office is located at 1308 Race Street, Suite 200, Cincinnati, Ohio 45202 ("**Licensee**").

Recitals:

A. The City owns the Towne Center public parking garage located at 1251 Central Avenue, Cincinnati, Ohio 45202, with a capacity of 689 spaces (the "**Garage**").

B. Licensee desires to purchase up to 200 monthly parking permits in the Garage, over an extended period of time, to provide parking for its tenants, employees, agents, or other associates (its "**Parking Permit Holders**"), and the City is agreeable to the same pursuant to the terms of this Agreement.

C. Granting Licensee the right to use up to 200 parking spaces in the Garage (the "**Total Reserved Spaces**") is tantamount to a right-of-entry, which, if the term exceeds one year, requires approval by City Council under Cincinnati Municipal Code Section 331-9 (*Sale, Lease, or Use of City-Owned Real Property Without Council Approval*).

D. The City's execution of this Agreement was authorized by City Council by Ordinance No. _____-2019, passed on _____, 2019, such authorization being contingent upon Licensee's agreement to forfeit its use of approximately 60 parking spaces currently used by Licensee at Washington Square Park Garage (which spaces are needed by Cincinnati Public School employees, staff, and students from the adjacent School for Creative and Performing Arts).

NOW, THEREFORE, for and in consideration of the promises, covenants and agreements herein contained, the parties mutually agree as follows:

1. **TERM.**

(A) **Initial Term; Automatic Renewals (5 years, with two 5-year renewals).** The initial term of this Agreement will be for 5 years, commencing on the Effective Date (_____, 2019) (defined on the signature page hereof as the date of the City Manager's execution of this Agreement) and expiring on _____, 2024, unless extended or sooner terminated as herein provided. No later than the Effective Date, Licensee shall permanently cease using the approximately 60 parking spaces at Washington Square Park Garage referred to in recital D above. Unless sooner terminated in accordance with the termination provisions hereof, the initial term shall automatically be extended for two additional 5-year periods (each, an "**Automatic Renewal Period**"). The Agreement may be continued upon the expiration of the second Automatic Renewal Period, on a month-to-month basis, but only if mutually agreed to by both parties and set forth in a written amendment to this Agreement; otherwise, this Agreement will automatically terminate upon the expiration of the second Automatic Renewal Period.

(B) **Early Termination by Licensee.** Licensee shall have the right to terminate this Agreement, at any time and for any reason, by delivering to the City a written notice of termination no less than 30 days prior to the effective date of such termination. As a condition of the City's willingness to enter into this Agreement, Licensee acknowledges and agrees that, if for any reason the City is unable to make all or any of the Total Reserved Spaces available to Licensee (either due to maintenance/repairs, alterations, demolition, damage by fire or other casualty, etc.), the City shall not be deemed to be in default under this Agreement and shall not be liable for any costs or damages suffered or incurred by Licensee; but rather Licensee's sole remedy shall be to exercise its right to terminate this Agreement under this paragraph.

(C) **Early Termination by City.** The City shall have the right to terminate this Agreement upon 30 days' written notice to Licensee if any of the following occur: (a) if Licensee at any time fails in the performance of any of the terms and conditions of this Agreement and such failure continues for 30 days after written notice thereof from the City; (b) if Licensee files a petition in bankruptcy or if an entry of a judgment of bankruptcy is filed against Licensee; (c) if all or any part of the Garage shall be destroyed or damaged by fire or other casualty such that there are not enough parking spaces in the Garage available to satisfy Licensee's parking needs. Upon the termination of this Agreement, Licensee shall pay the Total Monthly Fee through the effective date of the termination.

2. NUMBER OF RESERVED PARKING SPACES. The City shall make available, on a monthly basis, up to 200 parking permits for parking spaces in the Garage for use by the Parking Permit Holders (the "**Total Reserved Spaces**"). There shall be no specific parking spaces designated or numbered for use by the Parking Permit Holders; rather, they may park in any vacant parking space in the Garage. The 200 Total Reserved Spaces shall remain available to Licensee until Licensee requests parking passes for any of these spaces. Once Licensee requests parking passes for a particular number of parking spaces for use by its Parking Permit Holders, those parking spaces shall be referred to as "**Utilized Parking Spaces**", and the remaining spaces shall be referred to as "**Unused Parking Spaces**." The parties acknowledge that the number of Utilized Parking Spaces and Unused Parking Spaces may vary from time to time (so long as the total does not exceed 200).

3. FEE FOR UTILIZED PARKING SPACES. Licensee shall pay the monthly fee established for all spaces rented on a month-to-month basis at the Garage (the "**Monthly Rate**") for each of the Utilized Parking Spaces. The Monthly Rate at the time of execution of this Agreement is Forty and 00/100 Dollars (**\$40.00**) per month, per parking space. The City has the right to review and adjust the Monthly Rate at any time, at the City's sole discretion. Licensee will be notified at least thirty (30) days in advance should the Monthly Rate be changed. The total fee for a particular month shall be calculated based on the number of Utilized Parking Spaces for that month multiplied by the Monthly Rate for that month (referred to herein as the "**Total Monthly Fee**"). Licensee shall pay the Total Monthly Fee to the City on or before the last business day of each month, in advance for the next month. If the City does not receive the Total Monthly Fee within five (5) days after the due date, the City shall have the right to deactivate the Cards (defined below) for the Utilized Parking Spaces on the sixth (6th) day after the due date. Notwithstanding the notice and cure period provided for in paragraph 1(C) hereof, Licensee's failure to pay the Total Monthly Fee prior to the expiration of such 5-day grace period shall constitute an immediate default under this Agreement, whereupon the City shall have the right to terminate this Agreement by delivering a written notice of termination to Licensee. Payments shall be sent to Allpro Parking, LLC, 602 Main Street, Cincinnati, OH 45202. Payments shall be made payable to "Treasurer, City of Cincinnati" or such other entity as the City designates. In addition to all other rights and remedies hereunder, the City reserves the right to impose late charges and to charge interest on late payments. All rights and remedies of the City under this Agreement are cumulative.

4. FEE FOR UNUSED PARKING SPACES IF GARAGE REACHES CAPACITY. Licensee shall pay only for the Utilized Parking Spaces until such time as the parking spaces in the Garage requested to be used for monthly parking (including the Total Reserved Spaces) exceeds the capacity of the Garage. At such time as the City is unable to fulfill a request for monthly parking passes from a third party because the number of monthly parking passes would exceed the capacity of the Garage, Licensee will be required to commence paying for Unused Parking Spaces as well as all Utilized Parking Spaces, all at the Monthly Rate. In the alternative, Licensee could at that time request that this Agreement be modified to reduce the number of Total Reserved Spaces to a number that would enable the City to fulfill the pending request from the third party for monthly parking.

[For example: Assuming the total number of parking spaces in the Garage remains at 689, then, if, at some point in time, the number of Utilized Parking Spaces is 100 and the number of Unused Parking Spaces is 100, and the City has issued parking passes to third parties for all of the remaining parking spaces (689-200 = 489) (i.e., the Garage is at capacity), then (and unless Licensee agrees to amend this Agreement by reducing the number of Total Reserved Spaces to below 200), if and when the City receives a request by

a third party to obtain a monthly parking pass in the Garage (which the City will be unable to fulfill because the Garage is at capacity), Licensee must commence to pay the Monthly Rate for all of the Unused Parking Spaces.]

5. **FEE CHARGED BY LICENSEE TO PARKING PERMIT HOLDERS.** Licensee shall not charge its Parking Permit Holders an amount that is in excess of the Monthly Rate that is in effect from time to time under this Agreement (i.e., Licensee shall not make a profit by inflating the fee), with the exception of a small administrative fee of no more than 5% of the Monthly Rate.

6. **THIRD-PARTY PARKING MANAGER.** The City currently utilizes AllPro Parking (the "Parking Manager"; such term to include any successor management company utilized by the City) to manage the Garage on behalf of the City. Licensee acknowledges that some of the actions and obligations of the City under this Agreement, including without limitation maintenance obligations, may be carried out by the Parking Manager staff, rather than by City employees.

7. **HOURS OF ACCESS; ACCESS CARDS.** The City shall make the parking spaces available to Licensee 24 hours per day, 7 days per week, except as provided below. The City shall issue Licensee the parking permits in the form of electronic encoded plastic cards (the "Cards"). If a Card is lost, stolen, or damaged beyond ordinary wear and tear, the City shall provide Licensee with a replacement Card. Licensee should inform the Parking Manager of the Card's disappearance in writing, at Allpro Parking, LLC, 602 Main Street, Cincinnati, OH 45202, and may also contact them at 513-258-8288. The replacement Card will be provided within one business day of receipt of this written notification. Each lost or stolen card will be deactivated by the City as soon as possible after notice is provided. For each replacement Card issued by the City as a result of a Card being lost, stolen, or damaged, Licensee shall be charged a replacement Card fee in the amount of \$10.00 (subject to change, at the City's discretion, so long as the same replacement fee is charged to all users of the Garage).

8. **EVENT PARKING.** Outside of Monday through Friday, 6AM-6PM ("Normal Business Hours"), City may sell event parking in the Garage. For an event that requires the sale of parking partially within Normal Business Hours, City may sell event parking spaces in the Garage as they become available but shall allow normal in-and-out movement of Licensee permit holders until the cessation of Normal Business Hours. During event parking, Licensee's permit holders shall not park in the Garage; provided that nothing in this paragraph shall be construed to require any Licensee permit holder to move their vehicle out of the Garage during special events and after Normal Business Hours under circumstances where a Licensee permit holder initially accessed the Garage and parked their vehicle in the Garage during Normal Business Hours. City shall provide notice to Licensee of a special event prior to the date of the event.

9. **TEMPORARY CLOSURE OF GARAGE FOR MAINTENANCE.** The City shall be responsible for all maintenance, repair, and alterations to the Garage. The City shall retain control of the Garage at all times and shall have the right to temporarily clear and close the Garage or any part thereof in the event of maintenance, repairs, alterations, or emergencies. The City shall make all reasonable efforts to maintain as much of the Garage open as possible. Except in emergency situations, the City shall give Licensee notice of any closing of all or part of the Garage, and estimate of the duration of the closure, at least 7 days prior to the closure; whereupon Licensee shall notify the Parking Permit Holders of such closure. If the City completely closes the Garage for a period in excess of 7 consecutive days, the Total Monthly Fee shall be reduced to \$0.00 from and after the 7-day period, until such time as the Garage is re-opened. (There shall be no abatement of the Total Monthly Fee if the Garage is closed for less than 7 consecutive days, nor shall there be any partial abatement of the Total Monthly Fee if only a portion of the Garage is closed for longer than 7 consecutive days. Licensee acknowledges that the primary purpose of the foregoing to reduce the administrative burden on the City and Parking Manager.)

10. **DEMOLITION, RENOVATION, OR RECONSTRUCTION OF GARAGE.** Notwithstanding anything in this Agreement to the contrary, the City may determine, in its sole discretion, to undertake demolition, renovation, or reconstruction of the Garage that may require the removal of some or all of the parking spaces within the Garage for an extended period of time (or permanently in the event the City demolishes the Garage). In such event, the City will undertake, at no cost to the City, commercially reasonable efforts

to assist Licensee in finding nearby replacement parking spaces elsewhere, equal to the number of Utilized Parking Spaces being utilized at that time (the "**Replacement Parking Spaces**"), either in a parking garage or surface parking lot owned and controlled by the City or by a third party. The City will work cooperatively with Licensee to assist in finding replacement parking, in the same way the City will work with other entities that have a large number of monthly parking permits for parking at the Garage. If the Replacement Parking Spaces are located in another garage or parking lot owned and controlled by the City, the fee for the Replacement Parking Spaces shall be the prevailing fee for monthly parking for all users of that City-owned garage or parking lot. If the Replacement Parking Spaces are located in a garage or lot owned or managed by a third party, the fee for the Replacement Parking Spaces will be the rate negotiated between Licensee and the third party.

11. **RULES AND REGULATIONS.** Licensee and its Parking Permit Holders shall abide by the rules and regulations of the City and the Parking Manager in the use of the Garage, as the same may be modified from time to time. Copies of such rules and regulations, and modifications thereof, shall be provided to Licensee for distribution to the Parking Permit Holders.

12. **NO LIABILITY FOR CITY.** The City assumes no responsibility or liability whatsoever for any loss, damage or theft of any automobile or any article of personal property left therein or elsewhere in the Garage, no matter how caused; and as a material inducement to the City to enter into this Agreement, Licensee, and on behalf of its insurers and the Parking Permit Holders, waives all claims against the City in connection with any such loss, damage or theft.

13. **INDEMNIFICATION.** As a material inducement to the City to enter into this Agreement, Licensee shall indemnify, protect, and hold harmless the City, Parking Manager and their respective employees, representatives, agents, contractors and subcontractors (the "**Indemnified Parties**"), from and against all losses, damages, injuries, claims, demands, and expenses, including legal expenses, of whatsoever nature, caused by, or in any way connected with, or arising out of this Agreement or the use of the Garage by the Parking Permit Holders. In the event any such action is brought against any of the Indemnified Parties, Licensee shall defend them with legal counsel reasonably acceptable to the Indemnified Party and shall pay for losses, damages, injuries, claims, demands, expenses and judgments arising therefrom. All obligations and liabilities of Licensee under this Agreement that have accrued but have not been fully performed as of the termination of this Agreement, including without limitation indemnity obligations, shall remain in full force and effect following such termination, until fully performed.

14. **INSURANCE.** Licensee shall at its own expense during the term hereof maintain and deliver to the City a Commercial General Liability insurance policy pertaining to its use of the Garage, naming the City as an additional insured, in an amount no less than \$1,000,000 per occurrence/\$2,000,000 combined single limit, or in such greater amounts or with such other coverages as may be required by the City's Division of Risk Management. Such policies shall be in such form and with such insurance companies reasonably satisfactory to the City. Failure to provide evidence of such insurance upon the City's request shall be grounds for immediate termination of this Agreement.

15. **NOTICES.** All notices shall be personally delivered or sent by U.S. mail addressed to the parties as follows or addressed in such other way in respect to either party as that party may from time to time designate. Licensee shall promptly notify the City of any change of address. If Licensee sends a notice to the City that the City is in default under this Agreement, Licensee shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202:

City:
City of Cincinnati
Division of Parking Facilities
300 W. 6th Street
Cincinnati, OH 45202
Attention: Dan Fortinberry

Licensee:
Grandin Co., Ltd.
1308 Race Street, Suite 200
Cincinnati, OH 45202
Attention: _____

If Licensee sends a notice to the City alleging a default of the City under this Agreement, Licensee shall simultaneously send a copy of such notice to: City Solicitor, City of Cincinnati, 801 Plum Street, Suite 214, Cincinnati, OH 45202.

16. **NO ASSIGNMENT.** Licensee shall not assign or transfer its interest in this Agreement without the prior written consent of the City. (Licensee's issuance of Cards to the Parking Permit Holders shall not be deemed as an assignment under this Agreement.)

17. **NON-EXCLUSIVE AGREEMENT.** The parking rights granted to Licensee hereunder are non-exclusive Agreement. The City may enter into the same or a similar agreement with other licensees for parking at the Garage at any time during the term of this Agreement.

18. **GOVERNING LAW.** The laws of the State of Ohio and City of Cincinnati shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and shall govern the interpretation of this Agreement. All actions regarding this Agreement shall be brought in the Hamilton County Court of Common Pleas, and Licensee agrees that venue in such court is proper. Licensee waives trial by jury with respect to all matters arising under this Agreement.

19. **WAIVER.** This Agreement shall be construed in a manner that a waiver of any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

20. **ENTIRETY.** This Agreement and the exhibits and attachments, if any, hereto constitute the entire agreement between the parties as to the matters contained herein. Any oral representations or modifications concerning this Agreement shall be of no force and effect.

21. **SEVERABILITY.** This Agreement shall be severable, and if any part or parts of this Agreement shall for any reason be held invalid or unenforceable by a court of competent jurisdiction, all remaining parts shall remain binding and in full force and effect.

22. **AMENDMENT.** This Agreement may be modified or amended only by a written agreement duly executed by the parties hereto.

23. **EXHIBITS.** The following exhibits are attached hereto and made a part of this Agreement: none.

SIGNATURE PAGE FOLLOWS

Executed by the parties on the dates indicated below, effective as of the later of such dates (the "Effective Date").

CITY OF CINCINNATI

By: _____
Patrick Duhaney, Acting City Manager

Date: _____, 2019

GRANDIN CO., LTD.

By: _____

Printed Name: _____

Title: _____

Date: _____, 2019

RECOMMENDED BY:

Philip M. Denning, Director
Department of Community and Economic Development

APPROVED AS TO FORM BY:

Assistant City Solicitor

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
Reginald Zeno, City Finance Director