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June 12, 2015

Birmingham City Commission
151 Martin Street, P.O. Box 3001
Birmingham, MI 48012-3001

Re: Dearborn Federal Credit Union Project

Dear Mayor and Commissioners:

Karana Real Estate, LLC has proposed the redevelopment of the current Amoco Gas Station site at the corner of Cranbrook and Maple. Currently, they have a License Agreement with the City of Birmingham to use a portion of the property for the gas station operation. A portion of the property includes the alley located southeast of the intersection of West Maple and Cranbrook Road as well as the site where the Amoco sign rests at the corner of Cranbrook and Maple. Karana has requested a revision to the License Agreement so that it may lease the property to Dearborn Federal Credit Union.

We have been in negotiations with their counsel and have arrived at a new proposed License Agreement to license all of the properties they are currently using and to enable them to lease the property to DFCU Financial. The license fee shall initially be $844 per month. Said license fee shall be adjusted annually to increase or decrease by the Consumer Price Index for all urban areas as set forth by the Department of Labor reporting the Bureau of Labor statistics. This adjustment, however, is limited in that no increase in the monthly license fee shall be greater than 5% more than the monthly license fee for the prior license year.

The term of the License shall initially be 50 years. The licensee is required to indemnify and hold the City harmless and provide insurance that meets the City's requirements. It is our recommendation that the City Commission approve the License Agreement as set forth below so that this matter may go forward.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BEIER HOWLETT, P.C.

Timothy J. Currier

TJC/jc

SUGGESTED RESOLUTION

To approve the License Agreement between the City of Birmingham and Karana Real Estate, LLC and to authorize the Mayor and Clerk to execute the same on behalf of the City.

LICENSE AGREEMENT
("Agreement" or "License Agreement")

This **AGREEMENT** made this _____ day of _____, 20_____, BY AND BETWEEN the **City of Birmingham**, a municipal corporation, at 151 Martin Street, Birmingham, MI 48009 ("City") and **Karana Real Estate, LLC**, at 6108 North Greek Ct., West Bloomfield, MI 48322 ("Licensee"). The "Effective Date" of this Agreement is the date of the last signature of a party on this Agreement, as identified in the signature block.

RECITALS

A. Licensee is the owner of a parcel of land in the City of Birmingham, located at 2483 West Maple Road and described as follows:

> Lots 170 through 176 inclusive of the Meyering Land Companies, Birmingham Highlands Subdivision No. 1 ("Karana Property").

B. Pursuant to a License Agreement dated November 8, 1993 ("Prior License"), the City licensed to Amoco Oil Company, a Maryland corporation, and Cranbrook Car Care, Inc. (collectively, "Prior Licensees"), certain properties surrounding the Karana Property described and referred to herein collectively as the "Licensed Area."

C. The Licensed Area consists of two parcels (collectively the "License Area") that are more particularly described as follows:

> <u>Licensed Area "A":</u>
>
> Beginning at the northwest corner of Lot 175 of the Meyering Land Company's Birmingham Highlands Subdivision No. 1,

thence north 2 degrees, 10 minutes east, 69.94 feet to a point; thence north 88 degrees, 30 minutes east, 69.96 feet to the northwest corner of Lot 171 of said Subdivision; thence southwesterly on a curve to the right, 104.44 feet along the northwesterly line of Lots 171 through 175, inclusive, of said Subdivision, through 175, inclusive, of said Subdivision, to the point of beginning of this description.

Licensed Area "B":

Legal description for alley located Southeast of the intersection of West Maple Road and Cranbrook Road:

An alley located over the West 1/2 of the Northwest 1/4 of Section 35, Town 2 North, Range 10 East in Birmingham Highland Subdivision Number 1, in the City of Birmingham, Oakland County, Michigan being more particularly described as follows:

Commencing at a point distant North 88° 30' East 299.80 feet, and South 1° 30' East 60 feet and South 88° 30' West 73.54 feet (also the South right-of-way line of West Maple Avenue) from the Northwest 1/4 corner of Section 35, City of Birmingham, Oakland County, Michigan, to the point of beginning; thence South 1° 30' East 125 feet; thence Southwesterly 76.87 feet, thence South 87° 50' West 125 feet, to the Easterly right-of-way line of Cranbrook Road; thence North 2° 10' East 20 feet along said right-of-way line, to the Southwest corner of Lot 176 of Birmingham Highlands Subdivision No. 1, a plat recorded in Liber 218, Page 5 of Plats, Oakland County Registrar's office; thence proceeding along the South line of Lot 176 North 87° 50' East 86.77 feet; thence Northeasterly 100.0 feet along a line which also is the Southeasterly line of Lots 171 through 175; thence North 1° 30' West 86.77 feet along the East line of Lot 170; thence North 88° 30' East 20 feet along the South right-of-way line of West Maple Road to the point of beginning.

D. The Prior License runs with the land and binds successors and assign, and Licensee purchased the Karana Property on August 8, 2010, from Armada Oil Company.

E. The Licensed Area, pursuant to the Prior License, was and is used by the Prior Licensees for rear access to the gasoline service station owned by Cranbrook Car Care, Inc. and the parking.

F. Cranbrook Car Care, Inc. currently operates a gasoline service station on the Karana Property.

G. The Prior Licensees have made improvements to the Licensed Area including without limitation, an asphalt driveway, landscaping, outdoor lights, gas line, a flag pole, and signs (collectively, "Improvements").

H. The Improvements have been maintained throughout the term of the Prior License.

I. Licensee intends to lease the Property pursuant to a ground lease to a new user for reconstruction of the site into a lawful use.

J. The Prior License remains in full force and effect and is not in default.

K. The City has determined that the Licensed Area is not currently necessary for public use and that the Improvements and use made of the Property pursuant to the Prior License Agreement is in the best interest to the general public.

L. The City and Licensee wish and intend by this Agreement to extend the Prior License and to license the Licensed Area to Licensee, under the terms and conditions provided herein.

NOW, THEREFORE, the parties agree to the following terms and conditions.

1. The City hereby grants to Licensee an exclusive license for use of the Licensed Area pursuant to the terms of this Agreement.

2. The City authorizes the Licensee to maintain the Improvements currently existing on the Licensed Area in accordance with requirements of the City ordinances and this License. Further, the City hereby approves the assignment to, or use of this License Agreement by DFCU FINANCIAL, a Michigan state chartered credit union, at 400 Town Center Drive, Dearborn, MI

48126 ("DFCU"). Other than the assignment to, or use of the License by DFCU, Licensee may assign or allow others to use this License Agreement upon the consent of the City, which consent shall not be unreasonably withheld, delayed or denied.

3. This License is not intended to be a building permit for any further Improvements, or an approval of any other lawful new use or site plan; provided however, that any future Improvements, uses or site plans shall be submitted for approval to the City pursuant to the City ordinances in the ordinary course.

4. For purposes of all present and future uses, site plan reviews and zoning analysis related to any development, the Karana Property and the Licensed Areas shall deemed by the City as one parcel of property. Accordingly, the Licensed Areas shall be treated as if said Licensed Areas were a part of the Karana Property, and the Licensee and any Assignee may use the Licensed Area in the same manner as it uses the Karana Property. Licensee and Assignee, for purposes of any future site plans, zoning analysis or development of any kind on the Licensed Area and Karana Property, may present a site plan to the City showing that the Karana Property and the Licensed Area are one Property with all setback lines, dimensional information and other calculations required as part of the zoning and planning review being determined by the City of Birmingham as if the Karana Property and the Licensed Area were one single piece of property owned by Licensee.

5. City and Licensee acknowledge that this Agreement is intended as a license to Licensee exclusively, to use public property, to the exclusion of all other persons or entities pursuant to the terms and conditions of the license; and further that this license shall be regulated and controlled by the City, and Licensee must comply in all respects with the terms and conditions of the special land use permit to the DFCU approved on _____, 2015

for Licensee's Property or other terms and conditions required by the City for any future development approved by the City. Provided however, it is further acknowledged by the parties that Licensee may, at its discretion, submit plans to the City for new uses on the Licensed Area, and if said plans for a new use on the Licensed Area are approved pursuant to City ordinances in the ordinary course, then the new uses so approved by the City shall be deemed permitted under the terms and conditions of this License, and said new use(s) shall not affect the terms and conditions of this License Agreement and Licensee's right to use the Licensed Area as set forth herein.

6. This license is for a Term of 50 years from and after the "License Commencement Date", as herein defined, except in the event of nonpayment of the Monthly License Fee, which has not been cured by Licensee as provided in this License Agreement. Each consecutive calendar year from and after the License Commencement Date is defined herein as a "License Year". Licensee shall pay to the City a "Monthly License Fee" as set forth below for each calendar month during the License Year or portion of a month following the Effective Date of this Agreement, commencing on the first day of the calendar month following the execution of this Agreement (the "License Commencement Date"). If the Effective Date is the first day of a calendar month, the License Commencement Date and the Effective Date are the same. If the Effective Date is other than the first day of a calendar month, then Licensee shall pay a partial-License Commencement Date fee for the partial month in an amount equal to 1/30th of the Monthly License Fee for the First License Year times the number of days remaining in that month prior to the License Commencement Date, and said partial-License Commencement Date fee shall be paid upon the License Commencement Date. Otherwise, the Monthly License Fee shall be paid in advance no later than the fifth (5th) day of each calendar month of each License

Year ("Monthly License Fee Due Date") during the term of this License Agreement. In addition, Licensee will be responsible for all real and personal property taxes that are related to the Licensed Areas. The Monthly License Fee for the 50 year term of this License Agreement shall be Eight Hundred Forty-Four and 00/100 ($844.00) Dollars per month, subject to an adjustment as set forth in this paragraph. The adjustment of the Monthly License Fee shall occur no more than once each License Year. The Monthly License Fee shall be adjusted as follows by the City within the first Lease Month of each License Year: the Monthly License Fee shall be increased or decreased beginning with the second License Year and for each consecutive License Year thereafter by the U.S. city average all items consumer price index for all urban areas (CPIU) as set forth by the Department of Labor and reported by the Bureau of Labor Statistics. This increase or decrease in the Monthly License Fee shall be calculated by multiplying the amount of the prior lease year's Monthly License Fee by the total percentage increase in the CPIU which occurred during that prior License Year. Provided however, in no event shall the increase in the Monthly License Fee be greater than 5% more than the Monthly License Fee of the prior License Year.

7. Licensee may, in its discretion, submit a request to the City for approval of modifications or changes to the Improvements or may submit plans for a new use other than the current use. The City shall accept such applications and process them in the ordinary course.

8. To the fullest extent permitted by law, Licensee shall indemnify and hold harmless the City, its elected and appointed officials, employees and volunteers and others working on behalf of the city against any and all claims, demands, suits, or loss, including all costs connected therewith and for any damages which may be asserted, claimed or recovered against or from the City, its elected and appointed officials, employees, volunteers, or others

working on its behalf by reason of personal injury, including bodily injury, death and/or property damage, including the loss of use thereof (collectively "Claims and Damages"), which Claims and Damages arise out of the Licensee's use of the Licensed Area.

9. Licensee shall, during its occupancy and use of the Licensed Area, procure and maintain during the life of this Agreement the following insurance coverages related to the Licensed Area with insurers acceptable to the City:

Worker's Compensation Insurance – in accordance with Michigan law.

Commercial General Liability

Bodily Injury	Per Person	$1,000,000.00
	Per Claim	$2,000,000.00
Property Damage	Per Person	$1,000,000.00
	Per Claim	$2,000,000.00

Coverages shall include the following extensions:

a. Contractual Liability;
b. Product and Completed Operations;
c. Independent Contractors' Coverage;
d. Broad form General Liability extension or equivalent;
e. Deletion of all explosion, collapse and underground exclusions.

The foregoing insurance shall be on an "occurrence basis" only.

Motor Vehicle Liability; including Michigan No fault coverages:

Bodily Injury	Per Person	$1,000,000.00
	Per Claim	$2,000,000.00
Property Damage	Per Person	$1,000,000.00
	Per Claim	$2,000,000.00

Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles.

Upon execution of this Agreement, Karana shall furnish to the City Certificates of Insurance showing that Karana has in effect the above described insurance coverages. Except for Worker's Compensation Insurance, such Certificates shall indicate that the City, including all

elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and board members including employees and volunteers, are listed as additional insureds and that each of the insurance Agreements described in the Certificates contain the following endorsement:

> "It is understood and agreed that thirty (30) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to Finance Director, City of Birmingham, P.O. Box 3001, Birmingham, Michigan 48009."

These coverages shall be primary to the additional insureds and not contributing with any other insurance or similar insurance protection available to the additional insureds, whether said other available coverage be primary, contributing or excess.

10. Licensee shall be responsible for the upkeep and maintenance of the Licensed Area in a condition satisfactory to the City. Any flag poles placed on the Licensed Area shall display only national, state or city flags.

11. This license is in full force and effect for the 50 year term of this License Agreement provided that the City may earlier terminate this License Agreement only as follows.

(a) In the event Licensee has failed to pay the Monthly License Fee in a timely manner ("Monetary Default"), then the City shall give notice to the Licensee ("Cure Notice") which states the following:

(i) that the Licensee has failed to make a payment of the Monthly License Fee in a timely manner; and

(ii) the identification of which payment was not made; and

(iii) that the Licensee has 30 days ("Monetary Cure Period") from the date the Cure Notice is given, pursuant to the notice provisions set forth herein, to cure the non-payment and pay the Monthly License Fee(s); and

If the Monetary Cure Period expires and the Licensee has failed to cure the Monetary Default identified in the Cure Notice, then the City may earlier terminate this License Agreement upon written notice to Licensee.

(b) In the event that the Licensee commits a breach of its performance of any other material covenant in this Agreement, other than a Monetary Default, ("Non-Monetary Default"), and fails to reasonably cure, or reasonably commences to cure the Non-Monetary Default within sixty (60) days of the date notice from the City is given, pursuant to the notice provisions set forth herein, notifying Licensee of the Non- Monetary Default and identifying with specificity the Non-Monetary Default claimed, then the City may earlier terminate this License Agreement upon written notice to Licensee.

Notwithstanding anything herein to the contrary, in the event that an earlier termination of this License Agreement occurs for any reason, there shall be no acceleration of any Monthly License Fees due the City, and any and all obligations of Licensee hereunder to pay Monthly License Fees to the City shall immediately terminate as of the date of the earlier termination, this Agreement shall be deemed terminated, and neither party shall have any further obligations to the other hereunder.

12. This License shall be deemed in full force and effect, and not be affected in any way by a change of use or change of Licensee or occupant of the Karana Property provided that the change of use is a lawful use under local, state and federal law and is approved by the City pursuant to City ordinances in the ordinary course.

13. For the term of this Agreement, the City and Licensee acknowledge that the License and other terms, covenants, conditions and rights conferred by this Agreement are intended to, and do, constitute a covenant that runs with the land deemed appurtenant to the

Karana Property, shall be recorded by Licensee with the Oakland County Register of Deeds, and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors and assigns.

14. Upon execution of this License Agreement, the prior License Agreement shall be deemed terminated, and this Agreement shall supersede the Prior License and this License Agreement shall be deemed in full force and effect without any gap in time.

15. Any notice required or permitted by this Agreement shall be given in writing and shall be either (i) personally delivered, or (ii) mailed by a recognized overnight carrier (Fed Ex, UPS, etc.) marked for "next day" delivery, postage prepaid which delivery shall require a signature of the recipient of the notice. Notices shall be deemed given, in the case of personal delivery on the date of personal delivery, supported by an affidavit of service, and in the case of an overnight carrier, on the date of delivery, supported by appropriate delivery receipts of the overnight carrier. Either party hereto may change its address by giving written notice to the other party in the manner set forth in this paragraph. Notwithstanding the foregoing, regardless of any assignment of this License, any notice of any default, including without limitation a default in the payment of the Monthly License Fee, in addition to notification of the assignee of the Licensee shall be given to the following: Sam Karana c/o Karana Real Estate, LLC, 6108 North Greek Court, West Bloomfield, Michigan 48322, with a copy to Richard D. Rattner, Williams Williams Rattner and Plunkett, P.C., 380 North Old Woodward, Birmingham, MI 48009. Any party may change the address to which notice is to be given upon written notice to all other parties. If a notice is given on a day other than a "business day" as herein defined, then the date that notice is deemed given will be deemed to be the first "business day" following the

date of receipt. A "business day" is any weekday, and "business day" does not include any Saturday, Sunday, national, religious or bank holiday.

16. Miscellaneous.

(a) *Counterparts.* This Agreement may be executed in several counterparts, each of which is deemed an original and all of which constitute the same Agreement. The signature of any party to any counterpart is deemed to be a signature to, and may be attached to, any other counterpart.

(b) *Headings.* The headings of this Agreement are intended solely for convenience of reference and will be given no effect in the construction and interpretation of this Agreement.

(c) *Severability.* If any provision of this Agreement is adjudged or declared illegal, invalid or unenforceable, then the provision(s) will:

(i) be deemed null and void to the extent of such illegality, invalidity or unenforceability, and

(ii) be severable from and shall not limit or impair the operation or validity of any other provisions of this Agreement.

This Agreement will remain in full force and effect as though such illegal, invalid or unenforceable provision or provisions had never existed.

(d) *Binding Nature.* This Agreement is binding upon, and inures to the benefit of, each of the parties and their respective successors and assigns. This Agreement may not be assigned except as set forth in paragraph 2 above. Any purported assignment in violation of this Agreement is void.

(e) *Amendments.* This Agreement may not be modified, amended, altered or supplemented except by the execution and delivery of a written Agreement executed by all of the parties.

(f) *Entire Agreement.* This Agreement and the exhibits attached to it contain the entire agreement and understanding among the parties with respect to its subject matter.

(g) *Notices.* All notices, demands and requests required or permitted to be given under the provisions of this Agreement must be in writing to the addresses set forth in the preamble to this Agreement and pursuant to the terms and conditions of paragraph 15.

(h) *Choice of Law*. This Agreement will be governed, construed and enforced in accordance with the laws of the State of Michigan, without regard to conflicts of laws principles.

(i) *Jurisdiction and Venue*. Any lawsuit arising directly or indirectly out of this Agreement must be litigated in the state courts located in Oakland County, Michigan, or the United States District Court for the Eastern District of Michigan.

Continued on the following page

IT WITNESS WHEREOF, the parties execute this Agreement the day and year first above written, and the "Effective Date" of this License Agreement is deemed the date upon which the last signatory signs this Agreement.

"LICENSOR":

WITNESS:

CITY OF BIRMINGHAM
151 Martin Street
Birmingham, MI 48012

_____

By: _____
Stuart Sherman, Mayor

_____

By: _____
Laura Pierce, Clerk

Dated: _____

APPROVAL (Sec 2-289 City Code)

Joseph Valentine, City Manager
as to Substance

Mark Gerber, Director of
Finance as to Financial Obligation

Timothy J. Currier, City Attorney as to
Form

924985.7

"LICENSEE":

KARANA REAL ESTATE, LLC
6108 North Greek Ct.
West Bloomfield, MI 48322

By: _____

Dated: _____

_____

_____

"Effective Date": _____
(Date of last signature of a party)