

EMERGENCY

City of Cincinnati

CHM 

An Ordinance No. _____ - 2021

AUTHORIZING the City to enter into a *Lease Agreement* with vR Hospitality LLC or other affiliated organization acceptable to the City Administration, pursuant to which the City will grant a leasehold interest in the Lunken Airport Terminal Building and adjoining real property at Lunken Airport in the Linwood neighborhood for a term of up to 50 years; and further **AUTHORIZING** the City to enter into a Development Agreement and Service Agreement with vR Hospitality LLC or other affiliated organization acceptable to the City Administration, to facilitate the company's redevelopment activities at the Lunken Airport Terminal Building and adjoining property at Lunken Airport, and providing for City assistance to the project in the form of a rebate of a portion of the service payments in lieu of taxes imposed in connection with a proposed 30-year property tax exemption for improvements pursuant to Ohio Revised Code Section 5709.41, subject to the passage by this Council of a separate ordinance authorizing such tax exemption.

WHEREAS, the City owns Lunken Airport, including the Lunken Airport Terminal Building located at 262 Wilmer Avenue (the "Terminal Building"), which is under the management of the City's Department of Transportation and Engineering ("DOT"); and

WHEREAS, the vR Group submitted a proposal outlining its vision for the redevelopment of the Terminal Building in response to a Request for Information ("RFI") issued by the City that solicited offers to redevelop the Terminal Building; and

WHEREAS, after receiving the aforementioned proposal and no others in response to the RFI, the City elected to enter negotiations with the vR Group regarding its proposal to redevelop the Terminal Building; and

WHEREAS, following its negotiations with staff from DOTE and the Department of Community and Economic Development ("DCED"), the vR Group further refined its proposal and the City Administration found that proposal to be suitable and advantageous to the City; and

WHEREAS, the vR Group's proposal involves the lease of certain real property at Lunken Airport known as Lease Areas 53 and 54 (collectively, the "Property"), which Property includes the Terminal Building, to its affiliate, vR Hospitality LLC, a Kentucky limited liability company, or other affiliated organization acceptable to the City Administration ("Developer"), for a period of up to 50 years to allow for the improvement and conversion of the Property into an approximately 71,500 square-foot mixed-use hotel, restaurant, bar, and commercial event space at an estimated cost of \$20,560,000 (the "Project") (such costs include the cost of Developer's planned fixed-base operator facility to be constructed adjacent to the Project and subject to a separate lease agreement between Developer and the City), which Project is projected to create up

to 90 new full-time jobs and 100 temporary construction jobs, as more particularly detailed in the *Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference; and

WHEREAS, the City Administration, including DOTE and DCED, has determined that (i) the Property is not needed for any municipal purpose during the term of the *Lease Agreement*, and (ii) leasing the Property to Developer is not adverse to the City's retained interest in the Property or Lunken Airport; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease of City-owned property without competitive bidding in those cases in which it determines that it is in the best interests of the City; and

WHEREAS, the City Administration, including DOTE and DCED, upon consideration of airport industry standards, Federal Aviation Administration requirements, the extensive work necessary for the preservation and adaptive reuse of the Terminal Building, and the cost savings to be realized by the City by Developer's assumption of responsibility for maintenance of the Terminal Building, and following arms-length negotiations with the Developer, determined that the rent provided for in the *Lease Agreement* reflects the fair market rental value of the Property; and

WHEREAS, Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution, and research; and

WHEREAS, the City Administration, including DOTE and DCED, has determined that the City's lease of the Property to Developer constitutes a proper public purpose because the City's lease of the Property will create new employment opportunities at Lunken Airport, enhance the economic viability of Lunken Airport, help the City's Lunken Airport operations achieve self-sustainability, and stimulate economic activity in and around the Linwood neighborhood, thereby improving the economic welfare of the City and its residents; and

WHEREAS, the City Planning Commission approved the lease of the Property to Developer at its meeting on December 3, 2021; and

WHEREAS, contingent upon (i) the City Administration's satisfactory review of all due diligence materials, and (ii) negotiation of a Development Agreement with terms and conditions acceptable to the City Administration (the "Development Agreement"), the City, upon the recommendation of DCED, desires to facilitate the Project by providing a 30-year real property tax exemption for the Project pursuant to Ohio Revised Code Section 5709.41, subject to the passage by this Council of a separate ordinance authorizing such exemption (the "Project TIF" and the "TIF Ordinance," as applicable); and

WHEREAS, upon passage of the TIF Ordinance, Developer desires to enter into a Service Agreement with the City, pursuant to which Developer will make service payments in lieu of taxes; and

WHEREAS, the parties anticipate that the service payments in lieu of taxes will be used: (i) to make payments to the Board of Education of the Cincinnati City School District (the "School Board") under the City's *Tax Incentive Agreement* with the School Board effective as of April 28, 2020; (ii) to pay certain administration fees to the Hamilton County, Ohio Auditor and the City; (iii) to make rebate payments to Developer with respect to the Project; and (iv) to support urban redevelopment purposes, in each case in the manner and in the respective amounts as will be set forth in the Development Agreement; and

WHEREAS, subject to the successful negotiation and execution of the Development Agreement, on terms and conditions acceptable to the City Administration, the City has determined that it is in the best interest of the City to rebate the aforementioned portion of the service payments to Developer because the City will receive substantial economic and non-economic benefits from the Project in that the Project will create jobs, stimulate economic growth in the Linwood neighborhood of Cincinnati, and enable the Property to be put to its highest and best use, for the benefit of the people of the City; and

WHEREAS, the City believes that the Project will promote urban redevelopment in the Linwood neighborhood of Cincinnati, is in the vital and best interests of the City and the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That the City is hereby authorized to enter into a *Lease Agreement* with vR Hospitality LLC, a Kentucky limited liability company and affiliate of the vR Group, or other affiliated organization acceptable to the City Administration ("Developer"), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will lease to Developer, for a period of up to 50 years, certain real property at Lunken Airport known as Lease Areas 53 and 54 (collectively, the "Property"), which Property includes the Lunken Airport Terminal Building ("Terminal Building"), to allow for the improvement and conversion of the Property into an approximately 71,500 square-foot mixed-use hotel, restaurant, bar, and commercial event space at an estimated cost of \$20,560,000 (the "Project") (such costs include the cost of Developer's planned fixed-base operator facility to be

constructed adjacent to the Project and subject to a separate lease agreement between Developer and the City), which Project is projected to create up to 90 new full-time jobs and 100 temporary construction jobs.

Section 2. That the Property is not needed for a municipal purpose for the duration of the *Lease Agreement*.

Section 3. That leasing the Property to Developer is not adverse to the City's retained interest in the Property or Lunken Airport.

Section 4. That it is in the best interests of the City to eliminate competitive bidding in connection with the City's lease of the Property because following negotiations with the vR Group after receiving its response to a Request for Information soliciting offers to redevelop the Terminal Building, the City Administration, including the Department of Transportation and Engineering and the Department of Community and Economic Development, determined the vR Group's proposal to be suitable and advantageous to the City.

Section 5. That, following arms-length negotiations with the vR Group, and upon consideration of airport industry standards, Federal Aviation Administration requirements, the extensive work necessary for the preservation and adaptive reuse of the Terminal Building, and the cost savings to be realized by the City by Developer's assumption of responsibility for maintenance of the Terminal Building, the rent provided for in the *Lease Agreement* reflects the fair market rental value of the Property. Additionally, the City anticipates that it will receive economic and noneconomic benefits from the *Lease Agreement* in addition to the fair market rental value of the Property because the City's lease of the Property will create new employment opportunities at Lunken Airport, enhance the economic viability of Lunken Airport, help the City's Lunken Airport operations achieve self-sustainability, and stimulate economic activity in and

around the Linwood neighborhood.

Section 6. That, contingent upon the City Administration's satisfactory review of all due diligence materials, and the parties' negotiation of and agreement upon terms and conditions acceptable to the City Administration, the City is hereby authorized to enter into a Development Agreement and Service Agreement with Developer pertaining to the Project (the "Development Agreement" and the "Service Agreement", respectively), which Service Agreement will require Developer's payment of service payments in lieu of taxes with respect to the Project (the "Service Payments"), and which Development Agreement will provide for the City's rebate of a portion of the Service Payments to Developer, all on terms and conditions acceptable to the City Administration.

Section 7. That, pursuant to the Development Agreement, Council finds that the City is engaging in urban redevelopment.

Section 8. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the *Lease Agreement*, the Development Agreement, and the Service Agreement, including, without limitation, executing any and all ancillary documents associated with those agreements, including plats, deeds, easement agreements, and other documents, and further including executing amendments or supplements thereto to incorporate any and all additional or revised terms and conditions as the City Administration determines to be in the City's vital and best interests.

Section 9. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to enable the City to lease the Property to the Developer so that it may promptly

proceed with its plans to redevelop the Terminal Building and thereby create new employment opportunities at Lunken Airport, enhance the economic viability of Lunken Airport, help the City's Lunken Airport operations achieve self-sustainability, and stimulate economic activity in and around the Linwood neighborhood at the earliest possible time.

Passed: _____, 2021

John Cranley, Mayor

Attest: _____
Clerk

Contract No: _____

Property: Lunken Airport – Lease Area Nos. 53 and 54
Project: Lunken Airport Terminal

LEASE AGREEMENT
(up to 50 years)

This Lease (“Lease”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the “City”), and **LUNKEN DEVELOPMENT, LLC**, a Kentucky limited liability company, the address of which is 25 W. Robbins Street, Covington, Kentucky 41011 (“Developer”).

Recitals:

A. The City owns Lunken Airport, including the Lunken Airport Terminal Building located at 262 Wilmer Avenue (the “**Terminal Building**”), which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. Developer desires to lease from the City the Terminal Building and those portions of Lunken Airport known as **Lease Areas 53 and 54**, as more particularly depicted on Exhibit A (Site Survey), and more particularly described on Exhibit B (Legal Description) hereto (the “**Leased Premises**”).

C. Developer desires to make substantial improvements to the Terminal Building and Leased Premises, at an estimated construction cost of \$20,560,000, as generally described or shown on Exhibit C (Description of Project) and Exhibit D (Construction Requirements) hereto (the “**Project**”; with the new improvements to be constructed by Developer being referred to herein as the “**Improvements**.” The parties acknowledge that the Leased Premises *excludes* the Lunken Bike Trail, a multimodal transportation and recreation trail open to the public for public use that generally encircles the Airport and is under the management of the Cincinnati Recreation Commission (“**Lunken Trail**”). The City currently intends to continue to manage Lunken Trail through the Cincinnati Recreation Commission.

D. The City has determined that the Leased Premises are not needed for any municipal purpose during the term of this Lease.

E. The City has determined that competitive bidding in connection with the lease of the Leased Premises is impractical and that eliminating competitive bidding is in the best interest of the City because the City has not received any other acceptable development proposals from other parties in response to a Request for Information to solicit offers to develop the Terminal Building. Developer submitted the only proposal in response, which proposal the City determined is the most advantageous to the City, involving a capital investment of at least \$20,560,000, projecting the creation of up to 90 new full-time jobs and 100 temporary construction jobs. The foregoing capital investment includes Developer’s planned FBO facilities which are subject to a separate lease agreement between Developer and the City.

F. The rent set forth in this Lease reflects the fair market rental value of the Leased Premises, as determined by arms-length negotiation between the City and the Developer, taking into consideration airport industry standards and FAA requirements and the work necessary for the preservation and adaptive reuse of the Terminal Building.

G. The City Planning Commission, having the authority to approve the change in the use of the City-owned Leased Premises, approved the City's lease of the Leased Premises to Developer at its meeting on December 3, 2021.

H. Execution of this Lease was authorized by Ordinance No. [____], passed by Cincinnati City Council on [_____].

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. GRANT OF LEASEHOLD.

(A) Grant. On the terms and conditions set forth in this Lease, the City does hereby lease the Leased Premises to Developer, and Developer does hereby lease the Leased Premises from the City, for the Term established under section 2 below. The City makes no representations or warranties to Developer regarding the physical condition of the Airport or the Leased Premises. The rights herein granted to Developer are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Premises, and to any and all existing agreements between the City and the federal government pertaining to the Airport.

(B) As-Is Condition. The parties acknowledge and agree that, as part of the construction of the Improvements, Developer will be conducting its own title search, survey work, environmental assessments, soil and geotechnical studies, and other due diligence in order to familiarize itself with the condition and characteristics of the Leased Premises. The City makes no, and has not made, any representations or warranties concerning the title, condition, or characteristics of the Leased Premises or the suitability or fitness of the Leased Premises for the Project, and Developer acknowledges and agrees that Developer is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Leased Premises. On the Commencement Date (as defined in section 2 below), Developer shall accept the Leased Premises in "as is" condition.

(C) Title Matters. The rights herein granted to Developer are subject and subordinate to the rights of utility providers and others to enter upon the Leased Premises from time to time pursuant to recorded easements and other recorded instruments affecting the Leased Premises (if any), including without limitation rights in the general public to use the Lunken Trail. Developer shall not take any actions that would violate any easements, covenants, restrictions or other matters of record affecting the Leased Premises or that would impair the rights of the general public to use the Lunken Trail. Developer shall not have the right to grant any easements or otherwise encumber the City's title to the Leased Premises without the City's prior written consent, and Developer acknowledges that any further encumbrances may require approval of City Council under the Cincinnati Municipal Code. (Developer shall however have the right to grant Permitted Mortgages (defined below) and otherwise encumber Developer's leasehold interest in the Leased Premises (including granting easements to third parties that automatically terminate upon the expiration or termination of this Lease) without the City's consent, provided such encumbrances do not encumber the City's title.) The City shall have the right to grant easements to third parties and to take whatever other actions affecting the Leased Premises as may be deemed reasonably necessary by the City so long as such actions do not materially interfere with Developer's use of the Facilities for the Permitted Uses or otherwise unreasonably impair the rights granted to Developer under this Lease.

(D) City's Right to Enter. The City's employees, agents, and contractors shall have the right to enter upon the Leased Premises, at any reasonable time and from time to time, for the purpose of examining the condition of the Leased Premises, determining Developer's compliance with the provisions of this Lease, accessing any public utility installations as shown on drawings at the office of the Airport Manager, and for any other proper purpose. The City shall use reasonable efforts to avoid disrupting Developer's business operations and shall promptly repair any damage to the Leased Premises caused by the City's entry. The City shall use reasonable efforts to notify Developer prior to entering upon the Leased Premises except that no notice shall be required in the event of an emergency.

(E) Right to Terminate Early (after 24 months) if Developer is unable to construct Improvements. Notwithstanding anything in this Lease to the contrary, each party shall have the right to terminate this Lease early by giving thirty (30) days written notice thereof to the other party, if by 730 days after the Effective Date Developer is unable to obtain a building permit and any and all other permits, utility easements, zoning approvals, and other government and non-governmental approvals as may be required in connection with Developer's construction of the Improvements; and thereafter neither party shall have any rights or obligations hereunder (except that Developer shall remove its stored materials and do all things necessary to restore the Leased Premises to the same condition it was in on the Effective Date). At such time as Developer has obtained a building permit and any and all other required permits, easements and approvals, the Developer's and the City's termination rights under this paragraph 1(E) shall automatically terminate.

(F) Assignment of the Leased Premises to the Port. Nothing in this Agreement shall be construed to prohibit Developer from entering into a lease assignment arrangement with respect to the Leased Premises in which the leasehold interest to the Leased Premises is assigned to the Port of Greater Cincinnati Development Authority (the "Port"); *provided, however,* that (a) the purpose for such transaction is to take advantage of the sales tax exemption on the purchase of Project building materials, (b) Developer shall provide the City with such documents and other information with respect to this arrangement as the City may reasonably request, including the final form of the Port assignment transaction documents that are to be executed, at least 14 days prior to the effective date of the lease assignment, (c) Developer agrees to execute an amendment to the terms of this Lease, containing terms and provisions mutually agreed upon by the parties, should the City indicate, in writing, that such an amendment (or such amendments) are required to effect any technical and legal changes that the City may, in its reasonable discretion, deem to be necessary or desirable to accommodate such an arrangement while maintaining all of the material economic and financial terms of this Lease, and (d) the City and Developer agree to negotiate in good faith towards any such amendment. Developer may not assign its rights, obligations, or any other interest under this Lease to any other party, at any time, in compliance with the provisions of this Lease. The assignment to the Port or any other third party shall still be subject to the City's rights under this Lease. Developer hereby provides notice to the City that Developer will enter into the Port assignment transaction.

(G) Coordinated Report Conditions (#43-2021). Developer acknowledges that it has received a copy of, and must satisfy any and all conditions set forth in, the City Coordinated Report #43-2021, a copy of which has been provided to Developer, including without limitation the following:

(i) DOTe:

1. There shall be no change to the alignment to Lunken Trail, or additional driveways across Lunken Trail, between Airport Road (east towards hangers) and the crosswalk at Airport Road (west towards Riverside Drive).

2. There shall be no change in use of the trail, such as 'walk your bike', for the frontage of the hotel. Consider a barrier fence separating the hotel pedestrians and trail traffic, if the front door use will be heavy.

3. There is currently one access point across Lunken Trail in this area for dumpster access in front of the existing restaurant. DOTe recommends relocation of dumpsters to east/south of the site, and closing the access drive, as part of the proposed site improvements.

4. Any proposed valet will need to be approved by DOTe with input from the Bike Program.

5. DOTe highly recommends the inclusion of bike parking on the site.

(ii) MSD:

1. No structure which can interfere with the access to existing public sewers or can exert loading upon a public sewer shall be permitted per MSD Rules and Regulations Section 206. A change in existing topography or proposed site plan submittal may also necessitate a review by MSD.

2. A MSD Request for Availability for Sewer Service ("RASS") will be required for any future development or redevelopment of the surrounding area to the paper streets listed in this CR. The MSD RASS will determine the availability of sewers, the need for sewer extensions, and outline any additional MSD project requirements that could impact a development or redevelopment if not considered early in project planning. Such considerations may include the need to: (a.) obtain any MSD tap or special permits for any alteration to MSD infrastructure; (b.) provide or widened public sanitary sewer easements; (c.) Obtain an Ohio EPA Permit to install; (d.) utilize licensed and bonded sewer tappers with MSD; (e.) arrange sewer construction inspection scheduling; (f.) provide project on-site separation of flow requirements; (g.) obtain a MSD Excavation/Fill permit and bond; (h.) comply with MSD storm water detention requirements per Section 303 of the MSD Rules and Regulations; (i.) provide information for a grease interception system and review; and/or (j.) Coordinate with City of Cincinnati Stormwater Management Utility of the Department of the Greater Cincinnati Waterworks and with Lunken Airport staff for their specific additional detailed storm water, storm water detention, erosion control, and flood plain requirements.

3. The MSD RASS may require a MSD Excavation/Fill ("E/F") permit as well as bond which will be necessary for any predesign, geotechnical, construction, construction traffic, earthwork, or any other construction activity over existing sewers, including site preparation activities such as demolition of existing buildings in which existing sewers are located. Additional requirements will be established by the MSD E/F permit (such as verification and usage of existing or abandoned building services to sewers through dye testing, pre- and post-demolition or construction CCTVing, etc.) depending on the final project plan. No additional loading may be exerted on existing MSD sewers as the result of proposed structures and geotechnical/structural design calculations will be required for MSD review. Information concerning MSD E/F permits may be found in Section 406 of the MSD Rules and Regulations.

4. Requirements for MSD sewer construction in Special Flood Hazard Areas and addressing inflow or infiltration of flood waters including elevating drains and toilets to a least one foot above the base flood level may be found in Section 612 of the MSD Rules and Regulations.

(iii) GCWW:

1. There is an existing 8" public water main within the subject lease area. The construction of the proposed hotel foundation must be a minimum of 18 feet from both the existing public water main and thrust block at the bend in the main to protect and maintain the integrity of the thrust block.

2. If the proposed hotel foundation must be within 18 feet of the water main, Developer shall submit a Water Works Preliminary Application and a concept plan for the relocation of the public water main. Developer's engineer shall be required to prepare a survey of existing conditions, which indicates all existing water mains and related appurtenances within the lease area and prepare engineering drawings for Water Works review and approval, subject to Water Works plan review fees. Developer shall hire a contractor to perform all necessary water main abandonment and water main replacement work. Said contractor shall submit a letter of intent and contractor's bond for the work to be performed. A Water Works inspector must be present during all phases of water main abandonment work and water main installation. Water Works inspection fees will be charged

(iv) Duke Energy: Duke Energy has underground facilities in the area that it will need access to for maintenance.

(v) Cincinnati Bell: Cincinnati Bell has underground telephone facilities in the area. The existing facilities must remain in place, in service, and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this Lease shall be handled entirely at Developer's expense.

2. TERM; RENEWAL PERIODS.

(A) Initial Term (32 years). The initial term of this Lease ("**Term**") shall commence on the Commencement Date (being the date on which the City shall deliver exclusive possession of the Leased Premises to Developer), and, unless extended or sooner terminated as herein provided, shall expire on the last day of the 32nd Lease Year (being the date immediately preceding the 33rd anniversary of the Commencement Date. As used herein, a "**Lease Year**" shall mean each successive 12-month period beginning on the Commencement Date. The parties presently intend that the Commencement Date shall occur on or about January 1, 2022. The parties shall confirm the actual Commencement Date in writing once such date has occurred (however failure to do so shall not affect such date).

(B) Renewal Periods (one 10-year period and one 8-yr period, up to 18 years). Provided Developer is not in default under this Lease beyond any applicable cure period, at the time it exercises each renewal option, Developer shall have the option to extend the Term of this Lease for two renewal periods (i.e. an initial renewal period of 10 years and a subsequent renewal period of 8 years for a total Term, including the initial Term, of 50 Lease Years), exercisable by giving written notice thereof to the City at least 180 days (but no earlier than 9 months) prior to the expiration of the initial Term or then current renewal period (each, a "**Written Notice of Renewal**"). Each renewal shall be on the same terms and conditions as set forth herein (except that, after the second Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Lease). As used herein, the "**Term**" of this Lease means the initial Term and, if applicable, the Renewal Periods.

3. PERMITTED USES.

(A) Permitted Use. Other than during construction, Developer shall continuously use and operate the Leased Premises as a first-class hotel, restaurant, bar, and commercial event space. Developer shall not use the Leased Premises for any other uses without the prior written consent of the City. Developer shall not deviate from the Permitted Uses without the City's prior written approval (and if required, as determined by the City, without the prior written approval of the FAA), not to be unreasonably withheld.

(B) Legal Requirements. Developer shall obtain and maintain all necessary licenses and permits and shall operate and maintain the Leased Premises in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements applicable to the Leased Premises, including without limitation all applicable FAA regulations (collectively, "**Legal Requirements**").

(C) Hours of Operation. The City acknowledges and agrees that Developer's use of the Leased Premises for the Permitted Uses may extend beyond the City's normal hours of operation of the Airport.

4. RENT.

(A) Base Rent.

(i) Base Rent. Beginning on the Commencement Date, Developer shall pay annual base rent in equal annual installments of \$1.00, in advance, on the first business day of each year. Developer shall pay Base Rent, in advance, without demand, deduction or setoff, at such address as the City shall specify in writing from time to time. The monthly installment of rent for any partial calendar month at the beginning or end of the Term shall be prorated on a per diem basis. Notwithstanding the rent adjustments provided for herein, in no event shall annual base rent decrease.

(ii) Base Rent Adjustments (fair market value; adjusted each Renewal Period). If Developer exercises the option to extend the Term of this Lease, then effective as of the first day of each Renewal Period thereafter, annual base rent shall be adjusted to the then fair market rental value of the Leased Premises (land value only; i.e., not taking into consideration the value of Developer's Leasehold Improvements or any other capital improvements constructed and paid for by Developer), as determined by appraisal by the City's Real Estate Services Division. Promptly after the City receives Developer's Written Notice of Renewal, the City shall notify Developer in writing of the adjusted base rental amount for the upcoming Renewal Period (a "**Notice of Rent Adjustment**"). If Developer does not accept the adjusted amount set forth in the City's Notice of Rent Adjustment, Developer shall have the right to terminate this Lease by giving the City a written notice of termination within 60 days after receiving the Notice of Rent Adjustment.

(B) Additional Rent. Except for those expenses expressly provided under this Lease to be paid for by the City, this is a "triple net" lease and throughout the Term Developer shall pay all costs associated with the Leased Premises as additional rent. Developer shall make such payments directly to the persons or entities to whom such payments are owed. To the extent that the City, rather than Developer, pays any costs that would otherwise be payable by Developer under this Lease, Developer shall reimburse the City for such costs as additional rent within thirty (30) days after Developer's receipt of documentation substantiating such costs; provided however that with respect to costs that are within the control of the City, the City shall notify Developer at least 30 days prior to incurring such costs in order to give Developer the opportunity to address the matter.

(C) Late Payments. If any payment of rent is not paid when due, a late charge of 5% of the amount past due shall automatically become due and payable. If rent is outstanding for longer than 30 days, such past due amount shall bear interest at the rate of 10% per annum until paid.

5. AIRPORT PERMIT AND OPERATING FEES. Developer shall secure all necessary airport permits. In addition, Developer shall pay to the City of Cincinnati all applicable airport use and operating fees and charges including, without limitation, an operating fee for the use and privilege of operating and rendering commercial services at the airport. Accordingly, throughout the Term, Developer shall (i) provide the City, on a semi-annual basis (i.e., within 30 days following each successive six-month period after the Commencement Date) with complete and accurate sworn statements of gross revenue received from operations (the "**Semi-Annual Gross Revenue Statements**"), and (ii) at the time of the submission of each Semi-Annual Gross Revenue Statement, pay the City one-half percent (**0.5%**), of the gross revenue received from operations reflected on the Semi-Annual Gross Revenue Statement ("**Operating Fees**"). The City shall have the right to inspect and audit Developer's books and records from time to time, upon reasonable advance written notice, to verify the accuracy of the Semi-Annual Gross Revenue Statements. If any such inspection or audit reveals an inaccuracy that resulted in an underpayment of the Operating Fees, Developer shall pay the additional amount owed and shall reimburse the City for all costs associated with such inspection or audit, payable within 30 days after the City's written demand.

6. CONSTRUCTION OF IMPROVEMENTS; PERMITTED MORTGAGES; ALTERATIONS.

(A) Construction of Improvements. Developer shall commence and complete construction of the Improvements in accordance with the plans, specifications, and budget contained in Exhibit C (Description of Project) and the requirements set forth on Exhibit D and Exhibit F (Additional Requirements) hereto (to the extent applicable to the Project). Any material deviations from the plans and specifications contained in Exhibit C must receive the prior written approval of DOTE. Developer shall construct the Improvements in accordance with applicable law. All plans and specifications shall be prepared by licensed architects or engineers. Developer shall bear all costs associated with the Improvements.

(B) Commencement and Completion of Construction. Following the Commencement Date, at no cost to the City, Developer shall (i) (a) conduct all necessary surveying work and prepare a subdivision plat and legal descriptions for the Leased Premises, causing the creation of two new tax parcels for the Leased Premises (Developer shall work collaboratively to secure all appropriate City approvals of the

subdivision plat, in accordance with applicable laws and regulations, and the City shall reasonably cooperate with Developer's efforts to cause the Leased Premises to be subdivided into two new tax parcels); (b) apply for and receive the required building permits from the City's Department of Buildings and Inspections for construction of the Improvements and (c) commence on-site construction of the Improvements (the "**Construction Commencement**") no later than 24 months from the Effective Date (the "**Commencement Deadline**") and (ii) complete construction of the Project (as evidenced by a certificate of occupancy for the Improvements) in accordance with all other City approvals (the "**Construction Completion**") no later than 48 months from the Effective Date (the "**Completion Deadline**"); provided, however, the City may, upon Developer's request and at the City's sole discretion, extend the Commencement Deadline or the Completion Deadline, in either case for up to a maximum of twelve (12) additional months, with any such extension effective upon written approval by the Director of DOTE. Upon completion of construction, Developer shall provide DOTE with a copy of the "as-built" plans if obtained by Developer. As used in this Lease, "Improvements" shall include any and all leasehold improvements approved by DOTE and made by Developer to the Leased Premises during the Term, including without limitation all additions, new structures, ordinary fixtures, and trade fixtures.

(C) Completion Guaranty. Before Developer's execution of this Lease, Developer shall cause [] ("**Guarantor**") to execute the *Completion Guaranty* substantially in the form of the attached Exhibit E (*Form of Completion Guaranty*) hereto (the "**Completion Guaranty**").

(D) Developer's Right to Grant Leasehold Mortgage.

(i) Right to Grant Leasehold Mortgage. The City acknowledges and agrees that [a] Developer shall have the right to grant a leasehold mortgage to the construction lender who will be providing financing to Developer for the Improvements (a "**Permitted Leasehold Mortgage**", and the "**Permitted Leasehold Mortgagee**", as applicable), and [b] if Developer defaults under the Permitted Leasehold Mortgage, the Permitted Leasehold Mortgagee shall be permitted, by written notice to the City, to assume Developer's leasehold interests under this Lease by foreclosure of the Permitted Leasehold Mortgage or otherwise and on the terms and conditions set forth therein. The City shall execute any commercially reasonable documents required by Tenant's Permitted Leasehold Mortgagee provided that such documents are consistent with Tenant's rights and obligations under this Lease (*i.e.*, The City may refuse to execute documents required by a Permitted Leasehold Mortgagee that would extend rights to the Tenant or Permitted Leasehold Mortgagee or impose obligations on the City that are greater than those set forth in this Lease).

(ii) Delivery of Default Notices to Permitted Leasehold Mortgagee. Provided Developer or the Permitted Leasehold Mortgagee shall have given the City a recorded copy of the Permitted Leasehold Mortgage and notified the City in writing of the Permitted Leasehold Mortgagee's mailing address for purposes of notices under this Lease, then, if, while the Permitted Leasehold Mortgage remains in effect, the City gives a written notice of default to Developer under this Lease, which default, if uncured, would entitle the City to terminate this Lease under section 10 hereof (a "**Default Notice**"), the City shall send a copy of the Default Notice to the Permitted Leasehold Mortgagee. Notwithstanding the City's termination rights under section 10 hereof, the City agrees that it shall not exercise its right to terminate this Lease upon Developer's default until the City has given the Permitted Leasehold Mortgagee at least sixty (60) days (following the City's delivery of the Default Notice to the Permitted Leasehold Mortgagee) to cure such default. The foregoing shall not be construed as requiring the Permitted Leasehold Mortgagee to cure Developer's default. If neither Developer nor the Permitted Leasehold Mortgagee cures Developer's default within the applicable time periods specified in this paragraph (C)(ii) and section 10, the City shall be free to exercise its right to terminate this Lease and thereby extinguish the Permitted Leasehold Mortgage (whereupon Developer shall take all steps necessary to ensure that the Improvements are transferred to the City free and clear of all monetary liens and encumbrances as required under herein).

(E) Compliance with Federal Air Regulations; Improvements to Adjacent Property. Developer shall comply with Federal Air Regulations Part 77 and shall not penetrate any designated runway clear zone. If modification to the terrain surrounding the Leased Premises, including the existing adjacent

taxiway is required to conform to FAA regulations or requirements or is otherwise necessary to accommodate or support the Project, Developer shall bear all costs of such modification.

(F) Floodplain. Developer acknowledges that (i) the Leased Premises are located in a floodplain, (ii) FEMA requires that all improvements constructed within a floodplain comply with precise, rigorous construction standards, (iii) City building officials will not issue construction permits if the plans are not in compliance with the FEMA standards specific to floodplains, and (iv) compliance may add significant additional time and costs to the design and construction of Developer's proposed Improvements.

(G) Soil and Environmental Conditions. Developer acknowledges that it is familiar with and has had an opportunity to investigate the soil and environmental conditions at the Leased Premises. The City shall have no responsibility or liability in the event the existing conditions do not support Developer's proposed Improvements.

(H) Changes to Land Grade or Level. Developer shall not make any material changes in the land grade or level of the Leased Premises that might affect the abutting properties without the prior written consent of DOTE.

(I) Alterations and Future Improvements. Once installed, Developer shall not materially alter or remove the Improvements without the City's prior written consent, which shall not be unreasonably withheld. Any and all alterations shall comply with the minimum aesthetic and architectural standards and requirements adopted by the City (if any) that are applicable to the exterior of all other buildings and structures at the Airport.

(J) Determinations by DOTE. All determinations of the City, including determinations by the DOTE Director, with respect to the construction, alteration, maintenance, repair, restoration or removal of improvements at the Leased Premises shall be based upon confirmation that the improvements (i) are structurally sound, (ii) comply with the safety standards and requirements applicable to all other buildings and structures at the Airport, (iii) are consistent with the quality and appearance of Airport facilities adjacent to Wilmer Avenue, and (iv) comply with all other requirements under this Lease applicable to the Improvements.

(K) ADA Compliance. The parties acknowledge that maintaining places of public accommodation in compliance with the federal Americans with Disabilities Act ("ADA") is of utmost importance to the City and Developer; therefore, in making the Improvements and all future alterations to the Leased Premises, Developer shall use commercially reasonable efforts to remove barriers and meet or exceed maximum accessibility requirements for people with physical disabilities, to the maximum extent feasible.

(L) Signs. Developer shall be permitted to install such directional, informational, advertising and other signs at the Leased Premises as Developer deems appropriate provided that all such signs are professionally prepared and comply with all Legal Requirements, including the City's zoning regulations pertaining to signage. Developer shall, at its expense, keep all signs in good condition and repair. The foregoing notwithstanding, if the City deems any of Developer's signs to be objectionable, Developer and the City shall cooperate in resolving the objection.

(M) No Liens. If any mechanics' lien or other similar lien is filed against the fee interest of the Leased Premises as a result of labor or material furnished at Developer's request, Developer shall cause the lien to be released or bonded off within thirty (30) days after receiving notification of the filing of such lien.

7. REAL ESTATE TAXES. Developer shall pay (i) any and all utility charges associated with the Leased Premises; (ii) all real estate taxes and assessments levied against the Leased Premises that become due and payable during the Term (and regardless of the period to which such taxes and

assessment relate), and upon each such payment, Developer shall furnish the City with appropriate evidence of payment; and (iii) any and all other expenses associated with the Leased Premises, including without limitation any and all other fees required to be paid under Chapter 402 (*Airport*) of the CMC. *Developer acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this Lease.* Developer shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Developer shall pay all costs and expenses arising from such legal proceedings. If Developer institutes proceedings to contest the validity or amount of such taxes or to exempt the Leased Premises from taxation, the City, at no cost to the City, shall cooperate with Developer to the extent that the participation of the owner of the lessor's interest under this Lease is required or appropriate, but Developer may not defer payment of such taxes during such contest. Developer shall be entitled to any and all amounts recovered which relate to tax payments previously made by Developer.

8. MAINTENANCE AND REPAIRS; OPERATIONAL REQUIREMENTS.

(A) Maintenance and Repairs. Developer shall maintain the Leased Premises in a first-class manner and in good, clean, and safe condition and repair, shall not permit any waste or nuisance on the Leased Premises, shall not permit any debris or rubbish to accumulate in open space, and shall keep the Leased Premises free from unreasonable accumulations of snow and ice and other obstructions. The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Leased Premises under this Lease.

(B) Parking. Developer shall provide within the limits of the Leased Premises, at its own cost, a parking area for motor vehicles sufficient for vehicle parking needs of Developer, its agents, employees and customers.

(C) Reporting of Accidents and Other Significant Occurrences. Developer shall use reasonable efforts to keep the City informed of all significant reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Leased Premises that involve public health or safety issues or that Developer reasonably anticipates might lead to negative publicity. Developer shall use reasonable efforts to notify the Airport Manager of criminal activity within 24 hours after receiving notice of such incidents. For all incidents for which a police report is filed, Developer shall promptly obtain a copy of the police report and promptly provide a copy of it to the Airport Manager. (Notwithstanding the foregoing, if Developer fails to provide notices to the Airport Manager under this paragraph (C), the same shall not constitute a default under this Lease unless Developer routinely fails to provide such notices.

(D) Historic Lobby Murals and Airplane. Developer shall use best efforts to maintain, protect, and preserve the historic murals and the historic airplane located within the Terminal Building lobby to prevent their defacement, damage, degradation, or alteration.

9. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term, Developer shall maintain, or cause to be maintained, the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the buildings and other improvements at the Leased Premises (or in such other amount as may be approved from time to time by the City's Risk Manager), naming the City, Developer, and any Permitted Mortgagee, as their interests may appear;

(ii) property insurance on any and all personal property of Developer from time to time located at the Leased Premises, in such amount as Developer determines from time to time to be commercially reasonable;

(iii) commercial general liability insurance covering claims for bodily injury, personal injury or death, and Leased Premises damage occurring at the Leased Premises in an amount not less than Five Million Dollars (\$5,000,000) per accident, combined single limit, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar facilities in the Cincinnati area, naming the City as an additional insured;

(iv) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the Improvements constructed;

(v) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the City as an additional insured;

(vi) worker's compensation insurance as required by law; and

(vii) such other or additional amounts of insurance as may be required under any and all Permitted Mortgages.

(B) **Policy Requirements.** Developer's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. Prior to the Commencement Date and annually thereafter, Developer shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Developer hereunder.

(C) **Waiver of Subrogation.** Notwithstanding anything in the Lease to the contrary, Developer hereby waives all claims and rights of recovery, and on behalf of Developer's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Developer, even if such loss or damage arises from their negligence; it being the agreement of the parties that Developer shall at all times protect itself against such loss or damage by maintaining adequate insurance. Developer shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) **Indemnity.** The City assumes no responsibility for any acts, errors or omissions of Developer or any employee, agent, representative, or any other person acting or purporting to act for or on behalf of Developer. Developer shall defend, indemnify and hold the City, its elected and unelected officials, employees, agents, contractors, and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages, and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Developer, its agents, employees, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Developer in connection with Developer's activities at or with respect to the Leased Premises or in connection with any breach by Developer under this Lease.

10. CASUALTY; EMINENT DOMAIN. If the Leased Premises is damaged or destroyed by fire or other casualty, or if any portion of the Leased Premises is taken by exercise of eminent domain (federal, state or local), Developer shall repair and restore the Leased Premises, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Leased Premises was in immediately prior to such occurrence. The City and Developer shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If the insurance or eminent domain proceeds are insufficient to fully repair and restore the Improvements, the City shall not be required to make up the deficiency. Developer shall handle all construction in accordance with the applicable requirements set forth in this Lease. Developer shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Premises are being repaired or restored (it being the agreement of the parties that Developer

shall purchase business interruption insurance, if it so chooses, to alleviate such financial burden). Notwithstanding the foregoing, if (i) the Leased Premises are entirely destroyed such that the cost to rebuild the Terminal Building and Improvements is commercially unreasonable; or (ii) the entire Leased Premises are taken by eminent domain, or (iii) if a substantial portion of the Leased Premises is taken by eminent domain such that the remainder is not usable for the Permitted Use as determined by Developer, Developer shall have the right to terminate this Lease by giving written notice thereof to the City on or before the date on which Developer is required to surrender possession of such portion. Upon such termination of this Lease, the insurance or eminent domain proceeds shall be allocated as follows: (i) in the case of a taking by the state or federal government, to the City, to compensate the City for the value of the land taken (and, in the event of a casualty or a partial taking, for the cost of clearing and otherwise restoring the Leased Premises, or remaining portion thereof, to a safe and vacant condition); (ii) to Developer, to compensate Developer for the undepreciated value of the Improvements; and (iii) to the City, for the value of its reversionary interest in the Improvements. If the parties are unable to agree upon such values, the values shall be determined by the Hamilton County Court of Common Pleas.

11. DEFAULT; REMEDIES.

(A) Default. Each of the following shall constitute an event of default by Developer under this Lease:

(i) If Developer fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than thirty (30) days after Developer receives written notice thereof from the City;

(ii) If Developer fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than thirty (30) days after Developer receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such thirty (30) day period, an event of default shall not be deemed to have occurred if Developer commences to cure such failure within such thirty (30) day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within one hundred eighty (180) days (or such longer period as may be agreed upon by the parties) after Developer receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Developer fails to take corrective action immediately upon discovering such dangerous condition or emergency; and

(iii) The commencement of levy, execution, or attachment proceedings against Developer, any principal (which shall be defined as any individual or entity having an ownership interest in Developer of more than 25%) or partner of Developer, or any of the assets of Developer, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Developer or any principal or partner of Developer; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Developer or any principal or partner of Developer; or the commencement of a case by or against Developer or any principal or partner of Developer under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution).

(B) **Remedies.** Upon the occurrence of an event of default that continues (i.e., remains uncured) beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Developer written notice thereof (by way of clarification, the City shall not exercise such termination right if the City shall have previously received written evidence that the default has been cured), (ii) take such actions in the way of "self-help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Developer, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Developer shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Developer under this Lease or the City's enforcement or termination of this Lease. Developer shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

12. ASSIGNMENT AND SUBLETTING. Developer acknowledges that the City is entering into this Lease because of the City's confidence that Developer has the financial backing and business experience that are necessary to carry out the construction of the Improvements and the operation of the Leased Premises in accordance with the provisions of this Lease. Developer acknowledges that the City is entering into this Lease for Lease Areas 53 and 54, which together comprise the Leased Premises, to ensure that the two lease areas may be jointly developed as one cohesive project. Developer acknowledges that the City shall not be expected to consent to a proposed assignment by Developer of its interests under this Lease, or a proposed sublease of all or any portion of the Leased Premises, to any person or entity in whom the City does not have similar confidence, acting reasonably. Developer acknowledges that the City shall not be expected to consent to a proposed assignment by Developer of its interests under this Lease, or a proposed sublease of all or any portion of the Leased Premises, to any person or entity in a manner that would cause Leased Premises, including the Improvements constructed thereon, to become noncompliant with applicable health and safety codes, including the Ohio Building Code. Except as otherwise provided in section 1(F), any attempt by Developer to assign or otherwise transfer its interests under this Lease, or to sublease all or any portion of the Leased Premises, to a third party without the City's prior written consent, which shall not be unreasonably withheld in light of the considerations above, shall be null and void and shall, at the option of the City, constitute a default of Developer under this Lease. No assignment or sublease by Developer of its rights or obligations under this Lease to a third party shall relieve Developer from any liability to the City under this Lease.

13. SURRENDER; HOLDOVER.

(A) **Ownership of Improvements at end of Lease Term.** At the end of the Term, Developer shall surrender the Improvements to the City, free and clear of all liens and encumbrances, at no expense to the City, on the last day of the Term. At such time the Improvements shall automatically become the property of the City.

(B) **Developer's Right to Remove Items of Personal Property.** No later than the last day of the Term, Developer shall remove all of Developer's personal property at the Leased Premises (excluding trade fixtures, which shall not be removed) and shall repair any and all damage to the Leased Premises caused by the installation or removal thereof and otherwise restore the Leased Premises to a safe, clean, and satisfactory condition.

(C) **Holdover.** If Developer fails to surrender possession of the Leased Premises to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term and except that base rent payable during the holdover period shall be equal to two hundred percent of the base rent in effect at the end of

the Term), terminable by either party at any time by giving written notice thereof to the other party. Developer shall be liable for all costs and damages suffered or incurred by the City as a result of Developer's failure to surrender possession at the end of the Term, including without limitation costs and damages suffered or incurred by the City during the holdover period.

(D) Documents to be Delivered to City. At the end of the Term of this Lease, Developer shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, "as-built" plans and drawings, contracts with third parties, warranty information, and all other written materials and documents that are in Developer's possession or under Developer's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Leased Premises.

14. NOTICES. All notices required to be given to any party under this Lease shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a nationally recognized overnight courier service, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

To Developer:
Lunken Development, LLC
25 W. Robbins Street
Covington, KY 41011
Attn: Guy van Rooyen

To the City:
City of Cincinnati

Cincinnati, OH 45226
Attn: Airport Manager

If Developer sends a notice to the City alleging that the City is in breach of this Lease, Developer 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. If the City sends a notice to Developer alleging that Developer is in breach of this Lease (and unless Developer shall have previously notified the City in writing to send copies of notices to a different law firm), the City shall simultaneously send a copy of such notice by U.S. certified mail to: Keating Muething & Klekamp PLL, 1 East 4th Street, Suite 1400, Cincinnati, Ohio 45202, Attn: Barrett Tullis

15. COMPLIANCE WITH LAWS.

(A) Compliance with Laws. Developer shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati pertaining to the Airport, all applicable requirements set forth in CMC Chapter 402 (*Airport*), and all requirements under Title 49 of the Code of Federal Regulations, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. With reference to 49 CFR Subtitle A, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation", Developer shall include the foregoing provision in every agreement or concession pursuant to which any person or persons, other than Developer, operates any facility at the Leased Premises providing services to the public and shall include therein a provision granting the City the right to take such action as the United States may direct to enforce such covenant. Developer shall defend, indemnify, and hold harmless the City from any and all claims and demands of third persons, including the United States of America, resulting from Developer's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason of such noncompliance.

16. GENERAL PROVISIONS.

(A) Entire Agreement. This Lease (including the exhibits hereto and the other agreements referred to herein, if any) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations, or agreements, written or oral, between them respecting the subject matter hereof.

(B) Amendments. This Lease may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Lease shall be brought in the Hamilton County Court of Common Pleas, and Developer agrees that venue in such court is proper. The parties hereby waive trial by jury with respect to any and all disputes arising under this Lease.

(D) Binding Effect. This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) Captions. The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

(F) Severability. If any part of this Lease is held to be void, illegal or unenforceable by a court of law, such part shall be deemed severed from this Lease, and the balance of this Lease shall remain in full force and effect.

(G) No Recording. This Lease shall not be recorded in the Hamilton County Recorder's office. At the request of either party, the parties shall execute a memorandum of lease for recording purposes.

(H) Time. Time is of the essence with respect to the performance by the parties of their respective obligations under this Lease.

(I) No Third-Party Beneficiaries. The parties hereby agree that, except for (i) the rights of Permitted Mortgagees under section 6 hereof, no third-party beneficiary rights are intended to be created by this Lease.

(J) No Brokers. The City and Developer represent to each other that they have not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City and Developer under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City or Developer in other than his or her official capacity. No official executing or approving the City's or Developer's participation in this Lease shall be personally liable under this Lease.

(L) Representation as to Authority. The City and Developer each represents to the other that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease have been duly authorized by all necessary actions on the part of the performing party, including the authorizations and approvals described in the Recitals to this Lease.

(M) FAA Subordination Clause. This Lease shall be subordinate to the provisions of any existing or future agreements between the City and the United States Government, including any and all grant assurances relating to the maintenance, development, or operation of the Airport, the execution of which agreements has been or will be required as a condition precedent to the granting of federal funds for the maintenance, development, or operation of the Airport to the extent that the provisions of any such existing or future agreements are generally required by the United States at other civil air carrier airports receiving federal funds.

17. **EXHIBITS**. The following exhibits are attached hereto and made a part hereof:

- Exhibit A - *Site Survey*
- Exhibit B – *Legal Description*
- Exhibit C – *Description of Project*
- Exhibit D - *Construction Requirements*
- Exhibit E – *Form of Completion Guaranty*
- Exhibit F – *Additional Requirements*

[City Signature Page Follows]

This Lease is executed by the parties on the dates indicated below their respective signatures, effective as of the later of such dates (the "Effective Date").

City of Cincinnati

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by _____, the _____ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Recommended By:

John Brazina, Director
Department of Transportation and Engineering

Fred Anderton, Lunken Airport Manager

Approved By:

Edgar De Veyra, Interim Director
Department of Economic Inclusion

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____

Karen Alder, City Finance Director

[Developer Signature Page Follows]

LUNKEN DEVELOPMENT, LLC,
a Kentucky limited liability company

By: _____

Printed name: Guy van Rooyen

Title: Authorized Manager

Date: _____, 2021

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by Guy van Rooyen, the Authorized Manager of Lunken Development, LLC, a Kentucky limited liability company, on behalf of the company. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

EXHIBIT A
to Lease
Site Survey

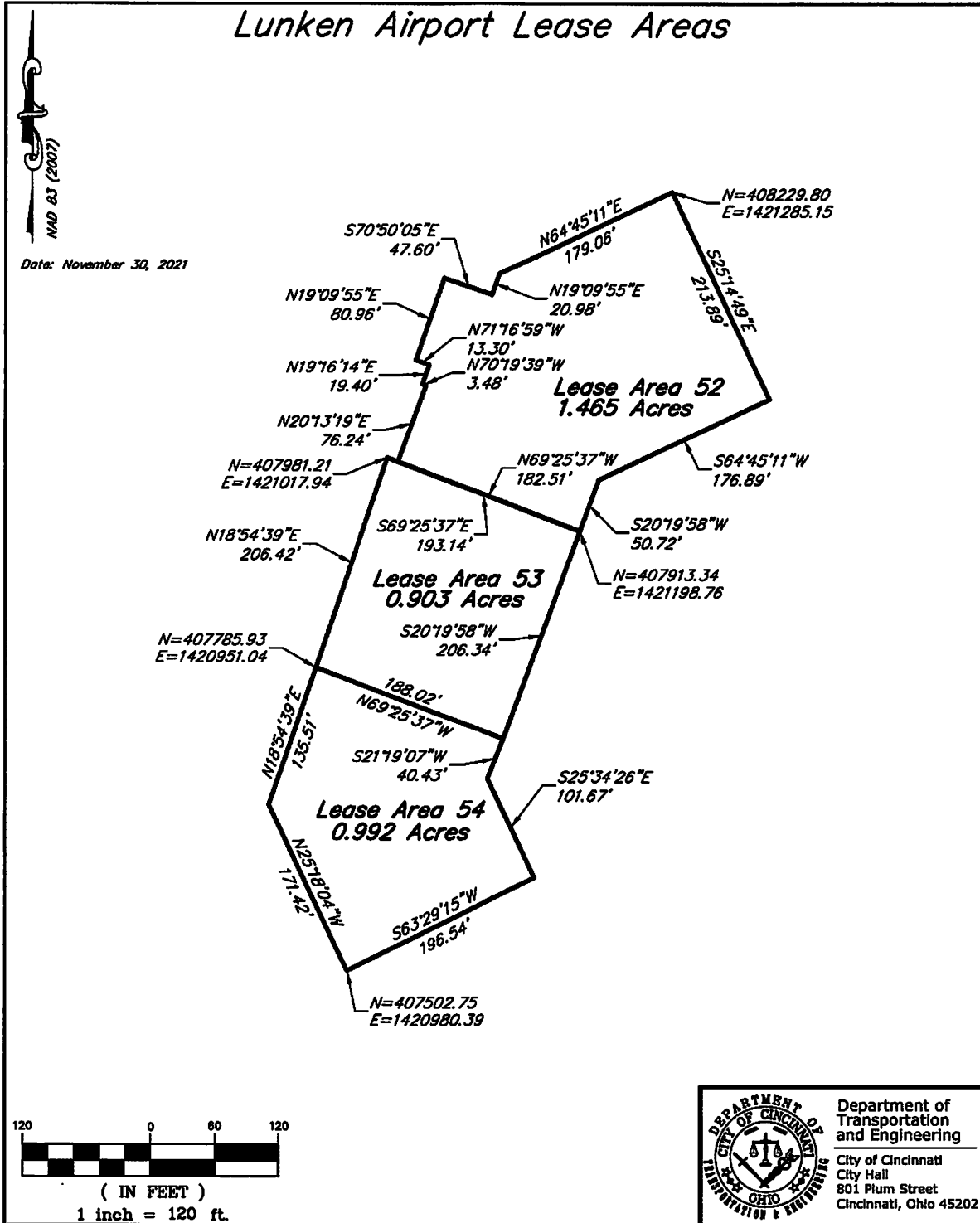


EXHIBIT B
to Lease
Legal Description

CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION
and ENGINEERING

LUNKEN AIRPORT
LEASE AREA 53
November 30, 2021

Situated in Section 30, Fractional Range 1, Town 5, Spencer Township, Hamilton County, Cincinnati, Ohio and being more particularly described as follows:

Beginning at a point with coordinates (407,785.93 N., 1,420,951.04 E.); thence North 18°54'39" East, 206.42 feet to a point with coordinates (407,981.21 N., 1,421,017.94 E.); thence South 69°25'37" East, 193.14 feet to a point; thence South 20°19'58" West, 206.34 feet to a point; thence North 69°25'37" West, 188.02 feet to the Place of Beginning.

Containing 0.903 acres of land, more or less. Bearings are based on Ohio State Plan Coordinate System, South Zone (3402), NAD83 (2007). Subject to all legal highways, easements and restrictors of record. This legal description is based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238.

**CITY OF CINCINNATI
DEPARTMENT OF TRANSPORTATION
and ENGINEERING**

**LUNKEN AIRPORT
LEASE AREA 54
November 30, 2021**

Situated in Section 30, Fractional Range 1, Town 5, Spencer Township, Hamilton County, Cincinnati, Ohio and being more particularly described as follows:

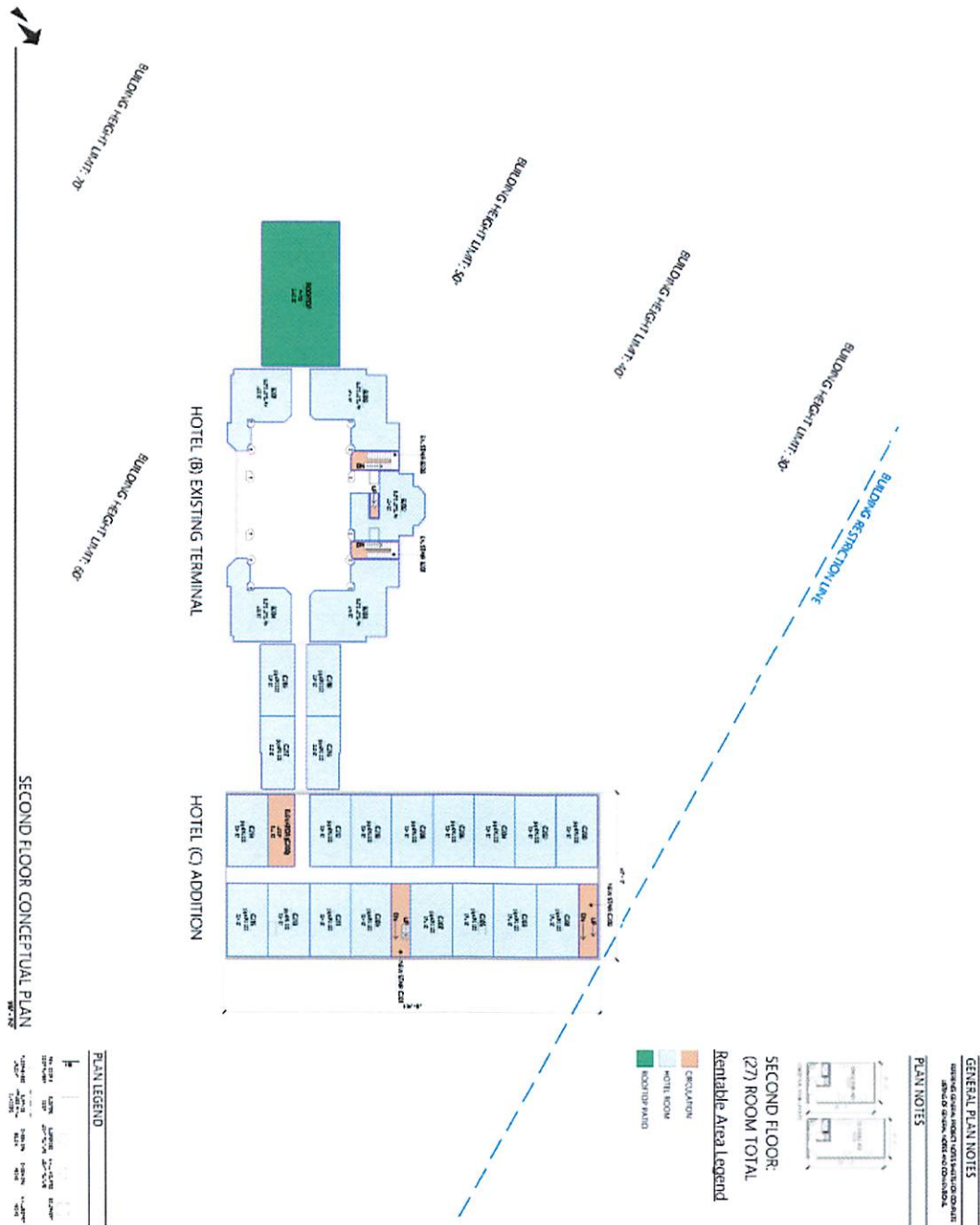
Beginning at a point with coordinates (407,502.75 N., 1,420,980.39 E.); thence North 25°18'04" West, 171.42 feet to a point; thence North 18°54'39" East, 135.51 feet to a point with coordinates (407,785.93 N., 1,420,951.04 E.); thence South 69°25'37" East, 188.02 feet to a point; thence South 21°19'07" West, 40.43 feet to a point; thence South 25°34'26" East, 101.67 feet to a point; thence South 63°29'15" West, 196.54 feet to the Place of Beginning.

Containing 0.992 acres of land, more or less. Bearings are based on Ohio State Plan Coordinate System, South Zone (3402), NAD83 (2007). Subject to all legal highways, easements and restrictors of record. This legal description is based on a survey performed under the direction of Douglas C. Spreen II, Ohio Registration Number 8238.

EXHIBIT C
to Lease
Description of Project

Project overview: approximately 71,500 square feet of commercial space comprised of a 55-key hotel, 2,000 square foot bar, 5,500 square foot restaurant, and 2,400 square foot event space.





SECOND FLOOR CONCEPTUAL PLAN

PLAN LEGEND

NO. 001	NO. 002	NO. 003	NO. 004	NO. 005	NO. 006	NO. 007	NO. 008	NO. 009	NO. 010
REPAIR	REPAIR	REPAIR	REPAIR	REPAIR	REPAIR	REPAIR	REPAIR	REPAIR	REPAIR

GENERAL PLAN NOTES
 VISIT: 10/10/2020 10:00 AM
 10/10/2020 10:00 AM
 10/10/2020 10:00 AM

PLAN NOTES

SECOND FLOOR:
 (27) ROOM TOTAL

Rentable Area Legend

- CREATION
- HOTEL ROOM
- NOOTER/PAID

SECOND FLOOR CONCEPTUAL PLAN
 262 WILMER AVENUE
 CINCINNATI, OHIO 45226

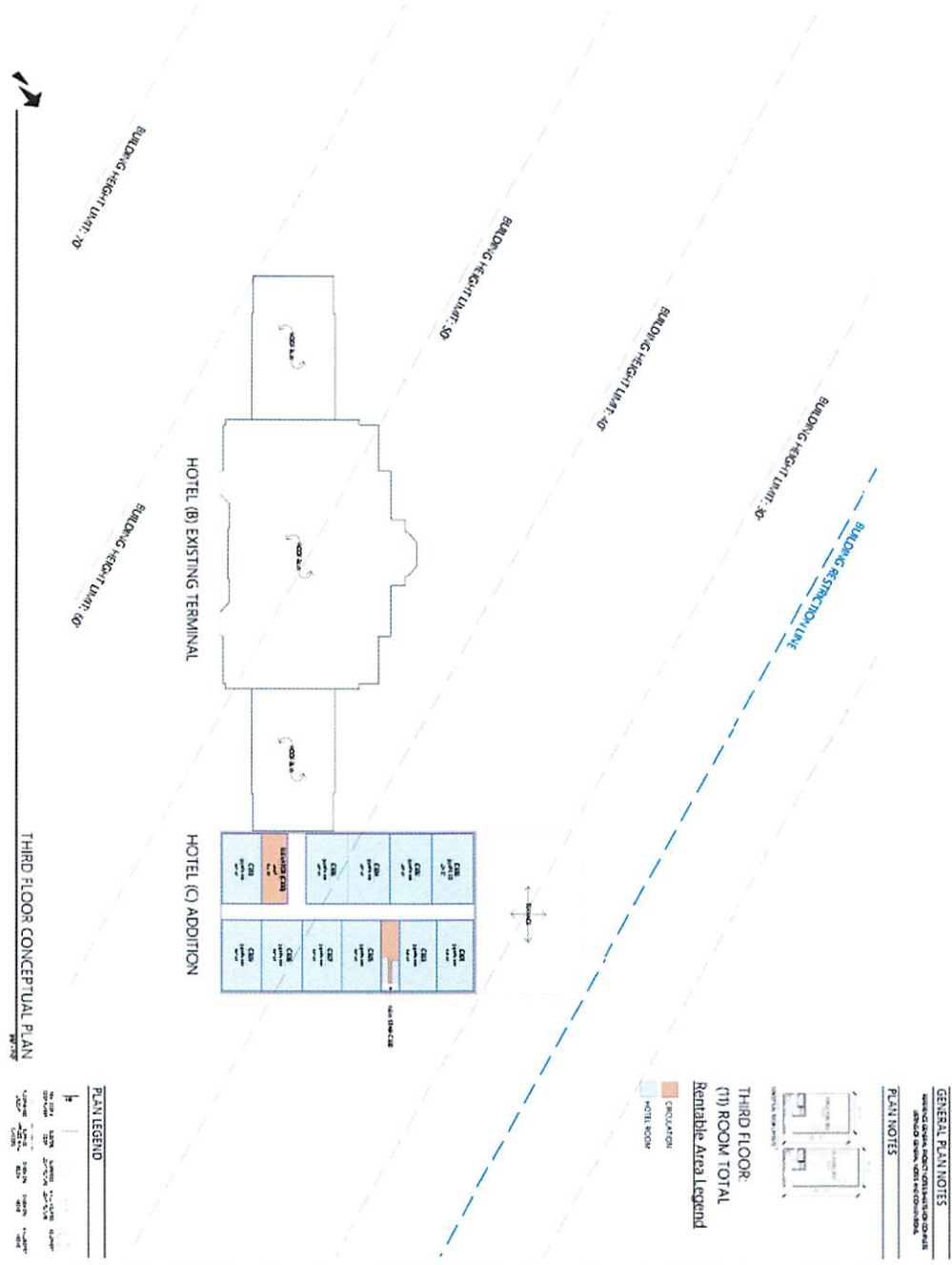
05.07.2021

A212

WORK
 architecture + design

HISTORIC RENOVATION
ROO2004 Cincinnati, OH

CONCEPTUAL DESIGN



THIRD FLOOR CONCEPTUAL PLAN

PLAN LEGEND

[Symbol]	EXISTING
[Symbol]	NEW
[Symbol]	RENOVATION
[Symbol]	DEMOLITION
[Symbol]	CONSTRUCTION
[Symbol]	RENTABLE AREA

GENERAL PLAN NOTES

1. ALL ROOMS SHALL BE RENTABLE AREAS UNLESS OTHERWISE NOTED.

PLAN NOTES

1. THIRD FLOOR: (11) ROOM TOTAL Rentable Area Legend

2. CORRIDOR

3. HOTEL ROOM

WORK
architecture + design

262 WILMER AVENUE
CINCINNATI, OHIO 45226

05.07.2021

A213

HISTORIC RENOVATION
ROO2004 Cincinnati, OH

CONCEPTUAL DESIGN

EXHIBIT C-1

To Lease

Preliminary Construction Budget and Source of Funds

BUDGET, SOURCES & USES

CONSTRUCTION USES	
Hard Costs	13,000,000
FF&E/ OSE	3,500,000
Soft Costs	3,050,000
Project Reserves	1,010,000
TOTAL USES	20,560,000
CONSTRUCTION SOURCES	
Historic Tax Credits	1,542,000
State Historic Tax Credits	1,542,000
Senior Debt Financing	13,364,000
Equity	4,112,000
TOTAL SOURCES	20,560,000

EXHIBIT D
to Lease
Construction Requirements

1. **Budget.** The estimated total cost of the Project is set forth on the preliminary construction budget attached as Exhibit C-1 to this Lease. If Developer makes changes to the budget during construction that increase or decrease the total budget by more than **20%**, Developer shall promptly submit each such revised budget to the City for review and approval (sometimes referred to as the "**Project Budget**").

2. **Sources of Funds.** The sources of funds obtained or expected to be obtained by Developer for the Project are as described in preliminary construction budget. If Developer determines that the total sources of funds identified by Developer are not sufficient to meet the Project Budget, Developer shall promptly notify the City in writing of how Developer intends to address the shortfall.

3. **Construction Schedule.** Developer shall substantially complete the Project in accordance with the construction schedule described in this Lease and shall complete all punch-list work within the time period set forth in paragraph 17 (*Punch-List Work*) of this Exhibit. (For clarity, "substantial completion" means all work has been completed, except for punch-list work.)

4. **Survey Work.** Prior to commencing construction, Developer shall retain a professional surveyor to prepare a vacation plan, subdivision plats and any and all other engineering drawings and other documents as may be required by the City's Department of City Planning and Engagement, the Hamilton County Auditor, or Hamilton County Recorder in order to reconfigure the Lease Premises into two tax parcels with boundaries that reflect the boundaries of Lease Areas 53 and 54, as more particularly described and depicted on Exhibit A and Exhibit B, and Developer shall cause the two tax parcels to be established.

5. **Design & Construction: As-Built Drawings.** The parties acknowledge that, as of the date of the parties' execution of this Lease, Developer is in the process of preparing the construction and engineering plans and technical specifications for the Improvements. The plans and specifications, as approved by Developer and the City, including any and all changes made pursuant to change orders or pursuant to this section 5, are referred to in this Lease as the "**Final Plans**". No changes shall be made to the Final Plans (unless such changes increase or decrease the Project Budget by less than **20%**) unless authorized by a written change order approved by the City and Developer. Developer shall obtain all required approvals pertaining to the Final Plans, and any and all changes thereto, from the City's Building Department. Developer shall cause the Improvements to be constructed in accordance with the Final Plans. All construction shall be performed in a good and workmanlike manner and in accordance with all Legal Requirements (as defined in this Lease). All materials and workmanship shall be of good quality, and upon completion of construction, all improvements will be structurally safe and sound, and all parts therefor and all mechanical equipment therein and all utilities serving the Improvements will be in good working order and will have been properly installed, tested, and paid for.

6. **City's Approval of General Contractor: Hiring of Subcontractors.** Developer's general contractor for the Project shall be subject to the prior written approval of the City. The City hereby approves Manning Contracting as the General Contractor for the Project. Developer and its General Contractor shall be permitted to hire subcontractors for the Project provided that the subcontractors are not listed on the Federal Debarred List or State Debarred List and provided further that the subcontractors are not identified as being debarred subcontractors on the City's Vendor's Performance list (as identified on the applicable federal, state and local government websites). Developer shall provide the City with a list of all subcontractors working on the Project, with periodic updates as necessary (provided that Developer shall not be required to identify subcontractors if the subcontract amount is under \$250,000).

7. Site Improvement or Tree Removal. Except as permitted as part of the Initial Site Work, Developer shall not remove any site improvements or trees at the Property without the prior written approval of the City.

8. Quarterly Project Reports. On a calendar quarter basis, and until such time as the Project has been completed, Developer shall submit to the City financial statements, budget reports, and such other statements and information pertaining to the Project as the City may from time-to-time request so that the City can be kept up-to-date on all matters pertaining to the Project.

9. Title, Survey, Environmental, and other Due Diligence. Developer shall be responsible for obtaining whatever title reports, appraisals, surveys, environmental assessments, soil and geotechnical reports, and such other reports as Developer deems prudent in connection with the construction of the Improvements. The City shall have no obligation to furnish any such reports or information to Developer. Developer shall not undertake any activity with respect to the Project that would violate any then existing easements, covenants, restrictions or other matters of record affecting the Property.

10. Inspections. The City shall have the right to periodically inspect the construction of the Improvements. If the City discovers any defects in the work or deviation from the Final Plans, Developer shall promptly correct the same upon receipt of written notice from the City. The City shall use reasonable efforts to verbally notify Developer prior to each inspection (except that no prior notice shall be needed in the event of inspections by the City's Building Department) and shall use reasonable efforts not to disrupt construction. City employees shall abide by Developer's safety requirements (e.g., wearing hard hats and/or other protective gear) and shall not enter upon construction zones designated by Developer or its general contractor as being potentially hazardous due to falling or flying objects, electrical shock, or the like.

11. Signs. During construction, the City shall have the right to review and approve all construction-related, financing-related and other signs relating to the Project that are posted at the Property.

12. No Liens. Developer shall not permit any mechanics liens to attach to the Property in connection with the Project. If any such liens attach, Developer shall cause them to be released or bonded off within thirty (30) days after receiving notification of the filing thereof.

13. Insurance. Throughout construction of the Project, Developer shall maintain, or cause to be maintained, the following insurance: (i) Commercial General Liability insurance of at least Five Million Dollars (\$5,000,000) per occurrence, combined single limit, naming the City and Permitted Mortgagees as additional insureds, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Developer's construction lenders, and (v) such other insurance as may be reasonably required by the City. All insurance maintained pursuant to this Lease shall be written by companies of recognized responsibility and credit reasonably acceptable to the City and authorized to do business in the State of Ohio, and in the form customarily in use or otherwise reasonably acceptable to the City. Developer shall provide all applicable certificates of insurance to the City prior to the commencement of construction of the Improvements.

14. Joinder in Applications for Permits, Licenses and Tax Reductions. If the City's participation is required by applicable law, the City shall, upon request by Developer, and at no expense to the City, (i) join with Developer in any and all applications for permits, licenses, zoning, rezoning, subdivision, variances, land development plans and any other authorizations sought from any utility, governmental or other body claiming jurisdiction in connection with the Project, to the extent permissible by law; and (ii) grant such easements for electricity, telephone, gas, water, sewer and other public utilities and facilities as Developer may reasonably require in connection with the Project. Developer shall be solely responsible, at its own expense, for any and all applications for permits, licenses, zoning, rezoning, subdivision, variances, land development plans and any other authorizations sought from any

governmental or other body claiming jurisdiction in connection with the Project. All obligations of the City are subject to approval by City Planning Commission and Cincinnati City Council if applicable.

15. Environmental Issues. During construction, Developer shall not accumulate, process, store, treat, or dispose of any Hazardous Materials (as hereinafter defined) at the Property, nor shall Developer allow any other person or entity to do so, except that Developer may, in accordance with all applicable Legal Requirements, accumulate, process, store, treat and dispose of such Hazardous Materials as are necessary or incidental in connection with the Project. Under no circumstances shall the City have any liability to Developer, nor shall the City be expected to take any remedial or other actions, with respect to pre-existing Hazardous Materials or other pre-existing environmental conditions at the Property. For purposes of this Lease, "Hazardous Materials" shall mean: (i) any "hazardous substance," "pollutant" or "contaminant" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14) and (33) or 40 C.F.R. Part 302 (including asbestos, asbestos containing materials and polychlorinated biphenyls (PCBs)), and (ii) any substance containing "petroleum," as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6991(8), or 40 C.F.R. §280.12.

16. Prevailing Wage. For all aspects of the Project, Developer shall comply and cause its contractors, subcontractors, and agents to comply with the applicable requirements of the State of Ohio's Prevailing Wage Law, as set forth in Ohio Revised Code Chapter 4115 (the "Prevailing Wage Law"). Developer acknowledges that the City has made the current prevailing wage rate schedules available to it and that Developer may obtain updated prevailing wage rate schedules upon request. Developer further acknowledges and agrees that it has not and shall not rely upon determinations or representations made by the City, its employees or agents regarding applicability of state and local prevailing wage laws and that Developer's decisions regarding applicability of and compliance with such laws shall be based upon its own and its counsel's investigations, determinations and opinions. Without limitation of other rights and remedies available to the City under this Lease or under state or local laws (including without limitation under paragraph 10(D) (*Indemnity*) and paragraph (H) (*Prevailing Wage*) of Exhibit F of this Lease), Developer shall defend, indemnify and hold the City harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against them as a result of or arising from Developer's failure to comply with applicable prevailing wage laws.

17. Punch-List Work. Developer shall notify the City in writing when construction of the Improvements is substantially complete (defined as all work completed, except for punch list work) (a "**Notice of Substantial Completion**"). Promptly thereafter, the City and Developer shall jointly inspect the Improvements. Developer shall create a punch-list of unfinished work and shall promptly thereafter complete such work (but in any event within one (1) year after the date of the Notice of Substantial Completion).

18. Correction of Defects During Warranty Period. If any defect should appear that, in the reasonable opinion of the City, is due to defective materials or workmanship, Developer shall remedy such defect, without cost to the City, within the applicable warranty period under Developer's contract with the General Contractor; failing which the City may, without limitation of their other rights and remedies, cause such defect to be remedied and charge the reasonable costs thereof to Developer.

* * *

EXHIBIT E
to Lease
Form of Completion Guaranty

Project: Lunken Terminal Building

COMPLETION GUARANTY

This Completion Guaranty ("**Guaranty**") is made as of the Effective Date (as defined on the signature page hereof) by [_____] an [_____] corporation, the address of which is [_____] ("**Guarantor**"), in favor of the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**").

Recitals:

A. The City and **LUNKEN DEVELOPMENT, LLC**, a Kentucky limited liability company ("**Obligor**") are parties to a *Lease Agreement* dated _____, 2021 (the "**Agreement**"). Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Agreement.

B. Pursuant to the Agreement, among other things, Obligor is obligated to complete the Project, which includes developing the Lunken Terminal Building and Leased Premises into a first-class hotel, commercial event space, and restaurant, at an estimated construction cost of \$18,650,000.

C. It is a condition of the Agreement that Guarantor provide this Guaranty to the City with respect to the Project.

NOW, THEREFORE, in consideration of the City's execution of the Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor hereby promises and agrees as follows:

1. Guaranty.

(A) Guarantor hereby absolutely, unconditionally, and irrevocably guarantees to the City the full and prompt performance by Obligor of Obligor's obligations under the Agreement to complete construction of the Project in accordance with, and subject to, the terms and conditions of the Agreement, including payment to the City of any and all losses, damages, and expenses (including without limitation attorneys' fees) suffered or incurred by the City and arising out of the failure by Obligor under the Agreement to do so, regardless of whether such losses, damages, or expenses are expressly provided for under the Agreement or are then otherwise allowable by law (collectively, the "**Guaranteed Obligations**").

(B) If Obligor fails to fulfill one or more the Guaranteed Obligations, resulting in a notice of default from the City to Obligor under the Agreement, the City may notify Guarantor thereof in writing, whereupon Guarantor, within ten (10) days after its receipt of such notice, shall take all steps necessary to cure the default (including, for example, providing additional funding for the Project if necessary). All rights and remedies of the City under this Guaranty are cumulative, and nothing in this Guaranty shall be construed as limiting the City's rights and remedies available under the Agreement or at law or in equity.

(C) From time to time, the City may in the exercise of its sole and absolute discretion and without providing notice to or obtaining the consent of Guarantor, and without in any way releasing, altering, or impairing any of Guarantor's obligations and liabilities to the City under this Guaranty: (i) waive compliance with, or any default occurring under, or grant any other indulgence with respect to, the Agreement; (ii) modify or supplement any of the provisions of the Agreement upon written agreement with Obligor; (iii) grant any extension or renewal of or with respect to the Agreement upon written agreement

with Obligor and/or effect any release, compromise, or settlement in connection therewith; and (iv) deal in all respects with Obligor as if this Guaranty were not in effect.

2. Liability of Guarantor.

(A) Guarantor's liability under this Guaranty (i) shall be primary, direct, and immediate and is a guaranty of performance and completion and not of collection; (ii) shall not be conditioned or contingent upon the pursuit by Obligor of any remedy that it may have against its contractors, subcontractors, or any other person with respect to the Project or at law or in equity; and (iii) shall be unconditional, irrespective of the genuineness, validity, regularity, or enforceability of the Agreement, as the case may be, or of the adequacy of any consideration or security given therefor or in connection therewith, or of any other circumstance that might otherwise constitute a legal or equitable discharge of a surety or a guarantor under applicable law. Guarantor hereby waives any and all defenses at law or in equity that may be available to Guarantor by virtue of any such circumstance.

(B) Without limiting the generality of the foregoing provisions of this Section 2, the City shall not be required (i) to make any demand of Obligor or any other person; or (ii) otherwise pursue or exhaust its remedies against Obligor or any other person or entity or against the Project, before, simultaneously with, or after enforcing any of its rights and remedies under this Guaranty against Guarantor. The City may bring one or more successive and/or concurrent actions against Guarantor, either as part of any action brought against Obligor or in one or more separate actions, as often as the City deems advisable in the exercise of its sole and absolute discretion.

(C) Guarantor's liability under this Guaranty shall continue after any assignment or transfer by the City or Obligor of any of their respective rights or interests under the Agreement or with respect to the Project until the satisfaction of all provisions contained in this Guaranty (but the foregoing shall not be deemed to be or constitute the consent by the City to any such assignment by Obligor, which shall continue to be governed by the terms of the Agreement). Guarantor's liability under this Guaranty shall not be affected by any bankruptcy, reorganization or insolvency of Obligor or any successor or assignee thereof or by any disaffirmance or abandonment by a trustee of Obligor.

(D) Waivers. Guarantor hereby expressly waives: (i) presentment and demand for payment of any sum payable under the provisions of the Agreement, and protest of any nonpayment thereof; (ii) notice of acceptance of this Guaranty and of such presentment, demand, and protest; (iii) notice of any default under this Guaranty or under the provisions of the Agreement, except as stated herein; (iv) demand for observance or performance, and enforcement, of any of the terms or conditions of this Guaranty, and/or of the Agreement, except as stated herein; (v) any and all other notices and demands that may otherwise be required by law to be given or made; and (vi) any and all rights that Guarantor may have to a trial by jury in any action brought on or with respect to this Guaranty, all rights and remedies accorded by applicable law to Guarantor, including, without limitation, any extension of time conferred by any law now or hereafter in effect, and all rights of redemption, homestead, dower and other rights or exemptions of every kind, whether common law or statutory. In addition, Guarantor hereby expressly agrees that, if this Guaranty is enforced by suit or otherwise, or if the City exercises any of its rights or remedies under the provisions of the Agreement upon any default by Obligor in performing any of Obligor's obligations thereunder, Guarantor shall reimburse the City, upon demand, for any and all expenses, including without limitation attorneys' fees, that the City incurs in connection therewith, payable within ten (10) days after the City's written demand.

3. Subrogation. No payment by Guarantor under this Guaranty shall give Guarantor any right of subrogation to any rights or remedies of the City against Obligor under the Agreement. Until Obligor has paid and performed all of its obligations under the Agreement, Guarantor hereby waives all rights of contribution, indemnity or subrogation with respect to Obligor that might otherwise arise from Guarantor's performance under this Guaranty.

4. Effect of this Guaranty. Guarantor hereby warrants to the City that: [x] Guarantor (i) has a financial interest in the Project; (ii) is duly organized, validly existing, and in good standing under the laws

of the State of [] and is duly authorized and registered to do business in the State of Ohio; (iii) has full power, authority, and legal right to execute, acknowledge, and deliver this Guaranty; and (iv) there are no actions, suits, or proceedings pending or to the knowledge of Guarantor threatened against Guarantor, at law or in equity, or before any governmental department, commission, board, bureau, agency, or instrumentality which involve the possibility of any judgment or order that may result in any material adverse effect upon Guarantor; and [y] this Guaranty constitutes Guarantor's binding and enforceable legal obligation.

5. **Notices.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person; (ii) upon receipt or refusal if delivered by overnight delivery with any reputable overnight courier service; or (iii) upon receipt or refusal if sent by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to Guarantor and the City, as the case may be, at the addresses set forth in the introductory paragraph of this Guaranty or such other address as may be designated from time to time by notice given to the other party in the manner prescribed herein. Guarantor shall simultaneously send, by U.S. certified mail, a copy of each notice given by Guarantor to the City hereunder to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, Ohio 45202.

6. **General Provisions.**

(A) **Amendment.** This Guaranty may be amended or supplemented by, and only by, an instrument executed by the City and Guarantor.

(B) **Waiver.** No party hereto shall be deemed to have waived the exercise of any right which it holds under this Guaranty unless that waiver is made expressly and in writing (and no delay or omission by any party hereto in exercising any such right shall be deemed a waiver of its future exercise). No such waiver made as to any instance involving the exercise of any such right shall be deemed a waiver as to any other such instance, or any other such right.

(C) **Applicable Law.** This instrument shall be given effect and construed by application of the laws of the City of Cincinnati and the State of Ohio, and any action or proceeding arising under this Guaranty shall be brought only in the Hamilton County Court of Common Pleas. Guarantor hereto agrees that the City shall have the right to join Obligor in any action or proceeding commenced by the City under this Guaranty.

(D) **Time of Essence.** Time shall be of the essence of this Guaranty.

(E) **Headings.** The headings of the paragraphs and subparagraphs of this Guaranty are provided herein for and only for convenience of reference and shall not be considered in construing their contents.

(F) **Construction.** As used in this Guaranty, (i) the term "person" means a natural person, a trustee, a corporation, a partnership, a limited liability company, and any other form of legal entity; and (ii) all references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well, (c) to any paragraph or subparagraph shall, unless herein expressly indicated to the contrary, be deemed to have been made to such paragraph or subparagraph of this Guaranty, and (d) to Guarantor, the City, and Obligor shall be deemed to refer to each person hereinabove so named and their respective heirs, executors, personal representatives, successors and assigns.

(G) **Severability.** No determination by any court or governmental body that any provision of this Guaranty or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of (i) any other such provision, or (ii) such provision in any circumstance not controlled by such determination. Each such provision shall be valid and enforceable to the fullest extent allowed by, and shall be construed wherever possible as being consistent with applicable law.

(H) Entire Agreement. This Guaranty represents the complete understanding between or among the parties hereto as to the subject matter hereof, and supersedes all prior negotiations, representations, warranties, statements or agreements, either written or oral, between or among the parties hereto as to the same.

(I) Term. This Guaranty shall be effective upon the execution hereof and shall remain in effect until such time as the Guaranteed Obligations are satisfied and discharged in full. At such time, Guarantor may request, and the City will endeavor to promptly provide, a written statement from the City acknowledging the same and confirming that Guarantor has no further obligations hereunder.

(J) Assignment. Guarantor shall not assign its rights or interests or delegate its duties or obligations under this Guaranty to any third party without the prior written consent of the City, which consent may be withheld in the City's sole and absolute discretion. Any prohibited assignment shall be void.

[Signature Page Follows]

Executed and effective as of _____, 2021 (the "Effective Date").

Guarantor:

[_____]

By: _____

Name: _____

Title: _____

Date: _____

Recommended by:

John S. Brazina, Director
Department of Transportation and Engineering

Approved as to Form:

Assistant City Solicitor

This instrument prepared by:
City of Cincinnati Law Department
801 Plum Street, Room 214
Cincinnati, Ohio 45202

EXHIBIT F
to Lease
Additional Requirements

As used in this exhibit, the term “**Developer**” shall mean Developer.

Developer and Developer’s general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, “**Government Requirements**”), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (i) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer’s contractors or employees, either on the City’s part or with respect to any other governmental entity, and (ii) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Lease.

This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer or its general contractor, and, in certain instances, expands upon the obligations imposed by such Government Requirements by including contractual provisions in furtherance of the objectives thereof or, in some instances, required to be included in this Lease thereby. Additionally, in some instances the contractual provisions included in this Exhibit which impose obligations over and above any Government Requirements are a result of the formal adoption of policy objectives by City Council via the passage of Resolutions. City administration (including the City’s Department of Community and Economic Development) is responsible for implementing the policy directives contained in such Resolutions, including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Lease.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified above, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Lease is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party, Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in the Developer and its general contractor’s aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the “**Construction Workforce Goals**”).

As used herein, the following terms shall have the following meanings:

(a) **"Best Efforts"** means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) **"Minority Person"** means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian or Alaskan Native.

(c) **"Black"** means a person having origin in the black racial group of Africa.

(d) **"Asian or Pacific Islander"** means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii and Samoa.

(e) **"Hispanic"** means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish cultural origin.

(f) **"American Indian"** or **"Alaskan Native"** means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which the Developer receives City funds or other assistance (including, but not limited to, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Lease may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than ten (10) days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to "construction contracts" under Cincinnati Municipal Code Chapter 321. Municipal Code Chapter 321 defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority," and "contract" as "all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction."

(b) Requirement. Subject to the limitations provided in clause (a) above, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Lease and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project's budget. For the purposes of this clause (iii), "direct City funding" means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Lease requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) "Bid" means an offer in response to an invitation for bids to provide construction work.

(2) "Invitation to Bid" means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) "Trade Craft" means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) "Public Notification" means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall include a description of the "scope of work" and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) "Read Aloud in a Public Forum" means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code, Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA's Lead in Construction Regulations and the OEPA's hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under Cincinnati Municipal Code Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City's written demand.

(F) Small Business Enterprise Program.

(i) Applicability. The applicability of Municipal Code Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. Municipal Code Chapter 323 defines "contract" as "a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services." It defines "construction" as "any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority." To the extent Municipal Code Chapter 323 does not apply to this Lease, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises ("SBE"s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with Cincinnati Municipal Code ("CMC") Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City's web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Lease, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

(1) Including qualified SBEs on solicitation lists.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15th. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Lease, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to Section 2921.12, Ohio Revised Code.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in Cincinnati Municipal Code Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Lease, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. Chapter 325 of the Cincinnati Municipal Code (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. Chapter 325 of the Municipal Code does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Lease is subject to the provisions of Chapter 325 of the Cincinnati Municipal Code (the City of Cincinnati's Equal Employment Opportunity Program), the provisions thereof are hereby incorporated by reference into this Lease.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all applicable prevailing wage requirements. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within twenty (20) days of demand therefor.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Lease, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2).

Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of Chapter 319 of the Cincinnati Municipal Code, which provides for a "Prompt Payment System", apply to this Lease. Municipal Code Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to Ohio Revised Code 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Lease constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-746-7200