

Property: 4162 and 4166 Hamilton Avenue and 1557 Chase Avenue

LEASE AND MANAGEMENT AGREEMENT

This Lease and Management Agreement (“**Agreement**”) is made and entered into effect as of the **Effective Date** (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**”, as lessor), and **The Northside Business Association**, an Ohio nonprofit corporation, the address of which is 4125 Hamilton Avenue, Cincinnati, OH 45223 (“**Operator**”).

Recitals:

A. The City owns certain real property located in the Northside neighborhood designated as Hamilton County, Ohio Auditor’s Parcel Nos.: (i) 196-22-9 (-9 & -10 cons.), (ii) 196-22-8, (iii) 196-22-168, and (iv) 196-22-12 (-12 & -13 cons.), as more particularly depicted on Exhibit A (Site Map) (collectively, the “**Property**”).

B. Pursuant to a *Lease and Management Agreement* dated January 27, 2016 (the “**2016 Agreement**”) the City leased the Property to Operator as a public parking lot for the benefit of the general public. The 2016 Agreement expired on January 27, 2021, and Operator has continued to Lease the Property on a month-to-month basis since that time.

C. The parties desire to enter into this Agreement pursuant to which the City will lease the Property to Operator for an initial five (5) year period, with three (3) optional renewal periods of five (5) years each.

D. The City has determined that the Property is not needed for any municipal purpose during the term of this Lease.

E. The fair market rental value of the Property, as determined by the City’s Real Estate Services Division, is approximately \$12,300/year, however the City is agreeable to lease the Property to Operator for less than its fair market rental value, namely, \$0.00, because (i) the City will receive benefits from the Agreement that equal or exceed the fair market rental value of the Property in that the City will be relieved of the expense and administrative burden of the management, operation, and maintenance of the Property through the term of this Agreement; and (ii) the Agreement requires Operator to use all revenue generated from the Property to pay operating expenses associated with the Property, and to use any and all excess parking revenue to pay for the construction of City approved public improvements to the Northside neighborhood business district, for the benefit of the City.

F. The City has determined that eliminating competitive bidding is in the best interest of the public because (i) Operator is a local neighborhood nonprofit organization with a mission to promote the general welfare of the Northside community, (ii) Operator has demonstrated experience managing and operating public parking lots in the neighborhood and owns and operates a public parking lot that abuts the Property, and (iii) Operator acknowledges and agrees that all revenue derived from the use of Property are restricted funds to be reinvested into the operation and maintenance of the Property, with any excess revenue to be used to construct City-approved public improvements within the local business district.

G. The City Planning Commission, having the authority to approve the change in use of City-owned property, approved the lease of the Property at its meeting on September 17, 2021.

H. Cincinnati City Council approved this Agreement by Ordinance No. ____-2021, passed on _____, 2021.

NOW THEREFORE, the parties hereby agree as follows:

1. GRANT OF LEASEHOLD.

(A) Grant. On the terms and conditions set forth in this Agreement, the City does hereby lease the Property to Operator, and Operator does hereby lease the Property from the City, for the Term established under section 2 below. The City leases the Property to Operator subject to any and all easements, covenants, restrictions and other matters of record, matters that would be disclosed upon an ordinary inspection or survey of the Property, and any and all rights expressly reserved under this Agreement for the benefit of the City, utility companies, and other third parties. The City has not made any representations or warranties concerning the condition or characteristics of the Property or the suitability or fitness of the Property for the Permitted Use, and Operator is not relying upon any such representations or warranties from the City. On the Commencement Date (as defined in section 2 below), Operator shall accept the Property in "as is" condition. During the Term, Operator shall not grant any easements or otherwise encumber the title to the Property without the City's prior written consent. The City shall have the right to grant easements to third parties and to take whatever other actions affecting the Property as may be deemed reasonably necessary by the City so long as such actions do not unreasonably impair the rights granted to Operator under this Agreement.

(B) City's Right to Inspect Property. The City hereby reserves the right for its employees and agents to enter upon the Property from time to time for any proper purpose, provided, however, that in exercising such rights, (i) the City shall not unreasonably disrupt Operator's use of the Property for the Permitted Use, and (ii) except in emergencies, the City shall give Operator reasonable written notice prior to entering the Property.

2. TERM; RENEWAL OPTIONS

(A) Initial Term (5 years). The term ("**Term**") of this Agreement shall commence on the Effective Date (also referred to herein as the "**Commencement Date**"), and, unless extended or sooner terminated in accordance with the provisions of this Agreement, shall expire on the five-year anniversary thereof. All obligations of Operator under this Agreement that have accrued but have not been fully performed as of the expiration or sooner termination of the Term of this Agreement, including without limitation indemnity obligations, shall survive such expiration or termination until fully performed. Notwithstanding anything herein to the contrary, if the City determines that it needs the Property or any portion thereof for a municipal purpose, the City shall have the right to terminate this Agreement at any time by giving Grantor a written notice of termination no less than sixty (60) days prior to the effective date of such termination as specified in the City's notice. The parties acknowledge and agree that the 2016 Agreement shall terminate effective as of the Commencement Date.

(B) Renewal Options (three five-year extensions). Provided that, at the time that Operator exercises each renewal option and on the commencement date of the applicable renewal period Operator is not in default under this Agreement beyond any applicable notice or cure period provided for herein, Operator shall have the right to renew the Term of this Agreement for three (3) successive renewal periods of five (5) years each (each, a "**Renewal Period**"), on the same terms and conditions as set forth in this Agreement except that, after the third Renewal Period, Operator shall have no further renewal options (unless otherwise agreed to by the parties in a written amendment to this Agreement). To exercise each renewal option, Operator must give the City written notice thereof no less than sixty (60) days prior to the date that the then current term would otherwise have expired.

3. PERMITTED USE. Throughout the Term, Operator shall continuously operate the Property as a public parking lot, open to the general public. Operator shall obtain and maintain all necessary licenses and permits and shall operate and maintain the parking lot in compliance with all applicable

federal, state, and local laws, codes, ordinances and other governmental requirements (collectively, “**Legal Requirements**”).

4. RENT.

(A) Base Rent. \$0.00/year.

(B) Additional Rent. This is a “fully net” lease, and throughout the Term, Operator shall pay all costs associated with the operation, maintenance, repair and replacement of the Property, including without limitation charges for electricity, water, sewer, telephone and all other utilities, insurance costs, real estate taxes and installments of assessments that may become due and payable during the Term, salaries, wages and benefits paid to persons employed in connection with the operation of the parking lot, and all other costs associated with the Property (collectively, “**Management Costs**”). Operator shall make such payments directly to the persons or entities to whom such payments are owed. To the extent that the City, rather than Operator, pays any costs that would otherwise be payable by Operator as Management Costs, Operator shall reimburse the City for such costs, as additional rent, within thirty (30) days after Operator’s receipt of documentation substantiating such costs.

(C) Real Estate Taxes. As provided in section 4(B) above, Operator shall pay all real estate taxes and installments of assessments coming due during the Term, including without limitation real estate taxes and assessments that are allocable to periods prior to the Effective Date. During any period during which the Property is not exempt from real estate taxes, Operator shall furnish the City with evidence of payment upon payment of each semi-annual tax bill. If Operator institutes proceedings to contest the validity or amount of real estate taxes on the Property, the City shall cooperate with Operator (it being acknowledged that the City shall have no obligation to incur any costs or expense in so doing) to the extent that the participation of the owner of the Property is required, but Operator may not defer payment of the real estate taxes during such contest. Operator shall be entitled to any and all amounts recovered which relate to tax payments previously made by Operator. Notwithstanding the foregoing, the City reserves the right to evaluate, on a case-by-case basis, the merit of Operator’s contest and reserves the right not to cooperate in such contest if, in the reasonable determination of the City, such contest would not be in the best interest of the public.

(D) Late Charges. If Operator fails to pay any sum due to the City hereunder, and the same remains overdue for longer than thirty (30) days past the due date, the overdue amount shall thereafter bear interest until paid at ten percent (10%).

5. OPERATION OF THE PROPERTY.

(A) Hours of Operation. Operator shall keep the parking lot open to the public 24 hours/day, 7 days/week, 52 weeks/year, or such other hours as may be approved by the City from time to time.

(B) Maintenance, Repairs and Services. Throughout the Term, Operator shall maintain the Property in good, clean and safe condition and repair, and shall provide all cleaning, garbage removal, snow and ice removal, security and other services, consistent with public parking facilities of similar age, size, quality and amenities within the City and outside of the downtown area as determined from time to time by the City. *The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Property.*

(C) Reporting of Accidents and Other Significant Occurrences. Operator shall keep the City informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Property that involve public health or safety issues or that could lead to negative publicity. Operator shall notify the City within 48 hours of break-ins and assaults. For all incidents for which a police report is filed, Operator shall promptly obtain a copy of the police report and promptly provide a copy of it to the City’s Department of Community and Economic Development.

(D) Parking Fees. Operator, with the City's prior written consent, shall establish an hourly, daily and monthly parking fee for the parking lot. Operator shall charge the same parking fees to all members of the public (i.e., Operator may not selectively charge certain members of the public to park at the Property while permitting others to park for free or at a discounted rate).

(E) Revenue. Operator shall collect and retain all revenue generated by the operation of the Property and shall use the same to pay for Management Costs. After payment of all Management Costs in any given year, Operator shall be permitted to use any and all remaining revenue with respect to such year to pay for neighborhood business district improvement projects that meet public purposes and that are approved in advance in writing by the City's Department of Community and Economic Development.

(F) Reserved Parking Spaces. Unless a greater number is approved in writing by the City, Operator shall not designate more than twenty percent (20%) of the total parking spaces in the Property as reserved parking spaces. All remaining spaces shall be unreserved.

(G) Parking Operator. If Operator hires an independent parking operator to manage and operate the Property, each such parking operator shall be subject to the City's written approval. Operator shall provide the City with a copy of each proposed parking management agreement no less than thirty (30) days prior to the date on which such agreement will go into effect. The hiring by Operator of a parking operator for the Property shall not relieve Operator from any obligations or liability under this Agreement.

(H) Reports. Operator shall collect, maintain, and furnish the City from time to time such other accounting, financial, business, administrative, operational and other reports, records, statements and information as may be requested by the City pertaining to Operator or the Property, including without limitation bank statements, loan statements, income tax returns, and such other reports and information as may be required for compliance with programs and projects funded by the City, Hamilton County, the State of Ohio, or any federal agency (all reports, records, statements and other information furnished by Operator under this paragraph being referred to herein collectively as "**Records and Reports**"). All Records and Reports compiled by Operator and furnished to the City shall be in such form as the City may from time to time require. During the Term, Operator shall permit the City and its designees and auditors to have access to and to inspect and audit Operator's Records and Reports. If the City's inspection or audit reveals a material discrepancy with information previously provided by Operator, Operator shall reimburse the City for the City's out-of-pocket costs associated with such inspection or audit.

6. ALTERATIONS; SIGNS; NO LIENS.

(A) Alterations. During the Term, Operator shall not make any material alterations, additions or other changes to the Property without the prior written consent of the City. Operator shall have the right to make all minor and cosmetic-type alterations to the Property without having to obtain the City's prior consent. All alterations made by Operator shall be made in a good and workmanlike manner, in compliance with all applicable Legal Requirements, shall not diminish the fair market value of the Property, and shall be consistent with the quality, design, functionality, and aesthetic appeal of the Property. If Operator installs any trade fixtures, ordinary fixtures, or parking equipment to service the parking lot, Operator shall not thereafter remove the same and shall surrender the same to the City at the end to the Term without compensation.

(B) Signs. Operator shall be permitted to erect such directional, informational and other signs on the Property as Operator deems appropriate provided that all such signs are professionally prepared, comply with all Legal Requirements, and satisfy the City's requirements with respect to size, design, content, and location. Operator shall, at its expense, keep all signs in good condition and repair.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Property as a result of labor or material furnished at Operator's request, Operator shall cause the lien to be released or bonded off within thirty (30) days following the filing of such lien.

7. INSURANCE; INDEMNITY.

(A) Insurance. Throughout the Term, Operator shall maintain, or cause to be maintained, the following insurance: (i) a standard form of Commercial General Liability insurance policy in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City as an additional insured; (ii) property insurance on all Operator's personal property kept at the Property (if any) in such amount as Operator from time to time deems commercially reasonable; and (iii) such other insurance as may from time to time be required by the City's Risk Management Division.

(B) Policy Requirements. Operator'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, if any. On the Effective Date and thereafter on an annual basis, Operator shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Operator hereunder.

(C) Waiver of Subrogation. Operator hereby waives all claims and rights of recovery, and on behalf of Operator'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 Agreement to be maintained by Operator, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Operator shall at all times protect itself against such loss or damage by maintaining adequate insurance. Operator 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 Operator or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Operator. Operator shall defend, indemnify and hold the City, its council members, officers, employees and agents harmless from and against all costs, losses, claims, damages, liabilities, actions, claims for relief of every kind and character, expenses, including legal expenses, and obligations, financial or otherwise, arising either directly or indirectly out of Operator's performance of its responsibilities under this Agreement. All indemnity obligations and assumption of liabilities herein provided for shall continue in full force and effect notwithstanding the termination of this Agreement.

8. CASUALTY; EMINENT DOMAIN. If the Property is damaged or destroyed by fire or other casualty, or if any portion of the Property is taken by exercise of eminent domain, Operator shall repair and restore the Property, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which the Property was in immediately prior to such occurrence. The City and Operator shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. Such proceeds shall be payable to the City as the owner of the Property; however, the City shall make available to Operator so much of the proceeds as are needed to repair and restore the Property. If the proceeds are insufficient to fully repair and restore the Property, the City shall not be required to make up the deficiency. Operator shall handle all construction in accordance with the City's standard construction requirements. Operator shall not be relieved of any obligations, financial or otherwise, under this Agreement during any period in which the Property is being repaired or restored.

9. DEFAULT; REMEDIES.

(A) Default. The occurrence of any of the following shall be an "event of default" under this Agreement:

(i) The failure of Operator to make any required payment when due or perform any obligation under this Agreement, and failure by Operator to correct such failure within thirty (30) days after Operator's receipt of written notice thereof from the City; provided, however, that if the nature of the default is such that it cannot reasonably be cured within 30 days, Operator shall not be in default so long as Operator commence to cure the default within such 30-day period and thereafter diligently completes such cure within a reasonable period of time (but not exceeding 90 days) after Operator's receipt of the City's initial notice of default. The foregoing notwithstanding, if Operator's failure to perform or observe any obligation, duty, or responsibility under this Agreement 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 Operator fails to take corrective action immediately upon discovering such dangerous condition or emergency; or

(ii) The dissolution of Operator, the filing of bankruptcy or insolvency proceedings by it, or the making by it of an assignment for the benefit of creditors; or

(iii) The filing of bankruptcy or insolvency proceedings against Operator, or the appointment of a receiver (temporary or permanent) for it, or the attachment of, levy upon, or seizure by legal process of any of its properties, that, in each such event, is not released within 60 days after the filing thereof.

(B) Remedies. Upon the occurrence of an event of default that continues beyond the applicable notice and cure period provided for under paragraph (A) above, the City shall be entitled to: (i) terminate this Agreement by giving Operator written notice thereof, (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 Operator, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity. Operator shall be liable for all costs and damages, including without limitation attorneys' fees suffered or incurred by the City as a result of a default of Operator under this Agreement or the City's enforcement or termination of this Agreement. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Agreement shall not constitute a waiver of the breach of such covenant or of such remedy.

10. ASSIGNMENT AND SUBLETTING. Operator shall not assign its interests under this Agreement, or sublet all or any portion of the Property, without the prior written consent of the City.

11. SURRENDER; HOLDOVER.

(A) Surrender. On the last day of the Term of this Agreement, Operator shall surrender the Property to the City in good condition and repair, reasonable wear and tear expected, and free and clear of all liens and other encumbrances created by Operator (if any) and on or before the last day of the Term, Operator shall remove all of Operator's tools and other personal property and any property not so removed shall be deemed abandoned, provided, however, that unless required by the City, Operator shall not remove any signs, trade fixtures, ordinary fixtures or parking equipment used in connection with the Property. Operator shall promptly repair any and all damage to the Property caused by its removal of any items under this paragraph.

(B) Holdover. If Operator fails to surrender possession of the Property 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), terminable by the City at any time by giving written notice thereof to Operator. Operator shall be liable for all costs and damages suffered or incurred by the City as a result of Operator's holding over.

(C) Documents to be Delivered to City. On the last day of the Term, Operator shall deliver to the City originals of all unpaid invoices, Management manuals, warranty information, books and records, contracts with third parties, and all other written materials and documents that are in Operator's possession or under Operator's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Property.

12. NOTICES. All notices required to be given to any party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a reputable courier service (e.g., Federal Express), 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 the City:

City of Cincinnati
Director of Community and Economic Development
805 Central Avenue
Suite 700
Cincinnati, OH 45202

To Operator:

The Northside Business Association
4125 Hamilton Avenue
Cincinnati, OH 45223
Attn: President

If Operator sends a notice to the City alleging that the City is in breach of this Agreement, Operator 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.

13. GENERAL PROVISIONS.

(A) Entire Agreement. This Agreement (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 Agreement may be amended only by a written amendment signed by both parties.

(C) Governing Law. This Agreement 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 Agreement shall be brought in the Hamilton County Court of Common Pleas, and Operator 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 Agreement.

(D) Binding Effect. This Agreement 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 Agreement 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 Agreement.

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

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

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

(I) No Third-Party Beneficiaries. The parties hereby agree that no third-party beneficiary rights are intended to be created by this Agreement.

(J) No Brokers. The City and Operator 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 Agreement.

(K) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement 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 in other than his or her official capacity. No official executing or approving the City's participation in this Agreement shall be personally liable under this Agreement.

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

(M) Appropriation of Funds. Notwithstanding anything in this Agreement, the City's performance of its obligations under the Agreement that require the expenditure of money is subject to the appropriation of funds for such purposes by Cincinnati City Council.

(N) Counterpart; E-Signature. This Agreement may be executed via electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

(O) Exhibits. The following exhibits are attached hereto and made a part hereof:
Exhibit A - *Site Map*

[*Signature Pages Follow*]

This Agreement 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

Recommended By:

Markiea L. Carter, Director
Department of Community and Economic Development

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

[*Operator's Signature Page Follows*]

THE NORTHSIDE BUSINESS ASSOCIATION,
an Ohio nonprofit corporation

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

EXHIBIT A
to Lease and Management Agreement

SITE MAP



