

Contract No. _____

Property: John Street north of York Street

LEASE AGREEMENT
(triple net)

This Lease Agreement (“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, Room 122, Cincinnati, OH 45202; Attention: Real Estate (the “City”), and **KAISER PROPERTIES-CENTRAL, LTD.**, an Ohio limited liability company, the address of which is 500 York Street, Cincinnati, OH 45214 (“Lessee”).

Recitals:

A. The City owns the public right-of-way known as John Street in the West End neighborhood of Cincinnati, including an approximately 3,141 square-foot portion of John Street (57.04 feet x 20 feet) located north of York Street, as more particularly described on Exhibit A (Legal Description), and depicted on Exhibit B (Survey) hereto (the “Leased Premises”), which is under the management of the Department of Transportation and Engineering (“DOT”).

B. Lessee or an affiliate thereof owns the properties located on either side of the Leased Premises, more particularly identified as Hamilton County, Ohio Auditor’s Parcel Nos. 132-0003-0159-00 (-159 through -163, & -326 Cons.) and 132-0003-0164-00 (“Lessee’s Property”).

C. Lessee, or an affiliate entity thereof, has leased the Leased Premises for approximately 23 years, pursuant to several *Lease Agreements* by and between the City and Lessee or its affiliate (the “Prior Leases”). The term of the most recent *Lease Agreement* authorized by Ordinance No. 135-2003 expired in 2023, and Lessee has continued to use the Leased Premises on a month-to-month basis since that time.

D. Lessee has petitioned to enter a new lease with the City for the Leased Premises, and the City is agreeable to lease the Leased Premises to Lessee on the terms and conditions set forth herein.

D. The City has determined that the Leased Premises above grade is not currently needed for transportation or other municipal purposes.

F. The estimated fair market rental value of the Leased Premises, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$305.00 per year, which Lessee has agreed to pay.

G. The City has determined that eliminating competitive bidding in connection with the lease of the Leased Premises is in the best interest of the City because (i) the City desires to lease the Leased Premises to Lessee for uses that are ancillary and incidental to Lessee’s Property; (ii) Lessee owns all real property abutting the Leased Premises, and (iii) as a practical matter, no one other than an adjoining property owner would have any interest in leasing the Leased Premises and assuming responsibility for the maintenance and repair thereof.

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s lease of the Leased Premises to Lessee at its meeting on October 20, 2023.

I. Cincinnati City Council authorized the execution of this Lease by Ordinance No. [____]-2023, passed on [____], 2023.

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant.**

(A) **Grant.** The City does hereby lease the Leased Premises to Lessee, and Lessee does hereby lease the Leased Premises from the City, on the terms and conditions set forth herein. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions, and other matters of record affecting the Leased Premises. Lessee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the physical condition and characteristics of the Leased Premises. The City makes no representations or warranties concerning the title, condition, or characteristics of the Leased Premises or the suitability or fitness of the Leased Premises for any purpose. Lessee acknowledges and agrees that it 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. Lessee shall accept the Leased Premises in "as is," "where is" condition with all faults and defects, known or unknown; provided, however, Lessee shall not be responsible for remediating any pre-existing environmental conditions not caused by Lessee.

(B) **Access by City Departments, Utility Companies and Others.** Lessee shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year) by the City's Police and Fire Departments, Greater Cincinnati Water Works ("GCWW"), Metropolitan Sewer District ("MSDGC"), Duke Energy, Altafiber, and any and all other utility companies that have utility lines or other utility installations within or near the Leased Premises, for the inspection, maintenance, repair, replacement, and removal thereof. Lessee shall not construct any structures within the Leased Premises. If Lessee constructs any additional improvements within the Leased Premises or undertakes any other action that interferes with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Lessee under this Lease, whereupon the City and such third parties shall be permitted to take all actions reasonably necessary to eliminate such interference at Lessee's expense. If Lessee's activities within the Leased Premises cause damage to existing utility lines or other utility facilities belonging to a utility provider, Lessee shall immediately notify the appropriate utility provider. All actual, out-of-pocket costs of repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Lessee and shall be payable by Lessee within thirty (30) days after Lessee receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Lessee within the Leased Premises in connection with its inspection, maintenance, repair, replacement, or removal of its existing utility facilities in the area, Lessee shall be solely responsible for all costs associated with the repair or replacement of Lessee's improvements. Under no circumstances shall the City be responsible for any damage to the Leased Premises or improvements thereon resulting from the entry onto the Leased Premises by utility companies and others having the right to enter upon the Leased Premises.

2. **Term.**

(A) **Initial Term.** The initial term of this Lease (the "Term") shall commence on the Effective Date (also referred to herein as the "Commencement Date") and shall continue for **five (5) years** thereafter, unless extended or sooner terminated as herein provided.

(B) **Renewal Periods (5-years each, up to 25 years).** Provided that Lessee is not in default under this Lease at the time it exercises each renewal option, Lessee shall have the option to extend the Term of this Lease, for five successive renewal periods of 5-years each (for a total Term, including the initial Term, of 30 years), exercisable by giving written notice thereof to the City at least ninety (90) 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 fourth 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.

(C) City's Early Termination Rights. Notwithstanding anything in this Lease to the contrary, the City shall have the right to terminate this Lease at any time, by giving Lessee no less than 60 days prior written notice, if the City determines that the Leased Premises are needed for a municipal purpose. Upon such termination, the City shall refund any prepaid base rent.

3. Base Rent.

(A) Base Rent. Lessee shall pay annual base rent to the City for the Leased Premises of ~~\$305.00~~. Lessee shall make a single, annual payment to the City no later than the Commencement Date, and on each one-year anniversary thereof, without demand, notice, or setoff.

(B) Rent During Renewal Terms. Effective as of the first day of each renewal period, annual Base Rent shall increase to an amount that is equal to the product of multiplying the annual Base Rent payable during the term then set to end by a fraction, the numerator of which is the CPI most recently published 60 days prior to the rent adjustment date, and the denominator of which is the CPI most recently published 60 days prior to the commencement of the lease year then just ended. "CPI" means the Consumer Price Index, All Urban Consumers, U. S. City Average (1982-1984=100) published from time to time by the United States Bureau of Labor Statistics. Lessee shall make all CPI rent adjustment computations under this section and shall send written notice of each CPI-based rent adjustment, together with Lessee's computations ("**Lessee's Rent Adjustment Notice**"), to the City's Real Estate Services Division (801 Plum Street, Room 122, Cincinnati, OH 45202) accompanied by Lessee's Written Notice of Renewal. Notwithstanding the rent adjustments provided for herein, in no event shall annual Base Rent decrease during the initial term.

(C) Late Payment; Place of Payment. If any payment owed by Lessee hereunder is not received by the City on the due date, Lessee shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. If the Term of this Lease is terminated early for any reason (other than due to the City's desire to use the Leased Premises for a municipal purpose under paragraph 2(B) above), the City shall not be required to refund any portion of the prepaid rent for such period. All payments shall be made by check payable to the "City of Cincinnati - Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, Attention: Real Estate.

4. Permitted Use. Lessee and any affiliates thereof shall use the Leased Premises for pedestrian and vehicular ingress and egress, parking, loading, and maintenance purposes, and for no other purpose unless consented to in writing by DOTE. Lessee shall not bring or permit to be brought onto the Leased Premises any hazardous materials or other contaminants or substances that are harmful to the public or to the environment.

5. Utilities; Real Estate Taxes; Other Expenses. During the Term of this Lease, Lessee shall pay, when due, (i) any and all utility expenses for utilities directly serving the Leased Premises, and (ii) any and all other operating expenses associated with the Leased Premises. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this Lease.* The parties acknowledge and agree that as of the Effective Date the Leased Premises are exempt from real estate taxes. However, if the Leased Premises becomes subject to taxation during the Term, Lessee agrees to pay any and all real estate taxes, assessments, penalties, interest, and charges levied against the Leased Premises that become due and payable during the Term, including the two semi-annual tax bills issued by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears.

6. Maintenance and Repairs. Lessee shall, at its sole expense, keep and maintain the Leased Premises in good, safe, orderly, sanitary, and clean condition and repair, ordinary wear and tear excepted, including without limitation any and all concrete or brick pavement, pavers, curbs, and sidewalks within the Leased Premises. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Premises. In the event of damage to the Leased Premises, Lessee shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE (however Lessee shall not be required to

restore the Leased Premises to a better condition than otherwise required under this Lease). Lessee shall be solely responsible for all snow and ice removal from the Leased Premises. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Premises or any improvements thereon.* For the avoidance of doubt, Lessee shall have no responsibility to maintain, repair, replace, or remove any existing public utility lines or other existing public utility facilities, fixtures, or equipment belonging to a public utility provider located on, under, or above the Leased Premises, including without limitation to sewers, water pipes, cables, and conduit unless Lessee's exercise of the rights granted herein causes damage to such existing public utility lines or other existing public utility facilities.

7. Alterations.

(A) Alterations. Except as already existing and approved by the City, Lessee shall not make any alterations or improvements to the Leased Premises, including without limitation installing any fences, signs, lighting, or other utilities, or remove any existing improvements within the Leased Premises, without obtaining the prior written consent of DOTE. If Lessee proposes to install any fencing or permanent-type structures or other improvements within the Leased Premises, Lessee shall also obtain the prior written consent of all utility companies whose utility facilities might be affected.

(B) No Liens. Lessee shall not permit any mechanics liens to attach to the Leased Premises in connection with work performed by or at the request of Lessee.

(C) Compliance with Laws. Lessee shall obtain all necessary City permits associated with work within the Leased Premises performed by Lessee and shall pay all required permit fees. Lessee shall ensure that all work is performed in compliance with all applicable federal, state, and local laws, codes, regulations, and other governmental requirements.

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain: (i) Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City of Cincinnati as an additional insured; (ii) property insurance on any and all equipment and other personal property of Lessee from time to time kept on the Leased Premises; and (iii) such additional insurance as the City or its risk advisors may from time to time reasonably require. All insurance required to be maintained by Lessee hereunder shall be issued by insurance companies reasonably acceptable to the City. On or prior to the Commencement Date and prior to the expiration of each insurance policy, Lessee shall furnish to the City a certificate of insurance evidencing the insurance required hereunder.

(B) Waiver of Claims and Subrogation. All improvements, materials, equipment, and other personal property of every kind that may at any time be on the Leased Premises shall be on the Leased Premises at Lessee's sole risk, and under no circumstances shall the City be liable for any loss or damage thereto, no matter how caused. As a material consideration under this Lease, Lessee hereby waives, as against the City, its employees, agents and contractors, all claims and liability, and on behalf of Lessee's insurers, rights of subrogation, with respect to property damaged by fire or other casualty or any other cause, even if caused by negligence, it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate property insurance.

(C) Indemnification. Lessee shall defend (with counsel reasonably acceptable to the City), indemnify and hold the City harmless from and against any and all claims, causes of action, losses, costs, judgments, fines, liability and damages caused by or arising out of any occurrence on the Leased Premises during or with respect to the Term of this Lease, including without limitation any of the foregoing that may occur or be claimed with respect to any death, personal injury or loss of or damage to property on or about the Leased Premises.

9. **Casualty.** If the Leased Premises is damaged or destroyed by fire or other casualty, Lessee shall repair and restore the same, as expeditiously as possible, and to the extent practicable, to substantially the same condition in which they were in immediately prior to such occurrence. The City and Lessee shall jointly participate in filing claims and taking such other actions pertaining to the payment of proceeds resulting from such occurrence. If Lessee's insurance proceeds are insufficient to fully repair and restore the Leased Premises, Lessee shall make up the deficiency. Lessee shall handle all construction in accordance with the applicable requirements set forth by DOTE. Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leased Area is being repaired or restored.

10. **Default.** Should Lessee fail to pay any sum due hereunder or perform any other obligation under this Lease within thirty (30) days after receiving written notice thereof from the City (herein, a "default"), the City, at its option, immediately or at any time during the continuance of the default, may terminate this Lease by delivering a written notice of termination to Lessee. Lessee shall pay to the City, upon demand, all costs and damages suffered or incurred by the City in connection with Lessee's default or the termination of this Lease. Without limitation of the City's other rights and remedies hereunder, upon the occurrence of a default, the City may, but shall not be obligated to, cure or attempt to cure such default at Lessee's sole expense and may, if necessary, enter onto the Leased Premises in order to undertake such cure. Lessee shall pay the City within ten (10) days after the City's written demand an amount equal to all costs paid or incurred by the City in effecting compliance with Lessee's obligations under this Lease, together with interest thereon from the date that the City pays or incurs such costs at an annual rate of ten percent. The rights and remedies of the City under this Lease are cumulative and are not intended to be exclusive of, and the City shall be entitled to, any and all other rights and remedies to which the City may be entitled hereunder, at law or in equity. The City's failure to insist in any one or more cases on strict performance of any provision of this Lease or to exercise any right herein contained shall not constitute a waiver in the future of such right.

11. **Notices.** All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by Federal Express or other recognized overnight courier that in the ordinary course of business maintains a record of each delivery, or mailed by U.S. certified mail, postage prepaid, return receipt requested, addressed to the City at its address set forth in the introductory paragraph of this Lease, and to Lessee at its address set forth below, or at such other address as either party may from time to time specify by notice to the other. Notices shall be deemed to have been given on the date of receipt if personally delivered, on the following business day if sent by an overnight courier, and on the date noted on the return receipt if mailed by U.S. certified mail. If Lessee sends a notice to the City alleging that the City is in default under this Lease, Lessee shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202. All notices given to Lessee under this Lease shall be delivered as follows:

Kaiser Properties-Central, LTD.
500 York Street,
Cincinnati, OH 45214
Attn: Kimberly Speed
kspeed@kaiserpickles.com

12. **Surrender; Holdover.**

(A) **Surrender; Holdover.** At the end of the Term, Lessee shall surrender the Leased Premises to the City in the condition in which Lessee is required to maintain the Leased Premises under the terms of this Lease. If Lessee remains in possession of the Leased Premises after the end of the Term without the City's consent, then, at the City's option, such holdover shall create a tenancy-at-will on the same terms and conditions as set forth in this Lease except that rent payable during such holdover shall be equal to the then fair market rental value of the Leased Premises as determined by appraisal by the City's Real Estate Services Division.

(B) **Removal of Alterations.** If Lessee has made improvements to the Leased Premises during the Term, then, at the end of the Term, the City shall identify which improvements, if any, Lessee shall be required to surrender (at no cost to the City) and which improvements Lessee shall be required to remove. If Lessee fails to timely remove improvements that are designated for removal by the City and fails to restore the Leased Premises to their former condition, or if Lessee fails to remove any items of personal property from the Leased Premises, such improvements and items of personal property shall be deemed abandoned by Lessee, whereupon the City may remove, store, keep, sell, discard or otherwise dispose of such improvements and items of personal property, and Lessee shall pay all costs incurred by the City in so doing within ten (10) days after the City's written demand. If the City incurs costs in removing Lessee's improvements and restoring the Leased Premises to their former condition, Lessee shall reimburse the City for all such removal and restoration costs within thirty (30) days after receiving an invoice therefor from the City.

13. **Assignment and Sublease.** Lessee shall not assign or sublet its interests under this Lease without the prior written consent of the City.

14. **General Provisions.**

(A) **Entire Agreement.** This Lease (including the exhibits hereto) 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 Lessee agrees that venue in such court is proper. Lessee hereby waives 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.

(H) **Time.** Time is of the essence with respect to the performance by Lessee of its obligations under this Lease.

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

(J) **No Brokers.** Lessee represents that it has 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 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 in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) **Representation as to Authority.** Lessee represents that it has the power and authority to enter 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 has been duly authorized by all necessary actions on Lessee's part.

(M) **Counterparts and Electronic Signatures.** This Lease may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This Lease may be executed and delivered by electronic signature.

15. **Additional Conditions from City's Coordinated Report (CR#8-2023).** Lessee shall comply with the following additional terms and conditions:

(a) **GCWW:** GCWW is unable to maintain a key for a private gate. In the event that GCWW needs to gain emergency access to the public water main behind a gate, GCWW reserves the right to cut the lock or shut off the main behind the fence and related services to Lessee's Property. Lessee is advised that GCWW requires 24/7 access to public infrastructure and does not want GCWW infrastructure behind a fence. GCWW is allowing this request only because this is an existing condition but generally would not approve new installations behind a fence. During the first term of this lease, GCWW recommends that Kaiser food relocate their service branches and abandon the public water main. GCWW would then allow a vacation of the right of way.

(b) **Altafiber:** [Intentionally Omitted].

15. **Exhibits.** The following exhibits are attached hereto and made a part hereof:
Exhibit A – *Legal Description*
Exhibit B – *Survey*

[SIGNATURE PAGES FOLLOW]

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").

Kaiser Properties-Central, LTD.,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____, 2024

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, the _____ of **Kaiser Properties-Central, LTD.,** an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

[CITY SIGNATURE PAGE FOLLOWS]

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2024

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2024, by _____, the _____ of the **CITY OF CINCINNATI**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation & Engineering

Approved as to Form:

Assistant City Solicitor

Certified Date: _____
Fund/Code: _____
Amount: _____
By: _____
Karen Alder, City Finance Director

EXHIBIT A
to Lease Agreement

Legal Description

Situated in Section 19, Town 3, Fractional Range 2, Millcreek Township, in the City of Cincinnati, Hamilton County, Ohio, as depicted on Proctor and Gambles Subdivision as recorded in Plat Book 1, Page 74, Hamilton County, Ohio records, and James Gambles Subdivision, as recorded in Plat Book 1, Page 123, Hamilton County, Ohio records, and being more particularly described as follows:

Begin at a 1/2' iron pin at the intersection of the existing north right-of-way line of York Street (a 50-foot r/w) with the existing west right-of-way line of Central Avenue (a 60-foot r/w);

thence, continuing with the north right-of-way line of York Street, North 83°55'32" West, 290.38 feet to a set mag-nail at the intersection of the north right-of-way line of York Street with the east right-of-way line of John Street (a 20-foot r/w), said point being the TRUE POINT OF BEGINNING;

thence, from the TRUE POINT OF BEGINNING, with the existing east right-of-way line of John Street, North 6°14'28" East, 157.04 feet to a set magnail at the north terminus of John Street;

thence with the existing north terminus of John Street, North 83°47'32" West, 20.00 feet to a 5/8" iron pin on the west right-of-way line of John Street;

thence, with the west right-of-way line of John Street, South 6°14'28" West, 159.43 feet, more or less to the north right-of-way line of York Street with the east right-of-way line of John Street 20' to the TRUE POINT OF BEGINNING.

EXHIBIT B
to Lease Agreement

Survey

