

# City of Cincinnati

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## An Ordinance No. \_\_\_\_\_ - 2021

**AUTHORIZING** the City Manager to vacate approximately 0.8573 acres of the public right-of-way designated as Gest Street; **AUTHORIZING** the City Manager to execute a *First Amendment to Amended and Restated Lease Agreement* with CBT Partners, LLC pursuant to which the City will add approximately 0.8573 acres of the vacated portion of Gest Street and approximately 0.6112 acres of public right-of-way designated as Baymiller Street to an existing lease of approximately 35 acres of City-owned land located south of West Mehring Way and east of the Mill Creek in the Queensgate neighborhood; and **AUTHORIZING** the City Manager to execute a *Grant of Easement* in favor of CBT Partners, LLC and Mehring Investors, LLC, pursuant to which the City will grant an aerial encroachment easement to permit an aerial conveyor above and across the West Mehring Way public right-of-way, in order to facilitate the redevelopment and safe and efficient use of the City's leased property by CBT Partners, LLC.

WHEREAS, pursuant to an *Amended and Restated Lease Agreement* dated June 18, 2020 (the "Lease"), the City leases approximately 35 acres of City-owned land located east of the Mill Creek and south of Mehring Way in the Queensgate neighborhood (the "Leased Property") to CBT Partners, LLC, an Ohio limited liability company ("CBT") for a 40-year term; and

WHEREAS, the City owns the following real property generally located east of the Mill Creek: (i) approximately 0.8573 acres of unimproved public right-of-way designated as Gest Street (the "Gest Street Property"); (ii) approximately 0.6112 acres of unimproved public right-of-way designated as Baymiller Street (the "Baymiller Street Property"); and (iii) improved public right-of-way designated as West Mehring Way abutting portions of the Leased Property, which properties are under the management of the Department of Transportation and Engineering ("DOT"); and

WHEREAS, the City's Law Department has certified that the City owns all the abutting property to the Gest Street Property, and the City Manager, in consultation with DOT, recommends that Council vacate the Gest Street Property, finding there is good cause for the vacation of the Gest Street Property, and that such vacation will not be detrimental to the general interest; and

WHEREAS, the City and CBT seek to amend the Lease to incorporate the Gest Street Property and the Baymiller Street Property therein, as more particularly detailed in the *First Amendment to Amended and Restated Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference; and

WHEREAS, CBT desires to construct an elevated conveyor above and across the West Mehring Way public right-of-way and has requested an aerial encroachment easement from the

City, as more particularly depicted and described in the *Grant of Easement* attached to this ordinance as Attachment B and incorporated herein by reference; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-1, the City may lease or encumber real property if it is not needed for municipal purposes for the duration of the lease term and the lease or encumbrance is not adverse to the City's retained interest in the real property; and

WHEREAS, the City Manager, in consultation with DOTE, has determined that (i) the Gest Street Property is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the Lease, (ii) the above-grade portion of the Baymiller Street Property is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the Lease, (iii) leasing the Gest Street Property and the Baymiller Street Property to CBT is not adverse to the City's retained interest in said City-owned property, (iv) granting the aerial encroachment easement to CBT is not adverse to the City's retained interest in the West Mehring Way public right-of-way, and (v) granting the aerial encroachment easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities; and

WHEREAS, the City's Real Estate Services Division has determined by appraisal that the fair market rental value of the Gest Street Property is approximately \$3,640 per year, the fair market rental value of the Baymiller Street Property is approximately \$2,595 per year, and the fair market value of the easement is approximately \$8,250, which figures CBT has agreed to pay; 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, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease or encumbrance of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the vacation of the Gest Street Property, the lease of the Gest Street Property, the lease of the Baymiller Street Property, and the aerial encroachment easement at its meeting on December 18, 2020; now, therefore,

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

Section 1. That the City Manager is hereby authorized to do all things necessary to vacate 0.8573 acres of real property designated as a portion of the Gest Street public right-of-

way. The portion of Gest Street to be vacated is more particularly described as follows, (the “Gest Street Property”):

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part Gest Street, formally known as Mill Street, as shown on Yeatman and Anderson’s Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder’s Office and being more particularly described as follows: BEGINNING at a set iron pin in the east line of Gest Street, said iron pin being South 33°49’46” West, 25.00 feet from the northwest corner of Lot 50 of Yeatman and Anderson’s Subdivision and at the intersection of south line of Mehring Way with the east line of Gest Street; Thence along said east line, South 33°49’46” West, 621.63 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder’s Office, passing a set iron pin at 355.00 feet; Thence along said low water mark, North 57°39’48” West, 60.02 feet to the west line of Gest Street; Thence along said west line, North 33°49’46” East, 623.19 feet to a set iron pin, passing a set iron pin at 263.19 feet; Thence leaving said west line, South 56°10’14” East, 60.00 feet to the POINT OF BEGINNING. CONTAINING 0.8573 ACRES. Being part of Gest Street, formerly known as Mill Street, of Yeatman and Anderson’s Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder’s Office.

Section 2. That the City Manager is hereby authorized to execute the *First Amendment to Amended and Restated Lease Agreement* with CBT Partners, LLC, an Ohio limited liability company (“CBT”), in substantially the form attached to this ordinance as Attachment A (the “First Amendment”), which First Amendment amends that certain *Amended and Restated Lease Agreement*, dated June 18, 2020, between the City and CBT (the “Lease”) by incorporating into the Lease the Gest Street Property and approximately 0.6112 acres of unimproved real property comprising a portion of the Baymiller Street public right-of-way (the “Baymiller Street Property”).

Section 3. That the City Manager is hereby authorized to execute a *Grant of Easement* in favor of CBT, in substantially the form attached to this ordinance as Attachment B and incorporated by reference herein, pursuant to which the City of Cincinnati will grant to CBT and Mehring Investors, LLC, an Ohio limited liability company, an aerial encroachment easement to construct, operate, and maintain an elevated conveyor above and across portions of the West Mehring Way public right-of-way (the “Encroachment Easement”).

Section 4. That Council finds (i) that there is good cause to vacate the Gest Street Property, that such vacation will not be detrimental to the general interest, and the Gest Street Property is not needed for any municipal purpose for the duration of the Lease; (ii) that the above grade portion of the Baymiller Street Property is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the Lease; (iii) that leasing the Gest Street Property and the Baymiller Street Property to CBT is not adverse to the City’s retained interest in said City-owned properties; (iv) that granting the Encroachment Easement to CBT and Mehring Investors, LLC is not adverse to the City’s retained interest in the West Mehring Way public right-of-way; and (v) that granting the Encroachment Easement will not have an adverse effect on the usability or accessibility of any existing public right-of-way facilities.

Section 5. That eliminating competitive bidding in connection with the City’s lease of the Gest Street Property and lease of the Baymiller Street Property is in the best interest of the City because as a practical matter, no one other than CBT, a long-term leasehold tenant of the properties that abut and surround the Gest Street Property and the Baymiller Street Property, would have any interest in leasing said City-owned properties and assuming responsibility for the maintenance and care thereof. That eliminating competitive bidding in connection with the City’s grant of the Encroachment Easement is in the best interest of the City because as a

practical matter, no one other than CBT and Mehring Investors, LLC, a long-term leasehold tenant and the owner of property on the north and south sides of the West Mehring Way public right-of-way, would have any use for the Encroachment Easement.

Section 6. That the City's Real Estate Services Division has determined by appraisal that the fair market rental value of the Gest Street Property is approximately \$3,640 per year, the fair market rental value of the Baymiller Street Property is approximately \$2,595 per year, and the fair market value of the Encroachment Easement is approximately \$8,250, which figures CBT has agreed to pay.

Section 7. That the proceeds from the *Grant of Easement* shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the *Grant of Easement*, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof related to the *Grant of Easement*, if any, into Miscellaneous Permanent Improvement Fund 757.

Section 8. That the City's Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, "Street Improvements," in which "YY" represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 9. That proceeds from the lease of the Gest Street Property and the Baymiller Street Property shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the First Amendment, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof into Urban Development Property Operations Fund 317.

Section 10. That, pursuant to Ohio Revised Code Section 723.041, any affected public utility shall be deemed to have a permanent easement in the Gest Street Property for the purpose of maintaining, operating, renewing, reconstructing, and removing its utility facilities and for purposes of access to said facilities.

Section 11. That Council authorizes the proper City officials to take all necessary and proper actions as they deem necessary or appropriate to fulfill the terms of this ordinance and the transactions described herein, including without limitation, executing any and all plats, deeds, leases, closing documents, agreements, amendments, memorandums of lease, and other instruments otherwise described in or required to fulfill the terms of the transactions described herein.

Section 12. That the City Solicitor shall cause an authenticated copy of this ordinance to be duly recorded in the land records of Hamilton County, Ohio.

Section 13. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: \_\_\_\_\_, 2021

\_\_\_\_\_  
John Cranley, Mayor

Attest: \_\_\_\_\_  
Clerk

ATTACHMENT A

**FIRST AMENDMENT TO AMENDED AND RESTATED LEASE AGREEMENT**

(Addition of portions of vacated Gest Street and unvacated Baymiller Street to Lease Area)

This First Amendment to Amended and Restated Lease Agreement (this "**Amendment**") 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 **CBT Partners, LLC**, an Ohio limited liability company, the address of which is 895 Mehring Way, Cincinnati, Ohio 45202 ("**Tenant**").

Recitals:

A. The City and Tenant are parties to an *Amended and Restated Lease Agreement* dated June 18, 2020 (the "**Lease**"), pursuant to which Tenant leases certain City-owned properties located south of Mehring Way and east of the Mill Creek in Cincinnati, as more particularly described on Exhibit A (Lease Area) (the "**Lease Area**"), which Lease Area is under the management and control of the City's Department of Community and Economic Development ("**DCED**"). Capitalized terms used herein but not defined herein shall have the meanings ascribed to them in the Lease.

B. The City owns approximately 0.8573 acres of property formerly designated as public right of way, commonly known as Gest Street, as more particularly depicted on Exhibit B (Legal Description – Gest Street) hereto (the "**Gest Street Property**"). Cincinnati City Council vacated the Gest Street Property as public right of way by Ordinance No. [\_\_\_\_\_] – 2021 on [\_\_\_\_\_] , 2021.

C. The City owns approximately 0.6112 acres of property designated as public right of way, commonly known as Baymiller Street, as more particularly depicted on Exhibit C (Legal Description– Baymiller Street) hereto (the "**Baymiller Street Property**", and together with the Gest Street Property, the "**Lease Area Expansion Property**"), which Lease Area Expansion Property is under the management of the City's Department of Transportation and Engineering ("**DOT**").

D. Tenant desires to amend the Lease to add the Lease Area Expansion Property to the Lease to expand Tenant's business operations, as determined solely by the Tenant, provided that such use is in accordance with all applicable laws and such operations do not damage the Lease Area Expansion Property in such a manner that Tenant cannot comply with the maintenance and other obligations contained in the Lease.

E. The City is agreeable to lease to Tenant the Lease Area Expansion Property finding that it is in the vital and best interests of the City and the health, safety, and welfare of its residents, and in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

F. The City Manager, in consultation with DOTE, has determined that (i) the Baymiller Street Property, above grade, is not needed for vehicular or pedestrian purposes or any other municipal purpose for the duration of the Lease, (ii) the Gest Street Property is not needed for any municipal purpose for the duration of the Lease, and (iii) leasing the Lease Area Expansion Property to Tenant is not adverse to the City's retained interest in the Lease Area Expansion Property.

G. The City's Real Estate Services Division has determined by appraisal that the fair market rental value of the Gest Street Property is approximately **\$3,640** per year, approximately **\$2,595** per year for the Baymiller Street Property, resulting in an aggregate fair market rental value of approximately **\$6,235** per year for the Lease Area Expansion Property, which value Tenant has agreed to pay.



H. The City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Lease Area Expansion Property at its meeting on December 18, 2020.

I. Cincinnati City Council authorized the City's execution of the Lease by Ordinance No. 518-2019, passed December 18, 2019. Cincinnati City Council authorized the City's execution of this Amendment by Ordinance No. [\_\_\_\_]-2021, passed [\_\_\_\_], 2021.

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

1. **Grant.** The City does hereby lease the Lease Area Expansion Property to Tenant, and Tenant does hereby lease the Lease Area Expansion Property from the City, on the terms and conditions set forth in the Lease, as hereby amended. The rights herein granted to Tenant are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Lease Area Expansion Property as of the Effective Date. The City makes no representations or warranties to Tenant concerning the physical condition of the Lease Area Expansion Property or the condition of the City's title to the Lease Area Expansion Property and, on the Effective Date (defined below), Tenant shall accept the Lease Area Expansion Property in "as is" condition.

2. **Exhibit A-1.** Exhibit A (Legal Description) to the Lease is hereby amended by deleting Exhibit A to the Lease and substituting in its place Exhibit A-1 (Legal Description of Lease Area as Amended) attached hereto. All references within the Lease to Exhibit A shall be read to refer to Exhibit A-1 on and after the Effective Date. Any reference in the Lease to the Property shall be deemed to include all of the real property described in Exhibit A-1, including but not limited to the Lease Area Expansion Property, as applicable.

3. **Rent.** Section 3 of the Lease entitled "Rent" is hereby amended and restated in its entirety to read as follows:

3. **Rent.**

(A) **Rent.** Tenant shall pay an annual rent of \$396,235 in four quarterly payments of \$99,058.75 each for the first five years of the Term (the "**Base Rent**"). Base Rent for the first year of the Term shall be prorated with the Existing Leases. The Base Rent shall increase at the end of the fifth year of the Term and every five years thereafter by a percentage equal to the percentage increase of the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor ("**CPI**") with respect to such five year period (the "**Adjusted Rent**" together with Base Rent, collectively, "**Rent**"). In no event shall there be a reduction of Rent as a result of changes to CPI. Rent shall be paid in advance on June 1, September 1, December 1, and March 1 of each year of the Term.

(B) **Late Payment.** If any payment owed by Tenant hereunder is not received by the City within five (5) days after the due date, Tenant shall pay the City a late charge equal to five percent (5%) 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 for any reason prior to the end of any given quarter for which Rent has been paid, 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, Cincinnati, Ohio 45202, Attention: Real Estate, or to such other address as the City may from time to time designate in writing.

**4. Additional Conditions from City's Coordinated Report (CR #42-2020).** Tenant acknowledges that it has received a copy of and must satisfy any and all conditions set forth in, the City Coordinated Report #42-2020, as such conditions apply to the Lease Area Expansion Property, including without limitation the following:

(A) **Metropolitan Sewer District of Greater Cincinnati ("MSDGC"):**

(i) MSDGC access shall be maintained at all times for the operations and maintenance of MSDGC sewers and structures within right-of-way ("ROW"), ROW, and outside ROW areas within or near the proposed construction area. This includes MSDGC Combined Sewer Overflow structures and their outfalls to the Ohio River (CSO 435 and CSO 436 -Four (4) located near the proposed construction area. MSDGC will need to be notified prior to the start of project construction activities to coordinate MSDGC CSO inspection and maintenance activities and any scheduled sewer maintenance activities.

(ii) Several sewers exist in the area. Permanent easements shall be reserved for sewers existing within ROW planned to be vacated, centered over the existing sewer. Easement width will need to be determined at a later date. Note, an additional 3' clearance on either side of the permanent easement will be required, along with other MSDGC restrictions, as outlined per MSDGC Rules and Regulation Section 207. No structure which can interfere with the access to the public sewer or can exert loading upon a public sewer will be allowed per MSDGC Rules and Regulation Section 206.

(iii) A MSDGC Excavation/Fill permit as well as bond will be necessary for any construction, construction traffic, earthwork, or any other construction activity over existing sewers and within the project's construction area prior to construction. Additional requirements will be established by the permit (such as verification and usage of existing or abandoned building services to sewers through dye testing, pre- and post- construction CCTVing, etc) depending on the final project plan. No additional loading may be exerted on existing MSDGC sewers as the result of structures being proposed and geotechnical/structural design calculations will be required for MSDGC review.

(iv) Project plans should be submitted to MSDGC through the utility review process during the Project's planning and design phases. Comments provided herein in response to this CR herein do not necessarily constitute a utility, design, or permit review. Contact MSDUtilityReview@cincinnati-oh.gov for existing combined or sanitary sewer information. Additionally: [a] Minimum clearance from existing ground surfaces to any proposed overhead structure is 13.5.' At locations where proposed overhead structures cross over existing MSDGC sewers and structures, sections of proposed overhead structure and conveyor system should be designed as removable to address sewer maintenance or repair activities necessitating excavation and shoring activities, and [b] drawings should show in plan and profile the relation of proposed overhead structures, columns, foundations, footers, piers, pile caps, or piles and any other permanent structure proposed with dimensions and elevations in relation to existing sewers.

(B) **Greater Cincinnati Water Works:**

(i) Tenant must protect and maintain the integrity of the public water main, fire hydrant and water service branch located on, under, and across the Baymiller Street Property.

(ii) No building, structure or improvement of any kind shall be made to the Property which will interfere with access to or operation of the existing water main located on, under, and across the Baymiller Street Property. The City of Cincinnati, Ohio shall not be responsible to any present or future tenants of the Property or present or future holders of rights

of ingress and egress over the Baymiller Street Property for reason of entering for constructing, maintaining or replacing the water mains. Further, the City of Cincinnati, Ohio shall not be responsible to any present or future tenants of the Property or future holders of rights of ingress and egress over the Baymiller Street Property for any damages which result from disruption or denial of said rights of ingress and egress or other rights of access by reason of entering for constructing, maintaining, or replacing the water main. No grade changes of any kind over any part of the full width profile of the Baymiller Street Property are permitted at any time so not to impact any present or future Greater Cincinnati Water Works operations. The full width of the Baymiller Street Property must be accessible to the Water Works at all times for future maintenance and operation purposes. Any damage to the existing 6" water main, public fire hydrant or the active water service branch, as a result of the construction within the Baymiller Street Property, would be repaired at project expense and at no cost to the Greater Cincinnati Water Works. The petitioner's contractor must contact OUPS to have the water main field located and marked. Any questions regarding the OUPS requested should be directed to Greater Cincinnati Water Works.

(C) **Duke Energy:**

(i) Duke Energy Land Services has an overhead 138 KV and 69KV transmission conductor all along the Property. Duke Energy Land Services must maintain access to such facilities at all times.

(ii) Duke Energy Gas has IP main along Mehring Way and the Gest Street Property, and Duke Energy Gas must maintain access to such facilities at all times.

(D) **Cincinnati Bell Telephone:** All existing underground telephone facilities at the Property must remain in place, in service, and able to be accessed. Any damage to such facilities or any work done to relocate such facilities as a result of the construction of the Improvements or the Lease shall be done at Tenant's sole cost and expense.

(E) **Department of Transportation and Engineering:**

(i) Access must be given to all utilities, Fire, Police and emergency equipment at all times.

(ii) No permanent removal, or construction of any permanent structure or utility may take place in the right-of-way without written permission from the City or utility company, and shall be consistent with drawings approved by DOTE.

(iii) [intentionally omitted]

(iv) [intentionally omitted]

(v) [intentionally omitted]

(vi) [intentionally omitted]

(vii) [intentionally omitted]

(viii) All barriers must be removed at the end or termination of the lease and the right of way restored to its original condition.

(ix) The City reserves the right to revoke the lease of the Baymiller Street Property for any municipal purpose.

(x) Gates shall be used if the Baymiller Street Property is to be closed to

general pedestrian traffic. Plans must be submitted to and approved by DOTE showing the location of the gates in relation to street fixtures and right-of-way line. Manufacturer's details of the gates and locking mechanism, provided with key locking from the outside and "panic" hardware on the inside, must be included with the plans.

(xi) A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street.

(xii) Tenant shall supply the City, annually, a copy of its General Commercial Liability Insurance policy showing the City named as "additional insured".

**5. Ratification.** All terms of the Lease not amended hereby or not inconsistent herewith shall remain in full force and effect, and the Lease, as amended hereby, is hereby ratified by the parties.

**6. Exhibits.** The following exhibits are attached hereto and made a part hereof:

Exhibit A – *Legal Description of Original Lease Area*

Exhibit A-1 – *Legal Description of Lease Area as Amended*

Exhibit B – *Legal Description Gest Street*

Exhibit C – *Legal Description Baymiller Street*

[ *Intentional Blank Space; Signature Pages Follow* ]

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

**CBT Partners, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

STATE OF OHIO )  
  ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of CBT Partners, LLC, an Ohio limited liability company, on behalf of and for the company. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to notarial act certified hereby.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[ City Signature Page Follows ]

**CITY OF CINCINNATI,**  
an Ohio municipal corporation

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

The foregoing instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of and for the municipal corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to notarial act certified hereby.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

Recommended By:

\_\_\_\_\_  
Markiea Carter, Director  
Department of Community and Economic Development

Approved By:

\_\_\_\_\_  
John Brazina, Director  
Department of Transportation and Engineering

Approved as to Form:

\_\_\_\_\_  
Assistant City Solicitor

Certified Date: \_\_\_\_\_

Fund/Code: \_\_\_\_\_

Amount: \_\_\_\_\_

By: \_\_\_\_\_

Karen Alder, City Finance Director

**EXHIBIT A**

to

First Amendment to Amended and Restated Lease Agreement

**LEGAL DESCRIPTION OF ORIGINAL LEASE AREA**

I. Parcel I

**Description for: 10.2092 Acre Parcel  
Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 1-7 of Culbertson Park Subdivision (west of Baymiller Street) as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northeast corner of Lot 1 Culbertson Park Subdivision and at the intersection of south line of Mehring Way and the west line of Baymiller Street;

Thence along the west line of Baymiller Street, South 11°22'16" West, 691.13 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 27.06 feet and at 42.06 feet;

Thence along said low water mark the following three (3) courses:

1. North 52°38'07" West, 132.70 feet,
2. North 53°54'20" West, 532.79 feet,
3. North 56°38'41" West, 180.73 feet to the southeast corner of lands conveyed to Cincinnati Bulk Terminals, LLC as recorded in Official Record 12085, Page 1238;

Thence along the east line of Cincinnati Bulk Terminals, LLC, North 33°37'59" East, 587.93 feet to a set MAG nail at the northeast corner of Cincinnati Bulk Terminals, passing a set iron pin at 237.93 feet

Thence along the north line of Cincinnati Bulk Terminals the following three (3) courses:

1. North 52°20'17" West, 115.29 feet to a set MAG nail,
2. North 54°33'29" West, 31.68 feet to a set MAG nail,
3. North 69°41'51" West, 65.09 feet to a set MAG nail at the south east corner of the Baltimore and Ohio Rail Road;

Thence along the east line of the Baltimore and Ohio Railroad, North 33°37'59" East, 28.88 feet to a set iron pin in the aforementioned south line of the Mehring Way;

Thence along said south line, South 56°22'01" East, 230.46 feet to a set iron pin AND South 56°10'14" East, 563.17 feet to the **POINT OF BEGINNING**.

**CONTAINING 10.2092 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Official Record 6432, Page 3205, and Official Record 9099, Page 6041. Further Identified as Auditors Parcels 138—0006-0010, 0012 thru 0030, 0201, 0214, 0236, 0240, 0241 and 0244.

II. Parcel II

**Description for: 1.3483 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 50-52 of Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northwest corner of Lot 50 of Yeatman and Anderson's Subdivision and at the intersection of south line of Mehring Way and the East line of Gest Street;

Thence along the south line of Mehring Way, South 56°10'14" East, 91.00 feet to the northeast corner of Lot 52 of Yeatman and Anderson's Subdivision;

Thence leaving said south line along the east line of said lot 52, South 33°49'46" West, 644.20 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 25.00 feet and at 380.00 feet;

Thence along said low water mark, North 57°39'48" West, 91.03 feet the aforementioned east line of Gest Street;

Thence leaving said low water mark along the east line of Gest Street, North 33°49'46" East, 646.57 feet to the **POINT OF BEGINNING**, passing a set iron pin at 266.57 and at 621.57 feet.

**CONTAINING 1.3483 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020



Being all of those lands conveyed to the City of Cincinnati in Official Record 6432, Page 3205 of the Hamilton County Recorder's Office. Further Identified Auditors Parcels 137-0002-0141 thru 0143.

III. Parcel III

**Description for: 13.3723 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 40-49 of Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 and being all of Lots 1-9 of Culbertson Park Subdivision as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northwest corner of Lot 9 of Culbertson Park Subdivision and at the intersection of south line of Mehring Way and the east line of Baymiller Street;

Thence along the south line of Mehring Way, South 56°10'14" East, 1033.94 feet to the northeast corner of Lot 49 of Yeatman & Anderson's Subdivision and at the intersection of the south line of Mehring Way and the west line of Gest Street;

Thence leaving said south line along said west line of Gest Street, South 33°49'46" West, 648.19 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 25.00 feet and at 385.00 feet;

Thence along said low water mark the following three courses:

1. North 57°39'48" West, 91.85 feet,
2. North 55°31'35" West, 647.09 feet,
3. North 52°38'07" West, 29.99 feet to the aforementioned east line of Baymiller Street;

Thence along the east line of Baymiller, North 11°22'16" East, 694.10 feet to the **POINT OF BEGINNING**, passing a set iron pin at 264.10 and at 667.05 feet.

**CONTAINING 13.3723 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 212, Page 590, Deed Book 1051, Page 183, Deed Book 3362, Page 769, Deed Book 3452, Page 585, Deed Book 3973, Page 314, Official Record 6432, Page 3205, Official Record 6696, Page 397, Official Record 6937, Page 2359, Official Record 8281, Page 1774 and Official Record 8679, Page 3417 of the Hamilton County Recorder's Office. Further Identified Auditors Parcels 137-0002-0103 thru 0140, 0152 thru 0154 and 0156.

IV. Parcel IV

**Description for: 5.9983 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, 24, 29 and 30, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, and being more particularly described as follows:

**COMMENCING** at a point in the north line of lands conveyed to the Port of Cincinnati as recorded in Official Record 13178, Page 1750 of the Hamilton County Recorder's Office and at the intersection of the south line of Mehring Way and the west line of vacated Harriet Street; Thence along south line of Mehring Way the following six (6) courses: 1) North 07°07'47" East, 17.65 feet, 2) North 57°14'13" West, 83.14 feet, 3) South 07°07'47" West, 6.51 feet, 4) North 57°08'13" West, 66.52 feet, 5) North 71°32'13" West, 1042.94 feet, 5) North 58°52'07" West, 5.34 feet; Thence leaving said south line South 15°24' 45" West, 24.37 feet to a point in the east line of Cincinnati Southern Railroad Company; Thence leaving said east line North 64°17'03" West, 55.90 feet to a set iron pin in the west line of Cincinnati Southern Railroad Company and the **POINT OF BEGINNING**;

Thence along said west line, South 15°24'45" West, 378.23 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 150.00 feet;

Thence along said low water mark the following three (3) courses:

1. North 69°24'02" West, 186.37 feet,
2. North 75°55'57" West, 443.45 feet,
3. North 82°10'53" West, 38.10 feet to the southeast corner of lands conveyed to River Container Concepts as recorded in Official Record 11848, Page 1498 of the Hamilton County Recorder's Office;

Thence leaving said south line along the east line of River Container Concepts, North 11°33'40" East, 322.95 feet AND North 18°31'40" East, 87.38 feet to the south line of the Baltimore & Ohio Railroad;

Thence along the south line of the Baltimore & Ohio Railroad, South 71°54'15" East, 679.87 feet to a set iron pin, passing a set iron pin at 102.00 feet AND South 64°17'03" East, 4.59 feet to the **POINT OF BEGINNING**.

**CONTAINING 5.9983 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 147, Page 6, Deed Book 140, Page 3 and Deed Book 1900, Page 155 of the Hamilton County Recorder's Office. Further Identified as Auditors Parcels 141-0006-0014, 0023, and 0034.

V. Parcel V

**Description for: 2.6732 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, and being more particularly described as follows:

**COMMENCING** at the intersection of the south line of Mehring Way and the south line of vacated West Fifth Street extended, thence South 33°37' 59" West, 103.57 feet to a set iron pin at the northwest corner of lands conveyed to Cincinnati Bulk Terminals, LLC as recorded in Official Record 12085, Page 1238 of the Hamilton County Recorder's Office and the **POINT OF BEGINNING**;

Thence along the west line of Cincinnati Bulk Terminals, LLC, South 33°37'59" West, 519.04 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 250.00 feet;

Thence along said low water mark, North 56°37'26" West, 117.68 feet to the south east corner of lands conveyed to CBT Acquisition, LLC as recorded in Official Record 9113, Page 5228;

Thence along the east line of CBT Acquisition, LLC, North 06°48'01" East, 511.63 feet to a set cross notch at the north east corner of CBT Acquisition, LLC and in the south line of the Baltimore & Ohio Railroad, passing a set iron pin at 306.63 feet;

Thence along the south line of the Baltimore & Ohio Railroad along a curve non-tangent to previous course deflecting to the left having a radius of 3887.00 feet, an arc length of 354.40 feet, central angle of 05°13'26", the chord of said arc bears South 66°36'52" East, 354.28 feet to the **POINT OF BEGINNING**.

**CONTAINING 2.6732 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, and Deed Book 1051, Page 183 of the Hamilton County Recorder's Office. Further Identified as Auditors Parcels 138-0004-0270, 0278 and 0281.

VI. Parcel VI

**Description for: 9.2421 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23 and 24, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part of Lots 21-29 of Israel Ludlow Subdivision as recorded in Deed Book R2, Page 9 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** a set cross notch at the intersection of the south line of Mehring Way with the west line of vacate Harriet Street and in the north line of lands conveyed to the Port of Cincinnati as recorded in Official Record 13178, Page 1750;

Thence along said north line the following three (3) courses:

1. North 59°17'19" West, 81.79 feet to a set iron pin,
2. North 66°34'49" West, 65.23 feet to a set iron pin,
3. North 71°32'13" West, 127.91 feet to a set iron pin in at the northwest corner of Port of Cincinnati

Thence along the west line of Port of Cincinnati, South 07°07'47" West, 501.41 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 200.00 feet;

Thence along said low water mark the following four (4) courses:

1. North 61°58'39" West, 356.46 feet,
2. North 64°57'10" West, 218.51 feet,
3. North 63°15'23" West, 190.93 feet,
4. North 69°24'02" West, 211.77 feet;

Thence leaving said low water mark, North 15°24'47" East, 372.51 feet, to a set iron pine in the south line the Baltimore & Ohio Railroad, passing a set iron pin at 242.51 feet;

Thence along the south and east line of the Baltimore & Ohio Railroad, South 71°32'13" East, 242.83 feet to a set iron pin AND North 07°07'47" East, 25.51 feet to a set iron pin in the aforementioned south line of Mehring Way;

Thence along said south line, South 71°32'13" East, 129.52 feet to a set iron pin in the west line of the Baltimore & Ohio Railroad;

Thence along the west, south and east lines of Baltimore & Ohio Railroad the following three (3) courses:

1. South 07°07'47" West, 25.51 feet to a set iron pin,
2. South 71°32'13" East, 259.04 feet to a set iron pin,
3. North 07°07'47" East, 25.51 feet to a set iron pin in the aforementioned south line of Mehring Way;

Thence along said south line the following five (5) courses:

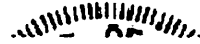
1. South 71°32'13" East, 389.69 feet to a set iron pin,
2. South 57°08'13" East, 66.52 feet to set iron pin,
3. North 07°07'47" East, 6.51 feet to a set iron pin,
4. South 57°14'13" East, 83.14 feet to a set cross notch,
5. South 07°07'47" West, 17.65 feet to the **POINT OF BEGINNING**

**CONTAINING 9.2421 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Deed Book 2219, Page 587, Registered Land Document 60695 (RL Cert 14910) and Official Record 9688, Page 3066 of the Hamilton County Recorder's Office. Further Identified as part of Auditors Parcels 140-0003-00120, 0123, 0124, 0131-0133, 0154, 0162 and 0163.



VII. Parcel VII

**Description for: 3.0133 Acre Parcel**

**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, and being more particularly described as follows:

**COMMENCING** at point in the north line of lands conveyed to Port of Cincinnati as recorded in Official Record 13178, Page 1750 of the Hamilton County Recorder's Office and at the intersection of the south line of Mehring Way and the east line of vacated Harriet Street; Thence along south line of Mehring Way, South 57°04'25" East, 88.18 feet to a set cross notch and the **POINT OF BEGINNING**;

Thence along said south line, South 57°04'25" East, 50.49 feet to a set cross notch AND South 60°42'49" East, 158.21 feet to a set cross notch in the west line of the Baltimore & Ohio Railroad;

Thence along the west and south line of Baltimore & Ohio Railroad the following three (3) courses:

1. South 06°48'01" West, 15.19 feet to a set cross notch,
2. South 58°48'17" East, 138.57 feet to a set cross notch,
3. along a curve non-tangent to previous course deflecting to the left having a radius of 3887.00 feet, an arc length of 276.97 feet, central angle of 04°04'58" the chord of said arc bears South 60°57'16" East, 276.92 feet to a set cross notch at the northwest corner of lands conveyed to CBT Acquisitions, LLC as recorded in Official Record 9113, Page 5228;

Thence South 06°48'01" West, 507.42 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 198.00 feet;

Thence along said low water mark, North 60°35'18" West, 277.65 feet to the southeast corner of lands conveyed to GMS Acquisition Corp., LLC as recorded in Official Record 9687, Page 447;

Thence along the east line of GMS Acquisition Corp., LLC, North 06°48'01" East, 499.53 feet to a set cross notch at the north east corner of said GMS Acquisition Corp., LLC, passing a set iron pin at 342.53 feet;

Thence along the north line of said GMS Acquisition Corp., LLC along a curve non-tangent to previous course deflecting to the right having a radius of 1161.28 feet, an arc length of 83.93 feet, central angle of 04°08'28", the chord of said arc bears North 57°53'19" West, 83.91 feet to a set cross notch AND North 55°49'06" West, 272.37 feet to the **POINT OF BEGINNING**.

**CONTAINING 3.0133 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Deed Book 2441, Page 572, Deed Book 2219, Page 627 and Deed Book 2441, Page 241 of the Hamilton County Recorder's Office. Further Identified as Auditors Parcels 140-0001-0003 and 0186 thru 0188 and Parcels 138-0004-0277 and 0282.

**EXHIBIT A-1**

to

First Amendment to Amended and Restated Lease Agreement

**LEGAL DESCRIPTION OF LEASE AREA AS AMENDED**

I. Parcel I

**Description for: 10.2092 Acre Parcel**

**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 1-7 of Culbertson Park Subdivision (west of Baymiller Street) as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northeast corner of Lot 1 Culbertson Park Subdivision and at the intersection of south line of Mehring Way and the west line of Baymiller Street;

Thence along the west line of Baymiller Street, South 11°22'16" West, 691.13 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 27.06 feet and at 42.06 feet;

Thence along said low water mark the following three (3) courses:

1. North 52°38'07" West, 132.70 feet,
2. North 53°54'20" West, 532.79 feet,
3. North 56°38'41" West, 180.73 feet to the southeast corner of lands conveyed to Cincinnati Bulk Terminals, LLC as recorded in Official Record 12085, Page 1238;

Thence along the east line of Cincinnati Bulk Terminals, LLC, North 33°37'59" East, 587.93 feet to a set MAG nail at the northeast corner of Cincinnati Bulk Terminals, passing a set iron pin at 237.93 feet

Thence along the north line of Cincinnati Bulk Terminals the following three (3) courses:

1. North 52°20'17" West, 115.29 feet to a set MAG nail,
2. North 54°33'29" West, 31.68 feet to a set MAG nail,
3. North 69°41'51" West, 65.09 feet to a set MAG nail at the south east corner of the Baltimore and Ohio Rail Road;

Thence along the east line of the Baltimore and Ohio Railroad, North 33°37'59" East, 28.88 feet to a set iron pin in the aforementioned south line of the Mehring Way;



Thence along said south line, South 56°22'01" East, 230.46 feet to a set iron pin AND South 56°10'14" East, 563.17 feet to the **POINT OF BEGINNING**.

**CONTAINING 10.2092 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Official Record 6432, Page 3205, and Official Record 9099, Page 6041. Further Identified as Auditors Parcels 138—0006-0010, 0012 thru 0030, 0201, 0214, 0236, 0240, 0241 and 0244.

II. Parcel II

**Description for: 1.3483 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 50-52 of Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northwest corner of Lot 50 of Yeatman and Anderson's Subdivision and at the intersection of south line of Mehring Way and the East line of Gest Street;

Thence along the south line of Mehring Way, South 56°10'14" East, 91.00 feet to the northeast corner of Lot 52 of Yeatman and Anderson's Subdivision;

Thence leaving said south line along the east line of said lot 52, South 33°49'46" West, 644.20 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 25.00 feet and at 380.00 feet;

Thence along said low water mark, North 57°39'48" West, 91.03 feet the aforementioned east line of Gest Street;

Thence leaving said low water mark along the east line of Gest Street, North 33°49'46" East, 646.57 feet to the **POINT OF BEGINNING**, passing a set iron pin at 266.57 and at 621.57 feet.

**CONTAINING 1.3483 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020

Being all of those lands conveyed to the City of Cincinnati in Official Record 6432, Page 3205 of the Hamilton County Recorder's Office. Further Identified Auditors Parcels 137-0002-0141 thru 0143.

III. Parcel III

**Description for: 13.3723 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 40-49 of Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 and being all of Lots 1-9 of Culbertson Park Subdivision as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northwest corner of Lot 9 of Culbertson Park Subdivision and at the intersection of south line of Mehring Way and the east line of Baymiller Street;

Thence along the south line of Mehring Way, South 56°10'14" East, 1033.94 feet to the northeast corner of Lot 49 of Yeatman & Anderson's Subdivision and at the intersection of the south line of Mehring Way and the west line of Gest Street;

Thence leaving said south line along said west line of Gest Street, South 33°49'46" West, 648.19 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 25.00 feet and at 385.00 feet;

Thence along said low water mark the following three courses:

1. North 57°39'48" West, 91.85 feet,
2. North 55°31'35" West, 647.09 feet,
3. North 52°38'07" West, 29.99 feet to the aforementioned east line of Baymiller Street;

Thence along the east line of Baymiller, North 11°22'16" East, 694.10 feet to the POINT OF BEGINNING, passing a set iron pin at 264.10 and at 667.05 feet.

**CONTAINING 13.3723 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 212, Page 590, Deed Book 1051, Page 183, Deed Book 3362, Page 769, Deed Book 3452, Page 585, Deed Book 3973, Page 314, Official Record 6432, Page 3205, Official Record 6696, Page 397, Official Record 6937, Page 2359, Official Record 8281, Page 1774 and Official Record 8679, Page 3417 of the Hamilton County Recorder's Office. Further Identified Auditors Parcels 137-0002-0103 thru 0140, 0152 thru 0154 and 0156.

IV. Parcel IV

**Description for: 5.9983 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, 24, 29 and 30, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, and being more particularly described as follows:

**COMMENCING** at a point in the north line of lands conveyed to the Port of Cincinnati as recorded in Official Record 13178, Page 1750 of the Hamilton County Recorder's Office and at the intersection of the south line of Mehring Way and the west line of vacated Harriet Street; Thence along south line of Mehring Way the following six (6) courses: 1) North 07°07'47" East, 17.65 feet, 2) North 57°14'13" West, 83.14 feet, 3) South 07°07'47" West, 6.51 feet, 4) North 57°08'13" West, 66.52 feet, 5) North 71°32'13" West, 1042.94 feet, 5) North 58°52'07" West, 5.34 feet; Thence leaving said south line South 15°24' 45" West, 24.37 feet to a point in the east line of Cincinnati Southern Railroad Company; Thence leaving said east line North 64°17'03" West, 55.90 feet to a set iron pin in the west line of Cincinnati Southern Railroad Company and the **POINT OF BEGINNING**;

Thence along said west line, South 15°24'45" West, 378.23 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 150.00 feet;

Thence along said low water mark the following three (3) courses:

1. North 69°24'02" West, 186.37 feet,
2. North 75°55'57" West, 443.45 feet,
3. North 82°10'53" West, 38.10 feet to the southeast corner of lands conveyed to River Container Concepts as recorded in Official Record 11848, Page 1498 of the Hamilton County Recorder's Office;

Thence leaving said south line along the east line of River Container Concepts, North 11°33'40" East, 322.95 feet AND North 18°31'40" East, 87.38 feet to the south line of the Baltimore & Ohio Railroad;

Thence along the south line of the Baltimore & Ohio Railroad, South 71°54'15" East, 679.87 feet to a set iron pin, passing a set iron pin at 102.00 feet AND South 64°17'03" East, 4.59 feet to the **POINT OF BEGINNING**.

**CONTAINING 5.9983 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 147, Page 6, Deed Book 140, Page 3 and Deed Book 1900, Page 155 of the Hamilton County Recorder's Office. Further Identified as Auditors Parcels 141-0006-0014, 0023, and 0034.

V. Parcel V

**Description for: 2.6732 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, and being more particularly described as follows:

**COMMENCING** at the intersection of the south line of Mehring Way and the south line of vacated West Fifth Street extended, thence South 33°37' 59" West, 103.57 feet to a set iron pin at the northwest corner of lands conveyed to Cincinnati Bulk Terminals, LLC as recorded in Official Record 12085, Page 1238 of the Hamilton County Recorder's Office and the **POINT OF BEGINNING**;

Thence along the west line of Cincinnati Bulk Terminals, LLC, South 33°37'59" West, 519.04 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 250.00 feet;

Thence along said low water mark, North 56°37'26" West, 117.68 feet to the south east corner of lands conveyed to CBT Acquisition, LLC as recorded in Official Record 9113, Page 5228;

Thence along the east line of CBT Acquisition, LLC, North 06°48'01" East, 511.63 feet to a set cross notch at the north east corner of CBT Acquisition, LLC and in the south line of the Baltimore & Ohio Railroad, passing a set iron pin at 306.63 feet;

Thence along the south line of the Baltimore & Ohio Railroad along a curve non-tangent to previous course deflecting to the left having a radius of 3887.00 feet, an arc length of 354.40 feet, central angle of 05°13'26", the chord of said arc bears South 66°36'52" East, 354.28 feet to the **POINT OF BEGINNING**.

**CONTAINING 2.6732 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, and Deed Book 1051, Page 183 of the Hamilton County Recorder's Office. Further Identified as Auditors Parcels 138-0004-0270, 0278 and 0281.

VI. Parcel VI

**Description for: 9.2421 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23 and 24, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part of Lots 21-29 of Israel Ludlow Subdivision as recorded in Deed Book R2, Page 9 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** a set cross notch at the intersection of the south line of Mehring Way with the west line of vacate Harriet Street and in the north line of lands conveyed to the Port of Cincinnati as recorded in Official Record 13178, Page 1750;

Thence along said north line the following three (3) courses:

1. North 59°17'19" West, 81.79 feet to a set iron pin,
2. North 66°34'49" West, 65.23 feet to a set iron pin,
3. North 71°32'13" West, 127.91 feet to a set iron pin in at the northwest corner of Port of Cincinnati

Thence along the west line of Port of Cincinnati, South 07°07'47" West, 501.41 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 200.00 feet;

Thence along said low water mark the following four (4) courses:

1. North 61°58'39" West, 356.46 feet,
2. North 64°57'10" West, 218.51 feet,
3. North 63°15'23" West, 190.93 feet,
4. North 69°24'02" West, 211.77 feet;

Thence leaving said low water mark, North 15°24'47" East, 372.51 feet, to a set iron pine in the south line the Baltimore & Ohio Railroad, passing a set iron pin at 242.51 feet;

Thence along the south and east line of the Baltimore & Ohio Railroad, South 71°32'13" East, 242.83 feet to a set iron pin AND North 07°07'47" East, 25.51 feet to a set iron pin in the aforementioned south line of Mehring Way;

Thence along said south line, South 71°32'13" East, 129.52 feet to a set iron pin in the west line of the Baltimore & Ohio Railroad;

Thence along the west, south and east lines of Baltimore & Ohio Railroad the following three (3) courses:

1. South 07°07'47" West, 25.51 feet to a set iron pin,
2. South 71°32'13" East, 259.04 feet to a set iron pin,
3. North 07°07'47" East, 25.51 feet to a set iron pin in the aforementioned south line of Mehring Way;

Thence along said south line the following five (5) courses:

1. South 71°32'13" East, 389.69 feet to a set iron pin,
2. South 57°08'13" East, 66.52 feet to set iron pin,
3. North 07°07'47" East, 6.51 feet to a set iron pin,
4. South 57°14'13" East, 83.14 feet to a set cross notch,
5. South 07°07'47" West, 17.65 feet to the **POINT OF BEGINNING**

**CONTAINING 9.2421 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Deed Book 2219, Page 587, Registered Land Document 60695 (RL Cert 14910) and Official Record 9688, Page 3066 of the Hamilton County Recorder's Office. Further Identified as part of Auditors Parcels 140-0003-00120, 0123, 0124, 0131-0133, 0154, 0162 and 0163.



VII. Parcel VII

**Description for: 3.0133 Acre Parcel**

**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, and being more particularly described as follows:

**COMMENCING** at point in the north line of lands conveyed to Port of Cincinnati as recorded in Official Record 13178, Page 1750 of the Hamilton County Recorder's Office and at the intersection of the south line of Mehring Way and the east line of vacated Harriet Street; Thence along south line of Mehring Way, South 57°04'25" East, 88.18 feet to a set cross notch and the **POINT OF BEGINNING**;

Thence along said south line, South 57°04'25" East, 50.49 feet to a set cross notch AND South 60°42'49" East, 158.21 feet to a set cross notch in the west line of the Baltimore & Ohio Railroad;

Thence along the west and south line of Baltimore & Ohio Railroad the following three (3) courses:

1. South 06°48'01" West, 15.19 feet to a set cross notch,
2. South 58°48'17" East, 138.57 feet to a set cross notch,
3. along a curve non-tangent to previous course deflecting to the left having a radius of 3887.00 feet, an arc length of 276.97 feet, central angle of 04°04'58" the chord of said arc bears South 60°57'16" East, 276.92 feet to a set cross notch at the northwest corner of lands conveyed to CBT Acquisitions, LLC as recorded in Official Record 9113, Page 5228;

Thence South 06°48'01" West, 507.42 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 198.00 feet;

Thence along said low water mark, North 60°35'18" West, 277.65 feet to the southeast corner of lands conveyed to GMS Acquisition Corp., LLC as recorded in Official Record 9687, Page 447;



Thence along the east line of GMS Acquisition Corp., LLC, North 06°48'01" East, 499.53 feet to a set cross notch at the north east corner of said GMS Acquisition Corp., LLC, passing a set iron pin at 342.53 feet;

Thence along the north line of said GMS Acquisition Corp., LLC along a curve non-tangent to previous course deflecting to the right having a radius of 1161.28 feet, an arc length of 83.93 feet, central angle of 04°08'28", the chord of said arc bears North 57°53'19" West, 83.91 feet to a set cross notch AND North 55°49'06" West, 272.37 feet to the **POINT OF BEGINNING**.

**CONTAINING 3.0133 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Deed Book 2441, Page 572, Deed Book 2219, Page 627 and Deed Book 2441, Page 241 of the Hamilton County Recorder's Office. Further Identified as Auditors Parcels 140-0001-0003 and 0186 thru 0188 and Parcels 138-0004-0277 and 0282.

#### VIII. Parcel VIII

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part Gest Street, formally known as Mill Street, as shown on Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at a set iron pin in the east line of Gest Street, said iron pin being South 33°49'46" West, 25.00 feet from the northwest corner of Lot 50 of Yeatman and Anderson's Subdivision and at the intersection of south line of Mehring Way with the east line of Gest Street;

Thence along said east line, South 33°49'46" West, 621.63 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 826 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 355.00 feet;

Thence along said low water mark, North 57°39'48" West, 60.02 feet to the west line of Gest Street;

Thence along said west line, North 33°49'46" East, 623.19 feet to a set iron pin, passing a set iron pin at 263.19 feet;

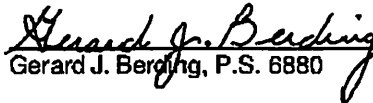
Thence leaving said west line, South 56°10'14" East, 60.00 feet to the **POINT OF BEGINNING**.

**CONTAINING 0.8573 ACRES.** Together with and subject to all easements of record.

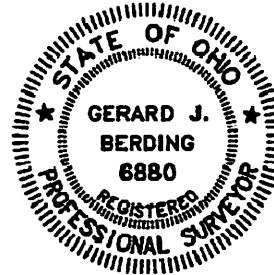
Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020

Being part of Gest Street, formerly known as Mill Street, of Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder's Office.

  
Gerard J. Berding, P.S. 6880

April 1, 2020  
Date



IX. Parcel IX

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part of Baymiller Street, formerly known as Wood Street, of Culbertson Park Subdivision as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at a set iron pin in the west line of Baymiller Street, said iron pin being South 11°22'16" West, 27.06 feet from the northeast corner of Lot 1 Culbertson Park Subdivision and the intersection of the south line of Mehring Way and the west line of Baymiller Street;

Thence leaving said west line, South 56°11'02" East, 43.28 feet to set iron pin in the east line of Baymiller Street;

Thence along the east line of Baymiller Street, South 11°22'16" West, 667.05 to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 402.95 feet;

Thence along said low water mark, North 52°38'07" West, 44.50 feet to the aforementioned west line of Baymiller Street;

Thence along said west line, North 11°22'16" East, 664.07 feet to the **POINT OF BEGINNING**, passing a set iron pin at 269.07 feet

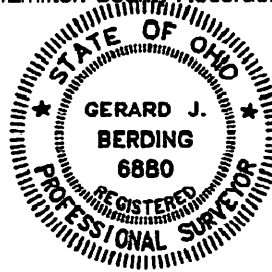
**CONTAINING 0.6112 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020.

Being part of Baymiller Street, formerly known as Wood Street, of Culbertson Park Subdivision as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office.

*Gerard J. Berding*      April 1, 2020  
Gerard J. Berding, P.S. 6880      Date



**Exhibit B**  
to  
First Amendment to Amended and Restated Lease

*LEGAL DESCRIPTION GEST STREET*

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part Gest Street, formally known as Mill Street, as shown on Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at a set iron pin in the east line of Gest Street, said iron pin being South 33°49'46" West, 25.00 feet from the northwest corner of Lot 50 of Yeatman and Anderson's Subdivision and at the intersection of south line of Mehring Way with the east line of Gest Street;

Thence along said east line, South 33°49'46" West, 621.63 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 355.00 feet;

Thence along said low water mark, North 57°39'48" West, 60.02 feet to the west line of Gest Street;

Thence along said west line, North 33°49'46" East, 623.19 feet to a set iron pin, passing a set iron pin at 263.19 feet;

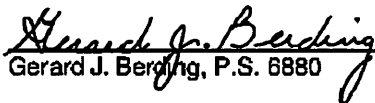
Thence leaving said west line, South 56°10'14" East, 60.00 feet to the **POINT OF BEGINNING**.

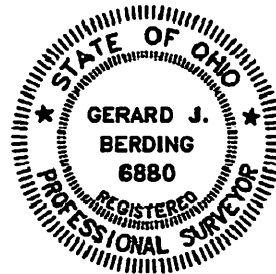
**CONTAINING 0.8573 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020

Being part of Gest Street, formerly known as Mill Street, of Yeatman and Anderson's Subdivision as recorded in Deed Book 39, Page 554 of the Hamilton County Recorder's Office.

 April 1, 2020  
Gerard J. Berding, P.S. 6880 Date



**Exhibit C**  
to  
First Amendment to Amended and Restated Lease

**LEGAL DESCRIPTION BAYMILLER STREET**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being part of Baymiller Street, formerly known as Wood Street, of Culbertson Park Subdivision as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at a set iron pin in the west line of Baymiller Street, said iron pin being South 11°22'16" West, 27.06 feet from the northeast corner of Lot 1 Culbertson Park Subdivision and the intersection of the south line of Mehring Way and the west line of Baymiller Street;

Thence leaving said west line, South 56°11'02" East, 43.28 feet to set iron pin in the east line of Baymiller Street;

Thence along the east line of Baymiller Street, South 11°22'16" West, 667.05 to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 402.95 feet;

Thence along said low water mark, North 52°38'07" West, 44.50 feet to the aforementioned west line of Baymiller Street;

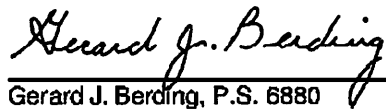
Thence along said west line, North 11°22'16" East, 664.07 feet to the **POINT OF BEGINNING**, passing a set iron pin at 269.07 feet

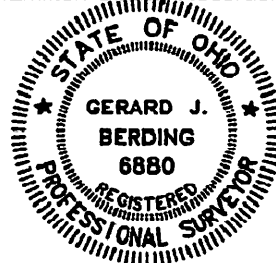
**CONTAINING 0.6112 ACRES.** Together with and subject to all easements of record.

Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on April 1, 2020.

Being part of Baymiller Street, formerly known as Wood Street, of Culbertson Park Subdivision as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office.

  
Gerard J. Berding, P.S. 6880      April 1, 2020  
Date



**ATTACHMENT B**

-----  
[SPACE ABOVE FOR RECORDER'S USE]

## GRANT OF ENCROACHMENT EASEMENT

(aerial encroachment over and across Mehring Way)

This Grant of Encroachment Easement is granted as of the Effective Date (as defined on the signature page hereof) by the **CITY OF CINCINNATI**, an Ohio municipal corporation, 801 Plum Street, Cincinnati, OH 45202 (the "City"), in favor of (i) **CBT Partners, LLC**, an Ohio limited liability company ("CBT"), and (ii) **Mehring Investors, LLC**, an Ohio limited liability company ("MI"), the address for each of which is 895 Mehring Way, Cincinnati, Ohio 45203 (CBT and MI are each individually and collectively, "Grantee").

### Recitals:

A. By virtue of a certain *Amended and Restated Lease Agreement* dated June 18, 2020 (as amended, the "**Lease**"), CBT leases from the City certain real property generally located south of Mehring Way and east of Mill Creek, as more particularly described on Exhibit A (Legal Description – Benefitted Property) and depicted on Exhibit B (Survey Plat) hereto (the "**CBT Property**"); and MI owns certain real property generally located north of Mehring Way, as more particularly described on Exhibit A as the "**MI Property**" (collectively, the CBT Property and MI Property is the "**Benefitted Property**").

B. The City owns the adjoining Mehring Way public right-of-way, which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

C. Grantee has requested the City to grant an aerial encroachment easement to construct an improvement that will encroach over and across a portion of the Mehring Way right-of-way, namely, an aerial conveyer (the "**Improvement**").

D. The City Manager, in consultation with DOTE, has determined that (i) the encroachment easement will not have an adverse effect on the City's retained interest in the Mehring Way public right-of-way, and (ii) granting the easement will not have an adverse effect on the usability or accessibility of any existing West Mehring Way public right-of-way facilities.

E. The City's Real Estate Services Division has determined that the fair market value of the encroachment easement, as determined by appraisal, is \$8,250, which has been deposited with the Real Estate Services Division.

F. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the encroachment easement at its meeting on December 18, 2020.

G. Cincinnati City Council approved the encroachment easement by Ordinance No. \_\_\_\_-2021, passed on \_\_\_\_\_, 2021.

NOW THEREFORE, the parties do hereby agree as follows:

1. Grant of Encroachment Easement. The City does hereby grant to Grantee, on the terms and conditions set forth herein, as an appurtenance to and for the benefit of the Benefitted Property, a non-exclusive aerial encroachment easement to construct, maintain, operate, repair, reconstruct, replace, and remove the Improvement over and across the Mehring Way public right-of-way, as more particularly depicted on Exhibit C (Easement Plat) hereto (the "**Aerial Conveyor Easement**" or "**Aerial Conveyor Easement Area**", as applicable). Grantee shall not make any modifications to the Improvement without the City's prior written consent. Notwithstanding anything herein to the contrary, the Aerial Conveyor Easement shall automatically terminate upon (i) the complete demolition of the Improvement's support structure, except if such demolition is merely a temporary step in rebuilding the support structure as a result of a casualty or otherwise; (ii) any permanent alteration by Grantee that entails the elimination of the Improvement within the Aerial Conveyor Easement Area such that the Aerial Conveyor Easement would be rendered unnecessary; (iii) upon written notice from the City, if the City determines that it needs the Aerial Conveyor Easement Area, or any portion thereof for a municipal purpose, including, without limitation to the implementation of Americans with Disabilities Act ("**ADA**") regulations compliance or accessibility standards; (iv) or upon written notice from the City if the City determines that the Improvement is creating a public safety issue, such as noncompliance with ADA accessibility regulations, contributing to adverse impacts on the usability or accessibility of any public right-of-way facilities.

2. Construction, Maintenance, and Repairs.

(A) The Improvement shall be constructed and maintained in accordance with the plans and specifications approved by DOTE, and in accordance with applicable code standards. Once installed, Grantee shall not make any enlargements or other modifications to the Improvement without DOTE's prior written consent.

(B) The parties hereby acknowledge that a portion of the Improvements within the Aerial Conveyor Easement Area crosses the centerline of Mehring Way. As a material inducement for the City to grant to Grantee the Aerial Encroachment Easement, Grantee shall provide the City with an attorney's certificate of title certifying the names of all abutters to the Aerial Conveyor Easement Area, and the consent of those abutters in a form acceptable to the City. Notwithstanding the foregoing, Grantee shall defend (with counsel acceptable to the City, in the City's sole and absolute discretion), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including, without limitation, attorneys' fees), liability and damages suffered or incurred by, or asserted against, the City arising from this *Grant of Encroachment Easement*, including, without limitation to, the construction, maintenance, repair, use, or other activities associated with the Improvement.

(C) Following installation, at no cost to the City, Grantee shall maintain the Improvement in a continuous state of good and safe condition and repair. Grantee acknowledges that there may be existing easements, utility lines, and related facilities in the vicinity of the Aerial Encroachment Easement Area ("**Third-Party Utility Lines**"). In connection with Grantee's construction, maintenance, repair, and use of the Improvement, Grantee shall not interfere with the access of utility companies to maintain and repair the Third-Party Utility Lines and shall, at Grantee's expense, promptly repair any and all damage to Third-Party Utility Lines caused by Grantee, their agents, employees, contractors, subcontractors, tenants, licensees, or invitees. Any relocation of Third-Party Utility Lines necessitated by the construction, maintenance, or repair of the Improvement under this instrument shall be handled entirely at Grantee's expense. All activities undertaken by Grantee under this instrument shall be in compliance with all applicable codes, laws, and other governmental standards, policies, guidelines and requirements



3. Insurance; Indemnification. At all times during which Grantee is undertaking construction activities within the Aerial Conveyor Easement Area, and in addition to whatever other insurance and bond requirements as the City may from time to time require, Grantee shall maintain or cause to be maintained a policy of Commercial General Liability insurance, with an insurance company reasonably acceptable to the City and naming the City as an additional insured, in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, or in such greater amount as the City may from time to time require. Grantee shall furnish to the City a certificate of insurance evidencing such insurance upon the City's request and, in any event, prior to undertaking any construction activities within the Aerial Conveyor Easement Area. Grantee hereby waives all claims and rights of recovery against the City, and on behalf of Grantee's insurers, rights of subrogation, in connection with any damage to the Improvement, no matter how caused. Grantee shall defend (with counsel reasonably acceptable to the City), indemnify, and hold the City harmless from and against any and all claims, actions, losses, costs (including without limitation reasonable attorneys fees), liability and damages suffered or incurred by, or asserted against, the City in connection with the construction, maintenance, repair or other matters associated with the Improvement.

4. Covenants Running with the Land. The provisions hereof shall run with the land and shall be binding upon and inure to the benefit of the City and Grantee and Grantee's successors-in-interest with respect to the Benefitted Property.

5. Coordinated Report Conditions (CR #42-2020). The following additional conditions shall apply:

(A) Metropolitan Sewer District of Greater Cincinnati ("MSDGC"):

(i) MSDGC access shall be maintained at all times for the operations and maintenance of MSDGC sewers and structures within right-of-way within or near the proposed Improvement. MSDGC will need to be notified prior to the start of any construction activities to coordinate MSDGC CSO inspection and maintenance activities and any scheduled sewer maintenance activities.

(ii) A MSDGC Excavation/Fill permit as well as bond will be necessary for any construction, construction traffic, earthwork, or any other construction activity over existing sewers and within the project's construction area prior to construction. Additional requirements will be established by the permit (such as verification and usage of existing or abandoned building services to sewers through dye testing, pre- and post- construction CCTVing, etc) depending on the final project plan. No additional loading may be exerted on existing MSDGC sewers as the result of structures being proposed and geotechnical/structural design calculations will be required for MSDGC review.

(iii) Project plans should be submitted to MSDGC through the utility review process during the Project's planning and design phases. Comments provided herein in response to this CR herein do not necessarily constitute a utility, design, or permit review. Contact MSDUtilityReview@cincinnati-oh.gov for existing combined or sanitary sewer information. Additionally: [a] Minimum clearance from existing ground surfaces to any proposed overhead structure is 13.5.' At locations where proposed overhead structures cross over existing MSDGC sewers and structures, sections of proposed overhead structure and conveyor system should be designed as removable to address sewer maintenance or repair activities necessitating excavation and shoring activities, and [b] drawings should show in plan and profile the relation of proposed overhead structures, columns, foundations, footers, piers, pile caps, or piles and any other permanent structure proposed with dimensions and elevations in relation to existing sewers.

(B) Greater Cincinnati Water Works: [intentionally omitted]

(C) Duke Energy:

(i) Duke Energy Land Services has an overhead 138 KV and 69KV transmission conductor all along the CBT Property. Duke Energy Land Services must maintain access to such facilities at all times.

(ii) Duke Energy Gas has IP main along Mehring Way, and Duke Energy Gas must maintain access to such facilities at all times.

(D) Cincinnati Bell Telephone: All existing underground telephone facilities at the CBT Property and Mehring Way must remain in place, in service, and able to be accessed. Any damage to such facilities or any work done to relocate such facilities as a result of the construction of the Improvements shall be done at Grantee's sole cost and expense.

(E) Department of Public Services: Grantee shall install signage delineating the height of the Improvement above the roadway. Such signage should be placed clearly for viewing during inclement weather using reflective paint and should be displayed on both sides of the Improvement itself and posted on signage at a reasonable distance along the roadside. Illumination of the signage is not required but preferred so drivers utilizing the roadway see the obstacle.

(F) Department of Transportation and Engineering:

(i) No permanent removal, or construction of any permanent structure or utility may take place in the right-of-way without written permission from the City or utility company, and shall be consistent with drawings approved by DOTE.

(ii) The Improvement shall be designed in accordance with the AASHTO Manual of Bridge Design, current addition. Detailed drawings and design calculations, signed and sealed by a professional engineer in the State of Ohio, need to be submitted and approved by City Structures.

(iii) Grantee is responsible for maintenance of the pavement, curb, and sidewalk.

(iv) DOTE's preferred minimum clearance under the Improvement and over the roadway shall be 18 feet.

(v) All supports related to the Improvement shall be constructed outside the right-of-way.

(vi) Grantee shall perform an annual structural inspection of the Improvement in accordance with National Bridge Inspection Standards and the Ohio Department of Transportation Manual of Bridge Inspection. A copy of such report shall be filed with the City Department of Transportation within 30 days of the date of inspection.

(vii) [intentionally omitted].

(viii) A DOTE street opening permit, obtained by a DOTE licensed street contractor, is required for all private improvements in the public right-of-way. All improvements in the public right-of-way must be built to City standards, policies and guidelines. Application for permits may be made at Room 425, City Hall, 801 Plum Street.

(ix) Grantee shall supply the City, annually, a copy of its General Commercial Liability Insurance policy showing the City named as "additional insured".

6. Exhibits. The following exhibits are attached hereto and made a part hereof:  
 Exhibit A – *Legal Description - Benefitted Property*  
 Exhibit B – *Survey Plat*  
 Exhibit C – *Easement Plat*

Executed by the parties on the respective date of acknowledgement listed below, effective as the later of such dates (the "Effective Date").

**CITY OF CINCINNATI**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF OHIO                    )  
   ) ss:  
 COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, the \_\_\_\_\_ of the City of Cincinnati, an Ohio municipal corporation, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

\_\_\_\_\_  
 Notary Public  
 My commission expires: \_\_\_\_\_

Approved by:

\_\_\_\_\_  
 John S. Brazina, Director  
 Department of Transportation and Engineering

Approved as to Form by:

\_\_\_\_\_  
 Assistant City Solicitor

[ CBT Signature Page Follows ]

ACCEPTED AND AGREED TO BY:

**CBT Partners, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, the \_\_\_\_\_ of **CBT Partners, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

[ *MI Signature Page Follows* ]

**Mehring Investors, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 2021

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, the \_\_\_\_\_ of **Mehring Investors, LLC**, an Ohio limited liability company, on behalf of the company. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

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

**EXHIBIT A**

to Grant of Encroachment Easement

**LEGAL DESCRIPTION - BENEFITTED PROPERTY**

**CBT Property**

**Description for: 10.2092 Acre Parcel**  
**Location: City of Cincinnati, Ohio**

Situated in Section 23, Town 4, Fractional Range 1, City of Cincinnati, Hamilton County, State of Ohio, being all of Lots 1-7 of Culbertson Park Subdivision (west of Baymiller Street) as recorded in Deed Book V2, Page 3 of the Hamilton County Recorder's Office and being more particularly described as follows:

**BEGINNING** at the northeast corner of Lot 1 Culbertson Park Subdivision and at the intersection of south line of Mehring Way and the west line of Baymiller Street;

Thence along the west line of Baymiller Street, South 11°22'16" West, 691.13 feet to the low water mark of the Ohio River as established by Joint Exhibit 30 from Case Number 27, Original of The Supreme Court of the United States, October Term 1984, recorded in Deed Book 720, Page 626 of the Clermont County, Ohio Recorder's Office, passing a set iron pin at 27.06 feet and at 42.06 feet;

Thence along said low water mark the following three (3) courses:

1. North 52°38'07" West, 132.70 feet,
2. North 53°54'20" West, 532.79 feet,
3. North 56°38'41" West, 180.73 feet to the southeast corner of lands conveyed to Cincinnati Bulk Terminals, LLC as recorded in Official Record 12085, Page 1238;

Thence along the east line of Cincinnati Bulk Terminals, LLC, North 33°37'59" East, 587.93 feet to a set MAG nail at the northeast corner of Cincinnati Bulk Terminals, passing a set iron pin at 237.93 feet

Thence along the north line of Cincinnati Bulk Terminals the following three (3) courses:

1. North 52°20'17" West, 115.29 feet to a set MAG nail,
2. North 54°33'29" West, 31.68 feet to a set MAG nail,
3. North 69°41'51" West, 65.09 feet to a set MAG nail at the south east corner of the Baltimore and Ohio Rail Road;

Thence along the east line of the Baltimore and Ohio Railroad, North 33°37'59" East, 28.88 feet to a set iron pin in the aforementioned south line of the Mehring Way;

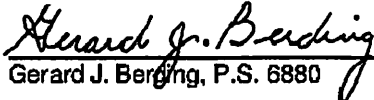
Thence along said south line, South 56°22'01" East, 230.46 feet to a set iron pin AND South 56°10'14" East, 563.17 feet to the **POINT OF BEGINNING**.

**CONTAINING 10.2092 ACRES.** Together with and subject to all easements of record.

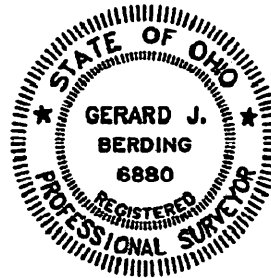
Iron pins referenced as being set are 5/8"x30" iron pins with cap stamped "G.J. Berding Surveying".

Prepared by G.J. BERDING SURVEYING, INC. on March 27, 2020. Based on a Consolidation Plat prepared by G.J. BERDING SURVEYING, INC. on March 27 2020.

Being all of those lands conveyed to the City of Cincinnati in Deed Book 212, Page 588, Deed Book 1051, Page 183, Official Record 6432, Page 3205, and Official Record 9099, Page 6041. Further Identified as Auditors Parcels 137—0006-0010, 0012 thru 0030, 0201, 0214, 0236, 0240, 0241 and 0244.

  
Gerard J. Berding, P.S. 6880

March 27, 2020  
Date



### MI Property

Situated in Section 23, Town 4, Fractional Range 1. City Cincinnati, Hamilton County, Ohio and being more particularly described as follows:

BEGINNING at a set iron pin of the southwest terminus of Baymiller Street said pin being South 11° 17' 02" West, 228.86 feet from the intersection of the south right of way line of Avery Street and the west right of way line of Baymiller Street;

Thence along the south line of Baymiller Street South 78° 42' 58" East, 66.00 feet to a set iron pin at the southeast terminus of Baymiller Street and the southwest corner of lands conveyed to CSX Transportation in Official Record 6976, Page M47 of the Hamilton County Recorder's Office:

Thence along the south line of CSX Transportation, South 85° 15' 22" East, 314.54 feet to a set iron pin;

Thence leaving said south line of CSX Transportation along a new division line, South 07° 01' 35" West, 289.76 feet to a set iron pin in the north line of Central Railroad Co. of Indiana;

Thence along the north line of sold Central Railroad Co. of Indiana the following seven (7) courses:

1. North 80° 10' 38" West, 12.26 feet to a set iron pin,
2. North 78° 32' 54" West, 218.01 feet to a set iron pin,
3. along a curve non-tangent to previous course deflecting to the right having a radius of 672.27 feet, an arc length of 98.86 feet, central angle of 08° 25' 31", the chord of so said arc bears North 76° 41' 22" West, 98.77 feet to a set iron pin,
4. North 72° 01' 17" West, 43.69 feet to a set iron pin,

5. along a curve non-tangent to previous course deflecting to the right having a radius of 541.00 feet, an arc length of 126.28 feet, central angle of 13° 22' 25", the chord of said arc bears North 63° 35' 07" West, 125.99 feet to a set iron pin,
6. along a curve deflecting to the right having a radius of 407.00', an arc length of 286.94 feet, central angle of 40° 23' 37", the chord of said arc bears North 37° 43' 33" West, 281.03 feet to a set iron pin,
7. North 16° 53' 43" West, 25.80 feet to a set iron pin;

Thence leaving said line of Central Railroad Co. of Indiana along a new division line, South 85° 15' 34" East, 55.00 feet to a set iron pin in the west line of Pier 66 of Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

The along the lines of said Pier 66 the following three (3) courses:

1. South 38° 49' 02" East, 13.26 feet to a set iron pin,
2. North 51° 10' 58" East, 6.50 feet to a set iron pin,
3. North 38° 49' 02" West, 7.08 feet to a set iron pin.

Thence along a new division line, South 85° 15' 34" East, 66.80 feet to a set iron pin in the west line of Pier 67 of Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

Thence along the lines of said Pier 67 the following three (3) courses:

1. South 60° 55' 51" East, 18.03 feet to a set iron pin,
2. North 29° 04' 09" East. 5.00 feet to o set iron pin,
3. North 60° 55' 51" West. 6.97 feet to a set iron pin;

Thence along a new division line, South 85° 15' 34" East, 30.69 feet to a set iron pin in the west line of Pier 68 of Baltimore & Ohio Railroad as recorded in Deed Book 3587, Page 594;

Thence along the lines of said Pier 68 the following three (3) courses:

1. South 04° 39' 55" West, 6.16 feet to a set iron pin,
2. South 85° 20' 05" East, 4.83 feet to a set iron pin,
3. North 04° 39' 55" East, 6 16 feet to a set iron pin;

Thence along a new division line, South 85° 15' 34" East, 34.07 feet to o set iron pin in me west line of Pier 69 of Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

Thence along the west line of said Pier 69 the following three (3) courses:

1. South 05° 20' 28" West, 6.11 feet to a set iron pin,
2. South 84° 39' 32" East, 4.83 feet to a set iron pin,
3. North 05° 20' 28" East, 6.17 feet to a set iron pin,

Thence along a new division line, South 85° 15' 34" East, 31.24 feet to a set iron pin in the west line or lands conveyed to Baltimore & Ohio Railroad as recorded in Deed Book 3987, Page 594;

Thence along the lines of the Baltimore & Ohio Railroad the following three (3) courses:

1. South 11° 17' 02" West, 33.35 feet to a set iron pin,
2. South 79° 34' 58" East, 71.34 feet to a set iron pin,
3. North 11° 17' 02' East, 8.20 feet POINT OP BEGINNING.

CONTAINING 3.6039 Acres, more or less.



The above described parcel being part of Hamilton County Auditor's Parcel 138-0006-0032 as conveyed to Queensgate South Realty, LLC, as recorded in Official Record 11003, Page 484 of the Hamilton County Recorder's Office.

The bearings are based on State Plane Coordinate System, Ohio South Zone (NAD83).

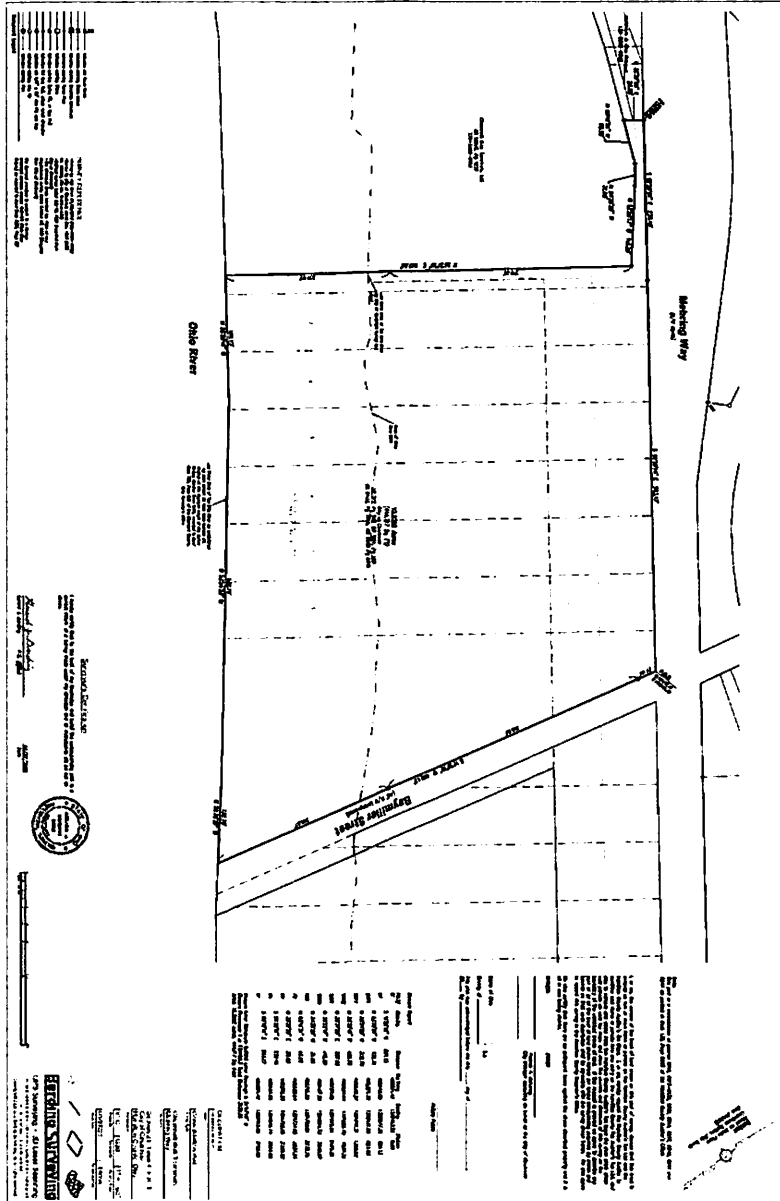
All set iron pins are 5/8" x 30" in size with cap, stamped "G J BERDING SURVEYING INC."

PPN: 138-006-0286

**EXHIBIT B**

to Grant of Encroachment Easement

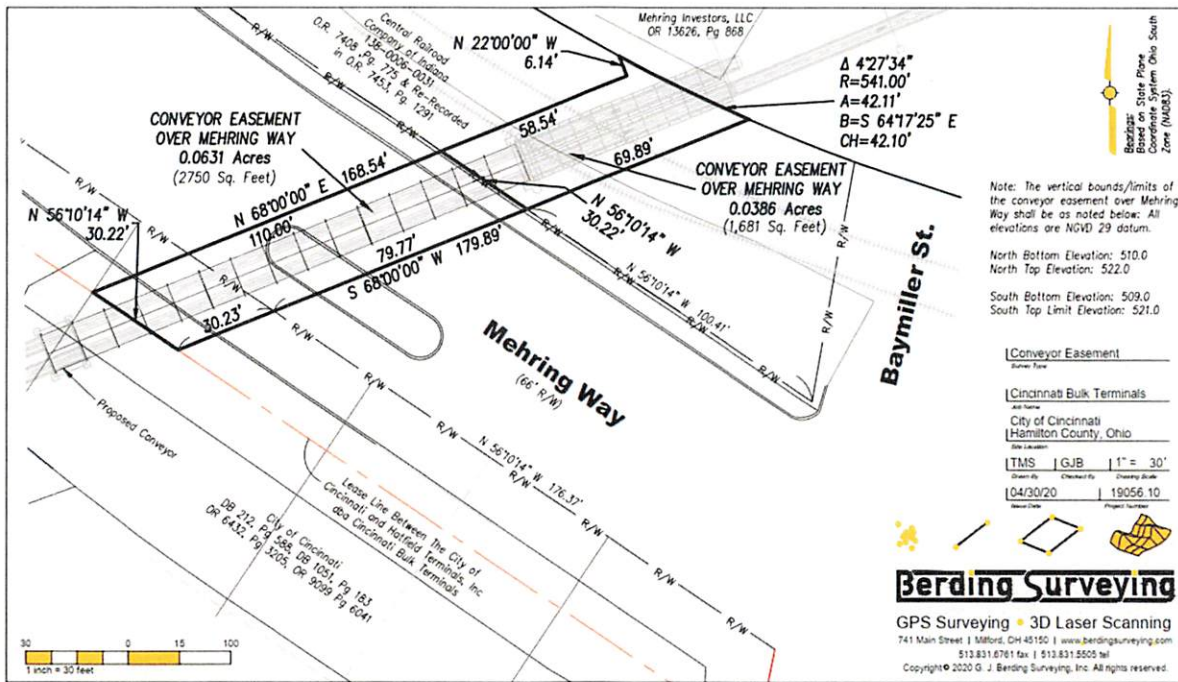
Survey Plat



# EXHIBIT C

to Grant of Encroachment Easement

## Easement Plat



Note: The vertical bounds/limits of the conveyor easement over Mehring Way shall be as noted below. All elevations are NGVD 29 datum.

North Bottom Elevation: 510.0  
 North Top Elevation: 522.0  
 South Bottom Elevation: 509.0  
 South Top Limit Elevation: 521.0

|                             |            |                |
|-----------------------------|------------|----------------|
| [Conveyor Easement]         |            |                |
| Survey Date                 |            |                |
| [Cincinnati Bulk Terminals] |            |                |
| As Shown                    |            |                |
| City of Cincinnati          |            |                |
| Hamilton County, Ohio       |            |                |
| Site Location               |            |                |
| TMS                         | GJB        | 1" = 30'       |
| Drawn By                    | Checked By | Drawing Scale  |
| 04/30/20                    |            | 19056.10       |
| Issue Date                  |            | Project Number |

**Berding Surveying**  
 GPS Surveying • 3D Laser Scanning  
 741 Main Street | Milford, OH 45150 | www.berdingsurveying.com  
 513.831.6761 fax | 513.831.5505 tel  
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