

City of Cincinnati

CHM

EESW

An Ordinance No. _____

- 2023

AUTHORIZING the City Manager to execute a Lease Agreement with Broadway Square II, LLC pursuant to which the City will lease for a term of up to five years a portion of City-owned property located at 1205-1209 Broadway in Over-the-Rhine.

WHEREAS, the City of Cincinnati owns certain real property located at 1205-1209 Broadway in Over-the-Rhine (“Property”), which Property is under the management of the Cincinnati Recreation Commission (“CRC”); and

WHEREAS, Broadway Square II, LLC, an Ohio limited liability company, an affiliate or subsidiary of the Model Group (“Lessee”), owns or otherwise controls certain real property abutting the Property located at 1201-1203 Broadway, and the City currently leases a portion of the Property to Lessee for use as an outdoor restaurant patio pursuant to a lease that expired on November 29, 2022, which lease has continued on a month-to-month basis since that time, as more particularly described and depicted in the Lease Agreement attached to this ordinance as Attachment A and incorporated herein by reference (“Leased Premises”); and

WHEREAS, the City Manager, in consultation with CRC, has determined that (i) the Leased Premises is not needed for recreation or any other municipal purpose for the duration of the lease, and (ii) leasing the Leased Premises to Lessee is not adverse to the City’s retained interest in the Leased Premises or the Property; and

WHEREAS, the City’s Real Estate Services Division has determined by a professional appraisal that the fair market rental value of the Leased Premises is approximately \$1,175 per year, which Lessee has agreed to pay; and

WHEREAS, pursuant to Section 331-5, Cincinnati Municipal Code, Council may authorize the lease of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City and leasing the Leased Premises to Lessee is in the best interest of the City because (i) the City desires to lease the Leased Premises to Lessee to because the City desires to lease the Leased Premises to Lessee to enhance Lessee’s Broadway Square development project, for the benefit of the City and its residents, and (ii) as a practical matter, no one other than an adjoining property owner would have any interest in leasing the Leased Premises for use as an outdoor restaurant patio and assuming responsibility for the maintenance and repair thereof; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Leased Premises at its meeting on November 17, 2017, and Lessee has been in continuous possession of the Leased Premises pursuant to the terms of the prior lease since that time, therefore, the new lease does not constitute a change in use of City property; 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 execute a Lease Agreement with Broadway Square II, LLC, an Ohio limited liability company (“Lessee”), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will lease for a term of up to five years a portion of real property located at 1205-1209 Broadway in Over-the-Rhine, as more particularly described and depicted in the Lease Agreement (“Leased Premises”).

Section 2. That the Leased Premises is not needed for recreation or any other municipal purpose for the duration of the lease.

Section 3. That leasing the Leased Premises to Lessee is not adverse to the City’s retained interest in the Leased Premises.

Section 4. That eliminating competitive bidding in connection with the City’s lease of the Leased Premises is in the best interest of the City because (i) the City desires to lease the Leased Premises to Lessee to enhance Lessee’s Broadway Square development project, for the benefit of the City and its residents, and (ii) as a practical matter, no one other than an adjoining property owner would have any interest in leasing the Leased Premises for use as an outdoor restaurant patio and assuming responsibility for the maintenance and repair thereof.

Section 5. That the fair market value of the lease, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$1,175 per year, which Lessee has agreed to pay.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the Lease Agreement, including executing any and all ancillary documents associated with the Lease Agreement, such

as amendments or supplements to the Lease Agreement deemed by the City Manager to be in the vital and best interests of the City.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2023

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Property: portion of 12th & Broadway Rec Area at
332-334 East 12th St & 1205-1209 Broadway
for use as outdoor restaurant patio

LEASE

This Lease is made and entered into by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which for purposes of this Lease is 805 Central Avenue, Suite 800, Cincinnati, OH 45202, Attention: Recreation (the "**City**"), and **Broadway Square II, LLC**, an Ohio limited liability company, the address of which is 1826 Race Street, Cincinnati, OH 45202 ("**Lessee**").

Recitals:

A. The City owns the land located at 332-334 East 12th Street and 1205-1209 Broadway in Pendleton as shown on Exhibit A (*Site Plan*) hereto (the "**Property**"), which is under the management and control of the Cincinnati Recreation Commission ("**CRC**").

B. Lessee, or an affiliate entity thereof, has redeveloped the adjacent property known as Broadway Square, which includes a restaurant at the property shown on Exhibit B (*Survey*), and in connection therewith desires to lease a portion of the Property shown on Exhibit A (the "**Leased Premises**") for use of an outdoor restaurant patio (the patio and other improvements constructed or installed by Lessee on the Leased Premises, including without limitation pavement, lighting, fencing, landscaping and signage, being referred to herein as the "**Leasehold Improvements**").

C. Lessee, or an affiliate entity thereof, has leased the Leased Premises since November 30, 2017, pursuant to a *Lease* by and between the City and Lessee or its affiliate (the "**Prior Lease**"). The Prior Lease expired on November 29, 2022; however, Lessee has continued to use the Leased Premises on a month-to-month basis since that time.

D. CRC approved the lease of the Leased Premises to Lessee at its meeting on September 19, 2023.

E. The City's Real Estate Services Division has determined that the fair market rental value of the Leased Premises, as determined by appraisal, is approximately \$1,175 per year, which Lessee has agreed to pay.

F. The City has determined that eliminating competitive bidding in connection with the City's lease of the Leased Premises is in the best interest of the public because the City desires to lease the Leased Premises to Lessee to enhance Lessee's Broadway Square development project, for the benefit of the City and its residents.

G. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Leased Premises to Lessee at its meeting on November 17, 2017, and Lessee has been in continuous possession of the Leased Premises pursuant to the terms of the Prior Lease; therefore, this Lease does not constitute a change in use of City property.

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

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant.** The City does hereby lease the Leased Premises to Lessee, and Lessee does hereby lease the Leased Premises from the City, on the terms and conditions set forth therein. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions, and other matters of record affecting the Leased Premises. The City makes no representations or warranties concerning the title, condition, or characteristics of the Leased Premises or the suitability or fitness of the Leased

Premises for any purpose. Lessee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Leased Premises. Lessee shall accept the Leased Premises in "as is," "where is" condition with all faults and defects, known or unknown.

2. Term.

(A) Term. The term ("**Term**") of this Lease shall be one (1) year and shall commence the Effective Date (the "**Commencement Date**") and, unless extended or sooner terminated as herein provided, shall expire on the one year anniversary thereof.

(B) Automatic Renewals. If neither party notifies the other party in writing (which notice shall be given at least 60 days prior to the date that the Term of this Lease would otherwise to expire) that such party does NOT wish to extend the Term for an additional period of one (1) year, the Term of this Lease shall automatically be extended for up to four (4) successive periods of one (1) year each. Annual rent payable by Lessee during each renewal period shall be as set forth in section 3 below. As used herein, the "Term" of this Lease means the initial Term and, if applicable, the renewal periods.

3. Rent.

(A) Initial Term. On the Commencement Date, Lessee shall pay to the City **\$1,175** as annual base rent for the Leased Premises for the initial Term of this Lease.

(B) Renewal Periods. If the Term is extended under paragraph 2(B) above, annual base rent for each renewal period shall increase by **\$50.00**. Rent for each renewal period shall be due and payable no later than the first day of each renewal period.

(C) Late Charge. If the Term of this Lease is terminated prior to the scheduled expiration date, the City shall not be required to refund any portion of the prepaid rent to Lessee. 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. If any payment hereunder is not paid when due, a late charge in the amount of 5.0% of the amount past due, or \$100, whichever is greater, shall automatically become due and payable, and the past due amount shall accrue interest at the rate of 12% until paid in full.

4. Permitted Use. Lessee shall use the Leased Premises for the following purpose and for no other purpose: as an outdoor restaurant patio. Lessee shall comply with all applicable federal, state and local laws, codes, ordinances, regulations and other governmental requirements of governmental authorities having jurisdiction and shall abide by such reasonable rules and regulations governing Lessee's use of the Leased Premises as may from time to time be communicated to Lessee by CRC. Lessee shall not bring or permit to be brought onto the Leased Premises any hazardous materials or other contaminants or substances that are harmful to the public or to the environment. Lessee's operating hours for the outdoor restaurant patio must be approved by CRC. Lessee shall take steps to limit music and other noise as directed by CRC.

5. Utilities; Real Estate Taxes; Other Expenses. During the Term of this Lease, Lessee shall pay (i) any and all utility expenses associated with the Leased Premises, (ii) any and all real estate taxes and assessments levied against the Leased Premises as the result of Lessee's use of the Leased Premises, and (iii) any and all other operating expenses associated with the Leased Premises. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this Lease.*

6. Maintenance and Repairs. Lessee shall, at its sole expense, keep and maintain the Leased Premises, including the Improvements, in good, safe, orderly, sanitary, and clean condition and repair. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Premises. In the event of damage to the Leased Premises or the Improvements caused by fire or other casualty, Lessee shall promptly repair such damage at its sole expense. Lessee shall be solely responsible for all sweeping and

snow and ice removal from the Leased Premises. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Premises or the improvements thereon.*

7. Construction of Improvements; Alterations & Signs.

(A) Alterations. Lessee shall be permitted to construct the Improvements solely in accordance with professionally prepared plans and specifications to be prepared by Lessee and approved in writing by CRC prior to the commencement of construction. Lessee shall not install or alter any other signs, fences, walls, walkways, curbs, structures, or lighting or make any other improvements or alterations to the Leased Premises, or change the existing grade of the Leased Premises, without first obtaining the written approval of CRC. Lessee shall obtain all necessary permits and other approvals from the City prior to constructing the Improvements.

(B) Access by City Departments, Utility Companies and Others. Lessee shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year) by the City's Police and Fire Departments, Greater Cincinnati Water Works (GCWW), Metropolitan Sewer District (MSD), Cincinnati Bell, Duke Energy, and any and all other utility companies that have utility lines or other utility installations within or near the Leased Premises for the maintenance, repair, modification, and replacement thereof or addition thereto. CRC shall also have the right to enter upon the Leased Premises at any time for inspection and all other reasonable purposes. Lessee shall not construct any structures or other improvements above any existing utility lines within the Leased Premises that would interfere with the operation or maintenance thereof. If Lessee constructs any improvements within the Leased Premises or undertakes any other action that interfere with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Lessee under this Lease, whereupon the City shall be permitted to take all actions reasonably necessary to eliminate such interference. The City shall not be responsible for any damage to the Leased Premises or the Improvements resulting from the entry onto the Leased Premises by utility companies and others having the right to enter upon the Leased Premises. In the event of damage to utility lines or other utility facilities located within or near the Leased Premises resulting from Lessee's use of the Leased Premises, Lessee shall be liable for all costs associated with the repair or replacement thereof, which amount shall be payable within thirty (30) days after Lessee receives written notice of the amount thereof accompanied by documentation substantiating such amount.

(C) Trees. If there are public trees within or near the Leased Premises at any time, Lessee shall obtain a public tree work permit before performing any work within fifteen (15) feet of a public tree. Lessee shall obtain the approval of CRC prior to removing any trees.

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

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

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain Commercial General Liability insurance with respect to the Leased Premises in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City of Cincinnati as an additional insured, and such additional insurance as CRC or the City's Department of Risk Management may from time to time reasonably require. All insurance required to be maintained by Lessee hereunder shall be issued by insurance companies reasonably acceptable to the City. Lessee shall also maintain property insurance on the Improvements in the amount of the full replacement cost thereof. On or prior to the Commencement Date and prior to the expiration of each insurance policy, Lessee shall furnish to the City a certificate of insurance evidencing the insurance required hereunder.

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

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

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

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

11. Surrender; Holdover.

(A) Surrender; Holdover. At the end of the Term, Lessee shall surrender the Leased Premises to the City in the condition in which Lessee is required to maintain the Leased Premises under the terms of this Lease. If Lessee remains in possession of the Leased Premises after the end of the Term, then, at the City's option, such holdover shall create a tenancy at will, on the same terms and conditions as set forth in this Lease except that rent payable during such tenancy shall be equal to two hundred percent of the rent in effect immediately prior to the end of the Term.

(B) Removal of Alterations. Lessee shall surrender to the City all Improvements to the Leased Premises made by or for Lessee during the Term except such improvements, if any, that CRC expressly designates be removed. If Lessee fails to timely remove improvements that CRC designates for removal, such improvements shall be deemed abandoned by Lessee, whereupon the City may remove, store, keep, sell, discard, or otherwise dispose of such improvements, and Lessee shall pay all costs incurred by the City in so doing within ten (10) days after the City's written demand.

12. General Provisions. This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Lease may be amended only by a written amendment signed by both parties hereto. Lessee shall not assign its interests under this Lease or sublet any portion of the Leased Premises without the prior written consent of the City, which consent may be withheld in the City's sole discretion. This Lease shall be binding upon the parties and their respective successors and permitted assigns. This Lease shall not be recorded in the Hamilton County Recorder's Office. This Lease shall be governed by the laws of the City of Cincinnati and the State of Ohio.

13. Additional Coordinated Report Conditions—CR#92-2022.

(i) Buildings and Inspections. The patio area must remain the size previously approved by the Prior Lease and associated building improvements. Any expansion of the patio area shall require a new certificate of occupancy and all necessary building, zoning, and historic district approvals before any expansion may occur.

[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").

Broadway Square II, LLC,
an Ohio limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by _____, the _____ of **Broadway Square II, LLC**, an Ohio limited liability company, on behalf of the company.

City of Cincinnati

By: _____

Printed name: _____

Title: _____

Date: _____

STATE OF OHIO)
) ss:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2023 by _____, the _____ of the **City of Cincinnati**, an Ohio municipal corporation, on behalf of the municipal corporation.

Notary Public
My commission expires: _____

Recommended by:

Daniel Betts, Director
Cincinnati Recreation Commission

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

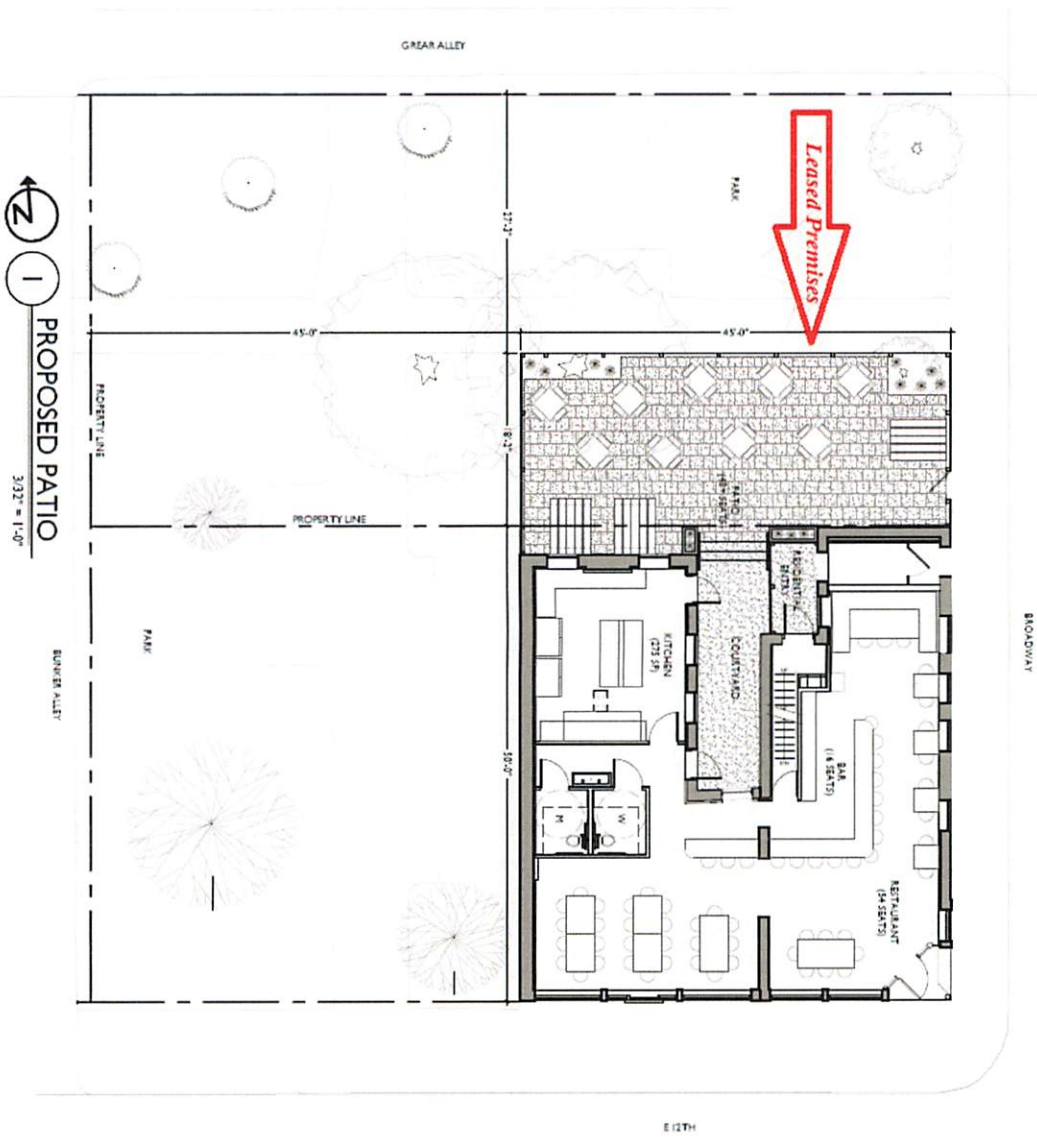
Fund/Code: _____

Amount: _____

By: _____

Karen Alder, City Finance Director

EXHIBIT A
to Lease
Site Plan



TENANT IMPROVEMENT FOR:
1201 BROADWAY
BOOMTOWN BISCUIT BAR

PLATTE
architecture + design
202 W. ELDER ST. SUITE 400 CINCINNATI, OH 45202

EXHIBIT B to Lease Survey

