

## LEASE AGREEMENT

(Portion of Baldwin Alley south of W. 12<sup>th</sup> Street and adjacent to the rear of 1132 Race Street)

This Lease Agreement (“**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 801 Plum Street, Cincinnati, OH 45202 (the “**City**”), and **OTR Collective LLC**, an Ohio limited liability company, d/b/a **Cobblestone OTR** (“**Cobblestone**”), the address of which for purposes of this Lease is 1132 Race Street, Cincinnati, OH 45202.

### Recitals:

A. The City owns the public right-of-way known as Baldwin Alley, between W. 12<sup>th</sup> Street and W. Central Parkway in Over-the-Rhine, as shown on Exhibit A (*Site Plan*) hereto.

B. Parkview Real Estate Holdings, LLC (“**Parkview**”) owns certain real property generally located at the southeast corner of Race and 12<sup>th</sup> Streets, abutting Baldwin Alley to the west, as shown on Exhibit A (the “**1132 Race Street Property**”). Parkview leases the 1132 Race Street Property to Cobblestone.

C. Cobblestone desires to lease a portion of Baldwin Alley from the City (said portions being shown on Exhibit A and referred to herein as the “**Leased Premises**”) so that it can restrict vehicular and pedestrian traffic through the Leased Premises in an effort to reduce loitering, drinking, drug dealing and other illegal and offensive activity, and repurpose the Leased Premises for commercial use.

D. The City’s Department of Transportation and Engineering (“**DOTe**”) has determined that the Leased Premises are not needed for vehicular or pedestrian access.

E. The fair market rental value of the Leased Premises, as determined by appraisal by the City’s Real Estate Services Division, is \$200/year for the leased portion of Baldwin Alley, which Cobblestone has agreed to pay.

F. The City has determined that eliminating competitive bidding in connection with the lease of the Leased Premises is in the best interest of the public because, as a practical matter, no one other than an abutting property owner, and in this case, an abutting lessee with consent of the abutting property owner, would have any interest in leasing the Leased Premises and assuming responsibility for the maintenance and repair thereof.

G. As a condition of receiving DOTe’s consent to this Lease, Cobblestone has provided the City with the written consent from the abutting property owners, copies of which are attached hereto as Exhibit B.

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the change in use of the Leased Premises at its meeting on September 4, 2020.

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant.** The City does hereby lease the Leased Premises to Cobblestone, and Cobblestone does hereby lease the Leased Premises from the City, on the terms and conditions set forth therein. The rights herein granted to Cobblestone 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 to Cobblestone concerning the physical condition of the Leased Premises or the condition of the City’s title to the Leased Premises and, on the Commencement Date, Cobblestone shall accept the Leased Premises in “as is” condition.

## 2. Term.

(A) The term ("**Term**") of this Lease ("**Initial Term**") shall be **five (5) years** and shall commence on the Effective Date (as defined on the signature page hereof) (herein, the "**Commencement Date**") and, unless sooner terminated as herein provided, shall expire on the 5<sup>th</sup> anniversary thereof. As used herein, a "**Lease Year**" shall mean the 12-month period from the month and day of the Commencement Date through the day preceding the one-year anniversary thereof.

(B) Renewal Periods (three 5-year renewal periods). Provided that on the commencement date of each renewal period Cobblestone is not in default under this Lease beyond any applicable notice and cure period provided for herein, Cobblestone shall have the option to extend the Term of this Lease for three (3) renewal periods of five (5) years each (each, a "Renewal Period") (for a total Term, including the Initial Term, of 20 Lease Years), exercisable by giving written notice to the City no less than ninety (90) days prior to the date that the initial Term (or then current renewal period, whichever is applicable) would otherwise have expired. Each renewal shall be on the same terms and conditions as set forth herein (except that, after the 3rd Renewal Period, there shall be no additional renewal options unless agreed to by the parties in a written amendment to this Lease). As used herein, the "**Term**" of this Lease means the Initial Term and, if applicable, the Renewal Periods.

(C) Early Termination on 30 Days Notice. Notwithstanding anything in this Lease to the contrary, the City may terminate this Lease at any time during the Term, by giving Cobblestone no less than 30 days prior written notice thereof, if the City determines that it needs the Leased Premises or any portion thereof for a municipal purpose or for any other reason. Similarly, Cobblestone may terminate this Lease at any time and for any reason by giving the City no less than 30 days prior written notice thereof.

## 3. Rent.

(A) Base Rent. On the Commencement Date, and on each anniversary thereof during the Term, Cobblestone shall pay the City annual rent for the Leased Premises in the amount of \$200/year for the Leased Premises.

(B) Late Payment. If any payment owed by Cobblestone hereunder is not received by the City on the due date, Cobblestone shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. If the Term of this Lease is terminated or expires prior to the end of a year, the City shall not be required to refund any portion of the prepaid rent for such year to Cobblestone. All payments shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to: City of Cincinnati, Attention: Real Estate, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, or to such other address as the City may from time to time designate in writing.

4. Permitted Use. Cobblestone may use the Leased Premises as a private walkway or patio for placement of tables and chairs for patrons of Cobblestone's eating and drinking establishment, for storage and other uses that serve the 1132 Race Street Property, and for no other purpose unless consented to in writing by DOTE (the "**Permitted Uses**"). Notwithstanding the forgoing, nothing herein shall be construed to permit or authorize any use or activity prohibited by applicable land use regulations, including, without limitation to, the Cincinnati Zoning Code. Cobblestone shall apply for and receive any and all required permits from DOTE and the City's Department of Buildings and Inspections, for the Permitted uses before the establishment of any of the Permitted Uses at the Leased Premises. Cobblestone shall not bring or permit to be brought onto the Leased Premises any hazardous materials or other contaminants or substances that are harmful to the public or to the environment.

5. Utilities & Other Expenses. During the Term of this Lease, Cobblestone shall pay, when due, (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 that become due and payable during the Term, and (iii) any and all other operating expenses associated with the Leased Premises. *Cobblestone 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. Cobblestone shall, at its sole expense, keep and maintain the Leased

Premises in good, safe, orderly, sanitary, and clean condition and repair, ordinary wear and tear excepted, including without limitation any and all concrete and asphalt pavement, pavers, curbs and sidewalks within the Leased Premises. Cobblestone 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, Cobblestone shall promptly repair such damage at its sole expense. Cobblestone shall be solely responsible for all snow and ice removal from the Leased Premises. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Premises or any improvements thereon.*

**7. Alterations.**

(A) Vehicular/Pedestrian Barriers. Cobblestone, at its expense, shall have the right (but not the obligation) to prevent vehicular and pedestrian use of the Leased Premises or any portion or portions thereof by installing a security fence with a lockable gate and/or other forms of barriers approved by DOTE, at the north and south ends of the Leased Premises (each, a “**Barrier**”, and collectively, the “**Barriers**”). The Barriers shall provide for a minimum 12 foot horizontal clearance for access by utility maintenance vehicles. All upright posts shall be located no closer than 3 feet to existing underground utility lines. The Barriers shall be constructed so that visibility through the Barriers is not impaired. Cobblestone, through a licensed street contractor, shall obtain a street opening permit before installing the Barriers and shall pay any and all permit fees imposed by DOTE. Before a street opening permit can be issued, Cobblestone’s licensed street contractor shall be required to supply two sets of plans to DOTE for approval showing the location of the Barriers in relation to street fixtures and the rights-of-way lines and, if applicable, providing the manufacturer’s details of the gate and locking mechanism. Unless otherwise approved by DOTE, the locking mechanism shall include key locking from the outside and panic hardware for pedestrian egress on the inside and such other features as may be required by DOTE. At the end of the Term, and unless DOTE requires that the Barriers remain in place, Cobblestone shall remove the Barriers and immediately perform all necessary street and sidewalk restoration under a DOTE street opening permit obtained by a licensed contractor. If Cobblestone fails to timely remove the Barriers and complete such restoration to the satisfaction of the City Engineer, the City may do so at Cobblestone’s expense, which amount shall be payable by Cobblestone within thirty (30) days after Cobblestone’s receipt of a statement from the City indicating the amount due.

(B) Access by City Departments, Utility Companies and Others. (i) Cobblestone shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year), by: (i) DOTE for inspection and all other reasonable purposes; (ii) the City’s Police and Fire Departments; (iii) Greater Cincinnati Water Works (“**GCWW**”) for the inspection, maintenance, repair or replacement of existing water mains in the area; (iv) Metropolitan Sewer District for the inspection, maintenance, repair or replacement of existing public sewers in the area; (v) Cincinnati Bell for the inspection, maintenance, repair or replacement of existing telephone facilities in the area; and (vi) Duke Energy for the inspection, maintenance, repair or replacement of any and all existing gas or electric facilities in the area. Cobblestone shall contact GCWW at least 2 full working days prior to commencing any construction within the Leased Premises; the GCWW contact person is Mark Niehe (513-591-7870). If Cobblestone installs gates under paragraph 7(A) above, Cobblestone shall provide the City and such utility companies, upon their request from time to time and at no cost to them, with a reasonable number of keys to unlock the gates. If Cobblestone undertakes any action or constructs any improvements within the Leased Premises that interfere with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Cobblestone under this Lease.

(ii) If Cobblestone’s activities within the Leased Premises cause damage to existing utility lines or other utility facilities belonging to a utility provider, Cobblestone shall immediately notify the appropriate utility provider. All costs of such repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Cobblestone and shall be payable by Cobblestone within thirty (30) days after Cobblestone receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Cobblestone within the Leased Premises in connection with its inspection, maintenance, repair or replacement of its existing utility facilities in the area, Cobblestone shall be solely responsible for all costs associated with the repair or replacement of Cobblestone’s improvements.

(C) No Liens. Cobblestone shall not permit any mechanics liens to attach to the Leased Premises in

connection with work performed by or at the request of Cobblestone.

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

(E) No Other Alterations or Signs. Except as permitted under this section, Cobblestone shall not make any alterations or improvements to the Leased Premises, install any signs within the Leased Premises that are visible from outside the Leased Premises, install any new utilities within the Leased Premises, or remove any existing improvements within the Leased Premises, without obtaining the prior written consent of DOTE. If Cobblestone proposes to install any permanent structures or other improvements in addition to the Barriers, Cobblestone shall also obtain the prior written consent of the utility companies that have utilities located within the Leased Premises.

## **8. Insurance; Indemnification.**

(A) Insurance. Throughout the Term, Cobblestone 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 as an additional insured, and such additional insurance as DOTE or the City's Department of Risk Management may from time to time reasonably require. All insurance required to be maintained by Cobblestone hereunder shall be issued by insurance companies reasonably acceptable to the City. If Cobblestone constructs any improvements within the Leased Premises, Cobblestone shall maintain property insurance on such 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, Cobblestone 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 Cobblestone'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. Cobblestone hereby waives, as against the City, its employees, agents and contractors, all claims and liability, and on behalf of Cobblestone'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 Cobblestone shall at all times protect itself against such loss or damage by carrying adequate insurance.

(C) Indemnification. Cobblestone 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 Cobblestone fail to pay the rent or to perform any other obligation under this Lease within thirty (30) days after receiving written notice thereof from the City (herein, a "default"), the City, at its option, immediately or at any time during the continuance of the default, may terminate this Lease by delivering a written notice of termination to Cobblestone. Cobblestone shall pay to the City, upon demand, all costs and damages suffered or incurred by the City in connection with Cobblestone'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 Cobblestone's sole expense and may, if necessary, enter onto the Leased Premises in order to undertake such cure. Cobblestone 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 Cobblestone'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 Cobblestone sends a notice to the City alleging that the City is in default under this Lease, Cobblestone 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, Cobblestone shall surrender the Leased Premises to the City in the condition in which Cobblestone is required to maintain the Leased Premises under the terms of this Lease. If Cobblestone 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 from month-to-month on the same terms and conditions as set forth in this Lease except that rent payable during such month-to-month tenancy shall be equal to the then fair market rental value of the Leased Premises as determined by appraisal by the City's Real Estate Services Division.

(B) Removal of Alterations. If Cobblestone has made improvements to the Leased Premises during the Term, then, at the end of the Term, the City shall identify which improvements Cobblestone shall be required to surrender (at no cost to the City) and which improvements Cobblestone shall be required to remove. If Cobblestone fails to timely remove improvements that are designated for removal by the City, such improvements shall be deemed abandoned by Cobblestone, whereupon the City may remove, store, keep, sell, discard or otherwise dispose of such improvements, and Cobblestone shall pay all costs incurred by the City in so doing within twenty days after the City's written demand. As provided in paragraph 7(A) hereof, at the end of the Term, and if required by DOTE, Cobblestone shall remove any and all Barriers installed by it under said paragraph.

**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. Cobblestone 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 terminate automatically upon the termination of Cobblestone's leasehold interest in the 1132 Race Street Property. 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, Ohio Recorder's office. This Lease shall be governed by the laws of the City of Cincinnati and the State of Ohio.

**13. Additional Conditions from City's Coordinated Reports.**

(A) Notwithstanding anything herein to the contrary, if Central Parkway is temporarily closed to the public for special events, Cobblestone shall keep the leased portion of Baldwin Alley open to vehicular traffic during each such event.

(B) No building, structure or improvement of any kind shall be made in the lease area which will interfere with access to or operation of the existing water mains. GCWW would allow gates on the alleys. The City of Cincinnati, Ohio shall not be responsible to any present or future owners of said property or present or future owners of property with rights of ingress and egress over said 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 owners of said property or future owners of property with rights of ingress and egress over said 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 this lease area are permitted at any time so not to impact any present or future GCWW operations. Any building, structure or improvement to be constructed in the vicinity of the lease area shall be kept not less than three (3) feet from the existing water mains. The full width of the lease area

must always be accessible to the GCWW for future operation and maintenance purposes.

14. **Exhibits.** The following Exhibits are attached hereto:  
Exhibit A – *Site Plan*  
Exhibit B – *Copy of consents from abutting property owners*

[ SIGNATURE PAGE FOLLOWS ]

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

**OTR COLLECTIVE LLC,**  
an Ohio limited liability company,  
d/b/a **COBBLESTONE OTR**

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

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

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

Date: \_\_\_\_\_, 2020

SEEN AND CONSENTED TO BY:  
**PARKVIEW REAL ESTATE HOLDINGS, LLC,**  
an Ohio limited liability company

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

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

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

Date: \_\_\_\_\_, 2020

**City of Cincinnati**

By: \_\_\_\_\_  
Paula Boggs Muething, City Manager

Date: \_\_\_\_\_, 2020

Recommended by:

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

Approved as to Form:

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

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

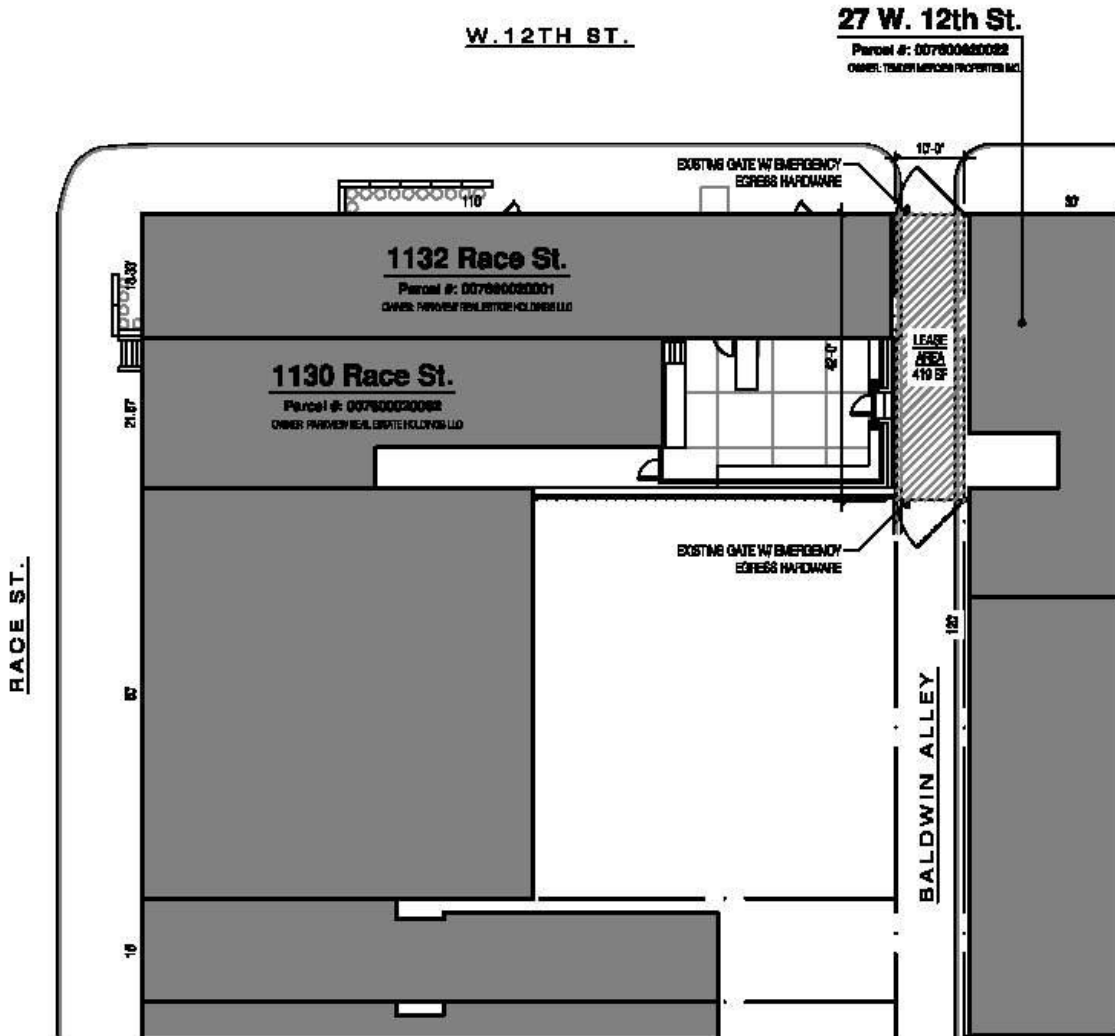
Fund/Code: \_\_\_\_\_

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

By: \_\_\_\_\_  
Karen Alder, City Finance Director

EXHIBIT A  
to  
Lease Agreement

SITE PLAN



**N**  
Lease Area Plan  
1:200





**EXHIBIT B**  
to  
Lease Agreement

COPY OF CONSENT FROM ABUTTING PROPERTY OWNER

SEE ATTACHED

From: **Russell Winters** [winters@tendermerciesinc.org](mailto:winters@tendermerciesinc.org)   
Subject: Baldwin Alley Lease and Public Hearing question  
Date: September 1, 2020 at 1:05 PM  
To: Bunch, Renee [Renee.Bunch@cincinnati-oh.gov](mailto:Renee.Bunch@cincinnati-oh.gov), Klumb, Tom [Tom.Klumb@cincinnati-oh.gov](mailto:Tom.Klumb@cincinnati-oh.gov)  
Cc: [adam@drawingdept.com](mailto:adam@drawingdept.com), [keyur@cobblestoneotr.com](mailto:keyur@cobblestoneotr.com), Josh Burgess [jburgess@tendermerciesinc.org](mailto:jburgess@tendermerciesinc.org)

RW

Hi Tom and Renee –

We've been approached by Cobblestone OTR (copied here), which abuts Baldwin Alley, about the possibility of their leasing the gated portion of the alley instead of Tender Mercies.  
Tender Mercies would have no objection to their leasing the gated portion of the alley that we currently lease as long as it remains gated and blocked off to passersby.  
Tender Mercies would still want to move forward with renewing its lease on Doerr Alley to the east of our property at 15 W 12<sup>th</sup>.

Logistically, is this possible with the Coordinated Report that is currently issued to make this change of lessee or would that need to be recirculated again? I realize that the lease is on this Friday's agenda of the CPC.

Could you please advise what action would be needed on our part, or if it would be simpler to set up a quick call with all interested parties, we can facilitate that.  
Thank as always for your help,  
Russell

**Russell L. Winters** | Chief Executive Officer

Tender Mercies Inc.  
27 West 12<sup>th</sup> Street | Cincinnati, OH 45202  
Office | 513.639.7054  
Cell | 513.407.0961  
Fax | 513.639.7037  
[rwinters@tendermerciesinc.org](mailto:rwinters@tendermerciesinc.org)  
[www.tendermerciesinc.org](http://www.tendermerciesinc.org)



