

Attachment A

Contract no.: _____

LEASE AGREEMENT
(Fifth Third Bank ATM near Moerlein Lager House)

This Lease Agreement ("**Lease**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **FIFTH THIRD BANK, NATIONAL ASSOCIATION**, the address of which is Fifth Third Center, 38 Fountain Square Plaza, Cincinnati, OH 45263 (the "**Lessee**").

Recitals:

A. The City is the owner of property located in downtown Cincinnati as shown on Exhibit A (Site Plan) hereto (the "**Property**"), which is under the control and management of the Cincinnati Park Board.

B. Pursuant to a *Lease Agreement* dated February 4, 2013, by and between the City and the Lessee (the "**Existing Lease**"), the Lessee currently leases a portion of the Property to maintain and operate a remotely-controlled ATM machine (the ATM machine, together with any and all Installations, as such term is defined herein, being hereinafter referred to as the "**ATM**"), as shown on Exhibit A (the "**Leased Premises**").

C. The Existing Lease expires on February 3, 2023, and the Lessee desires to continue to occupy the Leased Premises for an additional term of up to five years.

D. The City has determined that the Leased Premises are currently not needed for any municipal purpose during the term of this Lease that leasing the Leased Premises to the Lessee is not adverse to the City's retained interest in the Leased Premises.

E. That the City conducted a competitive bidding process for the Existing Lease under which the City determined that the Lessee's proposal was the most advantageous to an in the best interests of the City. The City has determined that eliminating competitive bidding in connection with the City's renewed lease of the Leased Premises is in the best interest of the City because the Lessee has been a good and responsible tenant, and the City desires to retain Lessee as a tenant.

F. The rent set forth in this Lease reflects the current fair market rental value of the Leased Premises, as determined by appraisal by the City's Real Estate Services Division.

G. City Planning Commission, having the authority to approve the change in use of City-owned property, approved of the City's lease of the Leased Premises to the Lessee at its meeting on October 7, 2022.

H. The execution of this Lease was authorized by Ordinance No. ____-2023, passed by City Council on _____, 2023.

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant.** The City does hereby lease the Leased Premises to the Lessee, and the Lessee does hereby lease the Leased Premises from the City, on the terms and conditions set forth herein. The rights herein granted to the 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 to the Lessee concerning the physical condition of the Leased Premises or the Property or the condition of the City's title to the Leased Premises or the Property, and, on the Commencement Date (as defined below), the Lessee shall accept the Leased Premises in "as is" condition.

2. Term.

(A) **Initial Term.** The term (“**Term**”) of this Lease shall commence on February 4, 2023 (also referred to herein as the “**Commencement Date**”) and, unless extended or sooner terminated as herein provided, shall expire on the day immediately preceding the fifth (5th) anniversary of the Commencement Date.

(B) **Renewal Option.** Provided the Lessee is not in default under this Lease at the time it delivers its notice of renewal to the City, the Lessee shall have one (1) option to renew the initial Term of this Lease for a renewal period of five (5) years by giving the City written notice thereof no less than sixty (60) days prior to the end of the initial Term. As used in this Lease, the “**Term**” of this Lease means the initial Term and, if applicable, the renewal period.

(C) **Lessee's Right to Terminate on 30 Days Notice.** The Lessee shall have the right to terminate this Lease, by giving the City no less than thirty (30) days prior written notice thereof, if (i) the Lessee determines that the operation of the ATM is not profitable, or (ii) the ATM is damaged by vandalism, fire or otherwise and the Lessee elects not to repair or replace it. All obligations of the Lessee under this Lease that have accrued but have not been fully performed as of the effective date of termination shall survive such termination until fully performed.

3. Rent. Beginning on the Commencement Date and continuing thereafter throughout the Term of this Lease, the Lessee shall pay rent to the City in the amount of \$10,000 per year, payable in advance on the first day of each quarter in equal quarterly installments of \$2,500 each, without notice, demand, or setoff. Any payment that remains outstanding for longer than thirty days past the due date shall bear interest at the rate of fifteen percent per annum until paid. The Lessee shall send all rent payments, payable to the “City of Cincinnati-Treasurer”, to: City of Cincinnati, 801 Plum Street, Cincinnati, Ohio 45202 or to such other address as the City may from time to time designate in writing.

4. Permitted Use. The Lessee shall use the Leased Premises solely for the operation of the ATM and for no other purpose. The Lessee shall install, operate, and maintain the ATM in compliance with all applicable federal, state and local laws, codes, regulations and other governmental requirements.

5. Lighting, Signage, and Theft Deterrent Devices. The City hereby grants its consent to the Lessee's installation of the following items within the perimeter of the Leased Premises: (i) lighting for the ATM, including electrical wiring and associated electrical installations, (ii) identification signage, and (iii) theft deterrent devices (*e.g.*, dye packs, audible alarms, smoke packs, and visual alarms) (collectively, and together with any and all other installations, attachments or alterations that the Park Board may from time to time approve in writing, the “**Installations**”). If any of the Lessee's proposed Installations will be located *outside* the perimeter of the Leased Premises, the Lessee may install such Installations only with the prior written consent of the Park Board, such approval not to be unreasonably withheld. Once the Park Board initially approves of the Lessee's proposed Installations, the Lessee may thereafter make minor modifications thereto without the consent of the Park Board (provided that the Lessee shall not be permitted to use a larger area or different area outside the perimeter of the Leased Premises without the Park Board's consent). *All Installations shall be installed, operated, and maintained by the Lessee at no expense to the City.*

6. Utilities & Other Expenses. (i) During the Term of this Lease, the Lessee shall pay (i) all utility expenses associated with the ATM, and (ii) all other expenses associated with the ATM and Leased Premises, including without limitation costs associated with the installation, operation, maintenance, repair, replacement, and removal of the ATM. *During the Term of this Lease, the City shall not be liable for any expenses associated with the ATM or Leased Premises.*

7. Maintenance and Repairs. The Lessee shall, at its sole expense, keep and maintain the ATM and Leased Premises in good, safe, orderly, sanitary, and clean condition and repair, ordinary wear and tear excepted. The Lessee shall not permit garbage or other unsightly or odorous materials to accumulate within the Leased Premises. In the event of damage to the ATM or Leased Premises caused by fire or other casualty, and unless the Lessee exercises its right to terminate this Lease under paragraph 2(C) above, the Lessee shall promptly repair such damage at its sole expense. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the ATM or the Leased Premises.*

8. Access. The Lessee shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year) by the Park Board, the City's Police and Fire Departments, and any and all other utility companies that have utility lines or other utility installations within or near the Leased Premises for the inspection, maintenance, repair, modification and replacement thereof. The 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 the 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 the 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 ATM or the Leased Premises resulting from the entry by utility companies and others having the right to enter upon the Leased Premises. If the Lessee or others under its control cause damage to utility lines or other utility installations located within or near the Leased Premises, Lessee shall immediately notify the appropriate utility provider. All costs of repairing such damage caused by the Lessee (and not utility providers), including without limitation, all costs of replacing any damaged utility facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by the Lessee and shall be payable by the Lessee within thirty (30) days after the Lessee receives documentation substantiating such costs. If any utility provider damages or must remove any improvements installed by the Lessee within the Leased Premises in connection with its inspection, operation, maintenance, repair, or replacement of its existing utility facilities in the area, the Lessee shall be solely responsible for all costs associated with the repair, replacement, or relocation of such improvements.

9. Insurance; Indemnification.

(A) **Insurance.** Throughout the Term, the Lessee shall maintain (i) Commercial General Liability insurance with respect to the Leased Premises in an amount not less than One Million Dollars (\$1,000,000) per occurrence, combined single limit, Two Million Dollars (\$2,000,000) aggregate, naming the City as an additional insured, (ii) special form property insurance on the ATM in the amount of the full replacement cost thereof, and (iii) such additional insurance as the City's Division of Risk Management may from time to time reasonably require. All insurance shall be issued by insurance companies reasonably acceptable to the City. Prior to the Commencement Date and promptly after the insurance policies renew annually, the Lessee shall furnish to the City a certificate of insurance evidencing the insurance required hereunder, which certificate shall evidence that such insurance shall not be cancelled, nor coverage reduced, without at least thirty (30) days prior written notice to the City.

(B) **Waiver of Subrogation.** The ATM and all 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 the 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. The Lessee hereby waives, as against the City, its employees, agents and contractors, all claims and liability, and on behalf of the Lessee's insurers, the 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 the Lessee shall at all times protect itself against such loss or damage by carrying adequate insurance.

(C) **Indemnification.** The 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 ATM or 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; excluding, however, any of the foregoing caused by the negligence or willful misconduct of the City, its employees, agents or contractors.

10. Default. Should the 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 the Lessee. The Lessee shall pay to the City, upon demand, all costs and damages suffered or incurred by the City in connection with the Lessee's default or the City's termination or enforcement 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 the Lessee's sole expense and

may, if necessary, enter upon the Leased Premises to undertake such cure. The 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 the Lessee's obligations under this Lease, together with interest thereon from the date that the City incurs such costs at an annual rate of fifteen percent. The rights and remedies of the City under this Lease are cumulative and are not intended to be exclusive of, and the City shall be entitled to, any and all other rights and remedies to which the City may be entitled hereunder, at law or in equity. The City's failure to insist in any one or more cases on strict performance of any provision of this Lease or to exercise any right herein contained shall not constitute a waiver in the future of such right.

11. Notices. All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by UPS, 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 the following addresses or 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.

To the Lessee: Fifth Third Bank, Fifth Third Center, 38 Fountain Square Plaza,
MD 10903K, Cincinnati, OH 45263, Attention: SVP Corporate Facilities

with a copy to: Fifth Third Bank, Fifth Third Center, 38 Fountain Square Plaza,
MD 10903K, Cincinnati, OH 45263, Attention: ATM Administrator

To the City: Cincinnati Park Board, 950 Eden Park Drive, Cincinnati, OH 45202

If the Lessee sends a notice to the City alleging that the City is in default under this Lease, the 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.

12. Surrender; Holdover.

(A) **Surrender; Holdover.** At the end of the Term, the Lessee shall surrender the Leased Premises to the City in the condition in which the Lessee is required to maintain the Leased Premises under the terms of this Lease. If the 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 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 one hundred twenty-five percent (125%) of the rent that was in effect under this Lease immediately prior to the commencement of the month-to-month tenancy. Regardless of whether the City elects to extend the Term of this Lease on a month-to-month basis, the Lessee shall be liable to the City for all costs and damages suffered or incurred by the City as a result of the Lessee's failure to surrender possession of the Leased Premises upon the expiration or termination of the initial Term (or, if applicable, the renewal Term).

(B) **Removal of ATM.** Throughout the Term, the ATM shall be deemed to be the property of the Lessee. At the end of the Term, the Lessee shall remove the ATM and repair any and all damage to the Leased Premises and the Property caused by the installation or removal thereof and generally restore the affected areas to a condition that is satisfactory to the Park Board. If the Lessee fails to timely remove the ATM, it shall be deemed abandoned by the Lessee, whereupon the City may remove, store, keep, sell, discard, or otherwise dispose of it, and the Lessee shall pay all costs incurred by the City in so doing within ten (10) days after the City's written demand.

13. Successors and Assigns. The 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. The City hereby consents to the Lessee's assignment of its interests under this Lease to (i) a subsidiary entity, parent entity, or "sister" entity, or (ii) the surviving entity in a merger or consolidation involving the Lessee or to an entity to which the Lessee sells all or substantially all of its stock or business assets; provided that, in each instance, the Lessee shall notify the City in writing prior to the effective date of such assignment and shall provide the City with documentation substantiating that the assignment was permitted

hereunder.

14. Official Capacity. All representations, warranties, covenants, agreements, and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

15. Authority of the Park Board. The Lessee acknowledges the legal authority of the Park Board to act on behalf of the City with respect to matters affecting the Property and agrees that, in instances under this Lease when the Lessee is required to obtain the City's consent, or the City is required to act, the Lessee shall accept the decisions and actions of the Park Board.

16. General Provisions.

(A) **Entire Agreement.** This Lease (including the exhibits hereto) contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof.

(B) **Amendments.** This Lease may be amended only by a written amendment signed by both parties.

(C) **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the City of Cincinnati and the State of Ohio. All actions regarding this Lease shall be brought in the Hamilton County Court of Common Pleas, and Lessee agrees that venue in such court is proper. Lessee hereby waives trial by jury with respect to any and all disputes arising under this Lease.

(D) **Binding Effect.** This Lease shall be binding upon and shall inure to the benefit of and be enforceable by and against the parties and their respective successors and permitted assigns.

(E) **Captions.** The captions of the various sections and paragraphs of this Lease are not part of the context hereof and are only guides to assist in locating such sections and paragraphs and shall be ignored in construing this Lease.

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

(G) **No Recording.** This Lease shall not be recorded in the Hamilton County Recorder's office.

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

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

(J) **No Brokers.** Lessee represents that it has not dealt with a real estate broker, salesperson or other person who might claim entitlement to a fee or other compensation as a result of the parties' execution of this Lease.

(K) **Official Capacity.** All representations, warranties, covenants, agreements, and obligations of the City under this Lease shall be effective to the extent authorized and permitted by applicable law. None of those representations, warranties, covenants, agreements, or obligations shall be deemed to be a representation, warranty, covenant, agreement, or obligation of any present or future member, officer, agent or employee of the City in other than his or her official capacity. No official executing or approving the City's participation in this Lease shall be personally liable under this Lease.

(L) **Representation as to Authority.** Lessee represents that it has the power and authority to enter into and perform its obligations under this Lease without the consent of anyone who is not a party to this Lease and that the execution and performance of this Lease has been duly authorized by all necessary actions on Lessee's part.

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

17. **Exhibits.** The following exhibit is attached hereto and made a part hereof:
Exhibit A – Site Plan

[Remainder of Page Intentionally Blank; Signature Pages Follow]

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 2023

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. 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: _____

Recommended by:

Jason Barron,
Director, Cincinnati Park Board

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

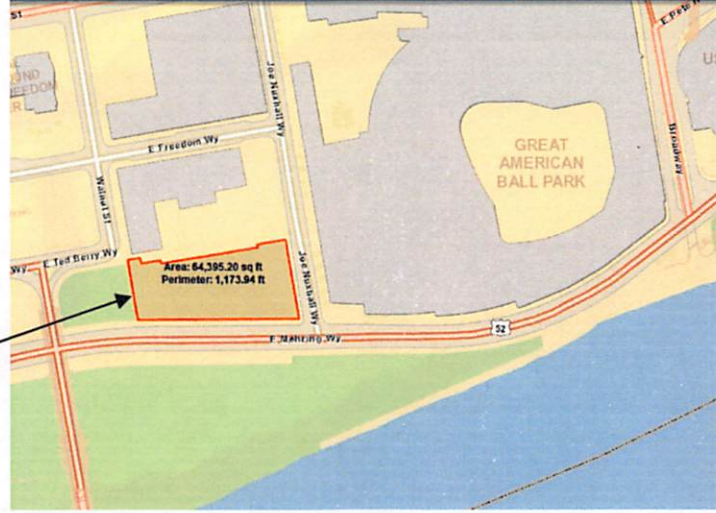
Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to
Lease Agreement

SITE PLAN



PROPERTY

