

Contract No. _____

Property: Sharp Alley

LEASE AGREEMENT
(triple net)

This Lease Agreement (“**Lease**”) is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **CITY OF CINCINNATI**, an Ohio municipal corporation, the address of which is 801 Plum Street, Room 122, Cincinnati, OH 45202; Attention: Real Estate (the “**City**”), and **60 EAST LLC**, an Ohio limited liability company, the address of which is 57 E McMicken, Cincinnati, OH 45202 (“**Lessee**”).

Recitals:

A. The City owns the public right-of-way known as Sharp Alley in the Over-the-Rhine neighborhood of Cincinnati, including an approximately 0.0331-acre portion of Sharp Alley, more particularly described on Exhibit A (Legal Description), and depicted on Exhibit B (Survey) hereto (the “**Leased Premises**”), which is under the management of the Department of Transportation and Engineering (“**DOT**”).

B. Lessee or an affiliate thereof owns the properties located on either side of the Leased Premises, more particularly identified as Hamilton County, Ohio Auditor’s Parcel Nos. 094-0005-0297 and 094-0005-0296 (“**Lessee’s Property**”).

C. Lessee desires to lease the Leased Premises from the City, and the City is agreeable to lease the Leased Premises to Lessee on the terms and conditions set forth herein.

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

F. The fair market rental value of the Leased Premises, as determined by a professional appraisal by the City’s Real Estate Services Division, is approximately \$225.00 per year, which Lessee has agreed to pay.

G. The City has determined that eliminating competitive bidding in connection with the lease of the Leased Premises is in the best interest of the City because (i) the City desires to lease the Leased Premises to Lessee to provide maintenance and lighting to the area; (ii) Lessee has provided the City with the written consent to this Lease from all property owners abutting the Leased Premises, and (iii) as a practical matter, no one other than an adjoining property owner would have any interest in leasing the Leased Premises and assuming responsibility for the maintenance and repair thereof.

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the City’s lease of the Leased Premises to Lessee at its meeting on July 21, 2023.

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

NOW THEREFORE, the parties hereby agree as follows:

1. Grant.

(A) Grant. The City does hereby lease the Leased Premises to Lessee, and Lessee does hereby lease the Leased Premises from the City, on the terms and conditions set forth herein. The rights herein

granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions, and other matters of record affecting the Leased Premises. Lessee acknowledges and agrees that it has conducted its own due diligence to familiarize itself with the physical condition and characteristics of the Leased Premises. The City makes no representations or warranties concerning the title, condition, or characteristics of the Leased Premises or the suitability or fitness of the Leased Premises for any purpose. Lessee acknowledges and agrees that it is not relying upon any such representations or warranties from the City. Without limitation of the foregoing, under no circumstances shall the City be responsible or liable for any pre-existing environmental conditions affecting the Leased Premises. Lessee shall accept the Leased Premises in "as is," "where is" condition with all faults and defects, known or unknown.

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

2. Term.

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

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

3. Base Rent.

(A) Base Rent. Lessee shall pay annual base rent to the City for the Leased Premises of \$225.00. Lessee shall make a single, annual payment to the City no later than the Commencement Date, and on each one-year anniversary thereof, without demand, notice, or setoff.

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

Cincinnati - Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, Attention: Real Estate.

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

5. Utilities; Real Estate Taxes; Other Expenses. During the Term of this Lease, Lessee shall pay, when due, (i) any and all utility expenses for utilities directly serving the Leased Premises, (ii) any and all real estate taxes, assessments, penalties, interest, and charges levied against the Leased Premises that become due and payable during the Term, including the two semi-annual tax bills issued by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears, 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 in good, safe, orderly, sanitary, and clean condition and repair, ordinary wear and tear excepted, including without limitation any and all concrete or brick pavement, pavers, curbs and sidewalks within the Leased Premises. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Premises. In the event of damage to the Leased Premises, Lessee shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE (however Lessee shall not be required to restore the Leased Premises to a better condition than otherwise required under this Lease). Lessee shall be solely responsible for all snow and ice removal from the Leased Premises. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Premises or any improvements thereon.*

7. Alterations.

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

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

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

8. Insurance; Indemnification.

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

each insurance policy, Lessee shall furnish to the City a certificate of insurance evidencing the insurance required hereunder.

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

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

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

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

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

mail to: City Solicitor, 801 Plum Street, Suite 214, Cincinnati, OH 45202. All notices given to Lessee under this Lease shall be delivered as follows:

60 East LLC
57 E McMicken,
Cincinnati, OH 45202
Attn: Michael Chewning
chewning@8kconstruction.com

12. Surrender; Holdover.

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

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

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

14. General Provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

15. Additional Conditions from City's Coordinated Report (CR#99-2022). Lessee shall comply with the following additional terms and conditions:

- (a) MSD: Ready access to the alley must be maintained due to the presence of a 24" brick sewer main in the public right-of-way.
- (b) Altafiber: Altafiber has existing underground telephone facilities at this location. Altafiber can approve this request if the existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this request will be handled entirely at the Lessee's expense.

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

[SIGNATURE PAGES FOLLOW]

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

60 EAST LLC,
an Ohio limited liability company

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 **60 EAST LLC**, an Ohio limited liability company, on behalf of the company.

Notary Public
My commission expires: _____

[CITY SIGNATURE PAGE FOLLOWS]

CITY OF CINCINNATI

By: _____

Printed name: _____

Title: _____

Date: _____, 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.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation & Engineering

Approved as to Form:

Assistant City Solicitor

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

EXHIBIT A
to Lease Agreement

Legal Description

Situated in Section 13, Town 3, Fractional Range 2, Millcreek Township, Between the Miamis, City of Cincinnati, Hamilton County, Ohio, and is more particularly described as follows:

All bearings referred to herein are based upon the Ohio State Plane Coordinate System, South Zone, NAD83 (2011).

BEGINNING, at the intersection of the northeasterly right-of-way line of East McMicken Avenue, 33.00 feet as measured perpendicular to the centerline, and the northwesterly right-of-way line of Sharp Alley, 6.00 feet as measured perpendicular to the centerline, being the southerly corner of Northcrown 56 McMicken LLC (Official Record Book 14045, page 1711), an existing cut notch bears S48°52'11"W 3.00 feet;

THENCE, with the northwesterly right-of-way line of Sharp Alley N48°52'11"W 120.00 feet to a point at the intersection of the southwesterly right-of-way line of Hust Alley, 6.00 feet as measured perpendicular to the centerline, and the northwesterly right-of-way line of Sharp Alley, an existing MAG Nail and washer stamped "HARTIG PS 8765" bears N48°52'11"E 5.00 feet;

THENCE, with the southwesterly right-of-way line of Hust Alley, S41°07'49"E 12.00 feet to a point at the intersection of the southwesterly right-of-way line of Hust Alley and the southeasterly right-of-way line of Sharp Alley, a set cut notch bears N48°52'11"E 3.00 feet;

THENCE, with the southeasterly right-of-way line of Sharp Alley S48°52'11"W 120.00 feet to a point at the intersection of the southeasterly right-of-way line of Sharp Alley and the northeasterly right-of-way line of East McMicken Avenue, a set cut notch bears S48°52'11"W 3.00 feet;

THENCE, with the northeasterly right-of-way line of East McMicken Avenue N41°07'49"W 12.00 feet to the **POINT OF BEGINNING CONTAINING 0.0331 ACRES** being subject to all right-of-ways and easements of record.

This description was prepared from a new survey made by Ryan M. Hartig, PS 8765, for Viox & Viox, Inc., December 22, 2022.

EXHIBIT B
to Lease Agreement

Survey

