



# City of Cincinnati

801 Plum Street  
Cincinnati, OH 45202

## Agenda - Final

### Budget and Finance Committee

*Chairperson David Mann*  
*Vice Chair Chris Seelbach*  
*Councilmember Steve Goodin*  
*Councilmember Jan-Michele Kearney*  
*Councilmember Liz Keating*  
*Councilmember Greg Landsman*  
*Councilmember Betsy Sundermann*  
*Councilmember Wendell Young*

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Monday, October 4, 2021

1:00 PM

Council Chambers, Room 300

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ROLL CALL

### PRESENTATIONS

**Telehealth Mobile Crisis Program  
Cincinnati Police Department**

**NOTE**

**Explanation of Process for Evaluating Street Improvements**

### AGENDA

- 1.**     [202102860](#)     MOTION, dated 9/27/2021, submitted by Councilmember Kearney, WE MOVE that the City set aside funds in the Fiscal Year 2021 budget to repair and/or upgrade the following city roadways, including the provision of traffic calming devices and better grading to prevent accidents: Reading Road (From Avondale through Bond Hill and then Roselawn), Glenway, Elberon (near Mt. Echo Park), Erie (by District 2), Sycamore Hill in Mt. Auburn, and Paddock Road between Reading Road and Tennessee Avenue.

**Sponsors:**     Kearney

**Attachments:**   [Motion - Kearney](#)
- 2.**     [202102812](#)     REPORT, dated 9/22/2021, submitted by Paula Boggs Muething, City Manager, regarding City roadway improvements and traffic calming in the FY 2022 Budget. (SEE DOC. #202102165)

**Sponsors:**     City Manager

**Attachments:**   [City Roadway Improvements and Traffic Calming in FY22](#)

3. [202102830](#) MOTION, dated 09/22/2021, submitted by Councilmember Kearney, WE MOVE for the City Administration to extend the current parking amnesty period for unpaid parking tickets incurred within the City of Cincinnati to December 31, 2021. The amount owed during this amnesty extension will include only the original parking ticket cost and no additional penalties or fees. WE FURTHER MOVE for this amnesty period to authorize any person who pays an unpaid parking ticket or tickets by October 31, 2021, to pay half of the full balance of the original ticket cost and no additional penalties or fees. WE FURTHER MOVE that all unpaid parking tickets incurred within the City of Cincinnati are eligible for the amnesty described above regardless of when the parking ticket was issued, or the number of parking tickets issued to any individual. WE FURTHER MOVE for the City Administration to report to City Council the date collected pertaining to the amnesty period extension and October amnesty program, including amount of funds collected.

**Sponsors:** Kearney

**Attachments:** [Parking Amnesty Motion 9.22.21](#)

4. [202102839](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AUTHORIZING the payment of \$7,794.92 as a moral obligation to Ernest Industries, doing business as Kelly-Creswell, for outstanding charges incurred for the repair of line-stripping equipment for the Traffic and Road Operations Division; and AUTHORIZING the Finance Director to make payment of \$7,794.92 to Ernest Industries from the Street Construction Maintenance and Repair Fund Traffic and Road Operations non-personnel operating budget account no. 301x252x6000x7259.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

5. [202102840](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AUTHORIZING the payment of \$57,000 as a moral obligation to The Ohio State University, doing business as the Ohio Academic Resources Network, for internet services and connectivity to the remote data center as part of the City's disaster recovery solution, and AUTHORIZING the Finance Director to make payment of \$57,000 to the Ohio Academic Resources Network from the General Fund non-departmental Enterprise Software and Licenses non-personnel operating budget account no. 050x952x4500x7212.

**Sponsors:** City Manager

**Attachments:** [Transmittal](#)  
[Ordinance](#)

6. [202102841](#) ORDINANCE submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AUTHORIZING the City Manager to accept an in-kind donation from the Candace Bates State Farm Agency of 25 carbon monoxide units valued at up to \$500 for use by the Cincinnati Fire Department.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)
7. [202102842](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AUTHORIZING the City Manager to execute a Lease Agreement with Condor Air, Ltd. pursuant to which the company will renew its leasehold interest at Lunken Airport for up to an additional twenty years.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)  
[Attachment I](#)
8. [202102843](#) ORDINANCE submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AUTHORIZING the City Manager to execute a Lease Agreement with Brewing Arts, LLC, pursuant to which the City will lease for a five-year term an above grade portion of the excess right of way located north of Blue Rock Street, and between Cherry Street and Turrill Street, in the Northside neighborhood.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)  
[Attachment I](#)

9. [202102844](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, ESTABLISHING new capital improvement program project account no. 980x203x222004, "Biochar Replication Bloomberg Grant"; AUTHORIZING the City Manager to apply for, accept, and appropriate grant resources in an amount of up to \$400,000 from Bloomberg Philanthropies into the newly established capital improvement program project account no. 980x203x222004, "Biochar Replication Bloomberg Grant," for the purpose of implementing a biochar production facility; and AUTHORIZING the transfer and appropriation of local matching resources from the unappropriated surplus of Urban Forestry Fund 428 in the amount of \$100,000 to newly established capital improvement program project account no. 980x203x222004, "Biochar Replication Bloomberg Grant."
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)
10. [202102845](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AUTHORIZING the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$75,000 from the Cincinnati Recreation Foundation, from funds made available through the ESPN RePlay program, for the purpose of renovating underutilized recreation spaces in Avondale as part of the 2021 Community Makeover program; and AUTHORIZING the Finance Director to deposit the grant funds into Recreation Special Activities Fund revenue account no. 323x8571x199Q876, "2021 Community Makeover."
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Ordinance](#)
11. [202102848](#) RESOLUTION (LEGISLATIVE) (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, DECLARING by legislative resolution the necessity of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati, Ohio involving the City of Cincinnati, Ohio Energy Special Improvement District.
- Sponsors:** City Manager
- Attachments:** [Transmittal](#)  
[Resolution w/ Attachment](#)

12. [202102850](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, DETERMINING to proceed with the special assessment project at 3634-3638 Madison Road in the City of Cincinnati involving the City of Cincinnati, Ohio Energy Special Improvement District.
- Sponsors:*** City Manager
- Attachments:*** [Transmittal](#)  
[Ordinance w/ Attachment](#)
13. [202102851](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, LEVYING special assessments for the purpose of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati involving the City of Cincinnati, Ohio Energy Special Improvement District.
- Sponsors:*** City Manager
- Attachments:*** [Transmittal](#)  
[Ordinance w/ Attachment](#)
14. [202102853](#) ORDINANCE (EMERGENCY) submitted by Paula Boggs Muething, City Manager, on 9/29/2021, AMENDING Ordinance No. 0388-2020 to correct the designated fund in which the Director of Finance is authorized to deposit proceeds received in connection with the grant of an easement authorized by said ordinance.
- Sponsors:*** City Manager
- Attachments:*** [Transmittal](#)  
[Ordinance](#)
15. [202102306](#) MOTION, dated 6/15/2021, submitted by Councilmember Kearney, WE MOVE that the City of Cincinnati allocate \$2.5 million from the Fleet Replacement funds in the capital budget to remove the West Fork Incinerator in South Cumminsville. These bonded capital dollars should be allocated from the 40% portion of the fleet replacement funds that are not allocated to police and fire vehicles.
- Sponsors:*** Kearney
- Attachments:*** [Motion 202102306](#)

ADJOURNMENT



**Jan-Michele Lemon Kearney**  
*Councilmember*

September 27, 2021

**MOTION**

**WE MOVE** that the City set aside funds in the Fiscal Year 2021 budget to repair and/or upgrade the following city roadways, including the provision of traffic calming devices and better grading to prevent accidents:

- Reading Road (From Avondale through Bond Hill and then Roselawn)
- Glenway
- Elberon (near Mt. Echo Park)
- Erie (by District 2)
- Sycamore Hill in Mt. Auburn
- Paddock Road between Reading Road and Tennessee Avenue

  
Councilmember Jan-Michele Lemon Kearney

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September 22, 2021

**TO:** Members of the Budget and Finance Committee

**FROM:** Paula Boggs Muething, City Manager **202102812**

**SUBJECT:** City Roadway Improvements and Traffic Calming in the FY 2022 Budget

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**REFERENCE DOC. #202102165**

The Budget and Finance Committee referred for a report at its session on June 21, 2021, the following Motion:

WE MOVE that the City set aside funds in the Fiscal Year 2021 budget to repair and/or upgrade the following city roadways, including the provision of traffic calming devices and better grading to prevent accidents:

- Warsaw Avenue (Kroger crosswalk)
- Rockdale Avenue (Rockdale Academy)
- Harrison Avenue (2200 block)
- Hamilton Avenue (Hamilton & Lingo)
- Virginia Avenue & Kirby Avenue
- Route 50/River Road (Sayler Park)

The following summarizes the assessment by the Office of Budget and Evaluation and the Department of Transportation and Engineering (DOTE) for roadway improvements and traffic calming devices on specific city streets for FY 2022.

Warsaw Avenue (Kroger crosswalk) – DOTE installed a pedestrian-triggered flashing light at this location in 2018. Staff has also worked with the East Price Hill Community Council to develop a new street design that will calm traffic throughout the Warsaw corridor and make it easier for pedestrians to cross the street. Approximately \$400,000 is needed to complete the engineering drawings, and approximately \$5,000,000 is needed for construction.

Rockdale Avenue (Rockdale Academy) – There have been 7 parked car crashes on this block since 2018. Given the proximity of the school, DOTE will evaluate this location for speed cushions in FY 2022 and score/compare it to other priority locations.

Harrison Avenue (2200 block) – Data shows that there is an above average number of wet weather accidents near the curve in this block of Harrison Avenue. DOTE evaluated Harrison Avenue in this area and determined two possible improvements: 1) Install new curve warning signs that are missing; this has been completed. 2) Install a high friction surface treatment (HFST) on the roadway. DOTE anticipates the cost to be \$250,000 for a HFST.

DOTE is also working with the Westwood Civic Association, Westwood Community Urban Redevelopment Corporation, and the South Fairmount Community Council to develop new street design options that will calm traffic throughout the Harrison Avenue corridor.

Hamilton Avenue (Hamilton & Lingo) – DOTE installed a pedestrian-triggered flashing light at this intersection in 2018. This intersection is not currently on the Northside Community Council Transportation Subcommittee’s list of priority locations for improvement.

Virginia Avenue & Kirby Avenue – This intersection is not currently on the Northside Community Council Transportation Subcommittee’s list of priority locations for improvement.

Route 50/River Road (Sayler Park) – DOTE has 2 projects planned for River Road:

1. From Fairbanks Avenue to Anderson Ferry Road: This will be an Ohio Department of Transportation (ODOT) Urban Paving project. It is scheduled for 2022/2023.
2. From Anderson Ferry Road to Dart Street: This will also be an ODOT Urban Paving project. It is scheduled for 2023/2024.

Community Council support for projects, whenever possible, is critical as it can help the City prioritize specific roadway improvements.

It is also important that the City partner with ODOT on large rehabilitation projects such as the projects for River Road/US Route 50. The funding split between ODOT and the City is 50/50. As such, the City only pays 50% of the total cost of the rehabilitation work, preserving local resources for other projects.

cc: William “Billy” Weber, Assistant City Manager  
John S. Brazina, Director, Transportation and Engineering





**Jan-Michele Lemon Kearney**  
*Councilmember*

September 22, 2021

**MOTION**

WE MOVE for the City Administration to extend the current parking amnesty period for unpaid parking tickets incurred within the City of Cincinnati to December 31, 2021. The amount owed during this amnesty extension will include only the original parking ticket cost and no additional penalties or fees.

WE FURTHER MOVE for this amnesty period to authorize any person who pays an unpaid parking ticket or tickets by October 31, 2021, to pay half of the full balance of the original ticket cost and no additional penalties or fees.

WE FURTHER MOVE that all unpaid parking tickets incurred within the City of Cincinnati are eligible for the amnesty described above regardless of when the parking ticket was issued, or the number of parking tickets issued to any individual.

WE FURTHER MOVE for the City Administration to report to City Council the data collected pertaining to the amnesty period extension and October amnesty program, including amount of funds collected.

\_\_\_\_\_  
Councilmember Jan-Michele Lemon Kearney

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## **STATEMENT**

Paying parking fines and subsequent financial penalties are an economic hardship for many Cincinnatians, especially during the pandemic. According to the U.S. Census 2019 American Community Survey, 23 percent of our community's population live below the poverty level and this extension of amnesty through December 31, 2021, will remove financial burdens faced by our residents. The amnesty program will also encourage residents to pay outstanding parking tickets as late fees and penalties will be forgiven and/or waived.

For the year of 2021, the City of Cincinnati has approximately 27,768 unpaid parking tickets. In 2020, the City of Cincinnati had 18,888 unpaid parking tickets, and in 2019, the City had approximately 23,173 unpaid parking tickets. In 2018, the City of Cincinnati had 21,234 unpaid parking tickets, and in 2017, the City of Cincinnati had 18,373 unpaid parking tickets. Finally, in 2016, the City of Cincinnati had approximately 17,667 unpaid parking tickets. It is evident that the collection of parking ticket payments has stalled. This motion serves to accelerate the payment of unpaid parking tickets while providing much-needed relief to our citizens. The tickets issued in 2021 and 2020 range from \$250 to \$45, with a median amount of \$65 per ticket as an average of the amount owed to the City of Cincinnati.

We ask that the City Administration inform Council of the data collected from this relief program, including amounts collected during the amnesty and amnesty extension periods.

September 29, 2021

**To:** Mayor and Members of City Council 202102839  
**From:** Paula Boggs Muething, City Manager  
**Subject:** **Emergency Ordinance – Public Services: Moral Obligation  
Payment to Kelly-Creswell**

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Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the payment of \$7,794.92 as a moral obligation to Ernest Industries, doing business as Kelly-Creswell, for outstanding charges incurred for the repair of line-stripping equipment for the Traffic and Road Operations Division; and **AUTHORIZING** the Finance Director to make payment of \$7,794.92 to Ernest Industries from the Street Construction Maintenance and Repair Fund Traffic and Road Operations non-personnel operating budget account no. 301x252x6000x7259.

This Emergency Ordinance authorizes the payment of \$7,794.92 as a moral obligation to Ernest Industries, doing business as (dba) Kelly-Creswell, for services provided to the Department of Public Services (DPS) Traffic and Road Operations Division in relation to repair of line-stripping equipment.

Kelly Creswell provided services to the City prior to the proper certification and encumbrance of funds. Due to the timing of the encumbrance, a moral obligation payment is required. DPS has reminded the vendor that a completed certification for work is needed prior to proceeding with any repairs of City equipment.

This Emergency Ordinance will also authorize the Finance Director to make a payment from the Street Construction Maintenance and Repair Fund Traffic and Road Operations non-personnel operating budget account no. 301x252x6000x7259 in an amount of \$7,794.92 for the purpose of providing payment to the vendor.

The reason for the emergency is the immediate need to pay Kelly-Creswell for outstanding charges relating to the services provided to the Department of Public Services.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director

Attachment

**EMERGENCY**

MSS

- 2021

**AUTHORIZING** the payment of \$7,794.92 as a moral obligation to Ernest Industries, doing business as Kelly-Creswell, for outstanding charges incurred for the repair of line-striping equipment for the Traffic and Road Operations Division; and **AUTHORIZING** the Finance Director to make payment of \$7,794.92 to Ernest Industries from the Street Construction Maintenance and Repair Fund Traffic and Road Operations non-personnel operating budget account no. 301x252x6000x7259.

WHEREAS, Ernest Industries, doing business as Kelly-Creswell, repaired line-striping equipment for the Department of Public Services (“DPS”), Traffic and Road Operations Division, without having submitted a certification for the work prior to beginning the repairs; and

WHEREAS, DPS has identified and resolved the issue which led to this oversight to avoid a similar situation in the future, and the vendor has been reminded that a completed certification for work is needed prior to proceeding with any repairs of City equipment; and

WHEREAS, sufficient resources are available to cover the incurred expenses in Street Construction Maintenance and Repair Fund Traffic and Road Operations non-personnel operating budget account no. 301x252x6000x7259; and

WHEREAS, the Cincinnati City Council desires to provide payment for such services in the amount of \$7,794.92; now, therefore,

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

Section 1. That the Finance Director is authorized to make a total payment of \$7,794.92 as a moral obligation to Ernest Industries, doing business as Kelly-Creswell, for outstanding charges incurred for the repair of line-striping equipment for the Traffic and Road Operations Division of the Department of Public Services, to be paid from Street Construction Maintenance and Repair Fund Traffic and Road Operations non-personnel operating budget account no. 301x252x6000x7259.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the provisions of Section 1 hereof.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to pay Kelly-Creswell for outstanding charges relating to the services provided to the Department of Public Services.

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

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

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

September 29, 2021

**To:** Mayor and Members of City Council 202102840  
**From:** Paula Boggs Muething, City Manager  
**Subject:** Emergency Ordinance – ETS: Moral Obligation Payment to OARnet

Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the payment of \$57,000 as a moral obligation to The Ohio State University, doing business as the Ohio Academic Resources Network, for internet services and connectivity to the remote data center as part of the City’s disaster recovery solution, and **AUTHORIZING** the Finance Director to make payment of \$57,000 to the Ohio Academic Resources Network from the General Fund non-departmental Enterprise Software and Licenses non-personnel operating budget account no. 050x952x4500x7212.

This Emergency Ordinance authorizes the payment of \$57,000 as a moral obligation to The Ohio State University, doing business as (dba) the Ohio Academic Resources Network (OARnet), for services provided to the Department of Enterprise Technology Solutions (ETS) in relation to internet services and connectivity to the remote data center as part of the City’s disaster recovery solution.

OARnet provided services to the City in Fiscal Year 2020 and Fiscal Year 2021 for which funds were not properly encumbered. Due to the timing of the encumbrance, a moral obligation payment is required. ETS has identified and resolved the issue which led to this oversight to avoid a similar situation in the future. Moving forward, the department intends to perform routine audits to ensure prompt payment of outstanding invoices.

This Emergency Ordinance will also authorize the Finance Director to make a payment from the General Fund non-departmental Enterprise Software and Licenses non-personnel operating budget account no. 050x952x4500x7212 in an amount of \$57,000 for the purpose of providing payment to the vendor.

The reason for the emergency is the immediate need to avoid service interruption by paying Ohio Academic Resources Network for past due charges invoiced to Enterprise Technology Solutions.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director

Attachment

## EMERGENCY

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**AUTHORIZING** the payment of \$57,000 as a moral obligation to The Ohio State University, doing business as the Ohio Academic Resources Network, for internet services and connectivity to the remote data center as part of the City’s disaster recovery solution; and **AUTHORIZING** the Finance Director to make payment of \$57,000 to the Ohio Academic Resources Network from the General Fund non-departmental Enterprise Software and Licenses non-personnel operating budget account no. 050x952x4500x7212.

WHEREAS, Ohio Academic Resources Network (“OARnet”) provided services to the Department of Enterprise Technology Solutions (“ETS”), including internet services and connectivity to the remote data center as part of the City’s disaster recovery solution; and

WHEREAS, OARnet has not been paid for these services despite having timely submitted invoices to ETS; and

WHEREAS, ETS has identified and resolved the issue which led to this oversight, and it is anticipated that greater stability in ETS staffing and improved communication between ETS and the vendor will prevent similar situations in the future; and

WHEREAS, City Council desires to provide payment for the services provided by OARnet; now, therefore,

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

Section 1. That the Finance Director is authorized to make a payment of \$57,000 from the General Fund non-departmental Enterprise Software and Licenses non-personnel operating budget account no. 050x952x4500x7212 to The Ohio State University, doing business as Ohio Academic Resources Network, as a moral obligation of the City of Cincinnati, for internet service and connectivity to the remote data center as part of the City’s disaster recovery solution.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the provisions of Section 1 above.

Section 3. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to avoid service interruption by paying Ohio Academic Resources Network for past due charges invoiced to Enterprise Technology Solutions.

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

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

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



September 29, 2021

**To:** Mayor and Members of City Council 202102841  
**From:** Paula Boggs Muething, City Manager  
**Subject: Ordinance – Cincinnati Fire Department Carbon Monoxide Detector In-Kind Donation**

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Attached is an Ordinance captioned:

**AUTHORIZING** the City Manager to accept an in-kind donation from the Candace Bates State Farm Agency of 25 carbon monoxide units valued at up to \$500 for use by the Cincinnati Fire Department.

Approval of this Ordinance authorizes the City Manager to accept an in-kind donation from the Candace Bates State Farm Agency of equipment valued at up to \$500 for use by Cincinnati Fire Department.

The Candace Bates State Farm Agency has offered to donate equipment, including 25 carbon monoxide detectors, to the Cincinnati Fire Department to be used for fire prevention efforts.

This donation does not require additional FTE or matching funds.

This Ordinance is in accordance with the “Sustain” goal to “manage our financial resources” as described on page 199 of Plan Cincinnati (2012).

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director

Attachment



LES

- 2021

**AUTHORIZING** the City Manager to accept an in-kind donation from the Candace Bates State Farm Agency of 25 carbon monoxide units valued at up to \$500 for use by the Cincinnati Fire Department.

WHEREAS, the Candace Bates State Farm Agency has offered to donate 25 carbon monoxide units to the Cincinnati Fire Department to be used for fire prevention efforts; and

WHEREAS, the value of the donation is up to \$500; and

WHEREAS, there is no local match required and no FTEs are associated with this donation; and

WHEREAS, this ordinance is in accordance with the “Sustain” goal to “manage our financial resources” as described on page 199 of Plan Cincinnati (2012); 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 accept an in-kind donation from the Candace Bates State Farm Agency of 25 carbon monoxide units valued at up to \$500 for use by Cincinnati Fire Department Fire in fire prevention efforts.

Section 2. That the proper City officials are authorized to do all things necessary and proper to carry out the terms of Section 1 hereof.

Section 3. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

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

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

September 29, 2021

To: Mayor and Members of City Council 202102842  
From: Paula Boggs Muething, City Manager  
Subject: EMERGENCY ORDINANCE – LUNKEN AIRPORT LEASE WITH CONDOR AIR, LTD

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Attached is an emergency ordinance captioned as follows:

AUTHORIZING the City Manager to execute a *Lease Agreement* with Condor Air, Ltd. pursuant to which the company will renew its leasehold interest at Lunken Airport for up to an additional twenty years.

The City currently leases space at Lunken Airport, known as Lease Area 47, to Condor Air, Ltd. (“Company”) pursuant to a lease that is scheduled to expire on October 31, 2021.

The Company desires to renew its leasehold interest for up to an additional 20 years (namely, an initial term of 5 years commencing November 1, 2021, with three 5-year renewal options), as further described in the attached *Lease Agreement*.

Council previously authorized the renewal of the Company’s lease by Ordinance No. 35-2020, but, upon further investigation, it was determined that extensive capital improvements are required to modernize the hangar on the leased premises (ownership of which will revert to the City upon the expiration of the existing lease) and to render it functional to serve tenants and their contemporary aircraft.

The Company has agreed to make substantial improvements to the City’s hangar that will improve its functionality and extend its useful life, and the *Lease Agreement* has been revised to reflect this arrangement.

The City’s Real Estate Services Division, in consultation with the City’s Airport Manager, and after considering airport industry standards, FAA requirements, and the work to be performed by the Company, has determined by appraisal that the fair market rental value of the leased premises is approximately \$33,550 per annum, which the Company has agreed to pay (with rent for each renewal period to be adjusted as described in the *Lease Agreement*).

Pursuant to Cincinnati Municipal Code Section 331-5, 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.

The City Planning Commission approved the renewed lease of Lease Area 47 to the Company at its meeting on January 17, 2020.

The reason for the emergency is the immediate need to execute the *Lease Agreement* prior to the expiration of the Company’s existing lease, to ensure the Company’s leasehold is timely renewed, and that the City receives the benefit of the work to be performed by the Company at the earliest possible time.

The Administration recommends passage of the attached emergency ordinance.

Attachment I – Lease agreement

cc: John S. Brazina, Director, Transportation and Engineering

EMERGENCY

City of Cincinnati

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AWB

An Ordinance No. \_\_\_\_\_

- 2021

**AUTHORIZING** the City Manager to execute a *Lease Agreement* with Condor Air, Ltd. pursuant to which the company will renew its leasehold interest at Lunken Airport for up to an additional twenty years.

WHEREAS, the City owns Lunken Airport, which is under the management and control of the City's Department of Transportation and Engineering; and

WHEREAS, the City currently leases space at the Airport, known as Lease Area 47, to Condor Air, Ltd. ("Company") pursuant to a lease that is scheduled to expire on October 31, 2021; and

WHEREAS, the Company desires to renew its leasehold interest for up to an additional twenty years (namely, an initial term of five years commencing November 1, 2021, with three five-year renewal options), as further described in the *Lease Agreement* attached to this ordinance as Attachment A; and

WHEREAS, Council previously authorized the renewal of the Company's lease by Ordinance No. 35-2020, but, upon further investigation, it was determined that extensive capital improvements are required to modernize the hangar on the leased premises (ownership of which will revert to the City upon the expiration of the existing lease) and to render it functional to serve tenants and their contemporary aircraft; and

WHEREAS, the Company has agreed to make substantial improvements to the City's hangar that will improve its functionality and extend its useful life, and the *Lease Agreement* has been revised to reflect this arrangement; and

WHEREAS, the City's Real Estate Services Division, in consultation with the City's Airport Manager, and after considering airport industry standards, FAA requirements, and the work to be performed by the Company, has determined by appraisal that the fair market rental value of the leased premises is approximately \$33,550 per annum, which the Company has agreed to pay (with rent for each renewal period to be adjusted as described in the *Lease Agreement*); and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, 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

WHEREAS, the City Planning Commission approved the renewed lease of Lease Area 47 to the Company at its meeting on January 17, 2020; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Lease Agreement* with Condor Air, Ltd. (“Company”), in substantially the form attached as Attachment A to this ordinance, pursuant to which the City of Cincinnati will renew the company’s leasehold interest in Lease Area 47 at Lunken Airportm for an initial term of five years, with three five-year renewal options (for a total of up to twenty years).

Section 2. That the rent set forth in the *Lease Agreement* reflects the fair market rental value of the leased premises, as determined by appraisal by the City’s Real Estate Services Division in consultation with the City’s Airport Manager and after considering airport industry standards, FAA requirements, and the work necessary to update and extend the useful life of the hangar.

Section 3. That eliminating competitive bidding in connection with the City’s lease of the leased premises is in the best interest of the City because the Company has been a good and responsible tenant at the Airport for decades, the City desires to retain the Company as a tenant, and the Company will make improvements to the City’s hangar that will improve its functionality and extend its useful life.

Section 4. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions of this ordinance and the *Lease Agreement*, including executing any and all ancillary documents associated therewith.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to execute the *Lease Agreement* prior to the expiration of the Company’s

existing lease to ensure the Company's leasehold is timely renewed and that the City receives the benefit of the work to be performed by the Company at the earliest possible time.

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

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

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

**ATTACHMENT A**



Contract No. \_\_\_\_\_

Property: Lunken Airport – Lease Area No. 47

## LUNKEN AIRPORT LEASE AGREEMENT

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 **Condor Air, Ltd.**, an Ohio limited liability company, the address of which is 670 Wilmer Avenue, Cincinnati, OH 45226 (“Lessee”).

### Recitals:

A. The City owns Lunken Airport, which is under the management and control of the City’s Department of Transportation and Engineering (“**DOTE**”).

B. Pursuant to an *Agreement of Lease* dated November 1, 1976 between the City and Condor, an Ohio general partnership (Lessee’s predecessor-in-interest), as amended by an *Addendum to Lease* dated August 15, 1977 and an *Amendment of Lease* dated November 18, 1999 (as so amended, the “**Existing Lease**”), Lessee currently leases the portion of the Airport known as Lease Area No. 47, containing approximately 1.575 acres, as generally depicted on Exhibit A (Site Map) and described on Exhibit B (Description of Leased Premises) hereto (the “**Leased Premises**”), for the storage, maintenance and repair of airplanes and other general aeronautical purposes (the “**Permitted Use**”).

C. The initial 45-year term of the Existing Lease (an initial term of 5 years, with eight 5-year renewal options) is scheduled to expire on Oct 31, 2021. Ownership of the hangar and associated leasehold improvements at the Leased Premises (the “**Leasehold Improvements**”) will automatically revert to the City on the above specified expiration date.

D. The parties desire to enter into a new lease pursuant to which the City will lease the Leased Premises to Lessee for an additional term of up to 20 years (5 years, with three 5-year renewal options).

E. The Leasehold Improvements require capital repairs and maintenance (as further described on Exhibit A hereto; hereinafter referred to as the “**Work**”), and Lessee has agreed to make the needed repairs and maintenance at its sole cost and expense.

F. The rent set forth in this Lease reflects the fair market rental value of the Leased Premises, as determined by analysis by the City’s Real Estate Services Division and the Airport Manager taking into consideration airport industry standards and FAA requirements, and as further modified in recognition of the Work to be performed by Lessee.

G. 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 for an additional term of up to 20 years at its meeting on January 17, 2020.

H. Execution of this Lease was authorized by Ordinance No. \_\_\_\_\_, passed by Cincinnati City Council on \_\_\_\_\_, 2021.

NOW, THEREFORE, the parties hereby agree as follows:

### 1. Leased Premises; Termination of Existing Lease.

(A) Grant. The City hereby leases the Leased Premises to Lessee, and Lessee hereby leases the Leased Premises from the City, on the terms and conditions set forth herein. The City makes no

representations or warranties to Lessee regarding the physical condition of the Airport or Leased Premises and Lessee accepts the Leased Premises in "as is" condition. 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, and to any and all existing agreements between the City and the federal government pertaining to the Airport.

(B) City's Right to Enter. The City's employees, agents and contractors shall have the right to enter upon the Leased Premises, at any reasonable time and from time to time, for the purpose of examining the condition of the Leased Premises, determining Lessee's compliance with the provisions of this Lease, accessing any public utility installations as shown on drawings at the office of the Airport Manager, and for any other proper purpose. The City shall use reasonable efforts to avoid disrupting Lessee's business operations and shall promptly repair any damage to the Leased Premises caused by the City's entry. The City shall use reasonable efforts to notify Lessee prior to entering upon the Leased Premises except that no notice shall be required in the event of an emergency.

(C) Termination of Existing Lease. The Existing Lease shall automatically terminate on the Commencement Date set forth in section 2 below; provided however that any and all obligations of Lessee under the Existing Lease that have accrued but have not been fully performed as of such date (for example, Lessee's obligation to pay rent through the termination date) shall survive such termination until fully performed.

## 2. Term; Renewal Periods.

(A) Initial Term (5 years). The initial term of this Lease ("Initial Term") shall commence on **November 1, 2021** (the "**Commencement Date**"), and, unless extended or sooner terminated as herein provided, shall expire on **Oct 31, 2026**. As used herein, each "**Lease Year**" shall mean each 12-month period from Nov 1 through Oct 31.

(B) Renewal Periods (three 5-year automatic renewal periods unless Lessee provides Notice of Non-Renewal). Provided that (i) on the commencement date of each renewal period Lessee is not in default under this Lease beyond any applicable notice and cure period provided for herein, and (ii) Lessee shall not have notified the City in writing that Lessee does NOT wish to extend the Term (a "**Notice of Non-Renewal**"), the Initial Term of this Lease shall automatically be extended 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). 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.

## 3. Rent.

(A) Base Rent. Beginning on the Commencement Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month, in the amounts calculated in this paragraph (namely, fixed for the Initial Term, with CPI adjustments every 5 years thereafter). The monthly installment of rent for any partial calendar month at the beginning or end of the Term shall be prorated on a per diem basis. Notwithstanding the rent adjustments provided for herein, in no event shall annual base rent decrease.

(i) Initial Term (Lease Years 1-5: Nov 1, 2021 – Oct 31, 2026) (fixed). For Lease Years 1-5, annual base rent shall be equal to the following amount:

Annual Amount	Monthly Installment
\$33,550.00	\$2,795.83

(ii) Renewal Periods (CPI adjustment every 5 years). Effective as of the first day of Lease

Years 6, 11 and 16 (i.e., every 5 years), the annual base rent shall increase to an amount that is equal to the product of multiplying the annual base rent payable during the 5-year term then just ended by a fraction, the numerator of which is the CPI most recently published 60 days prior to the rent adjustment date, and the denominator of which is the CPI most recently published 60 days prior to the commencement of the 5-year term then just ended. "CPI" means the Consumer Price Index, All Urban Consumers, U. S. City Average (1982-1984=100) published from time to time by the United States Bureau of Labor Statistics. Lessee shall make all CPI rent adjustment computations under this section 3(A) and shall send written notice of each CPI-based rent adjustment, together with Lessee's computations ("**Lessee's Rent Adjustment Notice**"), to DOTE (to the two addresses set forth in section 12 below) and to the City's Real Estate Services Division (801 Plum Street, Room 122, Cincinnati, OH 45202) no less than 30 days prior to each rent adjustment date.

(B) **Place of Payment.** As used herein, "rent" shall mean base rent and all other amounts payable by Lessee to the City under this Lease. Rent shall be payable to "Treasurer – City of Cincinnati" and mailed or delivered to: City of Cincinnati, 262 Wilmer Avenue, Room 22, Cincinnati, OH 45226, Attn: Lunken Airport Manager, or to such other address as the City may from time to time specify in writing.

(C) **Late Payments.** If any payment of rent is not paid when due, a late charge of 5% of the amount past due shall automatically become due and payable. If rent is outstanding for longer than 30 days, such past due amount shall bear interest at the rate of 10% per annum until paid.

(D) **Rent Adjustment if Lessee Fails to Complete the Work Within One Year.** If Lessee fails to complete the Work to the City's satisfaction within **one (1) year** after the Commencement Date (such determination to be made by the City) (the "**Work Period**"), the annual base rent for Lease Years 2-5 shall automatically increase to the following amount:

Annual Amount	Monthly Installment
\$61,950.00	\$5,162.50

In addition, if Lessee fails to complete the Work to the City's satisfaction within the Work Period, Lessee shall pay additional rent in the following amount during Lease Years 2-5 to reimburse the City for the Year 1 base rent adjustment applied in anticipation of Lessee's performance of the Work:

Annual Amount	Monthly Installment
\$7,100.00	\$591.67

If Lessee commences and diligently pursues the completion of the Work, but for reasons beyond Lessee's reasonable control (excluding financial reasons), Lessee is unable to complete the Work within the Work Period, Lessee may, prior to the end of the Work Period, make a written request to extend the Work Period for a reasonable period of time, which the City agrees to consider (however the City's agreement to consider such request shall not impair the City's termination rights under this paragraph (D) should the City determine that Lessee's failure to complete the Work within the Work Period was within Lessee's reasonable control or that the requested extension is otherwise not justified).

**4. Permitted Use.** Provided Lessee has obtained all valid permits from the City and any and all other required permits, Lessee shall use the Leased Premises for the Permitted Use and for no other activities whatsoever without the City's prior written consent. Lessee's right to use the Leased Premises for the Permitted Use is non-exclusive, and nothing herein shall limit or prevent the City from granting the same or similar non-exclusive rights to other persons or entities utilizing space at the Airport. Lessee shall not deviate from the Permitted Use without the City's prior written approval (and if required, as determined by the City, without the prior written approval of the FAA).

**5. Utilities; Real Estate Taxes; Other Expenses.** This is a "triple net" lease for the City, and during the Term of this Lease, Lessee shall pay (i) any and all utility charges associated with the Leased

Premises, (ii) all real estate taxes and assessments levied against the Leasehold Improvements (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 expenses associated with the Leased Premises, including without limitation any and all other fees required to be paid under Chapter 402 (*Airport*) of the CMC. *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; except that the City shall pay the real estate taxes and assessments on the raw land only.* Lessee shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. If the Leasehold Improvements are not separately taxed from the raw land for real estate tax purposes, the City shall calculate Lessee's share of each tax bill, based upon the Hamilton County Auditor's respective values of the land and Leasehold Improvements, and Lessee shall pay its allocated share of the bill within 15 days after receiving written notice from the City of the amount due.

**6. Performance of Work; Maintenance and Repairs; Other Operating Requirements.**

(A) Work. Lessee shall complete the Work in accordance with Exhibit C and Exhibit D hereto.

(B) Maintenance and Repairs. Lessee shall maintain the Leased Premises in good, clean and safe condition and repair, shall not permit any waste or nuisance on the Leased Premises, shall not permit any debris or rubbish to accumulate in open space, and shall keep the Leased Premises free from unreasonable accumulations of snow and ice and other obstructions. Without limitation of the foregoing, Lessee shall replace all light bulbs and filters, provide water sprinkler system inspection and repair, provide trash removal, window washing, grass cutting and proper maintenance of landscaped areas, and maintain and keep in good condition and repair the exterior and interior structural portions and roof of any and all buildings, structures, hangars, fences, fixtures, pavement, HVAC, electrical, plumbing and mechanical fixtures, and any and all other improvements located on the Leased Premises, reasonable wear and tear excepted, and in compliance with all applicable building and fire codes, airport regulations and other laws (collectively, "**Applicable Laws**").

(C) Protection from Aircraft Engine Blasts. Lessee shall provide an approved means of protection for persons and property from jet aircraft engine blasts or exhaust emissions at any time jet aircraft is operated on the Leased Premises.

(D) Parking. Lessee shall provide within the limits of the Leased Premises, at its own cost, a parking area for motor vehicles sufficient for vehicle parking needs of Lessee, its agents, employees and customers.

(E) Fuel Facilities. Lessee shall have sole responsibility for the operation, maintenance, repair and replacement of the fuel storage and distribution facilities located on the Leased Premises. Lessee shall be responsible for all required inspections and State of Ohio annual registration and fees.

(E) Permits. Lessee shall obtain all required permits and shall pay all required permit fees associated with Lessee's activities at the Leased Premises.

(F) Changes to Land Grade or Level. Lessee shall not make any changes in the land grade or level of the Leased Premises that might affect the abutting properties without the prior written consent of DOTE.

(G) Compliance with Federal Air Regulations. Lessee shall comply with Federal Air Regulations Part 77 and shall not penetrate any designated runway clear zone.

(H) Flood Plain. Lessee acknowledges that (i) the Leased Premises are located in a flood plain, (ii) FEMA requires that all improvements constructed within a flood plain comply with precise, rigorous

construction standards, (iii) City building officials will not issue construction permits if the plans are not in compliance with the FEMA standards specific to flood plains, and (iv) compliance may add significant additional time and costs to the design and construction of the Leasehold Improvements.

(I) Alterations and Future Improvements. Once installed, Lessee shall not alter or remove any leasehold improvements except in accordance with section 12 below. Any and all alterations to the Leased Premises shall require the prior written consent of DOTE and shall comply with the minimum aesthetic and architectural standards and requirements adopted by the City (if any) that are applicable to the exterior of all other buildings and structures at the Airport.

(J) Determinations by DOTE. All determinations of the City, including determinations by the DOTE Director, with respect to the construction, alteration, maintenance, repair, restoration or removal of improvements at the Leased Premises shall be based upon confirmation that the improvements (i) are structurally sound, (ii) comply with the safety standards and requirements applicable to all other buildings and structures at the Airport, (iii) are consistent with the quality and appearance of Airport facilities adjacent to Wilmer Avenue, and (iv) comply with all other requirements under this Lease applicable to the Leasehold Improvements.

## 7. Insurance.

(A) Insurance. Throughout the Term, Lessee shall maintain the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on the Leasehold Improvements, naming the City and Lessee as their interests may appear;

(ii) property insurance on any and all personal property of Lessee from time to time located at the Leased Premises in the amount of the full replacement cost thereof;

(iii) Commercial General Liability insurance of at least Three Million Dollars (\$3,000,000) per occurrence, combined single limit, naming the City as an additional insured, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar-sized airport facilities;

(iv) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the City as an additional insured; and

(v) workers compensation insurance as required by law.

(B) Policy Requirements. Lessee's insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. No later than the Commencement Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(C) Waiver of Subrogation. Lessee hereby waives all claims and rights of recovery, and on behalf of Lessee's insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Lessee or

any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Premises or in connection with any breach by Lessee under this Lease.

**8. Casualty; Eminent Domain.** If the Leased Premises are damaged or destroyed by fire or other casualty or if any portion thereof is taken by exercise of eminent domain (federal, state or local), 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 Leasehold Improvements, Lessee shall make up the deficiency. Lessee shall handle all construction in accordance with the applicable requirements set forth in this Lease. Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leasehold Improvements are being repaired or restored.

**9. Default; Remedies.**

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than ten (10) days after Lessee receives written notice thereof from the City;

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than twenty (20) days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 20-day period, an event of default shall not be deemed to have occurred if Lessee commences to cure such failure within such 20-day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within ninety (90) days after Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it); and

(iii) The commencement of levy, execution or attachment proceedings against Lessee, any principal (which shall be defined as any individual or entity having an ownership interest in Lessee of more than 25%) or partner of Lessee, or any of the assets of Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Lessee or any principal or partner of Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Lessee or any principal or partner of Lessee; or the commencement of a case by or against Lessee or any principal or partner of Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian,

sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution).

(B) **Remedies.** Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

**10. Assignment and Subletting.** Lessee acknowledges that the City is entering into this transaction because of the City's confidence that Lessee has the financial means and business experience that are necessary to successfully operate Lessee's business in accordance with the provisions of this Lease. Lessee acknowledges that the City shall not be expected to consent to a proposed assignment or sublease by Lessee of its interests under this Lease to any person or entity in whom the City does not have similar confidence. Any attempt by Lessee to assign, sublease, or otherwise transfer its interests under this Lease to a third party without the City's prior written consent shall be null and void and shall, at the option of the City, constitute a default of Lessee under this Lease. No assignment or sublease by Lessee of its rights or obligations under this Lease to an affiliate or any other third party shall relieve Lessee from any liability to the City under this Lease.

**11. Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati  
Dept of Transportation & Engineering  
801 Plum Street, Suite 450  
Cincinnati, OH 45202

To Lessee:

Condor Air, Ltd.  
670 Wilmer Avenue  
Cincinnati, OH 45226

*with a copy to:*

Lunken Airport Administration Building  
Attn: Airport Manager  
262 Wilmer Avenue, Room 23  
Cincinnati, OH 45226

If Lessee sends a notice to the City alleging that the City is in default under this Lease, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

**12. Surrender; Holdover.**

(A) **Surrender.** At the end of the Term, Lessee shall peaceably surrender the Leased Premises to the City, free and clear of all leasehold mortgages and other liens (except those, if any, created by the City); provided, however, that, notwithstanding any other provision of this Lease to the contrary, no less than 90 days prior to the end of the Term, Lessee shall notify DOTE in writing of the existence of any fuel tanks at the Leased Premises ("**Fuel Tanks**"), whereupon DOTE shall notify Lessee as to whether or not the City requires the removal of the Fuel Tanks. If the City requires Lessee to remove the Fuel Tanks, Lessee shall remove the same and repair any and all damage to the Leased Premises caused thereby no later than the end of the Term. As provided in paragraph 6(I) above, Lessee shall not be permitted to remove any other improvements and acknowledges that the City would not enter into this Lease on the terms and conditions set forth herein but for Lessee's obligation to surrender all improvements to the City, free and clear of all liens, at the end of the Term.

(B) **Lessee's Right to Remove Items of Personal Property.** No later than the last day of the Term, Lessee shall remove all of Lessee's personal property at the Leased Premises (excluding trade fixtures, which shall not be removed unless otherwise directed by the City under paragraph 12(B) above)) shall repair any and all damage to the Leased Premises caused by the installation or removal thereof and otherwise restore the Leased Premises to a safe, clean and satisfactory condition.

(C) **Holdover.** If Lessee fails to surrender possession of the Leased Premises to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term and except that base rent payable during the holdover period shall be equal to two hundred percent of the base rent in effect at the end of the Term), terminable by either party at any time by giving written notice thereof to the other party. Lessee shall be liable for all costs and damages suffered or incurred by the City as a result of Lessee's failure to surrender possession at the end of the Term, including without limitation costs and damages suffered or incurred by the City during the holdover period.

(D) **Documents to be Delivered to City.** At the end of the Term, Lessee shall deliver to the City originals or copies of all books and records, operating manuals, contracts with third parties (but only if the City has expressly agreed to accept an assignment of such contracts), warranty information, and all other written materials and documents that are in Lessee's possession or under Lessee's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation and maintenance of the Leased Premises for the Permitted Use.

### **13. Compliance with Laws.**

(A) **Compliance with Laws.** Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati pertaining to the Airport, all applicable requirements set forth in Chapter 402 (*Airport*) of the CMC, and all requirements under Title 49 of the Code of Federal Regulations, as the same may be enacted or modified from time to time.

(B) **Non-Discrimination.** With reference to 49 CFR Subtitle A, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation", Lessee shall include the foregoing provision in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing services to the public and shall include therein a provision granting the City the right to take such action as the United States may direct to enforce such covenant. Lessee shall defend, indemnify and hold harmless the City from any and all claims and demands of third persons, including the United States of America, resulting from Lessee's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason



of such noncompliance.

**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 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.

- 15. Exhibits.** The following exhibits are attached hereto and made a part hereof:  
Exhibit A - *Site Map*  
Exhibit B - *Legal Description of Leased Premises*

Exhibit C – *Description of Work*  
Exhibit D – *Construction Requirements*  
Exhibit E – *Additional Requirements*

**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").

**Condor Air, Ltd.**

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

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

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

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

**City of Cincinnati**

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

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

Recommended by:

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

\_\_\_\_\_  
Fred Anderton, Lunken Airport Manager

Approved as to Form:

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

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

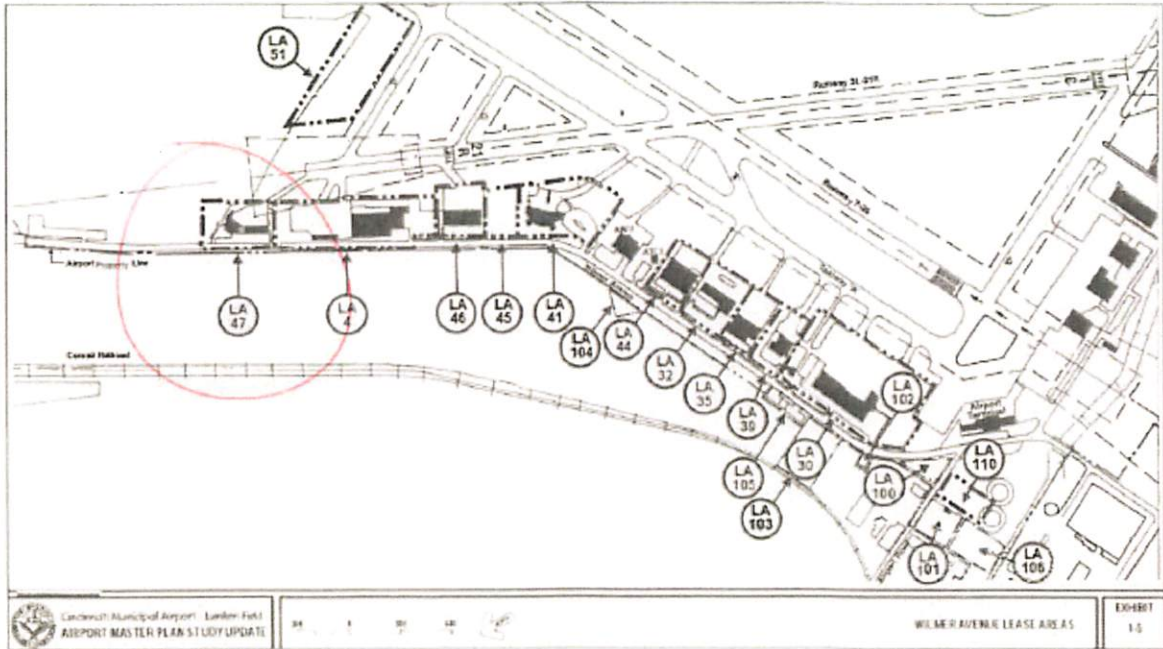
Fund/Code: \_\_\_\_\_

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

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

# EXHIBIT A

## SITE MAP



## EXHIBIT B

### LEGAL DESCRIPTION OF LEASED PREMISES

#### LEASE AREA 47

Situate in Section 19, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio, being part of Lots 57, 58 and 67 of Longworth's Subdivision of Turkey Bottom as recorded in Plat Book 3, Page 105, Hamilton County Records and more particularly described as follows:

From the common corner of Lots 58, 59, 65 and 67 of Longworth's Subdivision of Turkey Bottom as recorded in Plat Book 3, Page 105, Hamilton County Records, said corner being also an angle point on the northwesterly right-of-way line of Wilmer Avenue (as established by Ordinance No. 164-1962), measure along said northwesterly right-of-way line South 27 degrees, 4 minutes, 55 seconds West, 400.00 feet to the northerly corner of the property leased to the Proctor & Gamble Company by Paragraph One of Parcel Two as recorded in Lease Book 313, Pages 517-519 Hamilton County Records; thence measure along the northeasterly boundary line of said property South 54 degrees, 13 minutes, 05 seconds East, 93.58 feet to the southeasterly right-of-way line of said Wilmer Avenue for the PLACE OF BEGINNING; thence continuing along said northeasterly boundary line South 54 degrees, 13 minutes, 05 seconds East, 206.42 feet to a point; thence North 29 degrees, 53 minutes, 55 seconds East, 166.30 feet to the westerly Recreation

Commission line; thence along said Recreation Commission line continuing north 29 degrees, 53 minutes, 55 seconds East, 101.83 feet to a point; thence continuing along said Recreation Commission Line North 23 degrees, 24 minutes, 18 seconds West, 256.09 feet to the said southeasterly right-of-way line of Wilmer Avenue; thence along said southeasterly right of way line south 29 degrees, 53 minutes, 55 seconds West, 400.00 feet to the PLACE OF BEGINNING, containing 1.575 acres, more or less.

EXHIBIT C  
DESCRIPTION OF WORK



<u>Planned Immediate Improvements</u>	<u>Estimated Cost</u>
Replace Hangar doors	\$475,000
Replace all original passenger steel doors	\$34,000
Remodeling passenger area	\$128,000
Repaint and seal all structures	\$55,000
Reblacktop Ramp and Parking Lot	\$186,000
Rebuild Hangar Bathroom	\$29,000
Seal hangar floors and reinsulate hangars	\$46,000
Signage and lighting	\$32,000
Security gate and cameras	\$24,000
Fuel Farm DOT compliance	?
<b>Total</b>	<b>\$1,009,000</b>

## EXHIBIT D

### CONSTRUCTION REQUIREMENTS

As used in this exhibit, the word "Project" shall mean the Work.

1. Construction Schedule.

(A) Completion Date. Lessee shall complete the Work within **one (1) year** after the Commencement Date (defined in this Lease as the Work Period). (The parties acknowledge that Section 3(D) in the main body of this Lease provides that Lessee may request an extension of the Work Period in the event of a delay in completing the Work caused by circumstances beyond Lessee's reasonable control, which the City agrees to consider.)

(B) Verification of Actual Commencement and Completion Dates. Lessee shall notify DOTE promptly after commencing the Work, and shall notify DOTE within **10 days** following the date on which Lessee completes the Work (a "**Notice of Completion**"). The City shall inspect the Work upon completion and notify Lessee of any observable deficiencies.

2. Design & Construction. Prior to commencing construction, Lessee shall provide DOTE with plans and specifications for the Work for DOTE's review and approval (as approved, the "**Final Plans**"). Once approved by DOTE, Lessee shall not make any changes without DOTE's written approval. Lessee shall obtain all other required approvals pertaining to the Final Plans, and any and all changes thereto, from the City's Building Department. Lessee shall cause the Work to be performed in accordance with the Final Plans. All construction shall be performed in a good and workmanlike manner and in accordance with all legal requirements. All materials and workmanship shall be of good quality, and upon completion of construction, all improvements will be structurally safe and sound, and all parts therefor and all mechanical equipment therein and all utilities serving the improvements will be in good working order and will have been properly installed, tested, and paid for. Upon completion of construction, Lessee shall deliver a copy of all final "as-built" drawings to DOTE.

3. City's Approval of General Contractor and Subcontractors. Lessee's general contractor and subcontractors for the Project shall be subject to the prior written approval of DOTE. Lessee shall not hire any contractor or subcontractor who is listed on the Federal Debarred List or State Debarred List, or any contractor or subcontractor who is identified as being debarred on the City's Vendor's Performance list (as identified on the applicable federal, state and local government websites).

4. Monthly Project Reports. Until such time as the Work has been completed, Lessee shall submit a monthly progress report to DOTE so that the City can be kept up-to-date on all matters pertaining to the Work.

5. Inspections. The City shall have the right to periodically inspect the Work. If the City discovers any defects in the Work or deviation from the Final Plans, Lessee shall promptly correct the same upon receipt of written notice from the City. The City shall use reasonable efforts to verbally notify Lessee prior to each inspection (except that no prior notice shall be needed in the event of inspections by the City's Building Department or Health Department), and shall use reasonable efforts not to disrupt construction.

6. Signs. During construction, the City shall have the right to review and approve all construction-related, financing-related and other signs relating to the Project that are posted at the site.

7. No Liens. Lessee shall not permit any mechanics liens to attach to the Leased Premises in connection with the Project. If any such liens attach, Lessee shall cause them to be released within thirty (30) days after receiving notification of the filing thereof.

8. Insurance. Throughout construction of the Project, Lessee shall maintain, or cause to be

maintained, the following insurance: (i) Commercial General Liability insurance of at least Two Million Dollars (\$2,000,000) per occurrence, combined single limit, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Lessee's construction lenders, and (v) such other insurance as may be reasonably required by the City. All insurance maintained pursuant to this Lease shall be written by companies of recognized responsibility and credit reasonably acceptable to the City and authorized to do business in the State of Ohio, and in the form customarily in use or otherwise reasonably acceptable to the City. Lessee shall provide all applicable certificates of insurance to the City prior to the commencement of construction.

9. Environmental Issues. During construction, Lessee shall not accumulate, process, store, treat, or dispose of any Hazardous Materials (as hereinafter defined) at the site, nor shall Lessee allow any other person or entity to do so, except that Lessee may, in accordance with all applicable legal requirements, accumulate, process, store, treat and dispose of such Hazardous Materials as are necessary or incidental in connection with the Project. Under no circumstances shall the City have any liability to Lessee, nor shall the City be expected to take any remedial or other actions, with respect to pre-existing Hazardous Materials or other pre-existing environmental conditions at the site. For purposes of this Lease, "Hazardous Materials" shall mean: (i) any "hazardous substance," "pollutant" or "contaminant" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14) and (33) or 40 C.F.R. Part 302 (including asbestos, asbestos containing materials and polychlorinated biphenyls (PCBs)), and (ii) any substance containing "petroleum," as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6991(8), or 40 C.F.R. §280.12.

10. Prevailing Wage. Lessee shall comply with applicable prevailing wages for the Project as determined by state and local law. If available on the Effective Date, a copy of the City's prevailing wage determination is attached as *Addendum I* to this Exhibit. Lessee acknowledges and agrees that it has not and shall not rely upon determinations or representations made by the City, its employees or agents regarding applicability of state and local prevailing wage laws and that Lessee's decisions regarding applicability of and compliance with such laws shall be based upon its own and its counsel's investigations, determinations and opinions. Without limitation of other rights and remedies available to the City under this Lease or under state or local laws, Lessee shall defend, indemnify and hold the City harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against them as a result of or arising from Lessee's failure to comply with applicable prevailing wage laws.

11. Punch-List Work. Promptly after delivering the Notice of Completion to DOTE under Section 1 above, Lessee shall create a punch-list of unfinished work and shall promptly thereafter complete such work (but in any event within 90 days after the date of the Notice of Completion).

12. Correction of Defects During Warranty Period. If any defect should appear that, in the reasonable opinion of the City, is due to defective materials or workmanship, Lessee shall remedy such defect within the applicable warranty period under Lessee's contract with its general contractor.

\* \* \*



**EXHIBIT E**  
**ADDITIONAL REQUIREMENTS**

As used in this exhibit, the term "Project" shall mean the Work, and the term "Developer" shall mean Lessee.

Developer and Developer's general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, "**Government Requirements**"), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer's contractors, subcontractors, or employees, either on the City's part or with respect to any other governmental entity, and (b) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information With Respect to Government Requirements. This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer, or its contractors and subcontractors. Because this Agreement requires that Developer comply with all applicable laws, regulations, and other Government Requirements (and in certain circumstances to cause others to do so), this Exhibit flags certain Government Requirements that Developers, contractors, and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

(ii) Affirmatively Imposing Contractual Obligations. If certain conditions for applicability are met, this Exhibit also affirmatively imposes contractual obligations on Developer, even where such obligations are not imposed on Developer by Government Requirements. As described below, the affirmative obligations imposed hereby are typically a result of policies adopted by City Council which, per Council's directive, are to be furthered by the inclusion of certain specified language in some or all City contracts. The City administration (including the City's Department of Community and Economic Development) is responsible for implementing the policy directives promulgated by Council (which typically takes place via the adoption of motions or resolutions by Council), including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Agreement.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified in clause (ii) below, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Agreement is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party,

Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "Construction Workforce Goals").

As used herein, the following terms shall have the following meanings:

(a) "**Best Efforts**" means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) "**Minority Person**" means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian, or Alaskan Native.

(c) "**Black**" means a person having origin in the black racial group of Africa.

(d) "**Asian or Pacific Islander**" means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii, and Samoa.

(e) "**Hispanic**" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultural origin.

(f) "**American Indian**" or "**Alaskan Native**" means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, without limitation, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than 10 days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code (“CMC”) Chapter 321. CMC Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project’s budget. For the purposes of this clause (iii), “direct City funding” means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) “Bid” means an offer in response to an invitation for bids to provide construction work.

(2) “Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) “Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall

include a description of the “scope of work” and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) “Read Aloud in a Public Forum” means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code (“**ORC**”), Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA’s Lead in Construction Regulations and the OEPA’s hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under CMC Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City’s written demand.

(F) Small Business Enterprise Program.<sup>1</sup>

(i) Applicability. The applicability of CMC Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. CMC Chapter 323 defines “contract” as “a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services.” It defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.” To the extent CMC Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises (“SBE”s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with CMC Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City’s web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

(1) Including qualified SBEs on solicitation lists.

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1 Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15<sup>th</sup>. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to ORC Section 2921.12.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in CMC Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. CMC Chapter 325 (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. CMC Chapter 325 does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of CMC Chapter 325, the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within

twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (*City's Prevailing Wage Determination*) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of CMC Chapter 319, which provides for a "Prompt Payment System", may apply to this Agreement. CMC Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to ORC Section 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained CMC Chapter 326 (Wage Enforcement) (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud,

shall provide an "Amended Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively "investigative bodies") to release to the City's Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City's request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans With Disabilities Act; Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the "**Accessibility Motion**"). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the "**ADA**"), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a "place of public accommodation" or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, "**Contractual Minimum Accessibility Requirements**" means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible

point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to ORC Section 3735.67, et seq., or Job Creation Tax Credits pursuant to ORC Section 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

(ii) Requirement. If the applicability criteria of Ordinance No. 89-2017 are met, then the following requirements shall apply to any parking garage included within the Project: (a) at least one percent of parking spaces, rounding up to the nearest integer, shall be fitted with Level 2 minimum 7.2 kilowatt per hour electric car charging stations; provided that if one percent of parking spaces is less than two parking spaces, the minimum number of parking spaces subject to this clause shall be two parking spaces; and (b) the parking garage's electrical raceway to the electrical supply panel serving the garage shall be capable of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If Developer or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.



Addendum I  
to Exhibit E

Prevailing Wage Determination

*[ To be attached to execution version of Lease Agreement*

Contract No. \_\_\_\_\_

Property: Lunken Airport – Lease Area No. 47

## LUNKEN AIRPORT LEASE AGREEMENT

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 **Condor Air, Ltd.**, an Ohio limited liability company, the address of which is 670 Wilmer Avenue, Cincinnati, OH 45226 (“**Lessee**”).

### Recitals:

A. The City owns Lunken Airport, which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. Pursuant to an *Agreement of Lease* dated November 1, 1976 between the City and Condor, an Ohio general partnership (Lessee’s predecessor-in-interest), as amended by an *Addendum to Lease* dated August 15, 1977 and an *Amendment of Lease* dated November 18, 1999 (as so amended, the “**Existing Lease**”), Lessee currently leases the portion of the Airport known as Lease Area No. 47, containing approximately 1.575 acres, as generally depicted on Exhibit A (Site Map) and described on Exhibit B (Description of Leased Premises) hereto (the “**Leased Premises**”), for the storage, maintenance and repair of airplanes and other general aeronautical purposes (the “**Permitted Use**”).

C. The initial 45-year term of the Existing Lease (an initial term of 5 years, with eight 5-year renewal options) is scheduled to expire on **Oct 31, 2021**. Ownership of the hangar and associated leasehold improvements at the Leased Premises (the “**Leasehold Improvements**”) will automatically revert to the City on the above specified expiration date.

D. The parties desire to enter into a new lease pursuant to which the City will lease the Leased Premises to Lessee for an additional term of up to 20 years (5 years, with three 5-year renewal options).

E. The Leasehold Improvements require capital repairs and maintenance (as further described on Exhibit A hereto; hereinafter referred to as the “**Work**”), and Lessee has agreed to make the needed repairs and maintenance at its sole cost and expense.

F. The rent set forth in this Lease reflects the fair market rental value of the Leased Premises, as determined by analysis by the City’s Real Estate Services Division and the Airport Manager taking into consideration airport industry standards and FAA requirements, and as further modified in recognition of the Work to be performed by Lessee.

G. 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 for an additional term of up to 20 years at its meeting on January 17, 2020.

H. Execution of this Lease was authorized by Ordinance No. \_\_\_\_\_, passed by Cincinnati City Council on \_\_\_\_\_, 2021.

NOW, THEREFORE, the parties hereby agree as follows:

### **1. Leased Premises; Termination of Existing Lease.**

(A) Grant. The City hereby leases the Leased Premises to Lessee, and Lessee hereby leases the Leased Premises from the City, on the terms and conditions set forth herein. The City makes no

representations or warranties to Lessee regarding the physical condition of the Airport or Leased Premises and Lessee accepts the Leased Premises in “as is” condition. 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, and to any and all existing agreements between the City and the federal government pertaining to the Airport.

(B) City’s Right to Enter. The City’s employees, agents and contractors shall have the right to enter upon the Leased Premises, at any reasonable time and from time to time, for the purpose of examining the condition of the Leased Premises, determining Lessee’s compliance with the provisions of this Lease, accessing any public utility installations as shown on drawings at the office of the Airport Manager, and for any other proper purpose. The City shall use reasonable efforts to avoid disrupting Lessee’s business operations and shall promptly repair any damage to the Leased Premises caused by the City’s entry. The City shall use reasonable efforts to notify Lessee prior to entering upon the Leased Premises except that no notice shall be required in the event of an emergency.

(C) Termination of Existing Lease. The Existing Lease shall automatically terminate on the Commencement Date set forth in section 2 below; provided however that any and all obligations of Lessee under the Existing Lease that have accrued but have not been fully performed as of such date (for example, Lessee’s obligation to pay rent through the termination date) shall survive such termination until fully performed.

**2. Term; Renewal Periods.**

(A) Initial Term (5 years). The initial term of this Lease (“**Initial Term**”) shall commence on **November 1, 2021** (the “**Commencement Date**”), and, unless extended or sooner terminated as herein provided, shall expire on **Oct 31, 2026**. As used herein, each “**Lease Year**” shall mean each 12-month period from Nov 1 through Oct 31.

(B) Renewal Periods (three 5-year automatic renewal periods unless Lessee provides Notice of Non-Renewal). Provided that (i) on the commencement date of each renewal period Lessee is not in default under this Lease beyond any applicable notice and cure period provided for herein, and (ii) Lessee shall not have notified the City in writing that Lessee does NOT wish to extend the Term (a “**Notice of Non-Renewal**”), the Initial Term of this Lease shall automatically be extended 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). 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.

**3. Rent.**

(A) Base Rent. Beginning on the Commencement Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month, in the amounts calculated in this paragraph (namely, fixed for the Initial Term, with CPI adjustments every 5 years thereafter). The monthly installment of rent for any partial calendar month at the beginning or end of the Term shall be prorated on a per diem basis. Notwithstanding the rent adjustments provided for herein, in no event shall annual base rent decrease.

(i) Initial Term (Lease Years 1-5: Nov 1, 2021 – Oct 31, 2026) (fixed). For Lease Years 1-5, annual base rent shall be equal to the following amount:

Annual Amount	Monthly Installment
\$33,550.00	\$2,795.83

(ii) Renewal Periods (CPI adjustment every 5 years). Effective as of the first day of Lease

Years 6, 11 and 16 (i.e., every 5 years), the annual base rent shall increase to an amount that is equal to the product of multiplying the annual base rent payable during the 5-year term then just ended by a fraction, the numerator of which is the CPI most recently published 60 days prior to the rent adjustment date, and the denominator of which is the CPI most recently published 60 days prior to the commencement of the 5-year term then just ended. “CPI” means the Consumer Price Index, All Urban Consumers, U. S. City Average (1982-1984=100) published from time to time by the United States Bureau of Labor Statistics. Lessee shall make all CPI rent adjustment computations under this section 3(A) and shall send written notice of each CPI-based rent adjustment, together with Lessee’s computations (“**Lessee’s Rent Adjustment Notice**”), to DOTE (to the two addresses set forth in section 12 below) and to the City’s Real Estate Services Division (801 Plum Street, Room 122, Cincinnati, OH 45202) no less than 30 days prior to each rent adjustment date.

(B) Place of Payment. As used herein, “rent” shall mean base rent and all other amounts payable by Lessee to the City under this Lease. Rent shall be payable to “Treasurer – City of Cincinnati” and mailed or delivered to: City of Cincinnati, 262 Wilmer Avenue, Room 22, Cincinnati, OH 45226, Attn: Lunken Airport Manager, or to such other address as the City may from time to time specify in writing.

(C) Late Payments. If any payment of rent is not paid when due, a late charge of 5% of the amount past due shall automatically become due and payable. If rent is outstanding for longer than 30 days, such past due amount shall bear interest at the rate of 10% per annum until paid.

(D) Rent Adjustment if Lessee Fails to Complete the Work Within One Year. If Lessee fails to complete the Work to the City’s satisfaction within **one (1) year** after the Commencement Date (such determination to be made by the City) (the “**Work Period**”), the annual base rent for Lease Years 2-5 shall automatically increase to the following amount:

Annual Amount	Monthly Installment
\$61,950.00	\$5,162.50

In addition, if Lessee fails to complete the Work to the City’s satisfaction within the Work Period, Lessee shall pay additional rent in the following amount during Lease Years 2-5 to reimburse the City for the Year 1 base rent adjustment applied in anticipation of Lessee’s performance of the Work:

Annual Amount	Monthly Installment
\$7,100.00	\$591.67

If Lessee commences and diligently pursues the completion of the Work, but for reasons beyond Lessee’s reasonable control (excluding financial reasons), Lessee is unable to complete the Work within the Work Period, Lessee may, prior to the end of the Work Period, make a written request to extend the Work Period for a reasonable period of time, which the City agrees to consider (however the City’s agreement to consider such request shall not impair the City’s termination rights under this paragraph (D) should the City determine that Lessee’s failure to complete the Work within the Work Period was within Lessee’s reasonable control or that the requested extension is otherwise not justified).

**4. Permitted Use.** Provided Lessee has obtained all valid permits from the City and any and all other required permits, Lessee shall use the Leased Premises for the Permitted Use and for no other activities whatsoever without the City’s prior written consent. Lessee’s right to use the Leased Premises for the Permitted Use is non-exclusive, and nothing herein shall limit or prevent the City from granting the same or similar non-exclusive rights to other persons or entities utilizing space at the Airport. Lessee shall not deviate from the Permitted Use without the City’s prior written approval (and if required, as determined by the City, without the prior written approval of the FAA).

**5. Utilities; Real Estate Taxes; Other Expenses.** This is a “triple net” lease for the City, and during the Term of this Lease, Lessee shall pay (i) any and all utility charges associated with the Leased

Premises, (ii) all real estate taxes and assessments levied against the Leasehold Improvements (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 expenses associated with the Leased Premises, including without limitation any and all other fees required to be paid under Chapter 402 (*Airport*) of the CMC. *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; except that the City shall pay the real estate taxes and assessments on the raw land only.* Lessee shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. If the Leasehold Improvements are not separately taxed from the raw land for real estate tax purposes, the City shall calculate Lessee's share of each tax bill, based upon the Hamilton County Auditor's respective values of the land and Leasehold Improvements, and Lessee shall pay its allocated share of the bill within 15 days after receiving written notice from the City of the amount due.

**6. Performance of Work; Maintenance and Repairs; Other Operating Requirements.**

(A) Work. Lessee shall complete the Work in accordance with Exhibit C and Exhibit D hereto.

(B) Maintenance and Repairs. Lessee shall maintain the Leased Premises in good, clean and safe condition and repair, shall not permit any waste or nuisance on the Leased Premises, shall not permit any debris or rubbish to accumulate in open space, and shall keep the Leased Premises free from unreasonable accumulations of snow and ice and other obstructions. Without limitation of the foregoing, Lessee shall replace all light bulbs and filters, provide water sprinkler system inspection and repair, provide trash removal, window washing, grass cutting and proper maintenance of landscaped areas, and maintain and keep in good condition and repair the exterior and interior structural portions and roof of any and all buildings, structures, hangars, fences, fixtures, pavement, HVAC, electrical, plumbing and mechanical fixtures, and any and all other improvements located on the Leased Premises, reasonable wear and tear excepted, and in compliance with all applicable building and fire codes, airport regulations and other laws (collectively, "**Applicable Laws**").

(C) Protection from Aircraft Engine Blasts. Lessee shall provide an approved means of protection for persons and property from jet aircraft engine blasts or exhaust emissions at any time jet aircraft is operated on the Leased Premises.

(D) Parking. Lessee shall provide within the limits of the Leased Premises, at its own cost, a parking area for motor vehicles sufficient for vehicle parking needs of Lessee, its agents, employees and customers.

(E) Fuel Facilities. Lessee shall have sole responsibility for the operation, maintenance, repair and replacement of the fuel storage and distribution facilities located on the Leased Premises. Lessee shall be responsible for all required inspections and State of Ohio annual registration and fees.

(E) Permits. Lessee shall obtain all required permits and shall pay all required permit fees associated with Lessee's activities at the Leased Premises.

(F) Changes to Land Grade or Level. Lessee shall not make any changes in the land grade or level of the Leased Premises that might affect the abutting properties without the prior written consent of DOTE.

(G) Compliance with Federal Air Regulations. Lessee shall comply with Federal Air Regulations Part 77 and shall not penetrate any designated runway clear zone.

(H) Flood Plain. Lessee acknowledges that (i) the Leased Premises are located in a flood plain, (ii) FEMA requires that all improvements constructed within a flood plain comply with precise, rigorous

construction standards, (iii) City building officials will not issue construction permits if the plans are not in compliance with the FEMA standards specific to flood plains, and (iv) compliance may add significant additional time and costs to the design and construction of the Leasehold Improvements.

(I) Alterations and Future Improvements. Once installed, Lessee shall not alter or remove any leasehold improvements except in accordance with section 12 below. Any and all alterations to the Leased Premises shall require the prior written consent of DOTE and shall comply with the minimum aesthetic and architectural standards and requirements adopted by the City (if any) that are applicable to the exterior of all other buildings and structures at the Airport.

(J) Determinations by DOTE. All determinations of the City, including determinations by the DOTE Director, with respect to the construction, alteration, maintenance, repair, restoration or removal of improvements at the Leased Premises shall be based upon confirmation that the improvements (i) are structurally sound, (ii) comply with the safety standards and requirements applicable to all other buildings and structures at the Airport, (iii) are consistent with the quality and appearance of Airport facilities adjacent to Wilmer Avenue, and (iv) comply with all other requirements under this Lease applicable to the Leasehold Improvements.

## **7. Insurance.**

(A) Insurance. Throughout the Term, Lessee shall maintain the following insurance:

(i) special peril (formerly known as “all-risk”) full replacement cost insurance on the Leasehold Improvements, naming the City and Lessee as their interests may appear;

(ii) property insurance on any and all personal property of Lessee from time to time located at the Leased Premises in the amount of the full replacement cost thereof;

(iii) Commercial General Liability insurance of at least Three Million Dollars (\$3,000,000) per occurrence, combined single limit, naming the City as an additional insured, or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be customary for similar-sized airport facilities;

(iv) automobile liability insurance in the amount of \$1,000,000 per occurrence, naming the City as an additional insured; and

(v) workers compensation insurance as required by law.

(B) Policy Requirements. Lessee’s insurance policies shall (i) be written in standard form by insurance companies authorized to do business in Ohio and having an A.M. Best rating of A VII or better, (ii) provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. No later than the Commencement Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(C) Waiver of Subrogation. Lessee hereby waives all claims and rights of recovery, and on behalf of Lessee’s insurers, rights of subrogation, against the City, its employees, agents, contractors and subcontractors with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(D) Indemnity. The City assumes no responsibility for any acts, errors or omissions of Lessee or

any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Premises or in connection with any breach by Lessee under this Lease.

**8. Casualty; Eminent Domain.** If the Leased Premises are damaged or destroyed by fire or other casualty or if any portion thereof is taken by exercise of eminent domain (federal, state or local), 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 Leasehold Improvements, Lessee shall make up the deficiency. Lessee shall handle all construction in accordance with the applicable requirements set forth in this Lease. Lessee shall not be relieved of any obligations, financial or otherwise, under this Lease during any period in which the Leasehold Improvements are being repaired or restored.

**9. Default; Remedies.**

(A) Default. Each of the following shall constitute an event of default by Lessee under this Lease:

(i) If Lessee fails to pay rent or any other sum payable to the City hereunder when due, and such failure to pay continues for longer than ten (10) days after Lessee receives written notice thereof from the City;

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than twenty (20) days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 20-day period, an event of default shall not be deemed to have occurred if Lessee commences to cure such failure within such 20-day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within ninety (90) days after Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it); and

(iii) The commencement of levy, execution or attachment proceedings against Lessee, any principal (which shall be defined as any individual or entity having an ownership interest in Lessee of more than 25%) or partner of Lessee, or any of the assets of Lessee, or the application for or appointment of a liquidator, receiver, custodian, sequester, conservator, trustee, or other similar judicial officer; or the insolvency in the bankruptcy or equity sense, of Lessee or any principal or partner of Lessee; or the assignment for the benefit of creditors, or the admission in writing of an inability to pay debts generally as they become due, or the ordering of the winding-up or liquidation of the affairs of Lessee or any principal or partner of Lessee; or the commencement of a case by or against Lessee or any principal or partner of Lessee under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar laws, state or federal, or the determination by any of them to request relief under any insolvency, bankruptcy, creditor adjustment, debtor rehabilitation or similar proceeding, state or federal, including, without limitation, the consent by any of them to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian,

sequester or similar official for it or for any of its respective property or assets (unless, in the case of involuntary proceedings, the same shall be dismissed within ninety (90) days after institution).

(B) **Remedies.** Upon the occurrence of an event of default that continues beyond the applicable notice and cure period (if any) provided for under paragraph (A) above, the City shall be entitled to (i) terminate this Lease by giving Lessee written notice thereof, (ii) take such actions in the way of "self help" as the City determines to be reasonably necessary or appropriate to cure or lessen the impact of such default, all at the expense of Lessee, and (iii) exercise any and all other rights and remedies under this Lease or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Lessee shall be liable for all costs and damages, including without limitation legal fees, suffered or incurred by the City as a result of a default of Lessee under this Lease or the City's enforcement or termination of this Lease. Lessee shall pay all such costs and damages within thirty (30) days after receiving documentation from the City of the amount due. The failure of the City to insist upon the strict performance of any covenant or duty or to pursue any remedy under this Lease shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Lease shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Lease in any bankruptcy, reorganization or other court proceedings, the maximum amount allowed by any statute or rule of law in effect when such damages are to be proved.

**10. Assignment and Subletting.** Lessee acknowledges that the City is entering into this transaction because of the City's confidence that Lessee has the financial means and business experience that are necessary to successfully operate Lessee's business in accordance with the provisions of this Lease. Lessee acknowledges that the City shall not be expected to consent to a proposed assignment or sublease by Lessee of its interests under this Lease to any person or entity in whom the City does not have similar confidence. Any attempt by Lessee to assign, sublease, or otherwise transfer its interests under this Lease to a third party without the City's prior written consent shall be null and void and shall, at the option of the City, constitute a default of Lessee under this Lease. No assignment or sublease by Lessee of its rights or obligations under this Lease to an affiliate or any other third party shall relieve Lessee from any liability to the City under this Lease.

**11. Notices.** All notices given by the parties hereunder shall be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the parties at their addresses below or at such other addresses as either party may designate by notice to the other party given in the manner prescribed herein. Notices shall be deemed given on the date of receipt.

To the City:

City of Cincinnati  
Dept of Transportation & Engineering  
801 Plum Street, Suite 450  
Cincinnati, OH 45202

To Lessee:

Condor Air, Ltd.  
670 Wilmer Avenue  
Cincinnati, OH 45226

*with a copy to:*

Lunken Airport Administration Building  
Attn: Airport Manager  
262 Wilmer Avenue, Room 23  
Cincinnati, OH 45226

If Lessee sends a notice to the City alleging that the City is in default under this Lease, it shall simultaneously send a copy of such notice by U.S. certified mail to: City Solicitor, City of Cincinnati, 801 Plum Street, Room 214, Cincinnati, OH 45202.

**12. Surrender; Holdover.**



(A) Surrender. At the end of the Term, Lessee shall peaceably surrender the Leased Premises to the City, free and clear of all leasehold mortgages and other liens (except those, if any, created by the City); provided, however, that, notwithstanding any other provision of this Lease to the contrary, no less than 90 days prior to the end of the Term, Lessee shall notify DOTE in writing of the existence of any fuel tanks at the Leased Premises (“**Fuel Tanks**”), whereupon DOTE shall notify Lessee as to whether or not the City requires the removal of the Fuel Tanks. If the City requires Lessee to remove the Fuel Tanks, Lessee shall remove the same and repair any and all damage to the Leased Premises caused thereby no later than the end of the Term. As provided in paragraph 6(I) above, Lessee shall not be permitted to remove any other improvements and acknowledges that the City would not enter into this Lease on the terms and conditions set forth herein but for Lessee’s obligation to surrender all improvements to the City, free and clear of all liens, at the end of the Term.

(B) Lessee’s Right to Remove Items of Personal Property. No later than the last day of the Term, Lessee shall remove all of Lessee’s personal property at the Leased Premises (excluding trade fixtures, which shall not be removed unless otherwise directed by the City under paragraph 12(B) above)) shall repair any and all damage to the Leased Premises caused by the installation or removal thereof and otherwise restore the Leased Premises to a safe, clean and satisfactory condition.

(C) Holdover. If Lessee fails to surrender possession of the Leased Premises to the City at the end of the Term, such holdover shall be deemed as creating a tenancy-at-will on all of the same terms and conditions as set forth herein (except for the duration of the Term and except that base rent payable during the holdover period shall be equal to two hundred percent of the base rent in effect at the end of the Term), terminable by either party at any time by giving written notice thereof to the other party. Lessee shall be liable for all costs and damages suffered or incurred by the City as a result of Lessee’s failure to surrender possession at the end of the Term, including without limitation costs and damages suffered or incurred by the City during the holdover period.

(D) Documents to be Delivered to City. At the end of the Term, Lessee shall deliver to the City originals or copies of all books and records, operating manuals, contracts with third parties (but only if the City has expressly agreed to accept an assignment of such contracts), warranty information, and all other written materials and documents that are in Lessee’s possession or under Lessee’s control and that are reasonably needed in order for there to be a seamless transition with respect to the operation and maintenance of the Leased Premises for the Permitted Use.

### **13. Compliance with Laws.**

(A) Compliance with Laws. Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati pertaining to the Airport, all applicable requirements set forth in Chapter 402 (*Airport*) of the CMC, and all requirements under Title 49 of the Code of Federal Regulations, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. With reference to 49 CFR Subtitle A, Part 21, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation”, the purpose of which “is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation”, Lessee shall include the foregoing provision in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing services to the public and shall include therein a provision granting the City the right to take such action as the United States may direct to enforce such covenant. Lessee shall defend, indemnify and hold harmless the City from any and all claims and demands of third persons, including the United States of America, resulting from Lessee’s noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason

of such noncompliance.

**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 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.

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

Exhibit A - *Site Map*

Exhibit B - *Legal Description of Leased Premises*

Exhibit C – *Description of Work*  
Exhibit D – *Construction Requirements*  
Exhibit E – *Additional Requirements*

*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").

**Condor Air, Ltd.**

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

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

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

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

**City of Cincinnati**

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

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

Recommended by:

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

\_\_\_\_\_  
Fred Anderton, Lunken Airport Manager

Approved as to Form:

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

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

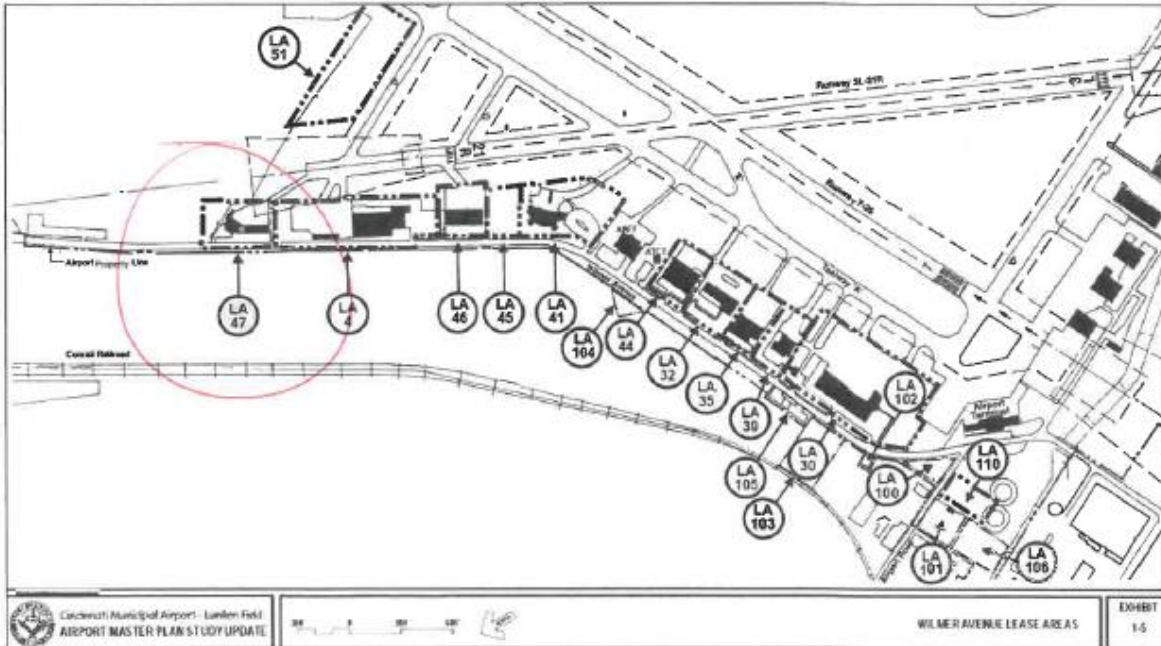
Fund/Code: \_\_\_\_\_

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

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

**EXHIBIT A**

**SITE MAP**



**EXHIBIT B**

**LEGAL DESCRIPTION OF LEASED PREMISES**

LEASE AREA 47

Situate in Section 19, Town 4, Fractional Range 2, Columbia Township, City of Cincinnati, Hamilton County, Ohio, being part of Lots 57, 58 and 67 of Longworth's Subdivision of Turkey Bottom as recorded in Plat Book 3, Page 105, Hamilton County Records and more particularly described as follows:

From the common corner of Lots 58, 59, 65 and 67 of Longworth's Subdivision of Turkey Bottom as recorded in Plat Book 3, Page 105, Hamilton County Records, said corner being also an angle point on the northwesterly right-of-way line of Wilmer Avenue (as established by Ordinance No. 164-1962), measure along said northwesterly right-of-way line South 27 degrees, 4 minutes, 55 seconds West, 400.00 feet to the northerly corner of the property leased to the Proctor & Gamble Company by Paragraph One of Parcel Two as recorded in Lease Book 313, Pages 517-519 Hamilton County Records; thence measure along the northeasterly boundary line of said property South 54 degrees, 13 minutes, 05 seconds East, 93.58 feet to the southeasterly right-of-way line of said Wilmer Avenue for the PLACE OF BEGINNING; thence continuing along said northeasterly boundary line South 54 degrees, 13 minutes, 05 seconds East, 206.42 feet to a point; thence North 29 degrees, 53 minutes, 55 seconds East, 166.30 feet to the westerly Recreation

Commission line; thence along said Recreation Commission line continuing north 29 degrees, 53 minutes, 55 seconds East, 101.83 feet to a point; thence continuing along said Recreation Commission Line North 23 degrees, 24 minutes, 18 seconds West, 256.09 feet to the said southeasterly right-of-way line of Wilmer Avenue; thence along said southeasterly right of way line south 29 degrees, 53 minutes, 55 seconds West, 400.00 feet to the PLACE OF BEGINNING, containing 1.575 acres, more or less.

EXHIBIT C

DESCRIPTION OF WORK

# CONDOR

<u>Planned Immediate Improvements</u>	<u>Estimated Cost</u>
Replace Hangar doors	\$475,000
Replace all original passenger steel doors	\$34,000
Remodeling passenger area	\$128,000
Repaint and seal all structures	\$55,000
Reblacktop Ramp and Parking Lot	\$186,000
Rebuild Hangar Bathroom	\$29,000
Seal hangar floors and reinsulate hangars	\$46,000
Signage and lighting	\$32,000
Security gate and cameras	\$24,000
Fuel Farm DOT compliance	?
<b>Total</b>	<b><u>\$1,009,000</u></b>

## EXHIBIT D

### CONSTRUCTION REQUIREMENTS

As used in this exhibit, the word "Project" shall mean the Work.

1. Construction Schedule.

(A) Completion Date. Lessee shall complete the Work within **one (1) year** after the Commencement Date (defined in this Lease as the Work Period). (The parties acknowledge that Section 3(D) in the main body of this Lease provides that Lessee may request an extension of the Work Period in the event of a delay in completing the Work caused by circumstances beyond Lessee's reasonable control, which the City agrees to consider.)

(B) Verification of Actual Commencement and Completion Dates. Lessee shall notify DOTE promptly after commencing the Work, and shall notify DOTE within 10 days following the date on which Lessee completes the Work (a "**Notice of Completion**"). The City shall inspect the Work upon completion and notify Lessee of any observable deficiencies.

2. Design & Construction. Prior to commencing construction, Lessee shall provide DOTE with plans and specifications for the Work for DOTE's review and approval (as approved, the "**Final Plans**"). Once approved by DOTE, Lessee shall not make any changes without DOTE's written approval. Lessee shall obtain all other required approvals pertaining to the Final Plans, and any and all changes thereto, from the City's Building Department. Lessee shall cause the Work to be performed in accordance with the Final Plans. All construction shall be performed in a good and workmanlike manner and in accordance with all legal requirements. All materials and workmanship shall be of good quality, and upon completion of construction, all improvements will be structurally safe and sound, and all parts therefor and all mechanical equipment therein and all utilities serving the improvements will be in good working order and will have been properly installed, tested, and paid for. Upon completion of construction, Lessee shall deliver a copy of all final "as-built" drawings to DOTE.

3. City's Approval of General Contractor and Subcontractors. Lessee's general contractor and subcontractors for the Project shall be subject to the prior written approval of DOTE. Lessee shall not hire any contractor or subcontractor who is listed on the Federal Debarred List or State Debarred List, or any contractor or subcontractor who is identified as being debarred on the City's Vendor's Performance list (as identified on the applicable federal, state and local government websites).

4. Monthly Project Reports. Until such time as the Work has been completed, Lessee shall submit a monthly progress report to DOTE so that the City can be kept up-to-date on all matters pertaining to the Work.

5. Inspections. The City shall have the right to periodically inspect the Work. If the City discovers any defects in the Work or deviation from the Final Plans, Lessee shall promptly correct the same upon receipt of written notice from the City. The City shall use reasonable efforts to verbally notify Lessee prior to each inspection (except that no prior notice shall be needed in the event of inspections by the City's Building Department or Health Department), and shall use reasonable efforts not to disrupt construction.

6. Signs. During construction, the City shall have the right to review and approve all construction-related, financing-related and other signs relating to the Project that are posted at the site.

7. No Liens. Lessee shall not permit any mechanics liens to attach to the Leased Premises in connection with the Project. If any such liens attach, Lessee shall cause them to be released within thirty (30) days after receiving notification of the filing thereof.

8. Insurance. Throughout construction of the Project, Lessee shall maintain, or cause to be



maintained, the following insurance: (i) Commercial General Liability insurance of at least Two Million Dollars (\$2,000,000) per occurrence, combined single limit, naming the City as an additional insured, (ii) builder's risk insurance in the amount of one-hundred percent (100%) of the value of the improvements constructed, (iii) worker's compensation insurance in such amount as required by law, (iv) all insurance as may be required by Lessee's construction lenders, and (v) such other insurance as may be reasonably required by the City. All insurance maintained pursuant to this Lease shall be written by companies of recognized responsibility and credit reasonably acceptable to the City and authorized to do business in the State of Ohio, and in the form customarily in use or otherwise reasonably acceptable to the City. Lessee shall provide all applicable certificates of insurance to the City prior to the commencement of construction.

9. Environmental Issues. During construction, Lessee shall not accumulate, process, store, treat, or dispose of any Hazardous Materials (as hereinafter defined) at the site, nor shall Lessee allow any other person or entity to do so, except that Lessee may, in accordance with all applicable legal requirements, accumulate, process, store, treat and dispose of such Hazardous Materials as are necessary or incidental in connection with the Project. Under no circumstances shall the City have any liability to Lessee, nor shall the City be expected to take any remedial or other actions, with respect to pre-existing Hazardous Materials or other pre-existing environmental conditions at the site. For purposes of this Lease, "Hazardous Materials" shall mean: (i) any "hazardous substance," "pollutant" or "contaminant" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601(14) and (33) or 40 C.F.R. Part 302 (including asbestos, asbestos containing materials and polychlorinated biphenyls (PCBs)), and (ii) any substance containing "petroleum," as defined in the Resource Conservation and Recovery Act, 42 U.S.C. §6991(8), or 40 C.F.R. §280.12.

10. Prevailing Wage. Lessee shall comply with applicable prevailing wages for the Project as determined by state and local law. If available on the Effective Date, a copy of the City's prevailing wage determination is attached as *Addendum I* to this Exhibit. Lessee acknowledges and agrees that it has not and shall not rely upon determinations or representations made by the City, its employees or agents regarding applicability of state and local prevailing wage laws and that Lessee's decisions regarding applicability of and compliance with such laws shall be based upon its own and its counsel's investigations, determinations and opinions. Without limitation of other rights and remedies available to the City under this Lease or under state or local laws, Lessee shall defend, indemnify and hold the City harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against them as a result of or arising from Lessee's failure to comply with applicable prevailing wage laws.

11. Punch-List Work. Promptly after delivering the Notice of Completion to DOTE under Section 1 above, Lessee shall create a punch-list of unfinished work and shall promptly thereafter complete such work (but in any event within 90 days after the date of the Notice of Completion).

12. Correction of Defects During Warranty Period. If any defect should appear that, in the reasonable opinion of the City, is due to defective materials or workmanship, Lessee shall remedy such defect within the applicable warranty period under Lessee's contract with its general contractor.

\* \* \*

**EXHIBIT E**  
**ADDITIONAL REQUIREMENTS**

As used in this exhibit, the term “Project” shall mean the Work, and the term “Developer” shall mean Lessee.

Developer and Developer’s general contractor shall comply with all applicable statutes, ordinances, regulations, and rules of the government of the United States, State of Ohio, County of Hamilton, and City of Cincinnati (collectively, “**Government Requirements**”), including the Government Requirements listed below, to the extent that they are applicable. Developer hereby acknowledges and agrees that (a) the below listing of Government Requirements is not intended to be an exhaustive list of Government Requirements applicable to the Project, Developer, or Developer’s contractors, subcontractors, or employees, either on the City’s part or with respect to any other governmental entity, and (b) neither the City nor its Law Department is providing legal counsel to or creating an attorney-client relationship with Developer by attaching this Exhibit to the Agreement.

This Exhibit serves two functions:

(i) Serving as a Source of Information With Respect to Government Requirements. This Exhibit identifies certain Government Requirements that may be applicable to the Project, Developer, or its contractors and subcontractors. Because this Agreement requires that Developer comply with all applicable laws, regulations, and other Government Requirements (and in certain circumstances to cause others to do so), this Exhibit flags certain Government Requirements that Developers, contractors, and subcontractors regularly face in constructing projects or doing business with the City. To the extent a Developer is legally required to comply with a Government Requirement, failure to comply with such a Government Requirement is a violation of the Agreement.

(ii) Affirmatively Imposing Contractual Obligations. If certain conditions for applicability are met, this Exhibit also affirmatively imposes contractual obligations on Developer, even where such obligations are not imposed on Developer by Government Requirements. As described below, the affirmative obligations imposed hereby are typically a result of policies adopted by City Council which, per Council’s directive, are to be furthered by the inclusion of certain specified language in some or all City contracts. The City administration (including the City’s Department of Community and Economic Development) is responsible for implementing the policy directives promulgated by Council (which typically takes place via the adoption of motions or resolutions by Council), including, in certain circumstances, by adding specific contractual provisions in City contracts such as this Agreement.

(A) Construction Workforce.

(i) Applicability. Consistent with the limitations contained within the City Resolutions identified in clause (ii) below, this Section (A) shall not apply to contracts with the City other than construction contracts, or to construction contracts to which the City is not a party. For the avoidance of doubt, this Agreement is a construction contract solely to the extent that it directly obligates Developer to assume the role of a general contractor on a construction project for public improvements such as police stations or other government buildings, public parks, or public roadways.

The Construction Workforce Goals are not applicable to future work (such as repairs or modifications) on any portion of the Project. The Construction Workforce Goals are not applicable to the purchase of specialty fixtures and trade fixtures.

(ii) Requirement. In furtherance of the policy enumerated in City Resolutions No. 32-1983 and 21-1998 concerning the inclusion of minorities and women in City construction work, if Developer is performing construction work for the City under a construction contract to which the City is a party,

Developer shall use Best Efforts to achieve a standard of no less than 11.8% Minority Persons (as defined below) and 6.9% females (of whom at least one-half shall be Minority Persons) in each craft trade in Developer and its general contractor's aggregate workforce in Hamilton County, to be achieved at least halfway through the construction contract (or in the case of a construction contract of six months or more, within 60 days of beginning the construction contract) (collectively, the "**Construction Workforce Goals**").

As used herein, the following terms shall have the following meanings:

(a) "**Best Efforts**" means substantially complying with all of the following as to any of its employees performing such construction, and requiring that all of its construction subcontractors substantially comply with all of the following: (1) solicitation of Minority Persons as potential employees through advertisements in local minority publications; and (2) contacting government agencies, private agencies, and/or trade unions for the job referral of qualified Minority Persons.

(b) "**Minority Person**" means any person who is Black, Asian or Pacific Islander, Hispanic, American Indian, or Alaskan Native.

(c) "**Black**" means a person having origin in the black racial group of Africa.

(d) "**Asian or Pacific Islander**" means a person having origin in the original people of the Far East or the Pacific Islands, which includes, among others, China, India, Japan, Korea, the Philippine Islands, Malaysia, Hawaii, and Samoa.

(e) "**Hispanic**" means a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish cultural origin.

(f) "**American Indian**" or "**Alaskan Native**" means a person having origin in any of the original people of North America and who maintains cultural identification through tribal affiliation.

(B) Trade Unions; Subcontracts; Competitive Bidding.

(i) Meeting and Confering with Trade Unions.

(a) Applicability. Per City of Cincinnati, Ordinance No. 130-2002, this requirement is limited to transactions in which Developer receives City funds or other assistance (including, without limitation, the City's construction of public improvements to specifically benefit the Project, or the City's sale of real property to Developer at below fair market value).

(b) Requirement. This Agreement may be subject to the requirements of City of Cincinnati, Ordinance No. 130-2002, as amended or superseded, providing that, if Developer receives City funds or other assistance, Developer and its general contractor, prior to the commencement of construction of the Project and prior to any expenditure of City funds, and with the aim of reaching comprehensive and efficient project agreements covering all work done by Developer or its general contractor, shall meet and confer with: the trade unions representing all of the crafts working on the Project, and minority, female, and locally-owned contractors and suppliers potentially involved with the construction of the Project. At this meeting, Developer and/or its general contractor shall make available copies of the scope of work and if prevailing wage rates apply, the rates pertaining to all proposed work on the Project. Not later than 10 days following Developer and/or its general contractor's meet and confer activity, Developer shall provide to the City, in writing, a summary of Developer and/or its general contractor's meet and confer activity.

(ii) Contracts and Subcontracts; Competitive Bidding.

(a) Applicability. This clause (ii) is applicable to “construction contracts” under Cincinnati Municipal Code (“**CMC**”) Chapter 321. CMC Chapter 321 defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than four thousand dollars and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority,” and “contract” as “all written agreements of the City of Cincinnati, its boards or commissions, prepared and signed by the city purchasing agent or a board or commission for the procurement or disposal of supplies, service or construction.”

(b) Requirement. If CMC Chapter 321 applies to the Project, Developer is required to ensure that all contracts and subcontracts for the Project are awarded pursuant to a competitive bidding process that is approved by the City in writing. All bids shall be subject to review by the City. All contracts and subcontracts shall be expressly required by written agreement to comply with the provisions of this Agreement and the applicable City and State of Ohio laws, ordinances and regulations with respect to such matters as allocation of subcontracts among trade crafts, Small Business Enterprise Program, Equal Employment Opportunity, and Construction Workforce Goals.

(iii) Competitive Bidding for Certain City-Funded Development Agreements.

(a) Applicability. Pursuant to Ordinance No. 273-2002, the provision in clause (b) below applies solely where the Project receives in \$250,000 or more in direct City funding, and where such funding comprises at least 25% of the Project’s budget. For the purposes of this clause (iii), “direct City funding” means a direct subsidy of City funds in the form of cash, including grants and forgivable loans, but not including public improvements, land acquisitions and sales, job creation tax credits, or tax abatements or exemptions.

(b) Requirement. This Agreement requires that Developer issue an invitation to bid on the construction components of the development by trade craft through public notification and that the bids be read aloud in a public forum. For purposes of this provision, the following terms shall be defined as set forth below:

(1) “  
Bid” means an offer in response to an invitation for bids to provide construction work.

(2) “  
Invitation to Bid” means the solicitation for quoted prices on construction specifications and setting a time, date and place for the submission of and public reading of bids. The place for the public reading of bids shall be chosen at the discretion of Developer; however, the place chosen must be accessible to the public on the date and time of the public reading and must have sufficient room capacity to accommodate the number of respondents to the invitation to bid.

(3) “  
Trade Craft” means (a) general construction work, (b) electrical equipment, (c) plumbing and gas fitting, (d) steam and hot water heating and air conditioning and ventilating apparatus, and steam power plant, (e) elevator work, and (f) fire protection.

(4) “Public Notification” means (a) advertisement of an invitation to bid with ACI (Allied Construction Industries) and the Dodge Report, and (b) dissemination of the advertisement (either by mail or electronically) to the South Central Ohio Minority Business Council, Greater Cincinnati Northern Kentucky African-American Chamber of Commerce, and the Hispanic Chamber of Commerce. The advertisement shall

include a description of the “scope of work” and any other information reasonably necessary for the preparation of a bid, and it shall be published and disseminated no less than fourteen days prior to the deadline for submission of bids stated in the invitation to bid.

(5) “Read Aloud in a Public Forum” means all bids shall be read aloud at the time, date and place specified in the invitation for bids, and the bids shall be available for public inspection at the reading.

(C) City Building Code. All construction work must be performed in compliance with City building code requirements.

(D) Lead Paint Regulations. All work must be performed in compliance with Chapter 3742 of the Ohio Revised Code (“**ORC**”), Chapter 3701-32 of the Ohio Administrative Code, and must comply with OSHA’s Lead in Construction Regulations and the OEPA’s hazardous waste rules. All lead hazard abatement work must be supervised by an Ohio Licensed Lead Abatement Contractor/Supervisor.

(E) Displacement. If the Project involves the displacement of tenants, Developer shall comply with all Government Requirements in connection with such displacement. If the City shall become obligated to pay any relocation costs or benefits or other sums in connection with the displacement of tenants, under CMC Chapter 740 or otherwise, Developer shall reimburse the City for any and all such amounts paid by the City in connection with such displacement within twenty (20) days after the City’s written demand.

(F) Small Business Enterprise Program.<sup>1</sup>

(i) Applicability. The applicability of CMC Chapter 323 (Small Business Enterprise Program) is limited to construction contracts in excess of \$5,000. CMC Chapter 323 defines “contract” as “a contract in excess of \$5,000.00, except types of contracts listed by the City purchasing agent as exempt and approved by the City Manager, for (a) construction, (b) supplies, (c) services, or (d) professional services.” It defines “construction” as “any construction, reconstruction, improvement, enlargement, alteration, repair, painting, decorating, wrecking or demolition, of any public improvement the total overall project cost of which is fairly estimated by Federal or Ohio statutes to be more than \$4,000 and performed by other than full-time employees who have completed their probationary periods in the classified service of a public authority.” To the extent CMC Chapter 323 does not apply to this Agreement, Developer is not subject to the various reporting requirements described in this Section (F).

(ii) Requirement. The City has an aspirational goal that 30% of its total dollars spent for construction and 15% of its total dollars spent for supplies/services and professional services be spent with Small Business Enterprises (“SBE”s), which include SBEs owned by minorities and women. Accordingly, subject to clause (i) above, Developer and its general contractor shall use its best efforts and take affirmative steps to assure that SBEs are utilized as sources of supplies, equipment, construction, and services, with the goal of meeting 30% SBE participation for construction contracts and 15% participation for supplies/services and professional services contracts. An SBE means a consultant, supplier, contractor or subcontractor who is certified as an SBE by the City in accordance with CMC Chapter 323. (A list of SBEs may be obtained from the Department of Economic Inclusion or from the City’s web page, <http://cincinnati.diversitycompliance.com>.) Developer and its general contractor may refer interested firms to the Department of Economic Inclusion for review and possible certification as an SBE, and applications may also be obtained from such web page. If the SBE program is applicable to this Agreement, as described in clause (i) above, Developer agrees to take (or cause its general contractor to take) at least the following affirmative steps:

(1) Including qualified SBEs on solicitation lists.

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1 Note: DCED is currently evaluating revisions to this SBE section due to recent legislative changes adopted by Council. If DCED implements these policy changes prior to the execution of this Agreement, this section will be revised.

(2) Assuring that SBEs are solicited whenever they are potential sources. Contractor must advertise, on at least two separate occasions, both in local minority publications and in other local newspapers of general circulation, invitations to SBEs to provide services, to supply materials or to bid on construction contracts for the Project. Contractor is encouraged to use the internet and similar types of advertising to reach a broader audience, but these additional types of advertising cannot be used as substitutes for the above.

(3) When economically feasible, dividing total requirements into small tasks or quantities so as to permit maximum SBE participation.

(4) When needs permit, establishing delivery schedules that will encourage participation by SBEs.

(iii) Subject to clause (i) above, if any subcontracts are to be let, Developer shall require the prime contractor to take the above affirmative steps.

(iv) Subject to clause (i) above, Developer shall provide to the City, prior to commencement of the Project, a report listing all of the contractors and subcontractors for the Project, including information as to the owners, dollar amount of the contract or subcontract, and other information that may be deemed necessary by the City Manager. Developer or its general contractor shall update the report monthly by the 15<sup>th</sup>. Developer or its general contractor shall enter all reports required in this subsection via the City's web page referred to in clause (i) above or any successor site or system the City uses for this purpose. Upon execution of this Agreement, Developer and its general contractor shall contact the Department of Economic Inclusion to obtain instructions, the proper internet link, login information, and password to access the site and set up the necessary reports.

(v) Subject to clause (i) above, Developer and its general contractor shall periodically document its best efforts and affirmative steps to meet the above SBE participation goals by notarized affidavits executed in a form acceptable to the City, submitted upon the written request of the City. The City shall have the right to review records and documentation relevant to the affidavits. If affidavits are found to contain false statements, the City may prosecute the affiant pursuant to ORC Section 2921.12.

(vi) Subject to clause (i) above, failure of Developer or its general contractor to take the affirmative steps specified above, to provide fair and equal opportunity to SBEs, or to provide technical assistance to SBEs as may be necessary to reach the minimum percentage goals for SBE participation as set forth in CMC Chapter 323, may be construed by the City as failure of Developer to use best efforts, and, in addition to other remedies under this Agreement, may be a cause for the City to file suit in Common Pleas Court to enforce specific performance of the terms of this section.

(G) Equal Employment Opportunity.

(i) Applicability. CMC Chapter 325 (Equal Employment Opportunity) applies (a) where the City expends more than \$5,000 under a non-construction contract, or (b) where the City spends or receives over \$5,000 to (1) employ another party to construct public improvements, (2) purchase services, or (3) lease any real or personal property to or from another party. CMC Chapter 325 does not apply where the contract is (a) for the purchase of real or personal property to or from another party, (b) for the provision by the City of services to another party, (c) between the City and another governmental agency, or (d) for commodities such as utilities.

(ii) Requirement. If this Agreement is subject to the provisions of CMC Chapter 325, the provisions thereof are hereby incorporated by reference into this Agreement.

(H) Prevailing Wage. Developer shall comply, and shall cause all contractors working on the Project to comply, with all any prevailing wage requirements that may be applicable to the Project. In the event that the City is directed by the State of Ohio to make payments to construction workers based on violations of such requirements, Developer shall make such payments or reimburse the City for such payments within

twenty (20) days of demand therefor. A copy of the City's prevailing wage determination may be attached to this Exhibit as Addendum I to Additional Requirements Exhibit (City's Prevailing Wage Determination) hereto.

(I) Compliance with the Immigration and Nationality Act. In the performance of its construction obligations under this Agreement, Developer shall comply with the following provisions of the federal Immigration and Nationality Act: 8 U.S.C.A. 1324a(a)(1)(A) and 8 U.S.C.A. 1324a(a)(2). Compliance or noncompliance with those provisions shall be solely determined by final determinations resulting from the actions by the federal agencies authorized to enforce the Immigration and Nationality Act, or by determinations of the U.S.

(J) Prompt Payment. The provisions of CMC Chapter 319, which provides for a "Prompt Payment System", may apply to this Agreement. CMC Chapter 319 also (i) provides certain requirements for invoices from contractors with respect to the Prompt Payment System, and (ii) obligates contractors to pay subcontractors for satisfactory work in a timely fashion as provided therein.

(K) Conflict of Interest. Pursuant to ORC Section 102.03, no officer, employee, or agent of the City who exercises any functions or responsibilities in connection with the planning or carrying out of the Project may have any personal financial interest, direct or indirect, in Developer or in the Project, and Developer shall take appropriate steps to assure compliance.

(L) Ohio Means Jobs. If this Agreement constitutes a construction contract (pursuant to the guidance with respect to the definition of that term provided in Section (A) above), then, pursuant to Ordinance No. 238-2010: To the extent allowable by law, Developer and its general contractor shall use its best efforts to post available employment opportunities with Developer, the general contractor's organization, or the organization of any subcontractor working with Developer or its general contractor with the OhioMeansJobs Center, 1916 Central Parkway, Cincinnati, Ohio 45214-2305, through its Employer Services Unit Manager at 513-946-7200.

(M) Wage Enforcement.

(i) Applicability. Council passed Ordinance No. 22-2016 on February 3, 2016, which ordained CMC Chapter 326 (Wage Enforcement) (the "**Wage Enforcement Chapter**"). The Wage Enforcement Chapter was then amended by Ordinance No. 96-2017, passed May 17, 2017. As amended, the Wage Enforcement Chapter imposes certain requirements upon persons entering into agreements with the City whereby the City provides an incentive or benefit that is projected to exceed \$25,000, as described more particularly in the Wage Enforcement Chapter. CMC Section 326-5 requires that the language below be included in contracts subject to the Wage Enforcement Chapter.

(ii) Required Contractual Language. Capitalized terms used, but not defined, in this clause (ii) have the meanings ascribed thereto in the Wage Enforcement Chapter.

(a) This contract is or may be subject to the Wage Enforcement provisions of the Cincinnati Municipal Code. These provisions require that any Person who has an Agreement with the city or with a Contractor or Subcontractor of that Person shall report all Complaints or Adverse Determinations of Wage Theft and Payroll Fraud (as each of those terms is defined in Chapter 326 of the Cincinnati Municipal Code) against the Contractor or Subcontractors to the Department of Economic Inclusion within 30 days of notification of the Complaint or Adverse Determination.

(b) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to include provisions in solicitations and contracts regarding a Development Site that all employers, Contractors or Subcontractors performing or proposing to perform work on a Development Site provide an initial sworn and notarized "Affidavit Regarding Wage Theft and Payroll Fraud" on a form prescribed by the city manager or his or her designee and, within 30 days of an Adverse Determination or Complaint of Wage Theft or Payroll Fraud,

shall provide an “Amended Affidavit Regarding Wage Theft and Payroll Fraud” on a form prescribed by the city manager or his or her designee.

(c) If this contract is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this contract is required to authorize, and does hereby specifically authorize, any local, state or federal agency, court, administrative body or other entity investigating a complaint of Wage Theft or Payroll Fraud against the Person (collectively “investigative bodies”) to release to the City’s Department of Economic Inclusion any and all evidence, findings, complaints and determinations associated with the allegations of Wage Theft or Payroll Fraud upon the City’s request and further authorizes such investigative bodies to keep the City advised regarding the status of the investigation and ultimate determination. If the investigative bodies require the Person to provide additional authorization on a prescribed form or in another manner, the Person shall be required to provide such additional authorization within 14 days of a request by the City.

(d) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall include in its contracts with all Contractors language that requires the Contractors to provide the authorizations set forth in subsection (c) above and that further requires each Contractor to include in its contracts with Subcontractors those same obligations for each Subcontractor and each lower tier subcontractor.

(e) If this Agreement is subject to the Wage Enforcement provisions of Chapter 326 of the Cincinnati Municipal Code, the Person entering into this Agreement shall post a conspicuous notice on the Development Site throughout the entire period work is being performed pursuant to the Agreement indicating that the work being performed is subject to Cincinnati Municipal Code Chapter 326, Wage Enforcement, as administered by the City of Cincinnati Department of Economic Inclusion. Such notice shall include contact information for the Department of Economic Inclusion as provided by the department.

(f) Under the Wage Enforcement provisions, the city shall have the authority, under appropriate circumstances, to terminate this contract or to reduce the incentives or subsidies to be provided under this contract and to seek other remedies, including debarment.

(N) Americans With Disabilities Act; Accessibility.

(i) Applicability. Cincinnati City Council adopted Motion No. 201600188 on February 3, 2016 (the “**Accessibility Motion**”). This motion directs City administration, including DCED, to include language specifically requiring compliance with the Americans With Disabilities Act, together with any and all regulations or other binding directives promulgated pursuant thereto (collectively, the “**ADA**”), and imposing certain minimum accessibility standards on City-subsidized projects regardless of whether there are arguably exceptions or reductions in accessibility standards available under the ADA or State law.

(ii) Requirement. In furtherance of the policy objectives set forth in the Accessibility Motion, (A) the Project shall comply with the ADA, and (B) if (i) any building(s) within the Project is subject to the accessibility requirements of the ADA (e.g., by constituting a “place of public accommodation” or another category of structure to which the ADA is applicable) and (ii) such building(s) is not already required to meet the Contractual Minimum Accessibility Requirements (as defined below) pursuant to the ADA, applicable building code requirements, or by any other legal requirement, then Developer shall cause such building(s) to comply with the Contractual Minimum Accessibility Requirements in addition to any requirements pursuant to the ADA and the applicable building code or legal requirement. As used herein, “**Contractual Minimum Accessibility Requirements**” means that a building shall, at a minimum, include (1) at least one point of entry (as used in the ADA), accessible from a public right of way, with respect to which all architectural barriers (as used in the ADA) to entry have been eliminated, and (2) if such accessible



point of entry is not a building's primary point of entry, conspicuous signage directing persons to such accessible point of entry.

(O) Electric Vehicle Charging Stations in Garages.

(i) Applicability. Cincinnati City Council passed Ordinance No. 89-2017 on May 10, 2017. This ordinance requires all agreements in which the City provides any amount of "qualifying incentives" for projects involving the construction of a parking garage to include a provision requiring the inclusion of certain features in the garage relating to electric vehicles. The ordinance defines "qualifying incentives" as the provision of incentives or support for the construction of a parking garage in the form of (a) the provision of any City monies or monies controlled by the City including, without limitation, the provision of funds in the form of loans or grants; (b) the provision of service payments in lieu of taxes in connection with tax increment financing, including rebates of service payments in lieu of taxes; and (c) the provision of the proceeds of bonds issued by the City or with respect to which the City has provided any source of collateral security or repayment, including, but not limited to, the pledge of assessment revenues or service payments in lieu of taxes. For the avoidance of doubt, "qualifying incentives" does not include (1) tax abatements such as Community Reinvestment Area abatements pursuant to ORC Section 3735.67, et seq., or Job Creation Tax Credits pursuant to ORC Section 718.15; (2) the conveyance of City-owned real property for less than fair market value; and (3) any other type of City support in which the City provides non-monetary assistance to a project, regardless of value.

(ii) Requirement. If the applicability criteria of Ordinance No. 89-2017 are met, then the following requirements shall apply to any parking garage included within the Project: (a) at least one percent of parking spaces, rounding up to the nearest integer, shall be fitted with Level 2 minimum 7.2 kilowatt per hour electric car charging stations; provided that if one percent of parking spaces is less than two parking spaces, the minimum number of parking spaces subject to this clause shall be two parking spaces; and (b) the parking garage's electrical raceway to the electrical supply panel serving the garage shall be capable of providing a minimum of 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer, and the electrical room supplying the garage must have the physical space for an electrical supply panel sufficient to provide 7.2 kilowatts of electrical capacity to at least five percent of the parking spaces of the garage, rounding up to the nearest integer.

(P) Certification as to Non-Debarment. Developer represents that neither it nor any of its principals is presently suspended or debarred by any federal, state, or local government agency. In completing the Project, Developer shall not solicit bids from any contractors or subcontractors who are identified as being suspended or debarred by any federal, state, or local government agency. If Developer or any of its principals becomes suspended or debarred by any federal, state, or local government agency during the term of this Agreement, Developer shall be considered in default under this Agreement.

Addendum I  
to Exhibit E

Prevailing Wage Determination

*[ To be attached to execution version of Lease Agreement*

Date: September 29, 2021

To: Mayor and Members of City Council 202102843  
From: Paula Boggs Muething, City Manager  
Subject: ORDINANCE – LEASE A PORTION OF BLUE ROCK STREET TO BREWING ARTS, LLC

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Attached is an ordinance captioned as follows:

AUTHORIZING the City Manager to execute a Lease Agreement with Brewing Arts, LLC, pursuant to which the City will lease for a five-year term an above grade portion of the excess right of way located north of Blue Rock Street, and between Cherry Street and Turrill Street, in the Northside neighborhood.

The City owns certain real property, designated as public right of way, and more particularly described as an above grade portion of the excess right of way located north of Blue Rock Street between Cherry Street and Turrill Street in the Northside neighborhood (the "Property"). Brewing Arts, LLC owns property abutting the Property and has requested to lease the Property.

The City has determined the Lease Area is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the lease and leasing the area to Brewing Arts, LLC is not adverse to the City's retained interest in the Lease Area.

The fair market value of the Lease Area is approximately \$2,400 per year, which Brewing Arts, LLC has agreed to pay.

The City Planning Commission approved the lease at its meeting on August 20, 2021.

The Administration recommends passage of the attached ordinance.

Attachment I – Lease Agreement

cc: John S. Brazina, Director, Transportation and Engineering

# City of Cincinnati

JRS

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

AWB

**AUTHORIZING** the City Manager to execute a *Lease Agreement* with Brewing Arts, LLC, pursuant to which the City will lease for a five-year term an above grade portion of the excess right of way located north of Blue Rock Street, and between Cherry Street and Turrill Street, in the Northside neighborhood.

WHEREAS, the City of Cincinnati owns certain real property, designated as public right of way, and more particularly described as an above grade portion of the excess right of way located north of Blue Rock Street, and between Cherry Street and Turrill Street, in the Northside neighborhood (the “Property”), which Property is under the management of the Department of Transportation and Engineering (“DOTE”); and

WHEREAS, Brewing Arts, LLC, an Ohio limited liability company (“Lessee”), owns or otherwise controls certain real property abutting the Property located at 1662 Blue Rock Street, and has requested to lease from the City a portion of the Property, as more particularly depicted in the *Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the “Lease Area”); and

WHEREAS, the City Manager, in consultation with DOTE, has determined that (i) the Lease Area is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the lease, and (ii) leasing the Lease Area to Lessee is not adverse to the City’s retained interest in the Lease Area or the Property; and

WHEREAS, the City’s Real Estate Services Division has determined by appraisal that the fair market rental value of the Lease Area is approximately \$2,400 per year, which Lessee has agreed to pay; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, 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

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Lease Area at its meeting on August 20, 2021; 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 Brewing Arts, 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 five-year term an above grade portion of the excess right of way located north of Blue Rock Street, and between Cherry Street and Turrill Street, in the Northside neighborhood, as more particularly depicted in the *Lease Agreement* (the “Lease Area”).

Section 2. That the Lease Area is not needed for vehicular or pedestrian access or any other municipal purpose for the duration of the lease.

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

Section 4. That eliminating competitive bidding in connection with the City’s lease of the Lease Area is in the best interest of the City because as a practical matter, no one other than Lessee, an abutting property owner, would have any interest in leasing the Lease Area and assuming responsibility for the maintenance and repair thereof.

Section 5. That the fair market value of the lease, as determined by appraisal by the City’s Real Estate Services Division, is \$2,400 per year, which Lessee has agreed to pay.

Section 6. That the proceeds from the lease of the Property, if any, shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City’s Real Estate Services Division in connection with the lease, and that the City’s Finance Director is hereby authorized to deposit amounts in excess amount thereof into Miscellaneous Permanent Improvement Fund 757.

Section 7. That the City’s Finance Director is authorized to transfer and appropriate such excess funds from Miscellaneous Permanent Improvement Fund 757 into Capital Improvement Program Project Account No. 980x233xYY2306, “Street Improvements,” in which “YY” represents the last two digits of the fiscal year in which the closing occurs and the proceeds are received, referencing the latter fiscal year if the events occur in different fiscal years.

Section 8. 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 by generating and installing street signage in accordance with the Department of Transportation and Engineering’s policies and procedures, and by 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 9. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

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

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

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

ATTACHMENT A

**LEASE AGREEMENT**

(Portion of excess right-of-way north of Blue Rock Street between Cherry Street and Turrill Street)

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 **Brewing Arts, LLC**, an Ohio limited liability corporation, the address of which is 1662 Blue Rock Street, Cincinnati, Ohio, 45223, (“Tenant”).

Recitals:

A. The City owns the portion of excess right-of-way north of Blue Rock Street between Cherry Street and Turrill Street in the Northside neighborhood, as depicted on Exhibit A (Site Map) hereto, which is under the management and control of the City’s Department of Transportation and Engineering (“DOT”).

B. Tenant owns the adjoining property located at 1662 Blue Rock Street, Cincinnati, Ohio, 45223, also depicted on Exhibit A (“Tenant’s Property”).

C. Tenant desires to lease the portion of the public street marked “Lease Area” on Exhibit A (the “Leased Premises”), for assimilation with Tenant’s Property.

D. Brian J. Hirsch, Esq., a reputable attorney practicing in Hamilton County, Ohio, has certified via an Attorney Certificate of Title that Tenant owns all of the real property abutting the Leased Premises.

E. Pursuant to Section 723.04, Ohio Revised Code, the City has determined that there is good cause to close the Leased Premises to the general public and that the lease of the Leased Premises to Tenant will not be detrimental to the general interest.

F. Pursuant to Section 331-1, Cincinnati Municipal Code (“CMC”), the City has determined that the Leased Premises are not currently needed for transportation or other municipal purposes.

G. Pursuant to Section 331-1, CMC, the City has determined that the fair market rental value of the Leased Premises, as determined by appraisal by the City’s Real Estate Services Division, is \$2,400/year, which Tenant has agreed to pay.

H. Pursuant to Section 331-5, CMC, the City has determined that eliminating competitive bidding in connection with leasing the Leased Premises is in the best interest of the public because, 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.

I. 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 Tenant at its meeting on August 20, 2021.

J. The City’s execution of this Lease was approved by Cincinnati City Council by Ordinance No. \_\_\_ - 20\_\_\_, passed on \_\_\_\_\_, 20\_\_\_.

NOW THEREFORE, the parties hereby agree as follows:

**1. Grant.**

(A) Grant. The City does hereby lease the Leased Premises to Tenant, and Tenant does hereby lease the Leased Premises from the City, on the terms and conditions set forth therein. The rights herein granted to Tenant are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Premises. The City makes no representations or warranties to Tenant concerning {00347677-1}



the physical condition of the Leased Premises or the condition of the City's title to the Leased Premises and, on the Commencement Date (defined below), Tenant shall accept the Leased Premises in "as is" condition.

**2. Term.**

(A) **Initial Term.** The initial term ("Term") of this Lease shall be five (5) years and shall commence on the Effective Date (as defined on the signature page hereof), (herein, the "**Commencement Date**"), unless extended or sooner terminated as herein provided, and shall expire on the 5<sup>th</sup> anniversary thereof. The City shall deliver possession of the Leased Premises to Tenant on the Commencement Date.

(B) **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 Tenant 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, Tenant 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, Tenant shall pay the City annual rent for the Leased Premises, in advance, without notice or setoff, in the amount of **\$2,400** per annum.

(B) **Late Payment.** If any payment owed by Tenant hereunder is not received by the City on the due date, Tenant 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 for any reason prior to the end of any given 12-month period for which rent has been paid, the City shall not be required to refund any portion of the prepaid rent for such period. All payments shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Cincinnati, Ohio 45202, Attention: Real Estate, or to such other address as the City may from time to time designate in writing.

**4. Permitted Use.** Tenant may use the Leased Premises as a private walkway or patio for placement of tables and chairs for patrons of an eating and drinking establishment and for no other purpose unless consented to in writing by DOTE (the "**Permitted Use**"). 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. Tenant 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 Use at the Leased Premises. Tenant 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, Tenant 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 (the parties acknowledge that the Leased Premises may currently be tax-exempt), and (iii) any and all other expenses associated with the Leased Premises. The Tenant is permitted to file complaints, at its sole expense, with the Hamilton County Board of Revision to challenge any taxable value of the Leased Premises if the Tenant chooses to do so. *Tenant 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.** Tenant 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 and abutting the Leased Premises. Tenant 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, Tenant shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE. Tenant 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*

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*maintenance or repair obligations with respect to the Leased Premises or any improvements thereon.*

**7. Alterations.**

**A. Vehicular/Pedestrian Barriers.**

- i. *Type and Location of Barriers:* Tenant, at its sole expense, may block access to the Leased Premises by the general public by installing removable traffic barriers or other similar barriers in the approximate location shown on Exhibit A (a "Barrier"), subject to approval by DOTE, provided, however, that Tenant shall have first determined that the Barrier will not interfere with the rights of utility providers to access, operate, maintain and repair their facilities as described in paragraph 7(B) below. Tenant shall not obstruct or block the existing sidewalk north of the Leased Premises nor the existing pedestrian crosswalks on the east or west of the Leased Premises as shown on Exhibit A.
- ii. *DOTE Approval of Plans:* Tenant shall design and install the Barrier in accordance with professionally prepared plans and specifications approved in writing by DOTE. Tenant, through a licensed street contractor, shall obtain a street opening permit before installing the Barrier and shall pay any and all permit fees imposed by DOTE. Before a street opening permit can be issued, Tenant's licensed street contractor shall be required to supply two (2) sets of plans to DOTE showing the location of the Barrier in relation to street fixtures and the rights-of-way lines. If the Barrier consists of a gate, the plans must provide 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. If the Barrier consists of bollards, the plans must show bollard footing and details showing how the bollards are locked in place and removable. Retractable bollards must require a key to both raise and lower the bollards.
- iii. *Removal:* At the end of the Term, and unless DOTE requires that the Barrier remains in place, Tenant shall remove the Barrier and immediately perform all necessary street and sidewalk restoration under a DOTE street opening permit obtained by a licensed contractor. If Tenant fails to timely remove the Barrier and complete such restoration to the satisfaction of the City Engineer, the City may do so at Tenant's expense, which amount shall be payable by Tenant within thirty (30) days after Tenant's receipt of a statement from the City indicating the amount due. The foregoing notwithstanding, if this Lease is terminated in connection with Tenant's simultaneous acquisition of title to the Leased Premises from the City, Tenant shall not be required to remove the Barrier at the end of the Term.

**B. Access by City Departments, Utility Companies and Others.** (i) Tenant 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. Tenant 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 Tenant 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 Tenant under this Lease. If Tenant's activities within the Leased Premises cause damage to existing utility lines or other utility facilities belonging to a utility provider, Tenant 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 Tenant and shall be payable by Tenant within thirty (30) days after Tenant receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Tenant within the Leased Premises in connection with its inspection, maintenance, repair or

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replacement of its existing utility facilities in the area, Tenant shall be solely responsible for all costs associated with the repair or replacement of Tenant's improvements.

C. **No Liens.** Tenant shall not permit any mechanics liens to attach to the Leased Premises in connection with work performed by or at the request of Tenant.

D. **Compliance with Laws.** Tenant shall obtain all necessary City inspection permits for work within the Leased Premises performed by Tenant and shall pay all required permit fees. Tenant 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, Tenant 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 Tenant proposes to install any permanent-type structures or other improvements within the Leased Premises (including without limitation the Barrier), Tenant shall also obtain the prior written consent of all utility companies whose utility facilities might be affected.

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

(A) **Insurance.** Throughout the Term, Tenant 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 Tenant hereunder shall be issued by insurance companies reasonably acceptable to the City. If Tenant constructs any improvements within the Leased Premises, Tenant 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, Tenant 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 Tenant'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. Tenant hereby waives, as against the City, its employees, agents and contractors, all claims and liability, and on behalf of Tenant'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 Tenant shall at all times protect itself against such loss or damage by carrying adequate insurance.

(C) **Indemnification.** Tenant 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; Remedies.** Should Tenant fail to pay the rent or any other sum due under this Lease within five (5) days after receiving written notice thereof from the City, or should Tenant fail to observe or perform any other obligation under this Lease within thirty (30) days after receiving written notice thereof from the City (in either event, 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 Tenant. Tenant shall pay to the City, upon demand, all costs and damages suffered or incurred by the City in connection with Tenant'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 Tenant's sole expense and may, if necessary, enter onto the Leased Premises in order to undertake such cure. Tenant 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 Tenant's obligations under this Lease, together with interest {00347677-1}

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. If Tenant becomes debarred by the federal, state or local government, the same shall constitute an immediate default of Tenant under this Lease.

**10. Notices.** All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by Federal Express, UPS or other recognized 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 Tenant sends a notice to the City alleging that the City is in default under this Lease, Tenant 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, Tenant shall surrender the Leased Premises to the City in the condition in which Tenant is required to maintain the Leased Premises under the terms of this Lease. If Tenant remains in possession of the Leased Premises after the termination date, 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. Tenant shall pay all costs incurred by the City in connection with Tenant's holdover, including without limitation attorneys' fees and court costs.

(B) **Removal of Alterations.** If Tenant has made improvements to the Leased Premises during the Term, then, at the end of the Term (and unless Tenant shall have simultaneously acquired title to the Leased Premises from the City), the City shall identify which improvements Tenant shall be required to surrender (at no cost to the City) and which improvements Tenant shall be required to remove. If Tenant fails to timely remove improvements that are designated for removal by the City, such improvements shall be deemed abandoned by Tenant, whereupon the City may remove, store, keep, sell, discard, or otherwise dispose of such improvements, and Tenant shall pay all costs incurred by the City in so doing within twenty 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. Tenant 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 Tenant and its successors and permitted assigns. If the Tenant hereunder consists of more than one individual or entity, such individuals' or entities' obligations under this Lease are joint and several. 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 Report (CR #10-2021).** Tenant shall comply with the following additional terms and conditions:

A) **NOTE:**

(i.) Pending approval from Fire and Police Departments, vehicular access if restricted shall be done with removable bollards or planters. Barriers must:

- a. Allow all utilities, Fire, Police, and emergency equipment access at all times.
- b. Permit ADA compliant pedestrian access.

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- c. Facilitate access to abutting property owners that desire it.
  - d. Be submitted (plans) to DOTE showing the location of the bollards or barriers in relation to street fixtures and right-of-way line. Plans must also show bollard footing and details showing how bollard is locked in place and removable. Retractable bollards must require a key to both raise and lower.
  - e. All Barriers must be removed at the end of the Term and the street fully restored to allow for its original purpose.
- B) **Stormwater**: Tenant is responsible for any stormwater inlets and ensuring they are free of debris and any repair, replacement, or maintenance as determined by the City.
- C) **Buildings and Inspections**: Tenant shall obtain all Conditional Use and Zoning Variances regarding outdoor dining and potential parking variances are required and to be approved by the Zoning Hearing Examiner. Tenant shall ensure the existing and proposed occupancy for the Leased Premises meets with all Building and Inspection requirements and obtains necessary approvals, and further shall develop pathway and code compliance for access to adequate restroom facilities including all necessary approvals and permits.
14. **Exhibits**. The following exhibits are attached hereto and made a part hereof:  
Exhibit A – *Site Map*

*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").

**Brewing Arts, LLC,**  
an Ohio limited liability company,

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

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

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

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

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

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

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

**City of Cincinnati**

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

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

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

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

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, the \_\_\_\_\_ of 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:

\_\_\_\_\_  
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 MAP**

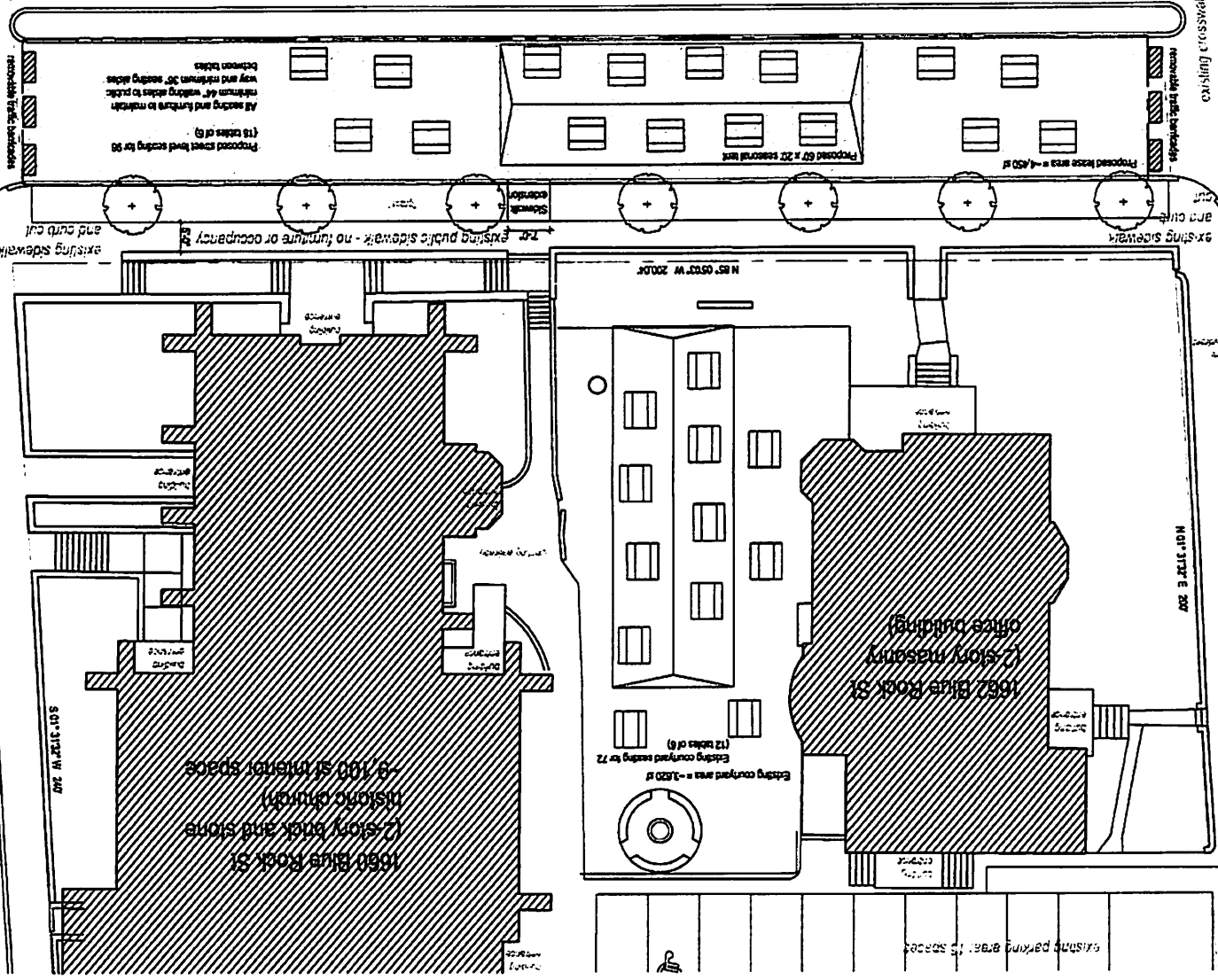


**TURRILL STREET (30')**

existing adjacent street parking: 6 spaces

**PLUMBING CALCULATIONS**

Occupancy in courtyard: 72  
 Occupancy at street level: 98  
**TOTAL OUTDOOR OCC.** 170  
 Plumbing fixture requirement for outdoor seating (300 occupants) requires 2 water closets for each sex  
 Occupancy in apartment: 200  
 Plumbing fixture requirement for apartment seating (1 water closet per occupant for A-2 use) = 40  
 8 water closets or 3 per sex  
**TOTAL REQUIREMENT:** 9 total water closets or 5 per sex  
**PROVIDE:** 15 total water closets  
 7 men + 8 women's water closets



**BLUE ROCK STREET**

**SITE PLAN**  
 prepared by Urban Architects 2021-05-07  
 1/4" = 1'-0"

**ZONING CALCULATIONS**

Use: A-2 bar and A-2 lounge  
 Form and location existing non-conforming, no change.  
 Existing floor Space: 5,100 sf  
 Existing Outdoor Dining: 3,820 sf  
 Proposed Outdoor Dining: 4,450 sf  
 12,170 sf total  
 16 spaces provided onsite  
 15 spaces covered adjacent  
 = 31 existing parking spaces  
 The Northwest Business Association Operates 7 public parking lots within the site of the property.

existing adjacent street parking: 4 spaces

**CHERRY STREET (30')**

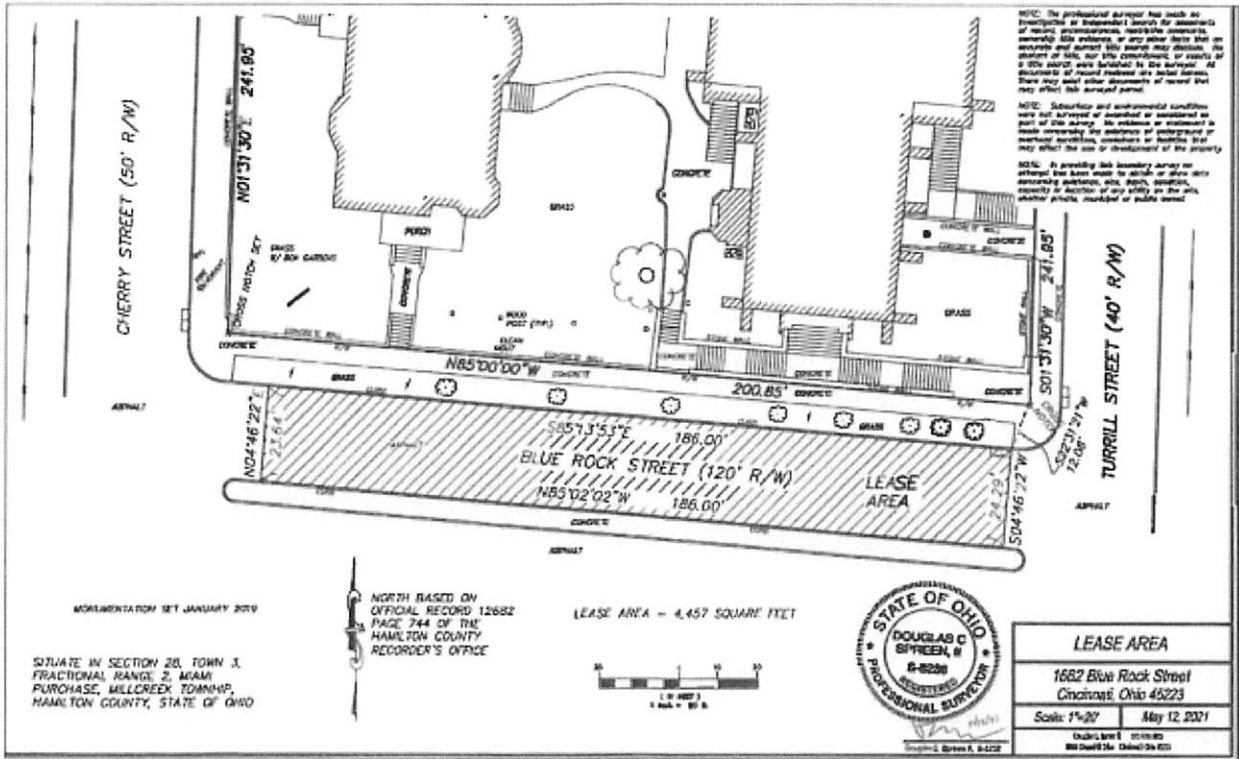


Exhibit "A" - Legal Description

Lease Area  
4,457 Square Feet  
May 12, 2021

Situate in Section 28, Town 3, Fractional Range 2, Millcreek Township, Hamilton County, State of Ohio, and being more particularly described as follows:

Commencing at a cross notch set at the intersection of the west right-of-way of Turrill Street (40' R/W) and the north right-of-way of Blue Rock Street (120' R/W); Thence southwardly, South 22°31'21" West, 12.08 feet to the POINT OF BEGINNING;

Thence southwardly, South 04°46'22" West, 24.29 feet to a point;

Thence westwardly, North 85°02'02" West, 186.00 feet to a point;

Thence northwardly, North 04°46'22" East, 23.64 feet to a point;

Thence eastwardly, South 85°13'53" East, 186.00 feet to the POINT OF BEGINNING, containing 4,457 square feet of land, more or less, subject to all easements and restrictions of record.

The basis of bearing for this described real estate was Official Record 12682 Page 744 of the Hamilton County Recorder's Office.

This description was prepared by Douglas C. Spreen II, Ohio Registration S-8238, as a result of a survey dated May 12, 2021.



**LEASE AGREEMENT**

(Portion of excess right-of-way north of Blue Rock Street between Cherry Street and Turrill Street)

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 Brewing Arts, LLC, an Ohio limited liability corporation, the address of which is 1662 Blue Rock Street, Cincinnati, Ohio, 45223, (“**Tenant**”).

Recitals:

A. The City owns the portion of excess right-of-way north of Blue Rock Street between Cherry Street and Turrill Street in the Northside neighborhood, as depicted on Exhibit A (Site Map) hereto, which is under the management and control of the City’s Department of Transportation and Engineering (“**DOT**”).

B. Tenant owns the adjoining property located at 1662 Blue Rock Street, Cincinnati, Ohio, 45223, also depicted on Exhibit A (“Tenant’s Property”).

C. Tenant desires to lease the portion of the public street marked “Lease Area” on Exhibit A (the “Leased Premises”), for assimilation with Tenant’s Property.

D. Brian J. Hirsch, Esq., a reputable attorney practicing in Hamilton County, Ohio, has certified via an Attorney Certificate of Title that Tenant owns all of the real property abutting the Leased Premises.

E. Pursuant to Section 723.04, Ohio Revised Code, the City has determined that there is good cause to close the Leased Premises to the general public and that the lease of the Leased Premises to Tenant will not be detrimental to the general interest.

F. Pursuant to Section 331-1, Cincinnati Municipal Code (“**CMC**”), the City has determined that the Leased Premises are not currently needed for transportation or other municipal purposes.

G. Pursuant to Section 331-1, CMC, the City has determined that the fair market rental value of the Leased Premises, as determined by appraisal by the City’s Real Estate Services Division, is \$2,400/year, which Tenant has agreed to pay.

H. Pursuant to Section 331-5, CMC, the City has determined that eliminating competitive bidding in connection with leasing the Leased Premises is in the best interest of the public because, 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.

I. 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 Tenant at its meeting on August 20, 2021.

J. The City’s execution of this Lease was approved by Cincinnati City Council by Ordinance No. \_\_\_\_-20\_\_, passed on \_\_\_\_\_, 20\_\_.

NOW THEREFORE, the parties hereby agree as follows:

**1. Grant.**

(A) Grant. The City does hereby lease the Leased Premises to Tenant, and Tenant does hereby lease the Leased Premises from the City, on the terms and conditions set forth therein. The rights herein granted to Tenant are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Premises. The City makes no representations or warranties to Tenant concerning the

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physical condition of the Leased Premises or the condition of the City's title to the Leased Premises and, on the Commencement Date (defined below), Tenant shall accept the Leased Premises in "as is" condition.

**2. Term.**

(A) Initial Term. The initial term ("**Term**") of this Lease shall be five (5) years and shall commence on the Effective Date (as defined on the signature page hereof), (herein, the "**Commencement Date**"), unless extended or sooner terminated as herein provided, and shall expire on the 5<sup>th</sup> anniversary thereof. The City shall deliver possession of the Leased Premises to Tenant on the Commencement Date.

(B) 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 Tenant 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, Tenant 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, Tenant shall pay the City annual rent for the Leased Premises, in advance, without notice or setoff, in the amount of **\$2,400** per annum.

(B) Late Payment. If any payment owed by Tenant hereunder is not received by the City on the due date, Tenant 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 for any reason prior to the end of any given 12-month period for which rent has been paid, the City shall not be required to refund any portion of the prepaid rent for such period. All payments shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Cincinnati, Ohio 45202, Attention: Real Estate, or to such other address as the City may from time to time designate in writing.

**4. Permitted Use.** Tenant may use the Leased Premises as a private walkway or patio for placement of tables and chairs for patrons of an eating and drinking establishment and for no other purpose unless consented to in writing by DOTE (the "**Permitted Use**"). 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. Tenant 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 Use at the Leased Premises. Tenant 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, Tenant 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 (the parties acknowledge that the Leased Premises may currently be tax-exempt), and (iii) any and all other expenses associated with the Leased Premises. The Tenant is permitted to file complaints, at its sole expense, with the Hamilton County Board of Revision to challenge any taxable value of the Leased Premises if the Tenant chooses to do so. *Tenant 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.** Tenant 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 and abutting the Leased Premises. Tenant 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, Tenant shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE. Tenant 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*

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*maintenance or repair obligations with respect to the Leased Premises or any improvements thereon.*

**7. Alterations.**

**A. Vehicular/Pedestrian Barriers.**

- i. *Type and Location of Barriers:* Tenant, at its sole expense, may block access to the Leased Premises by the general public by installing removable traffic barriers or other similar barriers in the approximate location shown on Exhibit A (a "Barrier"), subject to approval by DOTE, provided, however, that Tenant shall have first determined that the Barrier will not interfere with the rights of utility providers to access, operate, maintain and repair their facilities as described in paragraph 7(B) below. Tenant shall not obstruct or block the existing sidewalk north of the Leased Premises nor the existing pedestrian crosswalks on the east or west of the Leased Premises as shown on Exhibit A.
- ii. *DOTE Approval of Plans:* Tenant shall design and install the Barrier in accordance with professionally prepared plans and specifications approved in writing by DOTE. Tenant, through a licensed street contractor, shall obtain a street opening permit before installing the Barrier and shall pay any and all permit fees imposed by DOTE. Before a street opening permit can be issued, Tenant's licensed street contractor shall be required to supply two (2) sets of plans to DOTE showing the location of the Barrier in relation to street fixtures and the rights-of-way lines. If the Barrier consists of a gate, the plans must provide 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. If the Barrier consists of bollards, the plans must show bollard footing and details showing how the bollards are locked in place and removable. Retractable bollards must require a key to both raise and lower the bollards.
- iii. *Removal:* At the end of the Term, and unless DOTE requires that the Barrier remains in place, Tenant shall remove the Barrier and immediately perform all necessary street and sidewalk restoration under a DOTE street opening permit obtained by a licensed contractor. If Tenant fails to timely remove the Barrier and complete such restoration to the satisfaction of the City Engineer, the City may do so at Tenant's expense, which amount shall be payable by Tenant within thirty (30) days after Tenant's receipt of a statement from the City indicating the amount due. The foregoing notwithstanding, if this Lease is terminated in connection with Tenant's simultaneous acquisition of title to the Leased Premises from the City, Tenant shall not be required to remove the Barrier at the end of the Term.

**B. Access by City Departments, Utility Companies and Others.** (i) Tenant 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. Tenant 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 Tenant 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 Tenant under this Lease. If Tenant's activities within the Leased Premises cause damage to existing utility lines or other utility facilities belonging to a utility provider, Tenant 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 Tenant and shall be payable by Tenant within thirty (30) days after Tenant receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Tenant within the Leased Premises in connection with its inspection, maintenance, repair or

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replacement of its existing utility facilities in the area, Tenant shall be solely responsible for all costs associated with the repair or replacement of Tenant's improvements.

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

D. Compliance with Laws. Tenant shall obtain all necessary City inspection permits for work within the Leased Premises performed by Tenant and shall pay all required permit fees. Tenant 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, Tenant 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 Tenant proposes to install any permanent-type structures or other improvements within the Leased Premises (including without limitation the Barrier), Tenant shall also obtain the prior written consent of all utility companies whose utility facilities might be affected.

**8. Insurance; Indemnification.**

(A) Insurance. Throughout the Term, Tenant 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 Tenant hereunder shall be issued by insurance companies reasonably acceptable to the City. If Tenant constructs any improvements within the Leased Premises, Tenant 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, Tenant 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 Tenant'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. Tenant hereby waives, as against the City, its employees, agents and contractors, all claims and liability, and on behalf of Tenant'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 Tenant shall at all times protect itself against such loss or damage by carrying adequate insurance.

(C) Indemnification. Tenant 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; Remedies**. Should Tenant fail to pay the rent or any other sum due under this Lease within five (5) days after receiving written notice thereof from the City, or should Tenant fail to observe or perform any other obligation under this Lease within thirty (30) days after receiving written notice thereof from the City (in either event, 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 Tenant. Tenant shall pay to the City, upon demand, all costs and damages suffered or incurred by the City in connection with Tenant'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 Tenant's sole expense and may, if necessary, enter onto the Leased Premises in order to undertake such cure. Tenant 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 Tenant's obligations under this Lease, together with interest thereon from

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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. If Tenant becomes debarred by the federal, state or local government, the same shall constitute an immediate default of Tenant under this Lease.

**10. Notices.** All notices required to be given hereunder by either party shall be in writing and personally delivered, sent by Federal Express, UPS or other recognized 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 Tenant sends a notice to the City alleging that the City is in default under this Lease, Tenant 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, Tenant shall surrender the Leased Premises to the City in the condition in which Tenant is required to maintain the Leased Premises under the terms of this Lease. If Tenant remains in possession of the Leased Premises after the termination date, 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. Tenant shall pay all costs incurred by the City in connection with Tenant's holdover, including without limitation attorneys' fees and court costs.

(B) Removal of Alterations. If Tenant has made improvements to the Leased Premises during the Term, then, at the end of the Term (and unless Tenant shall have simultaneously acquired title to the Leased Premises from the City), the City shall identify which improvements Tenant shall be required to surrender (at no cost to the City) and which improvements Tenant shall be required to remove. If Tenant fails to timely remove improvements that are designated for removal by the City, such improvements shall be deemed abandoned by Tenant, whereupon the City may remove, store, keep, sell, discard, or otherwise dispose of such improvements, and Tenant shall pay all costs incurred by the City in so doing within twenty 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. Tenant 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 Tenant and its successors and permitted assigns. If the Tenant hereunder consists of more than one individual or entity, such individuals' or entities' obligations under this Lease are joint and several. 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 Report (CR #10-2021).** Tenant shall comply with the following additional terms and conditions:

A) DOTE:

(i.) Pending approval from Fire and Police Departments, vehicular access if restricted shall be done with removable bollards or planters. Barriers must:

- a. Allow all utilities, Fire, Police, and emergency equipment access at all times.
- b. Permit ADA compliant pedestrian access.



- c. Facilitate access to abutting property owners that desire it.
  - d. Be submitted (plans) to DOTE showing the location of the bollards or barriers in relation to street fixtures and right-of-way line. Plans must also show bollard footing and details showing how bollard is locked in place and removable. Retractable bollards must require a key to both raise and lower.
  - e. All Barriers must be removed at the end of the Term and the street fully restored to allow for its original purpose.
- B) Stormwater: Tenant is responsible for any stormwater inlets and ensuring they are free of debris and any repair, replacement, or maintenance as determined by the City.
- C) Buildings and Inspections: Tenant shall obtain all Conditional Use and Zoning Variances regarding outdoor dining and potential parking variances are required and to be approved by the Zoning Hearing Examiner. Tenant shall ensure the existing and proposed occupancy for the Leased Premises meets with all Building and Inspection requirements and obtains necessary approvals, and further shall develop pathway and code compliance for access to adequate restroom facilities including all necessary approvals and permits.
14. Exhibits. The following exhibits are attached hereto and made a part hereof:  
Exhibit A – *Site Map*

*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").

**Brewing Arts, LLC,**  
an Ohio limited liability company,

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

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

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

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

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

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

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

**City of Cincinnati**

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

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

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

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

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF HAMILTON        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, the \_\_\_\_\_ of 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:

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

Approved as to Form:

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

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

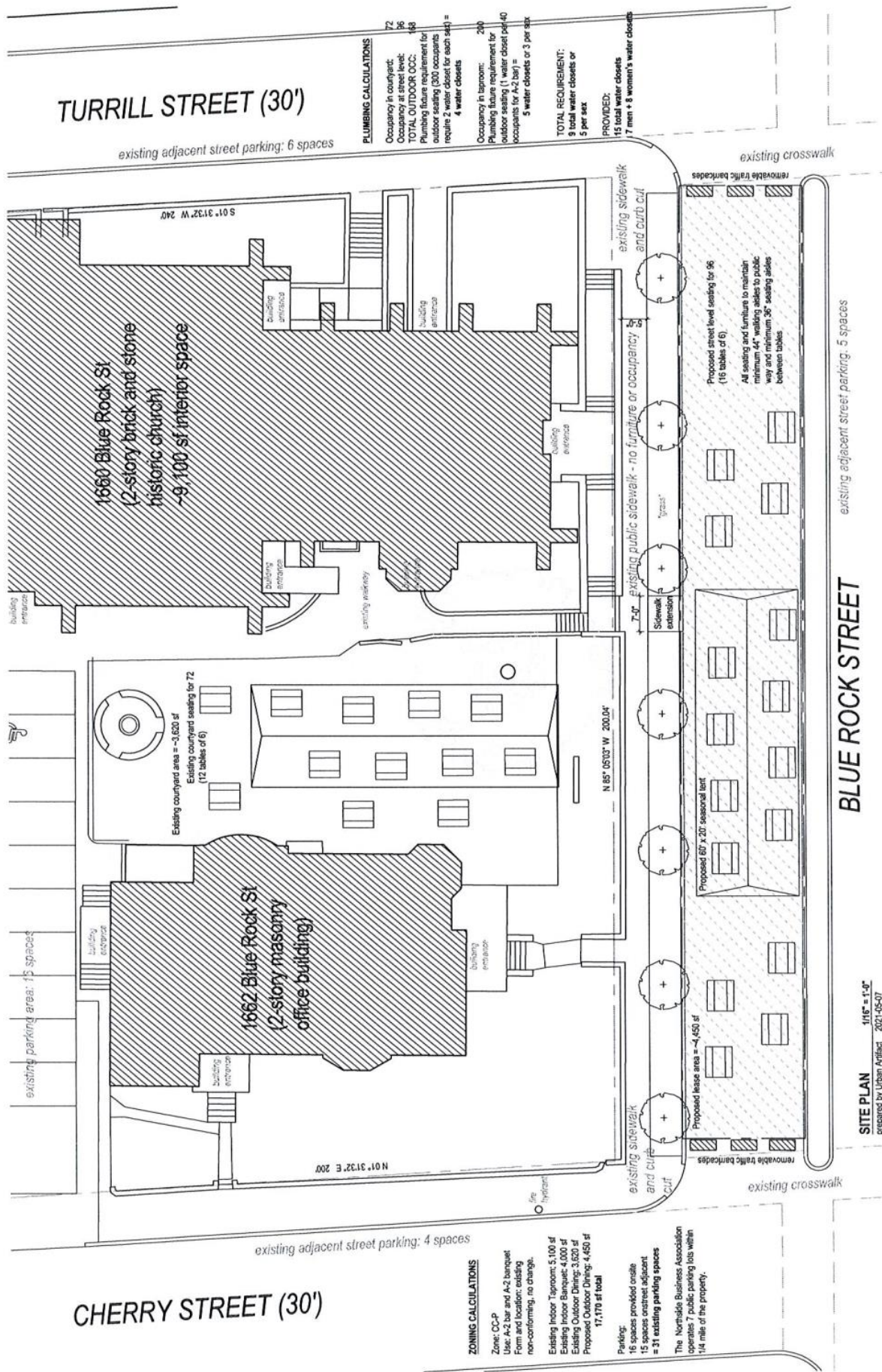
Fund/Code: \_\_\_\_\_

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

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

**EXHIBIT A**  
to  
Lease Agreement

**SITE MAP**



**TURRILL STREET (30')**

existing adjacent street parking: 6 spaces

**1660 Blue Rock St**  
 (2-story brick and stone historic church)  
 ~9,100 sf interior space

Existing courtyard area = 3,620 sf  
 Existing courtyard seating for 72  
 (12 tables of 6)

**1662 Blue Rock St**  
 (2-story masonry office building)

existing parking area: 15 spaces

existing adjacent street parking: 4 spaces

**CHERRY STREET (30')**

**PLUMBING CALCULATIONS**

Occupancy in courtyard: 72  
 Occupancy at street level: 156  
**TOTAL OUTDOOR OCC:** 186  
 Plumbing fixture requirement for outdoor seating (300 occupants require 2 water closets for each sex) = 4 water closets  
 Occupancy in taproom: 200  
 Plumbing fixture requirement for outdoor seating (1 water closet per 40 occupants for A-2 bar) = 5 water closets or 3 per sex

**TOTAL REQUIREMENT:**  
 9 total water closets or 5 per sex

**PROVIDED:**  
 15 total water closets  
 7 men + 8 women's water closets

**ZONING CALCULATIONS**

Zones: DCP  
 Use: A-2 bar and A-2 banquet  
 Form and location: existing non-conforming, no change.  
 Existing Indoor Taproom: 5,100 sf  
 Existing Indoor Banquet: 4,000 sf  
 Existing Outdoor Dining: 3,620 sf  
 Proposed Outdoor Dining: 4,450 sf  
**17,170 sf total**

**Parking:**  
 16 spaces provided onsite  
 15 spaces onstreet adjacent  
 = 31 existing parking spaces

The Northside Business Association operates 7 public parking lots within 1/4 mile of the property.

Proposed street level seating for 96 (18 tables of 6).  
 All seating and furniture to maintain minimum 4' walking access to public way and minimum 36" seating aisles between tables

Proposed 60' x 20' seasonal tent

Proposed lease area = 4,450 sf

existing adjacent street parking: 5 spaces

**BLUE ROCK STREET**

**SITE PLAN** 1/16" = 1'-0"  
 prepared by Urban Artifact 2021-05-07

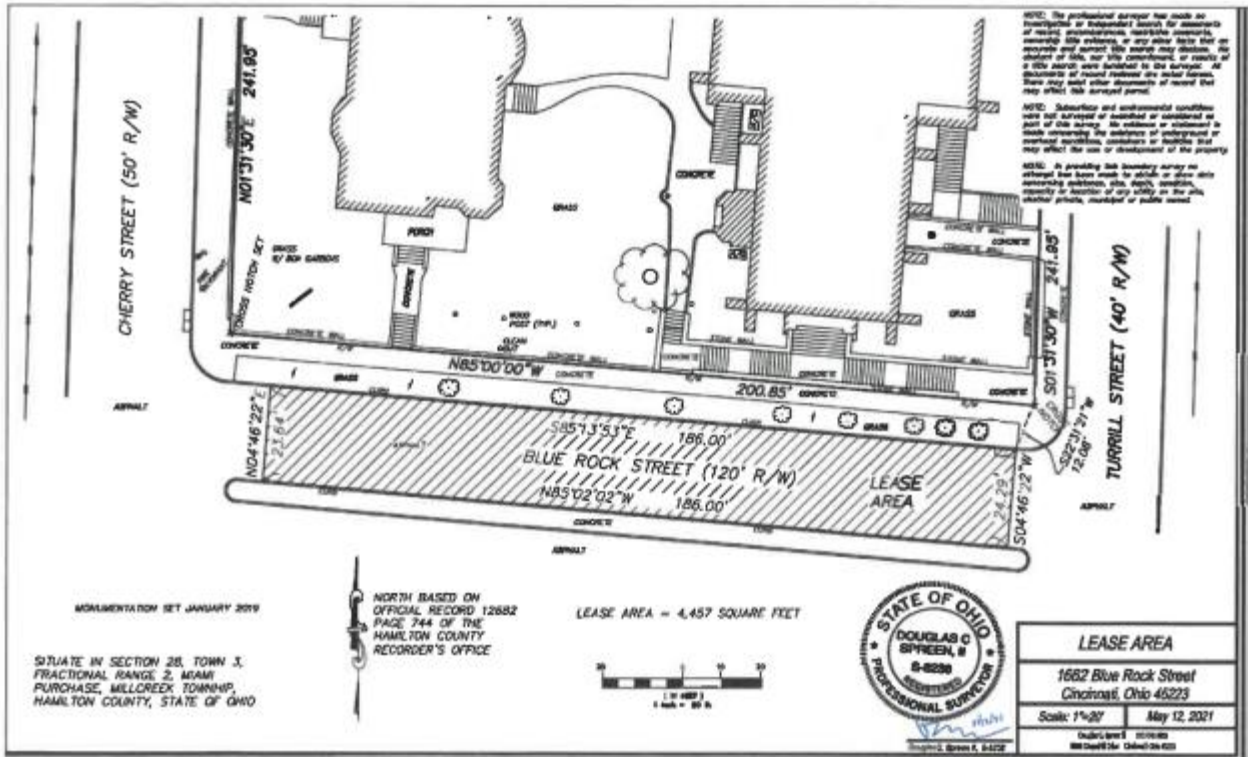


Exhibit "A" - Legal Description

Lease Area

4,457 Square Feet

May 12, 2021

Situate in Section 28, Town 3, Fractional Range 2, Millcreek Township, Hamilton County, State of Ohio, and being more particularly described as follows:

Commencing at a cross notch set at the intersection of the west right-of-way of Turrill Street (40' R/W) and the north right-of-way of Blue Rock Street (120' R/W); Thence southwardly, South 22°31'21" West, 12.08 feet to the POINT OF BEGINNING;

Thence southwardly, South 04°46'22" West, 24.29 feet to a point;

Thence westwardly, North 85°02'02" West, 186.00 feet to a point;

Thence northwardly, North 04°46'22" East, 23.64 feet to a point;

Thence eastwardly, South 85°13'53" East, 186.00 feet to the POINT OF BEGINNING, containing 4,457 square feet of land, more or less, subject to all easements and restrictions of record.

The basis of bearing for this described real estate was Official Record 12682 Page 744 of the Hamilton County Recorder's Office.

This description was prepared by Douglas C. Spreen II, Ohio Registration S-8238, as a result of a survey dated May 12, 2021.



September 29, 2021

**To:** Mayor and Members of City Council 202102844  
**From:** Paula Boggs Muething, City Manager  
**Subject:** **Emergency Ordinance – Parks: Biochar Replication Bloomberg Philanthropies Grant**

---

Attached is an Emergency Ordinance captioned:

**ESTABLISHING** new capital improvement program project account no. 980x203x222004, “Biochar Replication Bloomberg Grant”; **AUTHORIZING** the City Manager to apply for, accept, and appropriate grant resources in an amount of up to \$400,000 from Bloomberg Philanthropies into the newly established capital improvement program project account no. 980x203x222004, “Biochar Replication Bloomberg Grant,” for the purpose of implementing a biochar production facility; and **AUTHORIZING** the transfer and appropriation of local matching resources from the unappropriated surplus of Urban Forestry Fund 428 in the amount of \$100,000 to newly established capital improvement program project account no. 980x203x222004, “Biochar Replication Bloomberg Grant.”

This Emergency Ordinance authorizes the City Manager to apply for, accept, and appropriate a grant in the amount of \$400,000 from Bloomberg Philanthropies for the purpose of implementing a biochar production facility. This Emergency Ordinance would also authorize the Finance Director to establish new capital improvement program project no. 980x203x222004, “Biochar Replication Bloomberg Grant,” for the purpose of providing grant resources for implementing a biochar production facility.

This Emergency Ordinance authorizes the transfer and appropriation of \$100,000 from the unappropriated surplus of Urban Forestry Fund 428 to satisfy the local match requirement. There are no new FTE associated with the grant. While the grant application deadline was September 24, 2021, funding will not be accepted without the approval of this Emergency Ordinance by the City Council.

In March 2021, the Cincinnati Parks Division of Natural Resources partnered with the City’s Office of Environment & Sustainability (OES) and the University of Cincinnati (UC) to submit a proposal to Bloomberg Philanthropies to participate in the Mayors Challenge: Biochar Replication Project. Cincinnati was one of only ten cities in the world chosen to participate. The Urban Forestry team recently completed a summer workshop with Bloomberg Philanthropies learning about the Biochar product. Biochar is a supplemental planting product that is incorporated into the soil of new tree plantings and landscape beds to increase the water and nutrient holding



capacity of the soil. The addition of biochar into the soil helps improve the growth rate and health of the trees and plants by locking the nutrients and water near the root structure.

This Emergency Ordinance is in accordance with the “Sustain” goal to “Preserve our natural and built environment” and strategy to “Protect our natural resources,” as described on pages 193 – 196 of Plan Cincinnati (2012).

The reason for the emergency is the immediate need to assure the timely submission of the grant application and acceptance of any granted funds.

The Administration recommends passage of this Emergency Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director



Attachment

## EMERGENCY

CFG

-2021

**ESTABLISHING** new capital improvement program project account no. 980x203x222004, “Biochar Replication Bloomberg Grant”; **AUTHORIZING** the City Manager to apply for, accept, and appropriate grant resources in an amount of up to \$400,000 from Bloomberg Philanthropies into the newly established capital improvement program project account no. 980x203x222004, “Biochar Replication Bloomberg Grant,” for the purpose of implementing a biochar production facility; and **AUTHORIZING** the transfer and appropriation of local matching resources from the unappropriated surplus of Urban Forestry Fund 428 in the amount of \$100,000 to newly established capital improvement program project account no. 980x203x222004, “Biochar Replication Bloomberg Grant.”

WHEREAS, in March 2021, the City of Cincinnati Parks Department’s Division of Natural Resources (“Parks”) and the City of Cincinnati Office of Environment and Sustainability partnered with the University of Cincinnati in the submission of a proposal to Bloomberg Philanthropies’ Mayors Challenge: Biochar Replication Project; and

WHEREAS, the City of Cincinnati was one of only ten cities in the world chosen to participate in the Biochar Replication Project; and

WHEREAS, biochar is a supplemental planting product incorporated into the soil of new tree plantings and landscape beds to increase their capacity to hold water and nutrients, thereby improving growth rate and health; and

WHEREAS, Urban Forestry Fund 428 will be used to provide \$100,000 of City resources toward this project, as it holds sufficient resources and is restricted for Urban Forestry Management Program use; and

WHEREAS, the deadline for submission to Bloomberg Philanthropies of a grant application detailing an implementation plan and requesting funds to match the City’s funding is September 24, 2021, and Parks intends to apply by this date but will not accept the grant award prior to City Council authorization; and

WHEREAS, there are no new FTEs associated with acceptance of this grant; and

WHEREAS, acceptance of the grant is in accordance with the “Sustain” goal to “Preserve our natural and built environment” and the strategy to “Protect our natural resources” as described on pages 193-196 of Plan Cincinnati (2012); now, therefore,

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

Section 1. That the Finance Director is hereby authorized to establish new capital improvement program project account no. 980x203x222004, "Biochar Replication Bloomberg Grant," for the purpose of implementing a biochar production facility.

Section 2. That the City Manager is hereby authorized to apply for, accept, and appropriate grant resources in an amount of up to \$400,000 from Bloomberg Philanthropies into the newly established capital improvement program project account no. 980x203x222004, "Biochar Replication Bloomberg Grant."

Section 3. That the transfer and appropriation from the unappropriated surplus of Urban Forestry Fund 428 of \$100,000 to newly established capital improvement program project account no. 980x203x222004, "Biochar Replication Bloomberg Grant," is hereby authorized.

Section 4. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 through 3 hereof.

Section 5. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to assure the timely submission of the grant application and acceptance of any granted funds.

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

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

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

September 29, 2021

**To:** Mayor and Members of City Council 202102845  
**From:** Paula Boggs Muething, City Manager  
**Subject:** **Emergency Ordinance – ESPN RePlay Grant Program**

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Attached is an Emergency Ordinance captioned:

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$75,000 from the Cincinnati Recreation Foundation, from funds made available through the ESPN RePlay program, for the purpose of renovating underutilized recreation spaces in Avondale as part of the 2021 Community Makeover program; and **AUTHORIZING** the Finance Director to deposit the grant funds into Recreation Special Activities Fund revenue account no. 323x8571x199Q876, “2021 Community Makeover.”

This Emergency Ordinance authorizes the City Manager to apply for, accept, and appropriate a grant in the amount of up to \$75,000 from the Cincinnati Recreation Foundation for the purpose of renovating vacant or underutilized spaces in low to moderate income neighborhoods. These funds have been made available from the ESPN RePlay Program.

The Cincinnati Recreation Commission (CRC) is partnering with the Avondale Development Corporation to seek additional funds for community-based projects. Avondale is the designated area for the 2021 Community Makeover program. This program brings together the resources of the Cincinnati Reds Community Fund, P&G, the Cincinnati Zoo, and Children's Hospital to make a positive impact to identified neighborhoods.

There is no match funding requirement, and there are no new FTE associated with the grant. The department submitted this grant application on April 20, 2021. As a result, the Cincinnati Recreation Commission has applied for this grant prior to this Emergency Ordinance receiving approval from the City Council. Should this Emergency Ordinance not be approved, the grant funding will not be accepted.

This Ordinance is in accordance with the “Live” goal to “Create a more livable community,” as described on page 156 of Plan Cincinnati (2012).

The reason for the emergency is the need for grant funds to be accepted in a timely fashion upon receipt of an award notice.

The Administration recommends passage of this Ordinance.

cc: Andrew M. Dudas, Budget Director  
Karen Alder, Finance Director

Attachment



EMERGENCY

City of Cincinnati

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An Ordinance No. \_\_\_\_\_

- 2021

**AUTHORIZING** the City Manager to apply for, accept, and appropriate a grant in an amount of up to \$75,000 from the Cincinnati Recreation Foundation, from funds made available through the ESPN RePlay program, for the purpose of renovating underutilized recreation spaces in Avondale as part of the 2021 Community Makeover program; and **AUTHORIZING** the Finance Director to deposit the grant funds into Recreation Special Activities Fund revenue account no. 323x8571x199Q876, “2021 Community Makeover.”

WHEREAS, the Cincinnati Recreation Commission (“CRC”) is partnering with the Avondale Development Corporation to seek additional funds for community-based projects; and

WHEREAS, a grant in an amount of up to \$75,000 is available from the Cincinnati Recreation Foundation, from funds made available through the ESPN RePlay program, which provides financial support for revitalizing places for sports, recreation, and play in low- and moderate-income neighborhoods; and

WHEREAS, Avondale is the designated area for the 2021 Community Makeover program; and

WHEREAS, the 2021 Community Makeover program brings together the resources of the Cincinnati Reds Community Fund, P&G, the Cincinnati Zoo, and Children’s Hospital to positively impact identified neighborhoods; and

WHEREAS, two CRC sites, the Avondale Recreation Area (870 Blair Avenue) and the Rockdale Recreation Area (3480 Harvey Avenue), will receive improvements from the 2021 Community Makeover program; and

WHEREAS, the additional funds made available from the Cincinnati Recreation Foundation/ESPN RePlay program grant will be used to offset City investments and add additional amenities to the sites; and

WHEREAS, no matching funds and no additional FTEs are required for the acceptance of this grant; and

WHEREAS, CRC applied for this grant on April 20, 2021, but no funds will be accepted without Council approval; and

WHEREAS, this ordinance is in accordance with the “Live” goal to “Create a more livable community,” as described on page 156 of Plan Cincinnati (2012); 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 apply for, accept, and appropriate a grant in an amount of up to \$75,000 from the Cincinnati Recreation Foundation, from funds made available through the ESPN RePlay program, for the purpose of renovating underutilized recreation spaces in Avondale as part of the 2021 Community Makeover program.

Section 2. That the Finance Director is hereby authorized to deposit the grant funds into Recreation Special Activities Fund revenue account no. 323x8571x199Q876, "2021 Community Makeover."

Section 3. That the proper City officials are hereby authorized to do all things necessary and proper to comply with the terms of Sections 1 and 2 hereof.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the need for grant funds to be accepted in a timely fashion upon receipt of an award notice.

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

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

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

September 29, 2021

**To:** Mayor and Members of City Council **202102848**

**From:** Paula Boggs Muething, City Manager

**Subject: LEGISLATIVE RESOLUTION DECLARING THE NECESSITY OF THE PACE ASSESSMENT PROJECT FOR 3634-3638 MADISON ROAD**

---

Attached is an Emergency Legislative Resolution captioned as follows:

DECLARING by legislative resolution the necessity of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati, Ohio involving the City of Cincinnati, Ohio Energy Special Improvement District.

#### **BACKGROUND/CURRENT CONDITIONS**

The Ohio PACE (Property Assessed Clean Energy) program allows commercial property owners to opt into a special assessment which is added to the property tax bill to access long-term, fixed-rate financing for energy efficiency upgrades. The current owners, Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited, together with the future owner of the project site, Oakley Crossings Holdings, LLC, have requested to have their property added to the Energy Special Improvement District (ESID) and special assessments levied on the property, for the purpose of accessing PACE financing for energy efficient electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements.

#### **DEVELOPER INFORMATION**

Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited are the current owners of the property. The anticipated purchaser is Oakley Crossings Holdings, LLC, which is affiliated with Morelia Group, LLC (Morelia). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister's Deli, Tropical Smoothie Café, Holtman's Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning Center. Together, these developments were an approximately \$25,000,000 investment

that created approximately 300 new jobs, increased the City's tax base, and enhanced the quality of life for Oakley residents.

### **PROJECT DESCRIPTION**

The project will include the construction of approximately 17,300 square feet of commercial space. The total cost of the PACE eligible improvements is \$1,771,846.

### **PROPOSED INCENTIVE**

DCED is recommending that the City amend the Energy Special Improvements District (ESID) boundaries to add this property to the ESID, and levy special assessments on the property. This will allow the developer to access financing for energy efficient electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements.

### **PROJECT TEAM & TIMELINE**

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline, which includes two Budget and Finance meetings if necessary is as follows:

- September 29, 2021: Introduction to City Council
- October 4, 2021: Budget and Finance (1)
- October 11, 2021: Budget and Finance (2)
- October 13, 2021: City Council for Final Approval

### **RECOMMENDATION**

The Administration recommends approval of this Legislative Resolution.

Copy: Markiea L. Carter, Director, Department of Community & Economic Development



EMERGENCY

AWB

**Legislative Resolution**

**RESOLUTION NO. \_\_\_\_\_ - 2021**

**DECLARING** by legislative resolution the necessity of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati, Ohio involving the City of Cincinnati, Ohio Energy Special Improvement District.

WHEREAS, Ohio Revised Code Section 1710.02(F) provides that a political subdivision that has approved a petition for special assessments for public improvements in a special improvement district pursuant to Ohio Revised Code Chapter 1710 shall levy said special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, pursuant to Resolution No. 28-2014 passed on April 9, 2014, Council approved the Petition for the Creation of the City of Cincinnati, Ohio Energy Special Improvement District, together with the Articles of Incorporation of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. and, following said approvals by Council, on July 23, 2014, the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (hereinafter, the "ESID") was formed as an ESID and is now duly authorized and operating pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited (collectively, and together with all future owners of the Project Site, as defined below, the "Owner"), as the owner of one hundred percent (100%) of the lots and lands, including air parcels, to be assessed for the improvements described in this Resolution, has executed and filed with this Council a *Petition for Special Assessments for Special Energy Improvement Projects* dated as of January 7, 2021 (the "Petition"), including a *Supplement to Plan for 3634-3638 Madison Road Project* (the "Supplemental Plan"), proposing the necessity of special assessments to pay the costs of special energy improvement projects (as more fully identified in the Petition and Supplemental Plan, the "Authorized Improvements") to be located at 3634-3638 Madison Road in Cincinnati (the "Assessed Property"), and Oakley Crossings Holdings, LLC is the anticipated purchaser of the Assessed Property ("Oakley Crossings"); and

WHEREAS, the Petition and the Supplemental Plan are on file with the Clerk of Council, and copies thereof are attached to this Resolution as Attachment A; and

WHEREAS, in the Petition, the Owner requests and Oakley Crossings consents that the Authorized Improvements be paid for by special assessments assessed upon the Assessed Property (the "Special Assessments") in an amount sufficient to pay the costs of the Authorized Improvements and other related costs of financing the Authorized Improvements, which include, without limitation, the payment of principal of, interest on, and financing, credit enhancement, and issuance expenses related to, any bonds, notes, loans, or other financing provided to pay the costs

of the Authorized Improvements, and requests that the Authorized Improvements be undertaken cooperatively by the City, the ESID, the Owner, and Oakley Crossings in accordance with the Standing Assignment Agreement dated as of February 28, 2017 by and among the City, the Port of Greater Cincinnati Development Authority, and the ESID (the “Standing Assignment Agreement”); and

WHEREAS, in order to provide for the assignment and transfer of the Special Assessments, the ESID has requested that the City execute and deliver an Addendum to the Standing Assignment Agreement substantially in the form now on file with the Clerk of Council; and

WHEREAS, (i) the Special Assessments are conducive to the public health, convenience and welfare of this City and the inhabitants of the City; (ii) the Assessed Property is specially benefited by the Special Assessments; and (iii) the Special Assessments have been petitioned for by the owner of 100% of the Assessed Property; now, therefore,

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

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the *Petition for Special Assessments for Special Energy Improvement Projects* dated January 7, 2021 (the “Petition”), which Petition, together with a *Supplement to Plan for 3634-3638 Madison Road Project* (the “Supplemental Plan”), are hereby approved and accepted, and copies of which are attached to this Resolution as Attachment A.

Section 2. That this Council hereby approves and authorizes the City Manager to execute an Addendum to the Standing Assignment Agreement substantially in the form now on file with the Clerk of Council, together with any modifications as may be necessary to effectuate the purpose of the Petition and Ohio Revised Code Chapter 1710, provided that any such modifications shall not, in the judgment of the City Manager, be adverse to the City.

Section 3. That it is hereby declared necessary, and a vital and essential public purpose of the City, to improve the real property located at 3634-3638 Madison Road, Cincinnati, Ohio (the “Assessed Property”), by providing for special energy improvement projects as more fully identified in the Petition and Supplemental Plan (the “Authorized Improvements”) on the Assessed

Property, including any and all costs and expenses in connection with or otherwise related thereto as described in the Petition (collectively, the “Assessment Project”), which Assessment Project is described in the plans, specifications, profiles, and estimates of costs included in the Petition and on file in the office of the Clerk of Council.

Section 4. That the plans and specifications and total cost of the Assessment Project now on file in the office of the Clerk of Council are approved, subject to changes as provided for in the Standing Assignment Agreement among the City, the Port of Greater Cincinnati Development Authority, and the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (the “ESID”), and as permitted by Ohio Revised Code Chapter 727. The Assessment Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Assessment Project.

Section 5. That this Council finds and determines that: (i) the Assessment Project is conducive to the public health, convenience, and welfare of this City and the inhabitants thereof, and that it is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project as defined in Ohio Revised Code Section 1710.01(I); (ii) the Assessed Property is specially benefited by the Assessment Project; and (iii) the Assessment Project has been petitioned for by the owner of 100% of the Assessed Property. It is hereby determined that the Assessment Project’s elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Assessment Project’s elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner, and that the Assessment Project’s elements shall be treated as a single improvement pursuant to Ohio Revised Code Section 727.09.

Section 6. That pursuant to Ohio Revised Code Section 1710.02(G)(4), Council hereby determines that the Assessment Project is not required to be owned exclusively by the City. Council accordingly hereby authorizes the board of directors of the ESID to act as its agent to sell, transfer, lease, or convey the Assessment Project. The board of directors of the ESID must obtain from any sale, transfer, lease, or conveyance of the Assessment Project any consideration greater than or equal to \$1.00.

Section 7. That the costs of the Assessment Project, as set forth in the Petition, shall be assessed in proportion to the benefits upon the Assessed Property, and the assessment for such purpose (the "Special Assessments") shall be assessed and paid as specified in the Petition. The portion of the costs of the Assessment Project allocable to the City will be 0%. The City does not intend to issue securities in anticipation of the levy of the Special Assessments.

Section 8. That the City's Finance Director and/or her designee is authorized to cause to be prepared and filed in the office of the Clerk of Council the estimated Special Assessments and the cost of the Assessment Project in accordance with the method of assessment set forth in the Petition and this Resolution.

Section 9. That the Special Assessments shall be levied and paid in fifty-six (56) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition. The Owner and Oakley Crossings have waived the right to pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing ordinance.

Section 10. That the Owner and Oakley Crossings have waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the filing of the estimated Special Assessments with the Clerk of Council under Ohio Revised Code Section 727.13.

Section 11. That pursuant to and subject to the provisions of a valid Petition signed by the Owner, as the owner of one hundred percent (100%) of the Assessed Property, and consented to by Oakley Crossings, as the anticipated purchaser of the Assessed Property, which Petition is hereby accepted, the entire cost of the Assessment Project, which shall be located entirely on the Assessed Property, shall be paid by the Special Assessments levied against the Assessed Property, which is the benefited property.

Section 12. That this Council hereby accepts and approves the waivers contained in the Petition of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including, but not limited to, those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Cincinnati, Ohio, and consents to the immediate imposition of the Special Assessments upon the Assessed Property.

Section 13. That the City's Finance Director and/or her designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Assessment Project.

Section 14. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 15. That this resolution shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms

of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the board of directors of the ESID may proceed with the Assessment Project as soon as possible so that work thereon may commence or continue without delay.

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

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

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

**PETITION FOR SPECIAL ASSESSMENTS FOR  
SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE CITY OF CINCINNATI, OHIO SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS TO PAY THE COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS AGAINST PROPERTY OWNED BY THE PETITIONERS AND SPECIALLY BENEFITED THEREBY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To: The City Manager and City Council of the City of Cincinnati, Ohio

The undersigned are collectively the owners (collectively, the "Petitioners") are the owners of 100% of the property described on **Exhibit A** attached to this Petition (the "Property"). Oakley Crossings Holdings, LLC, a Delaware limited liability is the anticipated purchaser of the Property (the "Anticipated Purchaser"), and, following its acquisition of the Property, will implement special energy improvement projects on the Property (the "Authorized Improvements," as further described in **Exhibit B**).

The Board of Directors of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (the "Corporation"), an Ohio nonprofit corporation formed to govern the City of Cincinnati, Ohio Energy Special Improvement District (the "District"), created within the boundaries of the City of Cincinnati, Ohio (the "City") has approved a plan (the "Program Plan") for the purpose of developing and implementing special energy improvement projects, as defined in Ohio Revised Code Section 1710.01(I). The Program Plan is attached to this Petition as **Exhibit C**.

Pursuant to the Program Plan, the Corporation has caused special energy improvement projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710 and the Program Plan, the Program Plan may be amended from time to time by supplemental plans (the "Supplemental Plans") (the Program Plan and every Supplemental Plan together constituting the "Plan") to provide for additional special energy improvement projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board of Directors of the Corporation has received the Supplemental Plan attached to this Petition as **Exhibit B**, including the description of the Authorized Improvements, and related materials in support of the expansion of the District to include the Property.

As required by Ohio Revised Code Section 1710.02, the Petitioners, as the owners of the Property, being 100% of the area proposed to be added to the District and 100% of the area proposed to be assessed for the Authorized Improvements, hereby (a) petition the City Council to (i) approve the addition of the Property to the District and (ii) approve an amendment and supplement to the Plan by the Supplemental Plan to include the Authorized Improvements and

(b) request that (i) Authorized Improvements be undertaken by the District, and (ii) the total cost of those Authorized Improvements be assessed on the Property in proportion to the special benefits that will result from the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioners acknowledge that they each have reviewed or caused to be reviewed (i) the Plan and the Supplemental Plan, (ii) the plans, specifications and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in **Exhibit B** and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in **Exhibit B**. The Petitioners acknowledge that the estimated special assessment for each parcel is in proportion to the benefits that may result from the financing of the Authorized Improvements.

Accordingly, the Petitioners hereby petition for the construction of the Authorized Improvements identified in this Petition and the Supplemental Plan attached to this Petition as **Exhibit B**, as authorized under Ohio Revised Code Chapter 1710, and for the imposition of the special assessments identified in this Petition and authorized under Ohio Revised Code Chapters 727 and 1710 (the "Special Assessments") to pay the costs of the Authorized Improvements.

In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioners consent and agree that the Property as identified in **Exhibit A** shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages amount; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities to pay costs of the Authorized Improvements in anticipation of the receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities or other obligations; and any program administration fees or financing servicing fees; together with all other necessary expenditures. The Petitioners agree to pay the Special Assessments in a timely manner whether or not the Petitioners receive annual and timely notices of the Special Assessments.

Notwithstanding anything to the contrary contained herein, in the event that at any time following the date of this Petition the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Hamilton County, Ohio (the "County Auditor"), the Petitioners and the Anticipated Purchaser hereby request that the Special Assessments be allocated only to the resulting parcels which will be improved with the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Parcels"). The allocation among any resulting Assessed Parcels shall be made such that any Assessed Parcel or Assessed Parcels on which the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Building") shall be allocated a total of 100% of the Special Assessments. If the Property is combined or subdivided such that more than one Assessed Parcel is to receive an allocation of



the Special Assessments, the Special Assessments to be allocated to those Assessed Parcels shall be allocated among them in proportion to the total square feet of improvements on each such Assessed Parcel divided by the total square feet of improvements on all such Assessed Parcels. The Petitioners hereby certify, represent, and warrant to the District and the City that the portion of the Special Assessments allocated to each resulting Assessed Parcel, as described above, will cause each resulting Assessed Parcel to have Special Assessments allocated to it in proportion to, and not in excess of, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements. Immediately upon any subdivision of the Property, (i) any reference to the Property contained in this Petition shall be deemed to be a reference to all of the Assessed Parcels; and (ii) the legal description of the Assessed Parcels shall be deemed to replace the legal description of the Property set forth in **Exhibit A**.

In consideration of the Authorized Improvements, each of the Petitioners, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by Council of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, each of the Petitioners covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be assessed for the actual costs of the Authorized Improvements set forth in **Exhibit B**, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessment for the Authorized Improvements and to require that transferee covenant to disclose the existence of any outstanding Special Assessment for the Authorized Improvements in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, each of the Petitioners further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (i) for the acquisition by the transferee of the Property subject to any outstanding Special Assessment and the transferee's assumption of responsibility for payment thereof and for waiver by the transferee of any rights that the Petitioners have waived pursuant to this Petition, and (ii) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (i) so long as the Special Assessments remain unpaid.

The Petitioners further acknowledge and confirm that the Special Assessments set forth in this Petition and in **Exhibit B** are in proportion to, and do not exceed, the special benefits to be conferred on the Property by the financing of the Authorized Improvements. The Petitioners further consent to the levying of the Special Assessment against the Property by the Council. The Petitioners acknowledge that these Special Assessments are fair, just and equitable and being imposed at the Petitioners' specific request.

The Petitioners hereby waive notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710, and consent to proceeding with the Authorized Improvements. Without limiting the foregoing,

the Petitioners specifically waive any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioners, in accordance with Ohio Revised Code Section 1710.02(A), further agree that the Property may be included in more than one district formed under Ohio Revised Code Chapter 1710. The Petitioners further agree not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioners, in accordance with Ohio Revised Code Section 929.03, hereby grant permission to collect any Special Assessments levied against such Property.

The Petitioners further agree and consent to the Council promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Petitioners acknowledge that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated Special Assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioners, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioners further acknowledge and represent that the respective final assessments may be levied at such time as determined by the City and

regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioners further acknowledge that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the Auditor of the County, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioners hereby waive the right to pay the final assessments for the Authorized Improvements in cash within thirty (30) days from the passage of the ordinance confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in fifty-six (56) semi-annual installments.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioners hereby appoint as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 such representative as may be duly appointed by the Petitioners from time to time, which designation shall not expire unless and until Petitioners shall notify the Secretary of the District that said designation is no longer in effect or that Petitioners have made a new designation to replace said designation.

The Petitioners further waive any and all questions as to the constitutionality of the laws under which the Authorized Improvements shall be acquired, installed, or constructed or the proceedings relating to the acquisition, installation, or construction of the Authorized Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, or construction of the Authorized Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Authorized Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio and the Charter of the City of Cincinnati, Ohio. The Petitioners represent that they will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments, and any Special Assessments levied against the Property for the Authorized Improvements, or any other matters related to the foregoing.

The Petitioners acknowledge and understand that the City and the Corporation will be relying upon this Petition in taking actions pursuant to it and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioners, any successors or assigns of the Petitioners, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioners acknowledge that they have had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

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**IN WITNESS WHEREOF**, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0142-00 and located at the commonly used mailing address 3634 Madison Road, Cincinnati, Ohio.

**MICHELENE M. BENNETT**

Mich Bennett aka Benn  
(Signature)

Address for notices to Petitioner:

Michelene M. Bennett

1771 Woodpine Lane  
(Street Address)

Cincinnati, OH 45255  
(City, State ZIP)

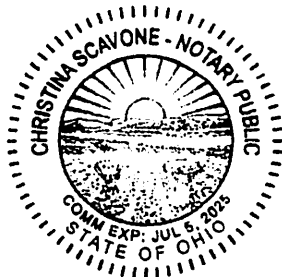
STATE OF Ohio )  
 )  
COUNTY OF Hamilton )

SS:

On the 8 day of January, 2020, Micheleni Bennett, personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such signer. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]



Christina Scavone  
Notary Public







**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The real property subject to this Petition is located at the commonly used mailing address 3634-3638 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID Nos. 051-0002-0142-00, 051-0002-0143-00, and 051-0002-0144-00, and the following legal descriptions:

**Parcel 051-0002-142-00:**

Situate in the City of Cincinnati and in Section 22, Township 4, Fractional Range 2 of the Miami Purchase, Columbia Township, Hamilton County, Ohio, and being part of Lot Number 4 as shown on the Plat in Partition of the Everson Estate as made in Case No. 98,500 in the Common Pleas Court, Hamilton County, Ohio, and more particularly described as follows:

Beginning at a point in the northwesterly line of Madison Road North 59 deg. 31' East, 715 feet from an iron rod at the intersection of said northwesterly line with the west line of said Lot No. 4; thence North 59 deg. 31' East along said northwesterly line of Madison Road 40 feet; thence North 30 deg. 29' West, 105 feet; thence South 59 deg. 31' West, 40 feet; thence South 30 deg. 29' East, 105 feet to the place of beginning.

**Parcel 051-0002-0143-00:**

The following described real estate located in Hamilton County, Ohio:

Situated in the County of Hamilton, in the State of Ohio and in the City of Cincinnati:

Situated in Section 22, Township 4, Fractional Range 2, Miami Purchase, and in the City of Cincinnati, Hamilton County, State of Ohio, and being a part of Lot No. Four (4) on the plat in partition of the Everson Estate made in Case 98500, Hamilton County, Ohio, Common Pleas Court.

Beginning at a point in the Northwesterly line of Madison Road, North 59 degrees 31' East, 755 feet from an iron rod at the intersection of said Northwesterly line with the West line of said Lot No. Four (4), thence North 59 degrees 31' East, along said Northwesterly line of Madison Road, 40 feet; thence North 30 degrees 29' West, 105 feet; thence South 59 degrees 31' West, 40 feet; thence South 30 degrees 29' East, 105 feet to the place of Beginning.

Parcel No: 051-0002-0143-00



Parcel 051-0002-0144-00

SITUATE IN THE CITY OF CINCINNATI AND IN SECTION 22, TOWNSHIP 4, PRACTIONAL RANGE 2 OF THE MIAMI PURCHASE, COLUMBIA TOWNSHIP, HAMILTON COUNTY, OHIO AND BEING PART OF LOT NO. 4 ON THE PLAT OF PARTITION OF THE EVERSON ESTATE MADE IN CASE NO. 98500, COMMON PLEASE COURT, HAMILTON COUNTY, OHIO AND MORE PARTICULARLY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHWESTERLY LINE OF MADISON ROAD, NORTH 59 DEGREES 31' EAST 795 FEET FROM AN IRON ROD AT THE INTERSECTION OF SAID NORTHWESTERLY LINE WITH THE WEST LINE OF SAID LOT NO. 4; THENCE NORTH 59 DEGREES 31' EAST ALONG THE NORTHWESTERLY LINE OF MADISON ROAD, 40 FEET; THENCE NORTH 40 DEGREES 29' WEST 105 FEET; THENCE SOUTH 59 DEGREES 31' WEST 40 FEET; THENCE SOUTH 30 DEGREES 29' EAST 105 FEET TO THE PLACE OF BEGINNING.

SUBJECT TO ANY EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

PARCEL # 051-0002-0144-00

*4/*

DESCRIPTION ACCEPTABLE  
HAMILTON COUNTY ENGINEER

Tax Map - 6/29/17 *[Signature]*

CAGIS - \_\_\_\_\_

**EXHIBIT B**

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

**SUPPLEMENT TO PLAN FOR 3634-3638 MADISON ROAD PROJECT**

As more fully provided by the City of Cincinnati, Ohio Special Improvement District Program Plan (together with all previously approved supplemental plans, the "Plan"), the City of Cincinnati, Ohio Energy Special Improvement District (the "District") has undertaken the administration of a property assessed clean energy ("PACE") program (the "Program"). The Program will provide financing secured by special assessments on real property for special energy improvement projects.

Through a Petition submitted in connection with this Supplemental Plan, the undersigned (the "Property Owners") have requested and consented to certain special assessments by the District with respect to certain real property owned by the Property Owners and located at 3634-3638 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID Nos. 051-0002-0142-00, 051-0002-0143-00, and 051-0002-0144-00 (the "Property"). A schedule for special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as Attachment A.

Initially the special assessments shall be allocated among the parcels (each an "Original Parcel" and, collectively, the "Original Parcels") constituting the Property as follows:

In the event that at any time following the date of this Supplemental Plan the Property or any parcel contained in the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Hamilton County, Ohio (the "County Auditor"), then the Property Owners hereby request that the Special Assessments be allocated among only the resulting parcels which will be improved with the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Parcels"). No Special Assessments shall be allocated to any resulting parcels which will not have any portion of the approximately 11,000 square foot retail building constructed thereon (the "Non-Assessed Parcels"). The allocation among any resulting Assessed Parcels shall be made such that the Assessed Parcel or Assessed Parcels on which the approximately 11,000 square foot retail building is constructed and into which the Authorized Improvements will be incorporated (the "Assessed Building") shall be allocated a combined total of 100% of the Special Assessments. If the Property is combined or subdivided such that more than one Assessed Parcel is to receive an allocation of the Special Assessments in the percentage stated above, the Special Assessments to be allocated to those Assessed Parcels shall be allocated among them in proportion to the total square feet of improvements on each such Assessed Parcel divided by the total square feet of improvements on all such Assessed Parcels. The Property Owners hereby certify, represent, and warrant to the District and the City that the portion of the Special Assessments allocated to each resulting Assessed Parcel, and the fact that no Special Assessments will be allocated to any resulting Non-Assessed Parcel, all as described above, will cause each resulting Assessed Parcel

to have Special Assessments allocated to it in proportion to, and not in excess of, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Supplemental Plan.

The Authorized Improvements applicable to the Property will include energy efficiency electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements. As required by Ohio Revised Code Section 1710.01(K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the Authorized Improvements is attached to this Supplemental Plan as Attachment B. The Property Owners hereby acknowledge and agree that the special benefit to be provided to the Property under this Supplemental Plan is the consummation of the financing to pay, finance, and refinance costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of the financing, and that the benefits are in proportion to and do not exceed the amount of the Special Assessments to be levied to pay the costs of the financing.

The Property Owners will cause this Supplemental Plan promptly to be filed with the Board of Directors of the District and with the Clerk of the City Council of Cincinnati, Ohio.

**The undersigned owners of real property to be located within the District acknowledge that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* The undersigned property owners agree to the disclosure of certain property owner information by the District to the extent required by law.**

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0142-00 and located at the commonly used mailing address 3634 Madison Road, Cincinnati, Ohio.

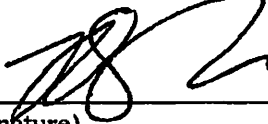
**MICHELENE M. BENNETT**

  
(Signature)

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0143-00 and located at the commonly used mailing address 3636 Madison Road, Cincinnati, Ohio.

**RYAN C. SCHWALLIE**




\_\_\_\_\_  
(Signature)

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0144-00 and located at the commonly used mailing address 3638 Madison Road, Cincinnati, Ohio.

**WILBURN REALTY LIMITED**

By:   
(Signature)

Name: Michael Scicolone

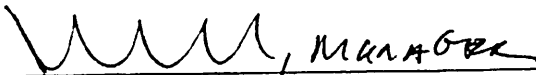
Title: President

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

Oakley Crossings Holdings, LLC, in anticipation of being the successor in interest of the Property Owners in the Property, hereby consents to the filing of the Supplemental Plan with the City, confirms all of the information in this Supplemental Plan, and agrees to perform the obligations of the Property Owners at such times as it takes ownership of all or any portion of the Property.

**OAKLEY CROSSINGS HOLDINGS, LLC**

**Authorized Signatory**

By:   
Name: Christopher R. Hildebrand  
Title: MANAGER

Address for notices to Petitioner:

Oakley Crossings Holdings, LLC  
8600 Governor's Hill Drive, Ste. 160  
Cincinnati, Ohio 45249  
Attention: Christopher Hildebrand

**Description of Real Property Subject to this Supplemental Plan:**

The real property subject to this Petition is located at the commonly used mailing 3634-3646 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID No[s]. [051-0002-0142-00], [051-0002-0143-00], and [051-0002-0144-00].

**SUPPLEMENTAL PLAN—ATTACHMENT A**

**Schedule of Special Assessments**

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs:	\$3,755,431.68
Estimated semi-annual special assessments for 28 years:	\$67,061.28
Number of semi-annual assessments:	56
First semi-annual installment due:	January 31, 2023

The schedule of Special Assessments for the Authorized Improvements is as follows:

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2023	\$67,061.28	\$22,123.32	\$22,123.32	\$22,814.64
7/31/2023	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2032	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2032	67,061.28	22,123.32	22,123.32	22,814.64

<sup>1</sup> Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified herein are subject to adjustment under certain conditions.

<sup>2</sup> Pursuant to Ohio Revised Code Section 727.36, the Hamilton County Auditor may charge and collect a fee in addition to the amounts listed in this Attachment A.



Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID. No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
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1/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2050	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2050	67,061.28	22,123.32	22,123.32	22,814.64

**SUPPLEMENTAL PLAN—ATTACHMENT B**

**Description of Authorized Improvements**

The Authorized Improvements are expected to consist of the following energy efficiency elements:

Energy Project Name: Oakley Crossings Holdings, LLC Parcel ID: 051-0002-0140-00 (plus 10 others) County/State: Hamilton/Ohio						
	<b>Improvement Description</b>	<b>Useful Life</b>	<b>Contractor</b>	<b>Improvement Cost (\$)</b>	<b>Baseline Energy Cost (\$)</b>	<b>Projected Energy Savings (\$)</b>
1	Building Envelope	30	Morelia Group	\$1,256,380		See Envelope COMcheck
2	High Efficiency Rooftop Units	20	Morelia Group	\$176,493		See Mechanical COMcheck
3	High Efficiency Lighting	15	Bockrath	\$110,347		See Lighting COMcheck
4	Soft Costs	N/A		\$228,626	N/A	N/A
5						
6						
<b>TOTALS:</b>				<b>\$1,771,846</b>		

**EXHIBIT C**

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

[See Attached]

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

The City of Cincinnati, Ohio Energy Special Improvement District (the "District") will administer a property assessed clean energy ("PACE") program (the "Program"). The Program will provide financing secured by special assessments on real property for special energy improvement projects. The District authorizes and adopts this plan for the Program (as the same may be amended and supplemented from time to time as provided herein, the "Plan") to provide for the Program's administration and to set forth the terms and conditions of participation in the Program. The Port of Greater Cincinnati Development Authority, as the initial property owner owning real property within the District, as well as in its capacity as a party with interests aligned with the City of Cincinnati (the "City") with respect to the formation of the District, authorizes and consents to this Plan.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the "Act." Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District's Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program's terms and conditions. These terms and conditions are addressed in this Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property ("Assessment Schedule"), and the governing documents forming the District. The District's governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the "Governing Documents"). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the "District Documents."

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Plan. By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.

**I. Purpose of the Program**

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy

improvement projects, as that term is defined in the Act (the “Authorized Improvements”). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, or nonprofit corporation securities (collectively, the “Program Obligations”) may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

**Nothing in this Plan shall be construed as a representation on the part of any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board that the Program is the best financing option for every situation. Property owners are advised to conduct independent research to determine the best course of action.**

## **II. The District’s Governance, Program Administrator, and Conduit Financing Entity**

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors (“Board”) of the City of Cincinnati, Ohio Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the “Corporation”) to govern the District.

Pursuant to the Act, other Ohio law, and the Code of Regulations of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Plan specifically contemplates that, as authorized in the Act, Greater Cincinnati Energy Alliance will serve as the District’s “Program Administrator” and render program administration services to the District and the Port of Greater Cincinnati Development Authority will serve as the District’s “Conduit Financing Entity” and render conduit financing services to the District.

The District is authorized to contract with Greater Cincinnati Energy Alliance for program administration services rendered to the District. The program administration services rendered by the Program Administrator may include, without limitation (i) pursuant to Part III of this Plan, developing and administering eligibility guidelines, creating and administering an application,

setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals, (ii) pursuant to Part IV of this Plan, marketing, program design, cooperating with property owners to implement Authorized Improvements, and other administrative services, and (iii) the establishment and administration of a revolving loan facility providing financing for certain special energy improvement projects.

The District is authorized to contract with the Port of Greater Cincinnati Development Authority for conduit financing services rendered to the District. The conduit financing services rendered by the Conduit Financing Entity may include, without limitation (i) pursuant to Part III of this Plan, financing Authorized Improvement and cooperating with property owners to obtain financing, (ii) pursuant to Part IV of this Plan, tracking and administering Program Obligations, administering special assessments, budgeting, and conducting or overseeing the audit process, (iii) assistance with marketing efforts relating to the District, and (iv) tracking compliance with respect to the Economic Inclusion Plan established by the Port of Greater Cincinnati Development Authority.

### **III. Program Eligibility, Approvals, Financing, and Procurement**

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

- (A) Eligibility. The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Plan. The Plan for the District may be amended and supplemented from time to time in accordance with its terms, including,

specifically, by supplements to the Plan which identify additional Authorized Improvements within the District to be subject to the Plan or add property to the District and subject such additional property to the Plan. To be eligible for participation in the Program, each property owner must file a supplement to this Plan (the "Plan Supplement") with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Plan applicable to real property within the District or to be added to the district. Plan Supplements shall include such other information as may be required by the Board. Plan Supplements shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to and must execute an Affidavit on Facts Relating to Title under Section 5301.252 of the Ohio Revised Code to be recorded with respect to the real property to be added to the District and filed with the clerk of the legislative body of the participating political subdivision in which the real property is located, which Affidavit on Facts Relating to Title shall state that the property owner has consented to include such real property in the District and that the property owner consents to, and will take all actions necessary to place upon such property, any subsequent special improvement district formed under Ohio Revised Code Chapter 1710 that includes such real property as long as the statutory conditions for forming the subsequent special improvement district are otherwise satisfied.

- (B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application's use and evaluation.
- (C) Contractors. The Board is hereby authorized to require property owners to complete Authorized Improvements through the work of pre-approved contractors. The Board is further authorized to create criteria for the approval of contractors, including but not limited to compliance with the Economic Inclusion Plan adopted by the Port of Greater Cincinnati Development Authority, and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor's requirements.

Nothing in this Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.

- (D) **Procurement and Referrals.** The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to the Act, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the City or the procedures in Chapter 735 of the Ohio Revised Code and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Plan, the District Documents shall not be construed to eliminate or alter the competitive bidding procedures applicable to the City as a participating political subdivision.

- (E) **Financing.** The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

#### **IV. Services Plan**

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Plan. Such services, without limitation, may include the following:

- (A) **Program Design.** The Board is hereby authorized to design comprehensive services to establish and maintain the Program's legal and programmatic framework.
- (B) **Program Administration.** The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program's overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.
- (C) **Marketing.** The Board is hereby authorized to market the Program and promote the District's image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.



- (D) Authorized Improvement Implementation. The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Plan Supplements by participating political subdivisions and the Board.
- (E) Tracking and Administration of Program Obligations. The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
- (F) Administering Special Assessments. The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners' claims regarding the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.
- (G) Budgeting. The Board shall provide for the production of an annual report describing the District's budget, services delivered, revenues received, expenditures made, and other information about the District's activities. The annual report shall be made available to the Board and to the District's members. The Board may hire such professionals as may be required to successfully account for all District finances.
- (H) Auditing. The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.
- (I) Other Services. The Board is hereby authorized to provide any other services authorized by the Act.

V. Fees

Program Costs. The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

- (A) The cost of creating and operating the District, including creating and operating City of Cincinnati, Energy Special Improvement District, Inc., hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;
- (B) The cost of planning, designing, and implementing Authorized Improvements or services under this Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Plan, the management, protection, and maintenance costs of public or private facilities;
- (C) Any court costs incurred by the District in implementing this Plan or any Plan Supplements;
- (D) Any damages resulting from implementing the public improvements or public services plan;
- (E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Plan; and
- (F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District's territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

Application Fee. The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

#### **VI. Energy Efficiency and Renewable Energy Regulations and Requirements**

Energy Efficiency Reporting Requirements. Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility ("EDU") with a District Authorized Improvement within the EDU's certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code

Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

## **VII. Statutory Requirements**

As provided in the District Documents:

- (A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Plan.
- (B) The District Documents may be amended or supplemented in accordance with their terms.
- (C) As described in this Plan, the Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.
- (D) The public improvements to be provided by the District are the Authorized Improvements identified in each petition and Plan Supplement. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.

- (E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

### **VIII. Changes in State and Federal Law**

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. **The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District's Program.**

### **IX. Releases and Indemnification**

The District has been created with the approval of the City of Cincinnati, Ohio, as a participating political subdivision, for the purposes of implementing this Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. Property owners will be solely responsible for the installation, operation, financing, refinancing, and maintenance of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

**By agreeing to and executing this Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program. Any political subdivision that owns real property included in the District agrees to release and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision's participation in the Program in its capacity as a property owner.**

### **X. Changes in the Program Terms; Severability**

Participation in the Program is subject to the District Document terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the

terms and conditions of the District Documents at any time without notice. No such change will affect a property owner's obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

#### **XI. Disclosure of Property Owner Information**

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio's energy programs, property owners' names and contact information may be disclosed to their current electric utilities. Property owners' names, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

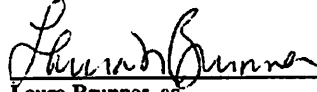
**Each owner of real property located within the District acknowledges that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* Each property owner that executes this Plan agrees to the disclosure of certain property owner information as stated in this Part.**

**BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PLAN AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PLAN.**

Date: July 23, 2014

**Property Owner:  
PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**

**Authorized Signatory**

  
\_\_\_\_\_  
Laura Brunner, as  
President and Chief Executive Officer

Address for notices to Property Owner:

Port of Greater Cincinnati Development  
Authority

299 East Sixth Street, Suite 2A

Cincinnati, Ohio 45202

Description of Real Property Subject to this Plan:

The real property subject to this Plan is located at the commonly used mailing address 1682 Seymour Avenue, Cincinnati, Ohio 45237. The front footage of the real property subject to this Plan is 233.00 feet, and its area is 0.418 acres. The Hamilton County Auditor Parcel ID for the real property subject to this Plan is 117-0007-0064-00. The following is the legal description for the real property subject to this Plan:

**Parcel One**

Situated in the City of Cincinnati, County of Hamilton, State of Ohio in Section 6, Township 3, Fractional Range 2, Millcreek Township and being Lot #1 of Shonae Subdivision, Block A, as recorded in Plat Book 105, Page 44, Hamilton County, Ohio Recorder's records.

**Parcel Two**

[Property Owner Consent to Plan]

The following described real estate situated in Section 6, Town 3, Fractional Range 2, Miami Purchase, in the City of Cincinnati, Hamilton County, Ohio, being part of Lot 2, Part 1, Block "B", Shonae Subdivision as recorded in Plat Book 120, Pages 49 and 50 of the Hamilton County, Ohio records.

Beginning in the Northwest corner of Block "A", Shonae Subdivision as recorded in Plat Book 105, Page 44 of the Hamilton County, Ohio Recorder's office;

Thence North 1 deg. 15' East, a distance of 21.75 feet; thence South 88 deg. 45' East, a distance of 146.46 feet to the Westerly line of Shona Drive; thence Southwardly along the Westerly line of Shona Drive on a curved line deflecting to the right with a radius of 220 feet a distance of 23.16 feet, chord of said curve bears South 21 deg. 16' 35" West, a distance of 23.14 feet to the Northeast corner of said Block "A", Shonae Subdivision, thence North 68 deg. 45' West, a distance of 138.53 feet to the place of beginning.

These parcels are not to be conveyed separately without prior approval of the governmental authority having jurisdiction.

[Property Owner Consent to Plan]

September 29, 2021

**To:** Mayor and Members of City Council **202102850**  
**From:** Paula Boggs Muething, City Manager  
**Subject: DETERMINING TO PROCEED WITH THE PACE ASSESSMENT PROJECT FOR 3634-3638 MADISON ROAD**

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Attached is an Emergency Ordinance captioned as follows:

DETERMINING to proceed with the special assessment project at 3634-3638 Madison Road in the City of Cincinnati involving the City of Cincinnati, Ohio Energy Special Improvement District.

### **BACKGROUND/CURRENT CONDITIONS**

The Ohio PACE (Property Assessed Clean Energy) program allows commercial property owners to opt into a special assessment which is added to the property tax bill to access long-term, fixed-rate financing for energy efficiency upgrades. The current owners, Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited, together with the future owner of the project site, Oakley Crossings Holdings, LLC, have requested to have their property added to the Energy Special Improvement District (ESID) and special assessments levied on the property, for the purpose of accessing PACE financing for energy efficient electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements.

### **DEVELOPER INFORMATION**

Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited are the current owners of the property. The anticipated purchaser is Oakley Crossings Holdings, LLC, which is affiliated with Morelia Group, LLC (Morelia). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister's Deli, Tropical Smoothie Café, Holtman's Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs, increased the City's tax base, and enhanced the quality of life for Oakley residents.



### **PROJECT DESCRIPTION**

The project will include the construction of approximately 17,300 square feet of commercial space. The total cost of the PACE eligible improvements is \$1,771,846.

### **PROPOSED INCENTIVE**

DCED is recommending that the City amend the Energy Special Improvements District (ESID) boundaries to add this property to the ESID, and levy special assessments on the property. This will allow the developer to access financing for energy efficient electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements.

### **PROJECT TEAM & TIMELINE**

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline, which includes two Budget and Finance meetings if necessary is as follows:

- September 29, 2021: Introduction to City Council
- October 4, 2021: Budget and Finance (1)
- October 11, 2021: Budget and Finance (2)
- October 13, 2021: City Council for Final Approval

### **RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance.

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

EMERGENCY

AWB

City of Cincinnati

An Ordinance No. \_\_\_\_\_

- 2021

**DETERMINING** to proceed with the special assessment project at 3634-3638 Madison Road in the City of Cincinnati involving the City of Cincinnati, Ohio Energy Special Improvement District.

WHEREAS, prior to the passage of this ordinance, this Council duly adopted a resolution declaring the necessity of the assessment project at 3634-3638 Madison Road in the City of Cincinnati (the "Resolution of Necessity"), which provides for the levying and collection of special assessments to be assessed on such property sufficient to pay the costs of the Authorized Improvements (as defined in the Resolution of Necessity); and

WHEREAS, all statutory procedural requirements for the imposition of special assessments on the assessed property, including, without limitation, the right to make claims for damages alleged to result from and objections to the Assessment Project (as defined in the Resolution of Necessity), have been waived by the owners of 100% of the affected property; now, therefore,

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

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined herein or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity, an unsigned copy of which is attached to this ordinance as Attachment A.

Section 2. That it is hereby determined to proceed with the Assessment Project described in the Resolution of Necessity. The Assessment Project shall be located entirely on the Assessed Property and shall be made in accordance with the provisions of the Resolution of Necessity, the Petition (a copy of which is attached to the Resolution of Necessity), and the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Clerk of Council.

Section 3. That the assessment of the Special Assessments to pay costs of the Assessment Project shall be assessed against the Assessed Property in the manner and in the number of installments provided in the Petition. The Special Assessments shall be assessed against the Assessed Property commencing in tax year 2022 for collection in 2023 and shall continue through tax year 2049 for collection in 2050.

Section 4. That the estimated Special Assessments for costs of the Assessment Project prepared and filed in the office of the Clerk of Council and in the office of the City's Director of Finance, in accordance with the Resolution of Necessity, are hereby adopted.

Section 5. That all contracts for the construction of the Assessment Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code and the Standing Assignment Agreement among the City, the Port of Greater Cincinnati Development Authority, and the City of Cincinnati, Ohio Energy Special Improvement District, Inc., and the costs of the Assessment Project shall be financed as provided in the Resolution of Necessity.

Section 6. That in compliance with Ohio Revised Code Section 319.61, the Clerk of Council is hereby directed to deliver a certified copy of this ordinance to the Hamilton County Auditor within fifteen (15) days after the date of passage.

Section 7. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the

terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the board of directors of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. may proceed with the Assessment Project as soon as possible so that work thereon may commence or continue without delay.

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

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

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

ATTACHMENT A

**EMERGENCY**

**Legislative Resolution**

**RESOLUTION NO. \_\_\_\_\_ - 2021**

**DECLARING** by legislative resolution the necessity of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati, Ohio involving the City of Cincinnati, Ohio Energy Special Improvement District.

WHEREAS, Ohio Revised Code Section 1710.02(F) provides that a political subdivision that has approved a petition for special assessments for public improvements in a special improvement district pursuant to Ohio Revised Code Chapter 1710 shall levy said special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, pursuant to Resolution No. 28-2014 passed on April 9, 2014, Council approved the Petition for the Creation of the City of Cincinnati, Ohio Energy Special Improvement District, together with the Articles of Incorporation of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. and, following said approvals by Council, on July 23, 2014, the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (hereinafter, the “ESID”) was formed as an ESID and is now duly authorized and operating pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited (collectively, and together with all future owners of the Project Site, as defined below, the “Owner”), as the owner of one hundred percent (100%) of the lots and lands, including air parcels, to be assessed for the improvements described in this Resolution, has executed and filed with this Council a *Petition for Special Assessments for Special Energy Improvement Projects* dated as of January 7, 2021 (the “Petition”), including a *Supplement to Plan for 3634-3638 Madison Road Project* (the “Supplemental Plan”), proposing the necessity of special assessments to pay the costs of special energy improvement projects (as more fully identified in the Petition and Supplemental Plan, the “Authorized Improvements”) to be located at 3634-3638 Madison Road in Cincinnati (the “Assessed Property”), and Oakley Crossings Holdings, LLC is the anticipated purchaser of the Assessed Property (“Oakley Crossings”); and

WHEREAS, the Petition and the Supplemental Plan are on file with the Clerk of Council, and copies thereof are attached to this Resolution as Attachment A; and

WHEREAS, in the Petition, the Owner requests and Oakley Crossings consents that the Authorized Improvements be paid for by special assessments assessed upon the Assessed Property (the “Special Assessments”) in an amount sufficient to pay the costs of the Authorized Improvements and other related costs of financing the Authorized Improvements, which include, without limitation, the payment of principal of, interest on, and financing, credit enhancement, and issuance expenses related to, any bonds, notes, loans, or other financing provided to pay the costs

of the Authorized Improvements, and requests that the Authorized Improvements be undertaken cooperatively by the City, the ESID, the Owner, and Oakley Crossings in accordance with the Standing Assignment Agreement dated as of February 28, 2017 by and among the City, the Port of Greater Cincinnati Development Authority, and the ESID (the “Standing Assignment Agreement”); and

WHEREAS, in order to provide for the assignment and transfer of the Special Assessments, the ESID has requested that the City execute and deliver an Addendum to the Standing Assignment Agreement substantially in the form now on file with the Clerk of Council; and

WHEREAS, (i) the Special Assessments are conducive to the public health, convenience and welfare of this City and the inhabitants of the City; (ii) the Assessed Property is specially benefited by the Special Assessments; and (iii) the Special Assessments have been petitioned for by the owner of 100% of the Assessed Property; now, therefore,

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

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the *Petition for Special Assessments for Special Energy Improvement Projects* dated January 7, 2021 (the “Petition”), which Petition, together with a *Supplement to Plan for 3634-3638 Madison Road Project* (the “Supplemental Plan”), are hereby approved and accepted, and copies of which are attached to this Resolution as Attachment A.

Section 2. That this Council hereby approves and authorizes the City Manager to execute an Addendum to the Standing Assignment Agreement substantially in the form now on file with the Clerk of Council, together with any modifications as may be necessary to effectuate the purpose of the Petition and Ohio Revised Code Chapter 1710, provided that any such modifications shall not, in the judgment of the City Manager, be adverse to the City.

Section 3. That it is hereby declared necessary, and a vital and essential public purpose of the City, to improve the real property located at 3634-3638 Madison Road, Cincinnati, Ohio (the “Assessed Property”), by providing for special energy improvement projects as more fully identified in the Petition and Supplemental Plan (the “Authorized Improvements”) on the Assessed

Property, including any and all costs and expenses in connection with or otherwise related thereto as described in the Petition (collectively, the “Assessment Project”), which Assessment Project is described in the plans, specifications, profiles, and estimates of costs included in the Petition and on file in the office of the Clerk of Council.

Section 4. That the plans and specifications and total cost of the Assessment Project now on file in the office of the Clerk of Council are approved, subject to changes as provided for in the Standing Assignment Agreement among the City, the Port of Greater Cincinnati Development Authority, and the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (the “ESID”), and as permitted by Ohio Revised Code Chapter 727. The Assessment Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Assessment Project.

Section 5. That this Council finds and determines that: (i) the Assessment Project is conducive to the public health, convenience, and welfare of this City and the inhabitants thereof, and that it is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project as defined in Ohio Revised Code Section 1710.01(I); (ii) the Assessed Property is specially benefited by the Assessment Project; and (iii) the Assessment Project has been petitioned for by the owner of 100% of the Assessed Property. It is hereby determined that the Assessment Project’s elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Assessment Project’s elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner, and that the Assessment Project’s elements shall be treated as a single improvement pursuant to Ohio Revised Code Section 727.09.



Section 6. That pursuant to Ohio Revised Code Section 1710.02(G)(4), Council hereby determines that the Assessment Project is not required to be owned exclusively by the City. Council accordingly hereby authorizes the board of directors of the ESID to act as its agent to sell, transfer, lease, or convey the Assessment Project. The board of directors of the ESID must obtain from any sale, transfer, lease, or conveyance of the Assessment Project any consideration greater than or equal to \$1.00.

Section 7. That the costs of the Assessment Project, as set forth in the Petition, shall be assessed in proportion to the benefits upon the Assessed Property, and the assessment for such purpose (the "Special Assessments") shall be assessed and paid as specified in the Petition. The portion of the costs of the Assessment Project allocable to the City will be 0%. The City does not intend to issue securities in anticipation of the levy of the Special Assessments.

Section 8. That the City's Finance Director and/or her designee is authorized to cause to be prepared and filed in the office of the Clerk of Council the estimated Special Assessments and the cost of the Assessment Project in accordance with the method of assessment set forth in the Petition and this Resolution.

Section 9. That the Special Assessments shall be levied and paid in fifty-six (56) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition. The Owner and Oakley Crossings have waived the right to pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing ordinance.

Section 10. That the Owner and Oakley Crossings have waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the filing of the estimated Special Assessments with the Clerk of Council under Ohio Revised Code Section 727.13.

Section 11. That pursuant to and subject to the provisions of a valid Petition signed by the Owner, as the owner of one hundred percent (100%) of the Assessed Property, and consented to by Oakley Crossings, as the anticipated purchaser of the Assessed Property, which Petition is hereby accepted, the entire cost of the Assessment Project, which shall be located entirely on the Assessed Property, shall be paid by the Special Assessments levied against the Assessed Property, which is the benefited property.

Section 12. That this Council hereby accepts and approves the waivers contained in the Petition of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including, but not limited to, those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Cincinnati, Ohio, and consents to the immediate imposition of the Special Assessments upon the Assessed Property.

Section 13. That the City's Finance Director and/or her designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Assessment Project.

Section 14. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 15. That this resolution shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms

of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the board of directors of the ESID may proceed with the Assessment Project as soon as possible so that work thereon may commence or continue without delay.

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

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

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

**ATTACHMENT A**

**RESOLUTION OF NECESSITY**

[See Attached]

**PETITION FOR SPECIAL ASSESSMENTS FOR  
SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE CITY OF CINCINNATI, OHIO SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS TO PAY THE COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS AGAINST PROPERTY OWNED BY THE PETITIONERS AND SPECIALLY BENEFITED THEREBY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To: The City Manager and City Council of the City of Cincinnati, Ohio

The undersigned are collectively the owners (collectively, the "Petitioners") are the owners of 100% of the property described on **Exhibit A** attached to this Petition (the "Property"). Oakley Crossings Holdings, LLC, a Delaware limited liability is the anticipated purchaser of the Property (the "Anticipated Purchaser"), and, following its acquisition of the Property, will implement special energy improvement projects on the Property (the "Authorized Improvements," as further described in **Exhibit B**).

The Board of Directors of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (the "Corporation"), an Ohio nonprofit corporation formed to govern the City of Cincinnati, Ohio Energy Special Improvement District (the "District"), created within the boundaries of the City of Cincinnati, Ohio (the "City") has approved a plan (the "Program Plan") for the purpose of developing and implementing special energy improvement projects, as defined in Ohio Revised Code Section 1710.01(I). The Program Plan is attached to this Petition as **Exhibit C**.

Pursuant to the Program Plan, the Corporation has caused special energy improvement projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710 and the Program Plan, the Program Plan may be amended from time to time by supplemental plans (the "Supplemental Plans") (the Program Plan and every Supplemental Plan together constituting the "Plan") to provide for additional special energy improvement projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board of Directors of the Corporation has received the Supplemental Plan attached to this Petition as **Exhibit B**, including the description of the Authorized Improvements, and related materials in support of the expansion of the District to include the Property.

As required by Ohio Revised Code Section 1710.02, the Petitioners, as the owners of the Property, being 100% of the area proposed to be added to the District and 100% of the area proposed to be assessed for the Authorized Improvements, hereby (a) petition the City Council to (i) approve the addition of the Property to the District and (ii) approve an amendment and supplement to the Plan by the Supplemental Plan to include the Authorized Improvements and

(b) request that (i) Authorized Improvements be undertaken by the District, and (ii) the total cost of those Authorized Improvements be assessed on the Property in proportion to the special benefits that will result from the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioners acknowledge that they each have reviewed or caused to be reviewed (i) the Plan and the Supplemental Plan, (ii) the plans, specifications and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in **Exhibit B** and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in **Exhibit B**. The Petitioners acknowledge that the estimated special assessment for each parcel is in proportion to the benefits that may result from the financing of the Authorized Improvements.

Accordingly, the Petitioners hereby petition for the construction of the Authorized Improvements identified in this Petition and the Supplemental Plan attached to this Petition as **Exhibit B**, as authorized under Ohio Revised Code Chapter 1710, and for the imposition of the special assessments identified in this Petition and authorized under Ohio Revised Code Chapters 727 and 1710 (the "Special Assessments") to pay the costs of the Authorized Improvements.

In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioners consent and agree that the Property as identified in **Exhibit A** shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages amount; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities to pay costs of the Authorized Improvements in anticipation of the receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities or other obligations; and any program administration fees or financing servicing fees; together with all other necessary expenditures. The Petitioners agree to pay the Special Assessments in a timely manner whether or not the Petitioners receive annual and timely notices of the Special Assessments.

Notwithstanding anything to the contrary contained herein, in the event that at any time following the date of this Petition the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Hamilton County, Ohio (the "County Auditor"), the Petitioners and the Anticipated Purchaser hereby request that the Special Assessments be allocated only to the resulting parcels which will be improved with the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Parcels"). The allocation among any resulting Assessed Parcels shall be made such that any Assessed Parcel or Assessed Parcels on which the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Building") shall be allocated a total of 100% of the Special Assessments. If the Property is combined or subdivided such that more than one Assessed Parcel is to receive an allocation of

the Special Assessments, the Special Assessments to be allocated to those Assessed Parcels shall be allocated among them in proportion to the total square feet of improvements on each such Assessed Parcel divided by the total square feet of improvements on all such Assessed Parcels. The Petitioners hereby certify, represent, and warrant to the District and the City that the portion of the Special Assessments allocated to each resulting Assessed Parcel, as described above, will cause each resulting Assessed Parcel to have Special Assessments allocated to it in proportion to, and not in excess of, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements. Immediately upon any subdivision of the Property, (i) any reference to the Property contained in this Petition shall be deemed to be a reference to all of the Assessed Parcels; and (ii) the legal description of the Assessed Parcels shall be deemed to replace the legal description of the Property set forth in **Exhibit A**.

In consideration of the Authorized Improvements, each of the Petitioners, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by Council of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, each of the Petitioners covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be assessed for the actual costs of the Authorized Improvements set forth in **Exhibit B**, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessment for the Authorized Improvements and to require that transferee covenant to disclose the existence of any outstanding Special Assessment for the Authorized Improvements in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, each of the Petitioners further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (i) for the acquisition by the transferee of the Property subject to any outstanding Special Assessment and the transferee's assumption of responsibility for payment thereof and for waiver by the transferee of any rights that the Petitioners have waived pursuant to this Petition, and (ii) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (i) so long as the Special Assessments remain unpaid.

The Petitioners further acknowledge and confirm that the Special Assessments set forth in this Petition and in **Exhibit B** are in proportion to, and do not exceed, the special benefits to be conferred on the Property by the financing of the Authorized Improvements. The Petitioners further consent to the levying of the Special Assessment against the Property by the Council. The Petitioners acknowledge that these Special Assessments are fair, just and equitable and being imposed at the Petitioners' specific request.

The Petitioners hereby waive notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710, and consent to proceeding with the Authorized Improvements. Without limiting the foregoing,

the Petitioners specifically waive any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioners, in accordance with Ohio Revised Code Section 1710.02(A), further agree that the Property may be included in more than one district formed under Ohio Revised Code Chapter 1710. The Petitioners further agree not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioners, in accordance with Ohio Revised Code Section 929.03, hereby grant permission to collect any Special Assessments levied against such Property.

The Petitioners further agree and consent to the Council promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Petitioners acknowledge that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated Special Assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioners, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioners further acknowledge and represent that the respective final assessments may be levied at such time as determined by the City and



regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioners further acknowledge that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the Auditor of the County, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioners hereby waive the right to pay the final assessments for the Authorized Improvements in cash within thirty (30) days from the passage of the ordinance confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in fifty-six (56) semi-annual installments.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioners hereby appoint as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 such representative as may be duly appointed by the Petitioners from time to time, which designation shall not expire unless and until Petitioners shall notify the Secretary of the District that said designation is no longer in effect or that Petitioners have made a new designation to replace said designation.

The Petitioners further waive any and all questions as to the constitutionality of the laws under which the Authorized Improvements shall be acquired, installed, or constructed or the proceedings relating to the acquisition, installation, or construction of the Authorized Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, or construction of the Authorized Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Authorized Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio and the Charter of the City of Cincinnati, Ohio. The Petitioners represent that they will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments, and any Special Assessments levied against the Property for the Authorized Improvements, or any other matters related to the foregoing.

The Petitioners acknowledge and understand that the City and the Corporation will be relying upon this Petition in taking actions pursuant to it and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioners, any successors or assigns of the Petitioners, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioners acknowledge that they have had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

[Balance of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0142-00 and located at the commonly used mailing address 3634 Madison Road, Cincinnati, Ohio.

**MICHELENE M. BENNETT**

Mich Bennett nka Benn  
(Signature)

Address for notices to Petitioner:

Michlene M. Bennett

1771 Woodpine Lane  
(Street Address)

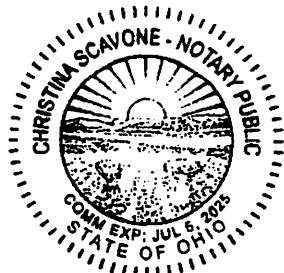
Cincinnati, OH 45255  
(City, State ZIP)

STATE OF Ohio )  
 ) SS:  
COUNTY OF Hamilton )

On the 8 day of January, 2020, Michlene Bennett, personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such signer. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]




Christina Scavone  
Notary Public

IN WITNESS WHEREOF, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0143-00 and located at the commonly used mailing address 3636 Madison Road, Cincinnati, Ohio.

RYAN C. SCHWALLIE

  
\_\_\_\_\_  
(Signature)

Address for notices to Petitioner:

Ryan C. Scwallie

3636 Madison Rd  
(Street Address)

CINCINNATI, OH 45209  
(City, State ZIP)

STATE OF OHIO )  
   )  
COUNTY OF Hamilton )


SS:

On the 07 day of JANUARY 2021, 2020, Ryan C. Scwallie personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such signer. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.



**ARTHUR A. VOLMER**  
Notary Public, State of Ohio  
My Commission Expires  
July 23, 2024

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

IN WITNESS WHEREOF, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0144-00 and located at the commonly used mailing address 3638 Madison Road, Cincinnati, Ohio.

**WILBURN REALTY LIMITED**

By: [Signature]  
(Signature)

Name: Michael Scicolone

Title: President

Address for notices to Petitioner:

Wilburn Realty Limited

(Street Address)

2622 Streamside Court  
Cincinnati, Ohio 45230

(City, State ZIP)

STATE OF Ohio )  
 )  
COUNTY OF Hamilton ) SS:

On the 7 day of January, 2020, Michael Scicolone, the President of Wilburn Realty Limited personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such officer and such limited liability company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]




[Signature]  
Notary Public April 7/5/2025

15915073v1

IN WITNESS WHEREOF, Oakley Crossings Holdings, LLC, in anticipation of being the successor in interest of the Petitioners in the Property, hereby consents to the filing of the Petition with the City, confirms all of the information in this Petition, and agrees to perform the obligations of the Petitioner sat such times as it takes ownership of all or any portion the Property.

**OAKLEY CROSSINGS HOLDINGS, LLC**

**Authorized Signatory**

By:   
Name: Christopher R. Hildebrandt  
Title: MANAGER

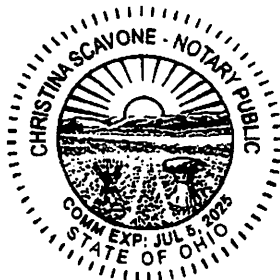
Address for notices to Petitioner: Oakley Crossings Holdings, LLC  
8600 Governor's Hill Drive, Ste. 160  
Cincinnati, Ohio 45249  
Attention: Christopher Hildebrandt

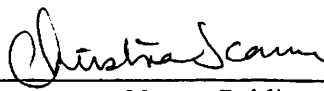
STATE OF Ohio )  
 ) SS:  
COUNTY OF Hamilton )

On the 8 day of January, 2020, Christopher Hildebrandt, as the manager of Oakley Crossings Holdings, LLC, personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition on behalf of Oakley Crossings Holdings, LLC and that the same was the free act and deed of such officer and of such limited liability company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]



  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The real property subject to this Petition is located at the commonly used mailing address 3634-3638 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID Nos. 051-0002-0142-00, 051-0002-0143-00, and 051-0002-0144-00, and the following legal descriptions:

**Parcel 051-0002-142-00:**

**Situate in the City of Cincinnati and in Section 22, Township 4, Fractional Range 2 of the Miami Purchase, Columbia Township, Hamilton County, Ohio, and being part of Lot Number 4 as shown on the Plat in Partition of the Everson Estate as made in Case No. 98,500 in the Common Pleas Court, Hamilton County, Ohio, and more particularly described as follows:**

**Beginning at a point in the northwesterly line of Madison Road North 59 deg. 31' East, 715 feet from an iron rod at the intersection of said northwesterly line with the west line of said Lot No. 4; thence North 59 deg. 31' East along said northwesterly line of Madison Road 40 feet; thence North 30 deg. 29' West, 105 feet; thence South 59 deg. 31' West, 40 feet; thence South 30 deg. 29' East, 105 feet to the place of beginning.**

**Parcel 051-0002-0143-00:**

**The following described real estate located in Hamilton County, Ohio:**

**Situated in the County of Hamilton, in the State of Ohio and in the City of Cincinnati:**

**Situated in Section 22, Township 4, Fractional Range 2, Miami Purchase, and in the City of Cincinnati, Hamilton County, State of Ohio, and being a part of Lot No. Four (4) on the plat in partition of the Everson Estate made in Case 98500, Hamilton County, Ohio, Common Pleas Court.**

**Beginning at a point in the Northwestery line of Madison Road, North 59 degrees 31' East, 755 feet from an iron rod at the Intersection of said Northwestery line with the West line of said Lot No. Four (4), thence North 59 degrees 31' East, along said Northwestery line of Madison Road, 40 feet; thence North 30 degrees 29' West, 105 feet; thence South 59 degrees 31' West, 40 feet; thence South 30 degrees 29' East, 105 feet to the place of Beginning.**

**Parcel No: 051-0002-0143-00**

Parcel 051-0002-0144-00

SITUATE IN THE CITY OF CINCINNATI AND IN SECTION 22, TOWNSHIP 4, PRACTIONAL RANGE 2 OF THE MIAMI PURCHASE, COLUMBIA TOWNSHIP, HAMILTON COUNTY, OHIO AND BEING PART OF LOT NO. 4 ON THE PLAT OF PARTITION OF THE EVERSON ESTATE MADE IN CASE NO. 98500, COMMON PLEAS COURT, HAMILTON COUNTY, OHIO AND MORE PARTICULARLY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHWESTERLY LINE OF MADISON ROAD, NORTH 59 DEGREES 31' EAST 795 FEET FROM AN IRON ROD AT THE INTERSECTION OF SAID NORTHWESTERLY LINE WITH THE WEST LINE OF SAID LOT NO. 4; THENCE NORTH 59 DEGREES 31' EAST ALONG THE NORTHWESTERLY LINE OF MADISON ROAD, 40 FEET; THENCE NORTH 40 DEGREES 29' WEST 105 FEET; THENCE SOUTH 59 DEGREES 31' WEST 40 FEET; THENCE SOUTH 30 DEGREES 29' EAST 105 FEET TO THE PLACE OF BEGINNING.

SUBJECT TO ANY EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

PARCEL # 051-0002-0144-00

*4/*

DESCRIPTION ACCEPTABLE  
HAMILTON COUNTY ENGINEER

Tax Map - 6/29/7 *[Signature]*

CAGIS - \_\_\_\_\_

**EXHIBIT B**

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

**SUPPLEMENT TO PLAN FOR 3634-3638 MADISON ROAD PROJECT**

As more fully provided by the City of Cincinnati, Ohio Special Improvement District Program Plan (together with all previously approved supplemental plans, the "Plan"), the City of Cincinnati, Ohio Energy Special Improvement District (the "District") has undertaken the administration of a property assessed clean energy ("PACE") program (the "Program"). The Program will provide financing secured by special assessments on real property for special energy improvement projects.

Through a Petition submitted in connection with this Supplemental Plan, the undersigned (the "Property Owners") have requested and consented to certain special assessments by the District with respect to certain real property owned by the Property Owners and located at 3634-3638 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID Nos. 051-0002-0142-00, 051-0002-0143-00, and 051-0002-0144-00 (the "Property"). A schedule for special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as Attachment A.

Initially the special assessments shall be allocated among the parcels (each an "Original Parcel" and, collectively, the "Original Parcels") constituting the Property as follows:

In the event that at any time following the date of this Supplemental Plan the Property or any parcel contained in the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Hamilton County, Ohio (the "County Auditor"), then the Property Owners hereby request that the Special Assessments be allocated among only the resulting parcels which will be improved with the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Parcels"). No Special Assessments shall be allocated to any resulting parcels which will not have any portion of the approximately 11,000 square foot retail building constructed thereon (the "Non-Assessed Parcels"). The allocation among any resulting Assessed Parcels shall be made such that the Assessed Parcel or Assessed Parcels on which the approximately 11,000 square foot retail building is constructed and into which the Authorized Improvements will be incorporated (the "Assessed Building") shall be allocated a combined total of 100% of the Special Assessments. If the Property is combined or subdivided such that more than one Assessed Parcel is to receive an allocation of the Special Assessments in the percentage stated above, the Special Assessments to be allocated to those Assessed Parcels shall be allocated among them in proportion to the total square feet of improvements on each such Assessed Parcel divided by the total square feet of improvements on all such Assessed Parcels. The Property Owners hereby certify, represent, and warrant to the District and the City that the portion of the Special Assessments allocated to each resulting Assessed Parcel, and the fact that no Special Assessments will be allocated to any resulting Non-Assessed Parcel, all as described above, will cause each resulting Assessed Parcel



to have Special Assessments allocated to it in proportion to, and not in excess of, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Supplemental Plan.

The Authorized Improvements applicable to the Property will include energy efficiency electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements. As required by Ohio Revised Code Section 1710.01(K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the Authorized Improvements is attached to this Supplemental Plan as Attachment B. The Property Owners hereby acknowledge and agree that the special benefit to be provided to the Property under this Supplemental Plan is the consummation of the financing to pay, finance, and refinance costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of the financing, and that the benefits are in proportion to and do not exceed the amount of the Special Assessments to be levied to pay the costs of the financing.

The Property Owners will cause this Supplemental Plan promptly to be filed with the Board of Directors of the District and with the Clerk of the City Council of Cincinnati, Ohio.

**The undersigned owners of real property to be located within the District acknowledge that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* The undersigned property owners agree to the disclosure of certain property owner information by the District to the extent required by law.**

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0142-00 and located at the commonly used mailing address 3634 Madison Road, Cincinnati, Ohio.

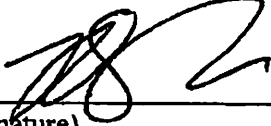
**MICHELENE M. BENNETT**

  
(Signature)

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0143-00 and located at the commonly used mailing address 3636 Madison Road, Cincinnati, Ohio.

**RYAN C. SCHWALLIE**

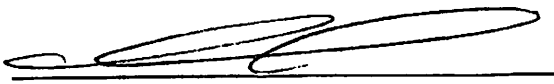


\_\_\_\_\_  
(Signature)

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0144-00 and located at the commonly used mailing address 3638 Madison Road, Cincinnati, Ohio.

**WILBURN REALTY LIMITED**

By:   
(Signature)

Name: Michael Scorsone

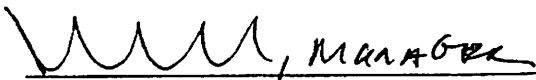
Title: President

BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.

Oakley Crossings Holdings, LLC, in anticipation of being the successor in interest of the Property Owners in the Property, hereby consents to the filing of the Supplemental Plan with the City, confirms all of the information in this Supplemental Plan, and agrees to perform the obligations of the Property Owners at such times as it takes ownership of all or any portion of the Property.

**OAKLEY CROSSINGS HOLDINGS, LLC**

**Authorized Signatory**

By: , MANAGER  
Name: Christopher R. Hildebrant  
Title: MANAGER

Address for notices to Petitioner:

Oakley Crossings Holdings, LLC  
8600 Governor's Hill Drive, Ste. 160  
Cincinnati, Ohio 45249  
Attention: Christopher Hildebrant

**Description of Real Property Subject to this Supplemental Plan:**

The real property subject to this Petition is located at the commonly used mailing 3634-3646 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID No[s]. [051-0002-0142-00], [051-0002-0143-00], and [051-0002-0144-00].

**SUPPLEMENTAL PLAN—ATTACHMENT A**

**Schedule of Special Assessments**

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs:	\$3,755,431.68
Estimated semi-annual special assessments for 28 years:	\$67,061.28
Number of semi-annual assessments:	56
First semi-annual installment due:	January 31, 2023

The schedule of Special Assessments for the Authorized Improvements is as follows:

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2023	\$67,061.28	\$22,123.32	\$22,123.32	\$22,814.64
7/31/2023	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2032	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2032	67,061.28	22,123.32	22,123.32	22,814.64

<sup>1</sup> Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified herein are subject to adjustment under certain conditions.

<sup>2</sup> Pursuant to Ohio Revised Code Section 727.36, the Hamilton County Auditor may charge and collect a fee in addition to the amounts listed in this Attachment A.

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID. No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2040	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2040	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2041	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2041	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2050	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2050	67,061.28	22,123.32	22,123.32	22,814.64

**SUPPLEMENTAL PLAN—ATTACHMENT B**

**Description of Authorized Improvements**

The Authorized Improvements are expected to consist of the following energy efficiency elements:

Energy Project Name: Oakley Crossings Holdings, LLC Parcel ID: 051-0002-0140-00 (plus 10 others) County/State: Hamilton/Ohio						
	Improvement Description	Useful Life	Contractor	Improvement Cost (\$)	Baseline Energy Cost (\$)	Projected Energy Savings (\$)
1	Building Envelope	30	Morelia Group	\$1,256,380		See Envelope COMcheck
2	High Efficiency Rooftop Units	20	Morelia Group	\$176,493		See Mechanical COMcheck
3	High Efficiency Lighting	15	Bockrath	\$110,347		See Lighting COMcheck
4	Soft Costs	N/A		\$228,626	N/A	N/A
5						
6						
<b>TOTALS:</b>				\$1,771,846		



**EXHIBIT C**

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

[See Attached]

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

The City of Cincinnati, Ohio Energy Special Improvement District (the "District") will administer a property assessed clean energy ("PACE") program (the "Program"). The Program will provide financing secured by special assessments on real property for special energy improvement projects. The District authorizes and adopts this plan for the Program (as the same may be amended and supplemented from time to time as provided herein, the "Plan") to provide for the Program's administration and to set forth the terms and conditions of participation in the Program. The Port of Greater Cincinnati Development Authority, as the initial property owner owning real property within the District, as well as in its capacity as a party with interests aligned with the City of Cincinnati (the "City") with respect to the formation of the District, authorizes and consents to this Plan.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the "Act." Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District's Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program's terms and conditions. These terms and conditions are addressed in this Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property ("Assessment Schedule"), and the governing documents forming the District. The District's governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the "Governing Documents"). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the "District Documents."

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Plan. By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.

**I. Purpose of the Program**

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy

improvement projects, as that term is defined in the Act (the "Authorized Improvements"). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, or nonprofit corporation securities (collectively, the "Program Obligations") may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

**Nothing in this Plan shall be construed as a representation on the part of any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board that the Program is the best financing option for every situation. Property owners are advised to conduct independent research to determine the best course of action.**

## **II. The District's Governance, Program Administrator, and Conduit Financing Entity**

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors ("Board") of the City of Cincinnati, Ohio Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the "Corporation") to govern the District.

Pursuant to the Act, other Ohio law, and the Code of Regulations of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Plan specifically contemplates that, as authorized in the Act, Greater Cincinnati Energy Alliance will serve as the District's "Program Administrator" and render program administration services to the District and the Port of Greater Cincinnati Development Authority will serve as the District's "Conduit Financing Entity" and render conduit financing services to the District.

The District is authorized to contract with Greater Cincinnati Energy Alliance for program administration services rendered to the District. The program administration services rendered by the Program Administrator may include, without limitation (i) pursuant to Part III of this Plan, developing and administering eligibility guidelines, creating and administering an application,

setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals, (ii) pursuant to Part IV of this Plan, marketing, program design, cooperating with property owners to implement Authorized Improvements, and other administrative services, and (iii) the establishment and administration of a revolving loan facility providing financing for certain special energy improvement projects.

The District is authorized to contract with the Port of Greater Cincinnati Development Authority for conduit financing services rendered to the District. The conduit financing services rendered by the Conduit Financing Entity may include, without limitation (i) pursuant to Part III of this Plan, financing Authorized Improvement and cooperating with property owners to obtain financing, (ii) pursuant to Part IV of this Plan, tracking and administering Program Obligations, administering special assessments, budgeting, and conducting or overseeing the audit process, (iii) assistance with marketing efforts relating to the District, and (iv) tracking compliance with respect to the Economic Inclusion Plan established by the Port of Greater Cincinnati Development Authority.

### **III. Program Eligibility, Approvals, Financing, and Procurement**

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

- (A) Eligibility. The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Plan. The Plan for the District may be amended and supplemented from time to time in accordance with its terms, including,

specifically, by supplements to the Plan which identify additional Authorized Improvements within the District to be subject to the Plan or add property to the District and subject such additional property to the Plan. To be eligible for participation in the Program, each property owner must file a supplement to this Plan (the "Plan Supplement") with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Plan applicable to real property within the District or to be added to the district. Plan Supplements shall include such other information as may be required by the Board. Plan Supplements shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to and must execute an Affidavit on Facts Relating to Title under Section 5301.252 of the Ohio Revised Code to be recorded with respect to the real property to be added to the District and filed with the clerk of the legislative body of the participating political subdivision in which the real property is located, which Affidavit on Facts Relating to Title shall state that the property owner has consented to include such real property in the District and that the property owner consents to, and will take all actions necessary to place upon such property, any subsequent special improvement district formed under Ohio Revised Code Chapter 1710 that includes such real property as long as the statutory conditions for forming the subsequent special improvement district are otherwise satisfied.

- (B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application's use and evaluation.
- (C) Contractors. The Board is hereby authorized to require property owners to complete Authorized Improvements through the work of pre-approved contractors. The Board is further authorized to create criteria for the approval of contractors, including but not limited to compliance with the Economic Inclusion Plan adopted by the Port of Greater Cincinnati Development Authority, and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor's requirements.

Nothing in this Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.

- (D) Procurement and Referrals. The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to the Act, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the City or the procedures in Chapter 735 of the Ohio Revised Code and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Plan, the District Documents shall not be construed to eliminate or alter the competitive bidding procedures applicable to the City as a participating political subdivision.

- (E) Financing. The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

#### IV. Services Plan

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Plan. Such services, without limitation, may include the following:

- (A) Program Design. The Board is hereby authorized to design comprehensive services to establish and maintain the Program's legal and programmatic framework.
- (B) Program Administration. The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program's overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.
- (C) Marketing. The Board is hereby authorized to market the Program and promote the District's image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.

- (D) Authorized Improvement Implementation. The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Plan Supplements by participating political subdivisions and the Board.
- (E) Tracking and Administration of Program Obligations. The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
- (F) Administering Special Assessments. The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners' claims regarding the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.
- (G) Budgeting. The Board shall provide for the production of an annual report describing the District's budget, services delivered, revenues received, expenditures made, and other information about the District's activities. The annual report shall be made available to the Board and to the District's members. The Board may hire such professionals as may be required to successfully account for all District finances.
- (H) Auditing. The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.
- (I) Other Services. The Board is hereby authorized to provide any other services authorized by the Act.

**V. Fees**

Program Costs. The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

- (A) The cost of creating and operating the District, including creating and operating City of Cincinnati, Energy Special Improvement District, Inc., hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;
- (B) The cost of planning, designing, and implementing Authorized Improvements or services under this Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Plan, the management, protection, and maintenance costs of public or private facilities;
- (C) Any court costs incurred by the District in implementing this Plan or any Plan Supplements;
- (D) Any damages resulting from implementing the public improvements or public services plan;
- (E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Plan; and
- (F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District's territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

**Application Fee.** The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

**VI. Energy Efficiency and Renewable Energy Regulations and Requirements**

**Energy Efficiency Reporting Requirements.** Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility ("EDU") with a District Authorized Improvement within the EDU's certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code



Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

## **VII. Statutory Requirements**

As provided in the District Documents:

- (A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Plan.
- (B) The District Documents may be amended or supplemented in accordance with their terms.
- (C) As described in this Plan, the Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.
- (D) The public improvements to be provided by the District are the Authorized Improvements identified in each petition and Plan Supplement. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.

- (E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

#### **VIII. Changes in State and Federal Law**

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District's Program.

#### **IX. Releases and Indemnification**

The District has been created with the approval of the City of Cincinnati, Ohio, as a participating political subdivision, for the purposes of implementing this Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. Property owners will be solely responsible for the installation, operation, financing, refinancing, and maintenance of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

By agreeing to and executing this Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program. Any political subdivision that owns real property included in the District agrees to release and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision's participation in the Program in its capacity as a property owner.

#### **X. Changes in the Program Terms; Severability**

Participation in the Program is subject to the District Document terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the

terms and conditions of the District Documents at any time without notice. No such change will affect a property owner's obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

#### **XI. Disclosure of Property Owner Information**

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio's energy programs, property owners' names and contact information may be disclosed to their current electric utilities. Property owners' names, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

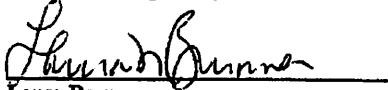
**Each owner of real property located within the District acknowledges that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* Each property owner that executes this Plan agrees to the disclosure of certain property owner information as stated in this Part.**

**BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PLAN AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PLAN.**

Date: July 23, 2014

**Property Owner:  
PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**

**Authorized Signatory**



Laura Brunner, as  
President and Chief Executive Officer

Address for notices to Property Owner:

Port of Greater Cincinnati Development  
Authority

299 East Sixth Street, Suite 2A

Cincinnati, Ohio 45202

**Description of Real Property Subject to this Plan:**

The real property subject to this Plan is located at the commonly used mailing address 1682 Seymour Avenue, Cincinnati, Ohio 45237. The front footage of the real property subject to this Plan is 233.00 feet, and its area is 0.418 acres. The Hamilton County Auditor Parcel ID for the real property subject to this Plan is 117-0007-0064-00. The following is the legal description for the real property subject to this Plan:

**Parcel One**

Situated in the City of Cincinnati, County of Hamilton, State of Ohio in Section 6, Township 3, Fractional Range 2, Millcreek Township and being Lot #1 of Shonae Subdivision, Block A, as recorded in Plat Book 105, Page 44, Hamilton County, Ohio Recorder's records.

**Parcel Two**

[Property Owner Consent to Plan]

The following described real estate situated in Section 6, Town 3, Fractional Range 2, Miami Purchase, in the City of Cincinnati, Hamilton County, Ohio, being part of Lot 2, Part 1, Block "B", Shonae Subdivision as recorded in Plat Book 120, Pages 49 and 50 of the Hamilton County, Ohio records.

Beginning in the Northwest corner of Block "A", Shonae Subdivision as recorded in Plat Book 105, Page 44 of the Hamilton County, Ohio Recorder's office;

Thence North 1 deg. 15' East, a distance of 21.75 feet; thence South 88 deg. 45' East, a distance of 146.46 feet to the Westerly line of Shona Drive; thence Southwardly along the Westerly line of Shona Drive on a curved line deflecting to the right with a radius of 220 feet a distance of 23.16 feet, chord of said curve bears South 21 deg. 16' 35" West, a distance of 23.14 feet to the Northeast corner of said Block "A", Shonae Subdivision, thence North 68 deg. 45' West, a distance of 138.53 feet to the place of beginning.

These parcels are not to be conveyed separately without prior approval of the governmental authority having jurisdiction.

[Property Owner Consent to Plan]

September 29, 2021

**To:** Mayor and Members of City Council **202102851**  
**From:** Paula Boggs Muething, City Manager  
**Subject: LEVYING SPECIAL ASSESSMENTS FOR THE PACE  
ASSESSMENT PROJECT FOR 3634-3638 MADISON ROAD**

---

Attached is an Emergency Ordinance captioned as follows:

LEVYING special assessments for the purpose of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati involving the City of Cincinnati, Ohio Energy Special Improvement District.

### **BACKGROUND/CURRENT CONDITIONS**

The Ohio PACE (Property Assessed Clean Energy) program allows commercial property owners to opt into a special assessment which is added to the property tax bill to access long-term, fixed-rate financing for energy efficiency upgrades. The current owners, Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited, together with the future owner of the project site, Oakley Crossings Holdings, LLC, have requested to have their property added to the Energy Special Improvement District (ESID) and special assessments levied on the property, for the purpose of accessing PACE financing for energy efficient electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements.

### **DEVELOPER INFORMATION**

Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited are the current owners of the property. The anticipated purchaser is Oakley Crossings Holdings, LLC, which is affiliated with Morelia Group, LLC (Morelia). Morelia has experience producing high-quality developments in the Greater Cincinnati area, including within the neighborhood of Oakley.

In 2017, Morelia, through its affiliate entities, acquired from Crossroads Church an approximately five-acre site located on Madison Road in Oakley and constructed thereon the Oakley Connection and Encore of Oakley mixed-use developments that now count as occupants Starbucks, Condado Tacos, Crumbl Cookie, Great Clips, Top Nail Salon, Chicken Salad Chick, General Electric Credit Union, McAlister's Deli, Tropical Smoothie Café, Holtman's Donuts, Tide Dry Cleaners and All About Kids Child Care & Learning Center. Together, these developments were an approximately \$25,000,000 investment that created approximately 300 new jobs, increased the City's tax base, and enhanced the quality of life for Oakley residents.

### **PROJECT DESCRIPTION**

The project will include the construction of approximately 17,300 square feet of commercial space. The total cost of the PACE eligible improvements is \$1,771,846.

### **PROPOSED INCENTIVE**

DCED is recommending that the City amend the Energy Special Improvements District (ESID) boundaries to add this property to the ESID, and levy special assessments on the property. This will allow the developer to access financing for energy efficient electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements.

### **PROJECT TEAM & TIMELINE**

The project team (listed below) will make themselves available at the request of the councilmember(s).

- Assistant City Manager: Billy Weber (Ext. 3318)
- DCED Director: Markiea Carter (Ext. 1953)
- Project Attorney: Samantha Brandenburg (Ext. 4704)

The anticipated council timeline, which includes two Budget and Finance meetings if necessary is as follows:

- September 29, 2021: Introduction to City Council
- October 4, 2021: Budget and Finance (1)
- October 11, 2021: Budget and Finance (2)
- October 13, 2021: City Council for Final Approval

### **RECOMMENDATION**

The Administration recommends approval of this Emergency Ordinance.

Copy: Markiea L. Carter, Director, Department of Community & Economic Development

EMERGENCY

City of Cincinnati

AWB

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

LEVYING special assessments for the purpose of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati involving the City of Cincinnati, Ohio Energy Special Improvement District.

WHEREAS, this Council duly adopted a legislative resolution declaring the necessity of an assessment project at 3634-3638 Madison Road in the City of Cincinnati (the "Resolution of Necessity"), which Resolution of Necessity also accepted and approved the Petition (as defined therein) requesting the improvements described in Section 3 of the Resolution of Necessity and an assessment for the cost thereof, all as set forth in the Petition; and

WHEREAS, this Council duly passed an ordinance determining to proceed with the Assessment Project (as defined in the Resolution of Necessity) and adopted the estimated Special Assessments filed with the Clerk of Council and the City's Director of Finance pursuant to the Resolution of Necessity; now, therefore,

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

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined herein or by reference to another document shall have the meaning assigned to it in the Resolution of Necessity, an unsigned copy of which is attached to this ordinance as Attachment B.

Section 2. That the Special Assessments for the costs and expenses of the Assessment Project, which are set forth in the Petition (a copy of which is attached to the Resolution of Necessity) and are on file with the Clerk of Council and the City's Finance Director, are adopted and confirmed and are assessed against the Assessed Property in the manner and in the number of installments provided in the Resolution of Necessity and the Petition. The Special Assessments are assessed against the Assessed Property commencing in tax year 2022 for collection in 2023 and shall continue through tax year 2049 for collection in 2050. The list of



Special Assessments to be levied and assessed against the Assessed Property and the schedule of the Special Assessments are attached to this ordinance as Attachment A. The Assessment Project shall be located entirely on the Assessed Property, as set forth in the Resolution of Necessity and the Petition.

Section 3. That this Council hereby finds and determines that the Special Assessments are in proportion to the special benefits received by the Assessed Property as set forth in the Petition and are not in excess of any applicable statutory limitation. The Special Assessments against the Assessed Property shall be payable as set forth in the Resolution of Necessity and the Petition. All Special Assessments shall be certified by the City's Finance Director to the Hamilton County Auditor pursuant to the Petition and Ohio Revised Code Section 727.33, to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition. This Council hereby appropriates the Special Assessments collected to be used by the City to meet its obligations with respect to the Assessment Project in accordance with the Standing Assignment Agreement and the Addendum.

Section 4. That the Owner of the Assessed Property and Oakley Crossings Holdings, LLC, as the anticipated purchaser of the Assessed Property, have waived their right to pay the Special Assessments in cash, and all Special Assessments and installments thereof are to be certified by the City's Finance Director to the Hamilton County Auditor as provided by law to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

Section 5. That the City's Finance Director is authorized to keep the Special Assessments on file in the office of the Finance Director.

Section 6. That in compliance with Ohio Revised Code Section 319.61, the Clerk of the Council is hereby directed to deliver a certified copy of this ordinance to the Hamilton County Auditor within twenty (20) days after its passage.

Section 7. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

Section 8. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the board of directors of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. may proceed with the Assessment Project as soon as possible so that work thereon may commence or continue without delay.

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

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

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

**ATTACHMENT A**

**LIST OF SPECIAL ASSESSMENTS AND  
SCHEDULE OF SPECIAL ASSESSMENTS**

3634-3638 MADISON ROAD  
LIST OF SPECIAL ASSESSMENTS

Name	Assessed Properties Description	Portion of Benefit and Special Assessment	Amount of Special Assessments
Micheline M. Bennett	Hamilton County Parcel Number: 051-0002-0142-00	33%	\$1,238,905.92
Ryan C. Schwallie	Hamilton County Parcel Number: 051-0002-0143-00	33%	\$1,238,905.92
Wilburn Realty Limited	Hamilton County Parcel Number: 051-0002-0144-00	34%	\$1,277,619.84

### Schedule of Special Assessments

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs:	\$3,755,431.68
Estimated semi-annual special assessments for 28 years:	\$67,061.28
Number of semi-annual assessments:	56
First semi-annual installment due:	January 31, 2023

The schedule of Special Assessments for the Authorized Improvements is as follows:

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2023	\$67,061.28	\$22,123.32	\$22,123.32	\$22,814.64
7/31/2023	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2032	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2032	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2033	67,061.28	22,123.32	22,123.32	22,814.64

<sup>1</sup> Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified herein are subject to adjustment under certain conditions.

<sup>2</sup> Pursuant to Ohio Revised Code Section 727.36, the Hamilton County Auditor may charge and collect a fee in addition to the amounts listed in this Attachment A.

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID. No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2040	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2040	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2041	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2041	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2050	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2050	67,061.28	22,123.32	22,123.32	22,814.64

**ATTACHMENT B**

**RESOLUTION OF NECESSITY**

[See Attached]

EMERGENCY

**Legislative Resolution**

**RESOLUTION NO. \_\_\_\_\_ - 2021**

**DECLARING** by legislative resolution the necessity of the special assessment project at 3634-3638 Madison Road in the City of Cincinnati, Ohio involving the City of Cincinnati, Ohio Energy Special Improvement District.

WHEREAS, Ohio Revised Code Section 1710.02(F) provides that a political subdivision that has approved a petition for special assessments for public improvements in a special improvement district pursuant to Ohio Revised Code Chapter 1710 shall levy said special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, pursuant to Resolution No. 28-2014 passed on April 9, 2014, Council approved the Petition for the Creation of the City of Cincinnati, Ohio Energy Special Improvement District, together with the Articles of Incorporation of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. and, following said approvals by Council, on July 23, 2014, the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (hereinafter, the "ESID") was formed as an ESID and is now duly authorized and operating pursuant to Ohio Revised Code Chapter 1710; and

WHEREAS, Michelene M. Bennett, Ryan C. Schwallie, and Wilburn Realty Limited (collectively, and together with all future owners of the Project Site, as defined below, the "Owner"), as the owner of one hundred percent (100%) of the lots and lands, including air parcels, to be assessed for the improvements described in this Resolution, has executed and filed with this Council a *Petition for Special Assessments for Special Energy Improvement Projects* dated as of January 7, 2021 (the "Petition"), including a *Supplement to Plan for 3634-3638 Madison Road Project* (the "Supplemental Plan"), proposing the necessity of special assessments to pay the costs of special energy improvement projects (as more fully identified in the Petition and Supplemental Plan, the "Authorized Improvements") to be located at 3634-3638 Madison Road in Cincinnati (the "Assessed Property"), and Oakley Crossings Holdings, LLC is the anticipated purchaser of the Assessed Property ("Oakley Crossings"); and

WHEREAS, the Petition and the Supplemental Plan are on file with the Clerk of Council, and copies thereof are attached to this Resolution as Attachment A; and

WHEREAS, in the Petition, the Owner requests and Oakley Crossings consents that the Authorized Improvements be paid for by special assessments assessed upon the Assessed Property (the "Special Assessments") in an amount sufficient to pay the costs of the Authorized Improvements and other related costs of financing the Authorized Improvements, which include, without limitation, the payment of principal of, interest on, and financing, credit enhancement, and issuance expenses related to, any bonds, notes, loans, or other financing provided to pay the costs

of the Authorized Improvements, and requests that the Authorized Improvements be undertaken cooperatively by the City, the ESID, the Owner, and Oakley Crossings in accordance with the Standing Assignment Agreement dated as of February 28, 2017 by and among the City, the Port of Greater Cincinnati Development Authority, and the ESID (the “Standing Assignment Agreement”); and

WHEREAS, in order to provide for the assignment and transfer of the Special Assessments, the ESID has requested that the City execute and deliver an Addendum to the Standing Assignment Agreement substantially in the form now on file with the Clerk of Council; and

WHEREAS, (i) the Special Assessments are conducive to the public health, convenience and welfare of this City and the inhabitants of the City; (ii) the Assessed Property is specially benefited by the Special Assessments; and (iii) the Special Assessments have been petitioned for by the owner of 100% of the Assessed Property; now, therefore,

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

Section 1. That the recitals hereof are hereby incorporated by reference, and each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the *Petition for Special Assessments for Special Energy Improvement Projects* dated January 7, 2021 (the “Petition”), which Petition, together with a *Supplement to Plan for 3634-3638 Madison Road Project* (the “Supplemental Plan”), are hereby approved and accepted, and copies of which are attached to this Resolution as Attachment A.

Section 2. That this Council hereby approves and authorizes the City Manager to execute an Addendum to the Standing Assignment Agreement substantially in the form now on file with the Clerk of Council, together with any modifications as may be necessary to effectuate the purpose of the Petition and Ohio Revised Code Chapter 1710, provided that any such modifications shall not, in the judgment of the City Manager, be adverse to the City.

Section 3. That it is hereby declared necessary, and a vital and essential public purpose of the City, to improve the real property located at 3634-3638 Madison Road, Cincinnati, Ohio (the “Assessed Property”), by providing for special energy improvement projects as more fully identified in the Petition and Supplemental Plan (the “Authorized Improvements”) on the Assessed



Property, including any and all costs and expenses in connection with or otherwise related thereto as described in the Petition (collectively, the "Assessment Project"), which Assessment Project is described in the plans, specifications, profiles, and estimates of costs included in the Petition and on file in the office of the Clerk of Council.

Section 4. That the plans and specifications and total cost of the Assessment Project now on file in the office of the Clerk of Council are approved, subject to changes as provided for in the Standing Assignment Agreement among the City, the Port of Greater Cincinnati Development Authority, and the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (the "ESID"), and as permitted by Ohio Revised Code Chapter 727. The Assessment Project shall be made in accordance with the plans, specifications, profiles, and estimates for the Assessment Project.

Section 5. That this Council finds and determines that: (i) the Assessment Project is conducive to the public health, convenience, and welfare of this City and the inhabitants thereof, and that it is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project as defined in Ohio Revised Code Section 1710.01(I); (ii) the Assessed Property is specially benefited by the Assessment Project; and (iii) the Assessment Project has been petitioned for by the owner of 100% of the Assessed Property. It is hereby determined that the Assessment Project's elements are so situated in relation to each other that in order to complete the acquisition and improvement of the Assessment Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of materials, and in the same manner, and that the Assessment Project's elements shall be treated as a single improvement pursuant to Ohio Revised Code Section 727.09.

Section 6. That pursuant to Ohio Revised Code Section 1710.02(G)(4), Council hereby determines that the Assessment Project is not required to be owned exclusively by the City. Council accordingly hereby authorizes the board of directors of the ESID to act as its agent to sell, transfer, lease, or convey the Assessment Project. The board of directors of the ESID must obtain from any sale, transfer, lease, or conveyance of the Assessment Project any consideration greater than or equal to \$1.00.

Section 7. That the costs of the Assessment Project, as set forth in the Petition, shall be assessed in proportion to the benefits upon the Assessed Property, and the assessment for such purpose (the "Special Assessments") shall be assessed and paid as specified in the Petition. The portion of the costs of the Assessment Project allocable to the City will be 0%. The City does not intend to issue securities in anticipation of the levy of the Special Assessments.

Section 8. That the City's Finance Director and/or her designee is authorized to cause to be prepared and filed in the office of the Clerk of Council the estimated Special Assessments and the cost of the Assessment Project in accordance with the method of assessment set forth in the Petition and this Resolution.

Section 9. That the Special Assessments shall be levied and paid in fifty-six (56) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition. The Owner and Oakley Crossings have waived the right to pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing ordinance.

Section 10. That the Owner and Oakley Crossings have waived notice of the adoption of this Resolution and the filing of the estimated Special Assessments upon the filing of the estimated Special Assessments with the Clerk of Council under Ohio Revised Code Section 727.13.

Section 11. That pursuant to and subject to the provisions of a valid Petition signed by the Owner, as the owner of one hundred percent (100%) of the Assessed Property, and consented to by Oakley Crossings, as the anticipated purchaser of the Assessed Property, which Petition is hereby accepted, the entire cost of the Assessment Project, which shall be located entirely on the Assessed Property, shall be paid by the Special Assessments levied against the Assessed Property, which is the benefited property.

Section 12. That this Council hereby accepts and approves the waivers contained in the Petition of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including, but not limited to, those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and the Charter of the City of Cincinnati, Ohio, and consents to the immediate imposition of the Special Assessments upon the Assessed Property.

Section 13. That the City's Finance Director and/or her designee is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Assessment Project.

Section 14. That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Section 15. That this resolution shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms

of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is to ensure that the board of directors of the ESID may proceed with the Assessment Project as soon as possible so that work thereon may commence or continue without delay.

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

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

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

**PETITION FOR SPECIAL ASSESSMENTS FOR  
SPECIAL ENERGY IMPROVEMENT PROJECTS**

**A PETITION TO THE CITY OF CINCINNATI, OHIO SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS TO PAY THE COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS AGAINST PROPERTY OWNED BY THE PETITIONERS AND SPECIALLY BENEFITED THEREBY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS**

To: The City Manager and City Council of the City of Cincinnati, Ohio

The undersigned are collectively the owners (collectively, the "Petitioners") are the owners of 100% of the property described on **Exhibit A** attached to this Petition (the "Property"). Oakley Crossings Holdings, LLC, a Delaware limited liability is the anticipated purchaser of the Property (the "Anticipated Purchaser"), and, following its acquisition of the Property, will implement special energy improvement projects on the Property (the "Authorized Improvements," as further described in **Exhibit B**).

The Board of Directors of the City of Cincinnati, Ohio Energy Special Improvement District, Inc. (the "Corporation"), an Ohio nonprofit corporation formed to govern the City of Cincinnati, Ohio Energy Special Improvement District (the "District"), created within the boundaries of the City of Cincinnati, Ohio (the "City") has approved a plan (the "Program Plan") for the purpose of developing and implementing special energy improvement projects, as defined in Ohio Revised Code Section 1710.01(I). The Program Plan is attached to this Petition as **Exhibit C**.

Pursuant to the Program Plan, the Corporation has caused special energy improvement projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710 and the Program Plan, the Program Plan may be amended from time to time by supplemental plans (the "Supplemental Plans") (the Program Plan and every Supplemental Plan together constituting the "Plan") to provide for additional special energy improvement projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board of Directors of the Corporation has received the Supplemental Plan attached to this Petition as **Exhibit B**, including the description of the Authorized Improvements, and related materials in support of the expansion of the District to include the Property.

As required by Ohio Revised Code Section 1710.02, the Petitioners, as the owners of the Property, being 100% of the area proposed to be added to the District and 100% of the area proposed to be assessed for the Authorized Improvements, hereby (a) petition the City Council to (i) approve the addition of the Property to the District and (ii) approve an amendment and supplement to the Plan by the Supplemental Plan to include the Authorized Improvements and

(b) request that (i) Authorized Improvements be undertaken by the District, and (ii) the total cost of those Authorized Improvements be assessed on the Property in proportion to the special benefits that will result from the Authorized Improvements.

In connection with this Petition and in furtherance of its purposes, the Petitioners acknowledge that they each have reviewed or caused to be reviewed (i) the Plan and the Supplemental Plan, (ii) the plans, specifications and profiles for the Authorized Improvements, (iii) the estimate of cost for the Authorized Improvements included in **Exhibit B** and (iv) the schedule of estimated special assessments to be levied for the Authorized Improvements also included in **Exhibit B**. The Petitioners acknowledge that the estimated special assessment for each parcel is in proportion to the benefits that may result from the financing of the Authorized Improvements.

Accordingly, the Petitioners hereby petition for the construction of the Authorized Improvements identified in this Petition and the Supplemental Plan attached to this Petition as **Exhibit B**, as authorized under Ohio Revised Code Chapter 1710, and for the imposition of the special assessments identified in this Petition and authorized under Ohio Revised Code Chapters 727 and 1710 (the "Special Assessments") to pay the costs of the Authorized Improvements.

In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioners consent and agree that the Property as identified in **Exhibit A** shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, survey, testing and inspection costs; the amount of any damages resulting from the Authorized Improvements and the interest on such damages amount; the costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities to pay costs of the Authorized Improvements in anticipation of the receipt of the special assessments, capitalized interest on, and financing reserve funds for, such securities or other obligations; and any program administration fees or financing servicing fees; together with all other necessary expenditures. The Petitioners agree to pay the Special Assessments in a timely manner whether or not the Petitioners receive annual and timely notices of the Special Assessments.

Notwithstanding anything to the contrary contained herein, in the event that at any time following the date of this Petition the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Hamilton County, Ohio (the "County Auditor"), the Petitioners and the Anticipated Purchaser hereby request that the Special Assessments be allocated only to the resulting parcels which will be improved with the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Parcels"). The allocation among any resulting Assessed Parcels shall be made such that any Assessed Parcel or Assessed Parcels on which the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Building") shall be allocated a total of 100% of the Special Assessments. If the Property is combined or subdivided such that more than one Assessed Parcel is to receive an allocation of

the Special Assessments, the Special Assessments to be allocated to those Assessed Parcels shall be allocated among them in proportion to the total square feet of improvements on each such Assessed Parcel divided by the total square feet of improvements on all such Assessed Parcels. The Petitioners hereby certify, represent, and warrant to the District and the City that the portion of the Special Assessments allocated to each resulting Assessed Parcel, as described above, will cause each resulting Assessed Parcel to have Special Assessments allocated to it in proportion to, and not in excess of, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements. Immediately upon any subdivision of the Property, (i) any reference to the Property contained in this Petition shall be deemed to be a reference to all of the Assessed Parcels; and (ii) the legal description of the Assessed Parcels shall be deemed to replace the legal description of the Property set forth in **Exhibit A**.

In consideration of the Authorized Improvements, each of the Petitioners, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by Council of the Special Assessments in accordance with the terms hereof will be final, conclusive and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, each of the Petitioners covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be assessed for the actual costs of the Authorized Improvements set forth in **Exhibit B**, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessment for the Authorized Improvements and to require that transferee covenant to disclose the existence of any outstanding Special Assessment for the Authorized Improvements in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, each of the Petitioners further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (i) for the acquisition by the transferee of the Property subject to any outstanding Special Assessment and the transferee's assumption of responsibility for payment thereof and for waiver by the transferee of any rights that the Petitioners have waived pursuant to this Petition, and (ii) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (i) so long as the Special Assessments remain unpaid.

The Petitioners further acknowledge and confirm that the Special Assessments set forth in this Petition and in **Exhibit B** are in proportion to, and do not exceed, the special benefits to be conferred on the Property by the financing of the Authorized Improvements. The Petitioners further consent to the levying of the Special Assessment against the Property by the Council. The Petitioners acknowledge that these Special Assessments are fair, just and equitable and being imposed at the Petitioners' specific request.

The Petitioners hereby waive notice and publication of all resolutions, legal notices and hearings provided for in the Ohio Revised Code with respect to the Authorized Improvements and the Special Assessments, particularly those in Ohio Revised Code Chapters 727 and 1710, and consent to proceeding with the Authorized Improvements. Without limiting the foregoing,

the Petitioners specifically waive any notices and rights under the following Ohio Revised Code Sections:

- The right to notice of the adoption of the Resolution of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by this Petition within the limitations contained in Ohio Revised Code Sections 727.03 and 727.06 applicable to the Special Assessments and any other special assessments properly levied now or in the future;
- The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- The right to notice that bids or quotations for the Authorized Improvements may exceed estimates by 15%;
- The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251; and
- The right to notice of the passage of the Assessing Ordinance under Ohio Revised Code Section 727.26.

The Petitioners, in accordance with Ohio Revised Code Section 1710.02(A), further agree that the Property may be included in more than one district formed under Ohio Revised Code Chapter 1710. The Petitioners further agree not to take any actions, or cause to be taken any actions, to place any of the Property in an agricultural district as provided for in Ohio Revised Code Chapter 929, and if any of the Property is in an agricultural district, the Petitioners, in accordance with Ohio Revised Code Section 929.03, hereby grant permission to collect any Special Assessments levied against such Property.

The Petitioners further agree and consent to the Council promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Petitioners acknowledge that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated Special Assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioners, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioners further acknowledge and represent that the respective final assessments may be levied at such time as determined by the City and



regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioners further acknowledge that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the Auditor of the County, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioners hereby waive the right to pay the final assessments for the Authorized Improvements in cash within thirty (30) days from the passage of the ordinance confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in fifty-six (56) semi-annual installments.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioners hereby appoint as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 such representative as may be duly appointed by the Petitioners from time to time, which designation shall not expire unless and until Petitioners shall notify the Secretary of the District that said designation is no longer in effect or that Petitioners have made a new designation to replace said designation.

The Petitioners further waive any and all questions as to the constitutionality of the laws under which the Authorized Improvements shall be acquired, installed, or constructed or the proceedings relating to the acquisition, installation, or construction of the Authorized Improvements, the jurisdiction of the City acting in connection with the acquisition, installation, or construction of the Authorized Improvements, all irregularities, errors and defects, if any, procedural or otherwise, in the levying of the assessments or the undertaking of the Authorized Improvements, and specifically waives any and all rights of appeal, including any right of appeal as provided in Ohio Revised Code Title 7, and specifically but without limitation, Ohio Revised Code Chapters 727 and 1710, as well as all such similar rights under the Constitution of the State of Ohio and the Charter of the City of Cincinnati, Ohio. The Petitioners represent that they will not contest, in a judicial or administrative proceeding, the undertaking of the Authorized Improvements, the estimated assessments, the final assessments, and any Special Assessments levied against the Property for the Authorized Improvements, or any other matters related to the foregoing.

The Petitioners acknowledge and understand that the City and the Corporation will be relying upon this Petition in taking actions pursuant to it and expending resources. This Petition therefore shall be irrevocable and shall be binding upon the Petitioners, any successors or assigns of the Petitioners, the Property, and any grantees, mortgagees, lessees, or transferees of the Property. The Petitioners acknowledge that they have had an opportunity to be represented by legal counsel in this undertaking and has knowingly waived the rights identified in this Petition.

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**IN WITNESS WHEREOF**, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0142-00 and located at the commonly used mailing address 3634 Madison Road, Cincinnati, Ohio.

**MICHELENE M. BENNETT**

Michlene M. Bennett  
(Signature)

Address for notices to Petitioner:

Michlene M. Bennett

1771 Woodpine Lane  
(Street Address)

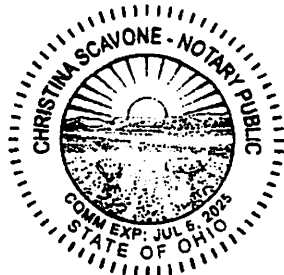
Cincinnati, OH 45255  
(City, State ZIP)

STATE OF Ohio )  
 ) SS:  
COUNTY OF Hamilton )

On the 8 day of January, 2020, Michlene Bennett, personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such signer. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

**IN WITNESS WHEREOF**, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]



Christina Scavone  
Notary Public

IN WITNESS WHEREOF, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0143-00 and located at the commonly used mailing address 3636 Madison Road, Cincinnati, Ohio.

**RYAN C. SCHWALLIE**

(Handwritten Signature)  
\_\_\_\_\_  
(Signature)

Address for notices to Petitioner:

Ryan C. Scwallie

3636 Madison Rd  
(Street Address)

CINCINNATI, OH 45209  
(City, State ZIP)

STATE OF OHIO )  
)                    SS:  
COUNTY OF HAMILTON )

On the 07 day of JANUARY 2021, 2020, RYAN C. SCHWALLIE personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such signer. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.



**ARTHUR A. VOLMER**  
Notary Public, State of Ohio  
My Commission Expires  
July 23, 2024

(Handwritten Signature)  
\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, the Petitioners have caused this petition to be executed by their respective undersigned duly authorized signatories.

The undersigned is the Petitioner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0144-00 and located at the commonly used mailing address 3638 Madison Road, Cincinnati, Ohio.

**WILBURN REALTY LIMITED**

By: [Signature]  
(Signature)

Name: Michael Scicolone

Title: President

Address for notices to Petitioner: Wilburn Realty Limited  
(Street Address) 2622 Streamside Court  
Cincinnati, Ohio 45230  
(City, State ZIP)

STATE OF Ohio )  
 )  
COUNTY OF Hamilton ) SS:

On the 7 day of January, 2020, Michael Scicolone, the President of Wilburn Realty Limited personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition and that the same was the free act and deed of such officer and such limited liability company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL]

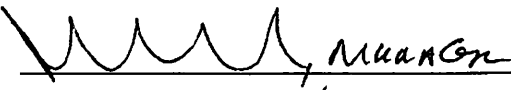


Christina Scavone  
Notary Public April 7/5/2025

IN WITNESS WHEREOF, Oakley Crossings Holdings, LLC, in anticipation of being the successor in interest of the Petitioners in the Property, hereby consents to the filing of the Petition with the City, confirms all of the information in this Petition, and agrees to perform the obligations of the Petitioner at such times as it takes ownership of all or any portion the Property.

**OAKLEY CROSSINGS HOLDINGS, LLC**

**Authorized Signatory**


By:   
Name: Christopher R. Hildebrand  
Title: MANAGER

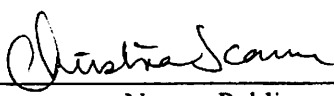
Address for notices to Petitioner: Oakley Crossings Holdings, LLC  
8600 Governor's Hill Drive, Ste. 160  
Cincinnati, Ohio 45249  
Attention: Christopher Hildebrand

STATE OF Ohio )  
 ) SS:  
COUNTY OF Hamilton )

On the 8 day of January, 2020, Christopher Hildebrand, as the manager of Oakley Crossings Holdings, LLC, personally appeared before me, a notary public in and for the state and county stated above, who acknowledged the execution of the foregoing Petition on behalf of Oakley Crossings Holdings, LLC and that the same was the free act and deed of such officer and of such limited liability company. The notarial act certified hereby is a jurat. An oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

[SEAL] 

  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The real property subject to this Petition is located at the commonly used mailing address 3634-3638 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID Nos. 051-0002-0142-00, 051-0002-0143-00, and 051-0002-0144-00, and the following legal descriptions:

**Parcel 051-0002-142-00:**

Situate in the City of Cincinnati and in Section 22, Township 4, Fractional Range 2 of the Miami Purchase, Columbia Township, Hamilton County, Ohio, and being part of Lot Number 4 as shown on the Plat in Partition of the Everson Estate as made in Case No. 98,500 in the Common Pleas Court, Hamilton County, Ohio, and more particularly described as follows:

Beginning at a point in the northwesterly line of Madison Road North 59 deg. 31' East, 715 feet from an iron rod at the intersection of said northwesterly line with the west line of said Lot No. 4; thence North 59 deg. 31' East along said northwesterly line of Madison Road 40 feet; thence North 30 deg. 29' West, 105 feet; thence South 59 deg. 31' West, 40 feet; thence South 30 deg. 29' East, 105 feet to the place of beginning.

**Parcel 051-0002-0143-00:**

The following described real estate located in Hamilton County, Ohio:

Situated in the County of Hamilton, in the State of Ohio and in the City of Cincinnati:

Situated in Section 22, Township 4, Fractional Range 2, Miami Purchase, and in the City of Cincinnati, Hamilton County, State of Ohio, and being a part of Lot No. Four (4) on the plat in partition of the Everson Estate made in Case 98500, Hamilton County, Ohio, Common Pleas Court.

Beginning at a point in the Northwesterly line of Madison Road, North 59 degrees 31' East, 755 feet from an iron rod at the intersection of said Northwesterly line with the West line of said Lot No. Four (4), thence North 59 degrees 31' East, along said Northwesterly line of Madison Road, 40 feet; thence North 30 degrees 29' West, 105 feet; thence South 59 degrees 31' West, 40 feet; thence South 30 degrees 29' East, 105 feet to the place of Beginning.

Parcel No: 051-0002-0143-00

Parcel 051-0002-0144-00

SITUATE IN THE CITY OF CINCINNATI AND IN SECTION 22, TOWNSHIP 4, PRACTIONAL RANGE 2 OF THE MIAMI PURCHASE, COLUMBIA TOWNSHIP, HAMILTON COUNTY, OHIO AND BEING PART OF LOT NO. 4 ON THE PLAT OF PARTITION OF THE EVERSON ESTATE MADE IN CASE NO. 98500, COMMON PLEASE COURT, HAMILTON COUNTY, OHIO AND MORE PARTICULARLY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHWESTERLY LINE OF MADISON ROAD, NORTH 59 DEGREES 31' EAST 795 FEET FROM AN IRON ROD AT THE INTERSECTION OF SAID NORTHWESTERLY LINE WITH THE WEST LINE OF SAID LOT NO. 4; THENCE NORTH 59 DEGREES 31' EAST ALONG THE NORTHWESTERLY LINE OF MADISON ROAD, 40 FEET; THENCE NORTH 40 DEGREES 29' WEST 105 FEET; THENCE SOUTH 59 DEGREES 31' WEST 40 FEET; THENCE SOUTH 30 DEGREES 29' EAST 105 FEET TO THE PLACE OF BEGINNING.

SUBJECT TO ANY EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

PARCEL # 051-0002-0144-00

4,

DESCRIPTION ACCEPTABLE  
HAMILTON COUNTY ENGINEER

Tax Map - 6/29/17 

CAGIS - \_\_\_\_\_

**EXHIBIT B**

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

**SUPPLEMENT TO PLAN FOR 3634-3638 MADISON ROAD PROJECT**

As more fully provided by the City of Cincinnati, Ohio Special Improvement District Program Plan (together with all previously approved supplemental plans, the "Plan"), the City of Cincinnati, Ohio Energy Special Improvement District (the "District") has undertaken the administration of a property assessed clean energy ("PACE") program (the "Program"). The Program will provide financing secured by special assessments on real property for special energy improvement projects.

Through a Petition submitted in connection with this Supplemental Plan, the undersigned (the "Property Owners") have requested and consented to certain special assessments by the District with respect to certain real property owned by the Property Owners and located at 3634-3638 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID Nos. 051-0002-0142-00, 051-0002-0143-00, and 051-0002-0144-00 (the "Property"). A schedule for special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as Attachment A.

Initially the special assessments shall be allocated among the parcels (each an "Original Parcel" and, collectively, the "Original Parcels") constituting the Property as follows:

In the event that at any time following the date of this Supplemental Plan the Property or any parcel contained in the Property is combined or subdivided into permanent parcels in the records of the County Auditor of Hamilton County, Ohio (the "County Auditor"), then the Property Owners hereby request that the Special Assessments be allocated among only the resulting parcels which will be improved with the approximately 11,000 square foot retail building into which the Authorized Improvements will be incorporated (the "Assessed Parcels"). No Special Assessments shall be allocated to any resulting parcels which will not have any portion of the approximately 11,000 square foot retail building constructed thereon (the "Non-Assessed Parcels"). The allocation among any resulting Assessed Parcels shall be made such that the Assessed Parcel or Assessed Parcels on which the approximately 11,000 square foot retail building is constructed and into which the Authorized Improvements will be incorporated (the "Assessed Building") shall be allocated a combined total of 100% of the Special Assessments. If the Property is combined or subdivided such that more than one Assessed Parcel is to receive an allocation of the Special Assessments in the percentage stated above, the Special Assessments to be allocated to those Assessed Parcels shall be allocated among them in proportion to the total square feet of improvements on each such Assessed Parcel divided by the total square feet of improvements on all such Assessed Parcels. The Property Owners hereby certify, represent, and warrant to the District and the City that the portion of the Special Assessments allocated to each resulting Assessed Parcel, and the fact that no Special Assessments will be allocated to any resulting Non-Assessed Parcel, all as described above, will cause each resulting Assessed Parcel



to have Special Assessments allocated to it in proportion to, and not in excess of, the special benefits to be conferred on the resulting parcel or resulting parcels by the Authorized Improvements identified in this Supplemental Plan.

The Authorized Improvements applicable to the Property will include energy efficiency electrical systems, HVAC improvements, lighting, building envelope improvements and related improvements. As required by Ohio Revised Code Section 1710.01(K), said Authorized Improvements are anticipated to reduce or support the reduction of energy consumption, allow for reduction in demand, or support the production of clean, renewable energy. A detailed description of the Authorized Improvements is attached to this Supplemental Plan as Attachment B. The Property Owners hereby acknowledge and agree that the special benefit to be provided to the Property under this Supplemental Plan is the consummation of the financing to pay, finance, and refinance costs of the Authorized Improvements, which shall be conferred immediately upon the consummation of the financing, and that the benefits are in proportion to and do not exceed the amount of the Special Assessments to be levied to pay the costs of the financing.

The Property Owners will cause this Supplemental Plan promptly to be filed with the Board of Directors of the District and with the Clerk of the City Council of Cincinnati, Ohio.

**The undersigned owners of real property to be located within the District acknowledge that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* The undersigned property owners agree to the disclosure of certain property owner information by the District to the extent required by law.**

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0142-00 and located at the commonly used mailing address 3634 Madison Road, Cincinnati, Ohio.

**MICHELENE M. BENNETT**

  
(Signature)

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0143-00 and located at the commonly used mailing address 3636 Madison Road, Cincinnati, Ohio.

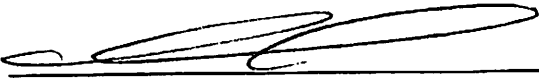
**RYAN C. SCHWALLIE**

  
\_\_\_\_\_  
(Signature)

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

The undersigned is the Property Owner with respect to portion of Property having Hamilton County Parcel ID Number 051-0002-0144-00 and located at the commonly used mailing address 3638 Madison Road, Cincinnati, Ohio.

**WILBURN REALTY LIMITED**

By:   
(Signature)

Name: Michael Scicolone

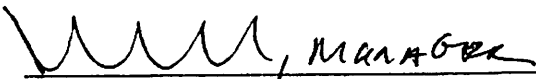
Title: President

**BY EXECUTING THIS SUPPLEMENTAL PLAN, THE PROPERTY OWNERS IDENTIFIED BELOW HEREBY AUTHORIZE AND CONSENT TO THIS SUPPLEMENTAL PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PLAN) AND AGREE TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNERS CONTAINED IN THIS SUPPLEMENTAL PLAN.**

Oakley Crossings Holdings, LLC, in anticipation of being the successor in interest of the Property Owners in the Property, hereby consents to the filing of the Supplemental Plan with the City, confirms all of the information in this Supplemental Plan, and agrees to perform the obligations of the Property Owners at such times as it takes ownership of all or any portion of the Property.

**OAKLEY CROSSINGS HOLDINGS, LLC**

**Authorized Signatory**

By:  MANAGER  
Name: Christopher R. Hildebrandt  
Title: MANAGER

Address for notices to Petitioner:

Oakley Crossings Holdings, LLC  
8600 Governor's Hill Drive, Ste. 160  
Cincinnati, Ohio 45249  
Attention: Christopher Hildebrandt

**Description of Real Property Subject to this Supplemental Plan:**

The real property subject to this Petition is located at the commonly used mailing 3634-3646 Madison Road, Cincinnati, Ohio, having Hamilton County Auditor Parcel ID No[s]. [051-0002-0142-00], [051-0002-0143-00], and [051-0002-0144-00].

**SUPPLEMENTAL PLAN—ATTACHMENT A**

**Schedule of Special Assessments**

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs:	\$3,755,431.68
Estimated semi-annual special assessments for 28 years:	\$67,061.28
Number of semi-annual assessments:	56
First semi-annual installment due:	January 31, 2023

The schedule of Special Assessments for the Authorized Improvements is as follows:

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2023	\$67,061.28	\$22,123.32	\$22,123.32	\$22,814.64
7/31/2023	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2024	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2025	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2026	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2027	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2028	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2029	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2030	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2031	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2032	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2032	67,061.28	22,123.32	22,123.32	22,814.64

<sup>1</sup> Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified herein are subject to adjustment under certain conditions.

<sup>2</sup> Pursuant to Ohio Revised Code Section 727.36, the Hamilton County Auditor may charge and collect a fee in addition to the amounts listed in this Attachment A.

Special Assessment Payment Date <sup>1</sup>	Total Special Assessment Installment Amount <sup>2</sup>	Special Assessment Installment Amount for Parcel ID. No. 051-0002-0142	Special Assessment Installment Amount for Parcel ID No. 051-0002-0143	Special Assessment Installment Amount for Parcel ID No. 051-0002-0144
1/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2033	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2034	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2035	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2036	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2037	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2038	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2039	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2040	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2040	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2041	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2041	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2042	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2043	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2044	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2045	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2046	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2047	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2048	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2049	67,061.28	22,123.32	22,123.32	22,814.64
1/31/2050	67,061.28	22,123.32	22,123.32	22,814.64
7/31/2050	67,061.28	22,123.32	22,123.32	22,814.64

**SUPPLEMENTAL PLAN—ATTACHMENT B**

**Description of Authorized Improvements**

The Authorized Improvements are expected to consist of the following energy efficiency elements:

<b>Energy Project Name: Oakley Crossings Holdings, LLC</b>						
<b>Parcel ID: 051-0002-0140-00 (plus 10 others)</b>						
<b>County/State: Hamilton/Ohio</b>						
	<b>Improvement Description</b>	<b>Useful Life</b>	<b>Contractor</b>	<b>Improvement Cost (\$)</b>	<b>Baseline Energy Cost (\$)</b>	<b>Projected Energy Savings (\$)</b>
1	Building Envelope	30	Morelia Group	\$1,256,380		See Envelope COMcheck
2	High Efficiency Rooftop Units	20	Morelia Group	\$176,493		See Mechanical COMcheck
3	High Efficiency Lighting	15	Bockrath	\$110,347		See Lighting COMcheck
4	Soft Costs	N/A		\$228,626	N/A	N/A
5						
6						
<b>TOTALS:</b>				\$1,771,846		



**EXHIBIT C**

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

[See Attached]

**CITY OF CINCINNATI, OHIO ENERGY SPECIAL IMPROVEMENT DISTRICT  
PROGRAM PLAN**

The City of Cincinnati, Ohio Energy Special Improvement District (the "District") will administer a property assessed clean energy ("PACE") program (the "Program"). The Program will provide financing secured by special assessments on real property for special energy improvement projects. The District authorizes and adopts this plan for the Program (as the same may be amended and supplemented from time to time as provided herein, the "Plan") to provide for the Program's administration and to set forth the terms and conditions of participation in the Program. The Port of Greater Cincinnati Development Authority, as the initial property owner owning real property within the District, as well as in its capacity as a party with interests aligned with the City of Cincinnati (the "City") with respect to the formation of the District, authorizes and consents to this Plan.

The District is established pursuant to the special energy improvement district provisions of Chapter 1710 of the Ohio Revised Code. This Plan refers to Chapter 1710 and any and all future amendments to the special energy improvement district provisions of Chapter 1710 as the "Act." Any specific statutory reference contained in this Plan shall also refer to any succeeding or amending statutory provision.

Participation in the District's Program is limited to property owners who have agreed to add their property to the District and who otherwise meet the Program's terms and conditions. These terms and conditions are addressed in this Plan, and include, without limitation, an application, a petition, a schedule of assessments to be made on included property ("Assessment Schedule"), and the governing documents forming the District. The District's governing documents include its Articles of Incorporation, Code of Regulations, resolutions duly adopted by the board of directors of the District, and the applicable resolutions and ordinances of the participating political subdivision where the real property is located (collectively, the "Governing Documents"). As a condition to participation in the District and the Program, each property owner must review and agree to the Governing Documents and further must review, agree to, and execute this Plan, an application, a petition, and an Assessment Schedule. The Governing Documents, this Plan, the applications, the petitions, and the Assessment Schedules are referred to herein collectively as the "District Documents."

The District Documents establish the terms and conditions of the Program. The Program terms and conditions may be amended from time to time as described in Part X of this Plan. By agreeing to and executing the District Documents, each property owner consents to the terms and conditions of all District Documents.

**I. Purpose of the Program**

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy

improvement projects, as that term is defined in the Act (the "Authorized Improvements"). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, or nonprofit corporation securities (collectively, the "Program Obligations") may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

**Nothing in this Plan shall be construed as a representation on the part of any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board that the Program is the best financing option for every situation. Property owners are advised to conduct independent research to determine the best course of action.**

## **II. The District's Governance, Program Administrator, and Conduit Financing Entity**

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors ("Board") of the City of Cincinnati, Ohio Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the "Corporation") to govern the District.

Pursuant to the Act, other Ohio law, and the Code of Regulations of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Plan specifically contemplates that, as authorized in the Act, Greater Cincinnati Energy Alliance will serve as the District's "Program Administrator" and render program administration services to the District and the Port of Greater Cincinnati Development Authority will serve as the District's "Conduit Financing Entity" and render conduit financing services to the District.

The District is authorized to contract with Greater Cincinnati Energy Alliance for program administration services rendered to the District. The program administration services rendered by the Program Administrator may include, without limitation (i) pursuant to Part III of this Plan, developing and administering eligibility guidelines, creating and administering an application,

setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals, (ii) pursuant to Part IV of this Plan, marketing, program design, cooperating with property owners to implement Authorized Improvements, and other administrative services, and (iii) the establishment and administration of a revolving loan facility providing financing for certain special energy improvement projects.

The District is authorized to contract with the Port of Greater Cincinnati Development Authority for conduit financing services rendered to the District. The conduit financing services rendered by the Conduit Financing Entity may include, without limitation (i) pursuant to Part III of this Plan, financing Authorized Improvement and cooperating with property owners to obtain financing, (ii) pursuant to Part IV of this Plan, tracking and administering Program Obligations, administering special assessments, budgeting, and conducting or overseeing the audit process, (iii) assistance with marketing efforts relating to the District, and (iv) tracking compliance with respect to the Economic Inclusion Plan established by the Port of Greater Cincinnati Development Authority.

### **III. Program Eligibility, Approvals, Financing, and Procurement**

The Board is hereby authorized to create, administer, amend, and abolish a process by which property owners join the Program. The process by which property owners join the Program may include, without limitation, the following requirements:

- (A) **Eligibility.** The Board is hereby authorized to create, administer, amend, and abolish eligibility requirements for the Program. The Board is further authorized to determine, in each individual case, whether property is eligible for participation in the Program.

To be eligible for participation in the Program, each property owner must file a petition with the Board requesting to add its property to the District and requesting the levy of special assessments to be used to pay or secure Program Obligations issued or used to finance Authorized Improvements. Each parcel of real property added to the District must have at least one Authorized Improvement. The petition to add property to the District shall be considered by the District in accordance with this Plan and the other District Documents. If the District approves the petition, it shall submit the petition to the executive officer and legislative body of the participating political subdivision in which the real property is located. A property owner may file more than one petition and may amend or withdraw any petition filed at any time before the petition is approved by the legislative body of the participating political subdivision in which the real property is located. Petitions shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to be bound by the terms of this Plan. The Plan for the District may be amended and supplemented from time to time in accordance with its terms, including,

specifically, by supplements to the Plan which identify additional Authorized Improvements within the District to be subject to the Plan or add property to the District and subject such additional property to the Plan. To be eligible for participation in the Program, each property owner must file a supplement to this Plan (the "Plan Supplement") with the Board and the clerk of the legislative body of the participating political subdivision in which the real property is located identifying the Authorized Improvements to be undertaken as part of the Plan applicable to real property within the District or to be added to the district. Plan Supplements shall include such other information as may be required by the Board. Plan Supplements shall conform to the requirements of Ohio Revised Code Chapter 1710 and any requirements of the Board.

To be eligible for participation in the Program, each property owner must agree to and must execute an Affidavit on Facts Relating to Title under Section 5301.252 of the Ohio Revised Code to be recorded with respect to the real property to be added to the District and filed with the clerk of the legislative body of the participating political subdivision in which the real property is located, which Affidavit on Facts Relating to Title shall state that the property owner has consented to include such real property in the District and that the property owner consents to, and will take all actions necessary to place upon such property, any subsequent special improvement district formed under Ohio Revised Code Chapter 1710 that includes such real property as long as the statutory conditions for forming the subsequent special improvement district are otherwise satisfied.

- (B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application's use and evaluation.
- (C) Contractors. The Board is hereby authorized to require property owners to complete Authorized Improvements through the work of pre-approved contractors. The Board is further authorized to create criteria for the approval of contractors, including but not limited to compliance with the Economic Inclusion Plan adopted by the Port of Greater Cincinnati Development Authority, and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor's requirements.

Nothing in this Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.

- (D) **Procurement and Referrals.** The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to the Act, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the City or the procedures in Chapter 735 of the Ohio Revised Code and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Plan, the District Documents shall not be construed to eliminate or alter the competitive bidding procedures applicable to the City as a participating political subdivision.

- (E) **Financing.** The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

#### **IV. Services Plan**

The Board is hereby authorized to provide ongoing services to the District, its property, and the property owners. All services provided under this Plan shall be deemed to be services provided in furtherance of Authorized Improvements provided under this Plan. Such services, without limitation, may include the following:

- (A) **Program Design.** The Board is hereby authorized to design comprehensive services to establish and maintain the Program's legal and programmatic framework.
- (B) **Program Administration.** The Board is hereby authorized to educate the public on the Program and its purposes, market the program to the public, process applications, verify aspects of the Authorized Improvements, assure the Program's overall quality and the quality of Authorized Improvements, serve customers, and assist property owners in the origination and closing processes.
- (C) **Marketing.** The Board is hereby authorized to market the Program and promote the District's image through means such as developing literature and brochures, conducting public relations, collecting data, managing information, cooperating with members, creating electronic and print marketing materials, and holding special events.

- (D) Authorized Improvement Implementation. The Board is hereby authorized to cooperate with property owners for the implementation of Authorized Improvements, including cooperating with property owners for the addition of property to the District and the approval of petitions and Plan Supplements by participating political subdivisions and the Board.
- (E) Tracking and Administration of Program Obligations. The Board is hereby authorized to create, administer, amend, and abolish procedures for the tracking and administration of Program Obligations issued or used to finance Authorized Improvements. Without limitation, the administration of special assessments may include reporting delinquent special assessments, following-up with delinquent property owners, and coordinating with delinquent property owners. The Board may hire such professionals as may be required to successfully track and administer Program Obligations.
- (F) Administering Special Assessments. The Board is hereby authorized to create, administer, amend, and abolish procedures for the administration of special assessments levied pursuant to the District Documents. Without limitation, the administration of special assessments may include calculating the amount of special assessments, preparing certifications of special assessments for the county auditor, billing the special assessments, and considering property owners' claims regarding the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.
- (G) Budgeting. The Board shall provide for the production of an annual report describing the District's budget, services delivered, revenues received, expenditures made, and other information about the District's activities. The annual report shall be made available to the Board and to the District's members. The Board may hire such professionals as may be required to successfully account for all District finances.
- (H) Auditing. The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.
- (I) Other Services. The Board is hereby authorized to provide any other services authorized by the Act.

**V. Fees**

Program Costs. The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

- (A) The cost of creating and operating the District, including creating and operating City of Cincinnati, Energy Special Improvement District, Inc., hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;
- (B) The cost of planning, designing, and implementing Authorized Improvements or services under this Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Plan, the management, protection, and maintenance costs of public or private facilities;
- (C) Any court costs incurred by the District in implementing this Plan or any Plan Supplements;
- (D) Any damages resulting from implementing the public improvements or public services plan;
- (E) The costs of issuing, monitoring, paying interest on, and redeeming or refunding Program Obligations issued or used to finance Authorized Improvements or services under this Plan; and
- (F) The costs associated with the sale, lease, lease with an option to purchase, conveyance of other interests in, or other contracts for the acquisition, construction, maintenance, repair, furnishing, equipping, operation, or improvement of the District's territory, or between the District and any owner of property in the District on which an Authorized Improvement has been acquired, installed, equipped, or improved.

Pursuant to the Act, such Program costs may be included in the special assessments levied on real property within the District.

**Application Fee.** The Board is hereby authorized to set and charge an application fee for Program services provided by the District. The application fee may be non-refundable. The application fee may be credited to the cost of Authorized Improvements if the application is approved and an Authorized Improvement is made to the property for which application was made.

#### **VI. Energy Efficiency and Renewable Energy Regulations and Requirements**

**Energy Efficiency Reporting Requirements.** Ohio Revised Code Section 1710.061 requires the Board to submit a quarterly report to each electric distribution utility ("EDU") with a District Authorized Improvement within the EDU's certified territory. The quarterly report submitted to the EDU must include the total number and a description of each new and ongoing District Authorized Improvement that produces energy efficiency savings or reduction in demand and other additional information that the EDU needs to obtain credit under Ohio Revised Code



Section 4928.66 for energy efficiency savings or reduction in demand from such projects. The Board is hereby authorized to submit quarterly reports due required under Ohio Revised Code Section 1710.061. Property owners shall comply with Board requirements for information gathering and reporting to ensure Board compliance with Ohio Revised Code Section 1710.061.

Energy Efficiency Credits. The Board is hereby authorized to adopt rules governing energy efficiency credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

## **VII. Statutory Requirements**

As provided in the District Documents:

- (A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Plan.
- (B) The District Documents may be amended or supplemented in accordance with their terms.
- (C) As described in this Plan, the Board is authorized to implement and amend this Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.
- (D) The public improvements to be provided by the District are the Authorized Improvements identified in each petition and Plan Supplement. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.

- (E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

#### **VIII. Changes in State and Federal Law**

The ability to issue or use Program Obligations to finance Authorized Improvements is subject to a variety of state and federal laws. If these laws change after property owners have applied to the District for financing, the District may be unable to fulfill its obligations under this Plan. **The District shall not be obligated to implement any provision of this Plan which is contrary to state or federal law. The District shall not be liable for any inability to finance Authorized Improvements as a result of state and federal law or any changes in state and federal law which reduce or eliminate the effectiveness of financing Authorized Improvements through the District's Program.**

#### **IX. Releases and Indemnification**

The District has been created with the approval of the City of Cincinnati, Ohio, as a participating political subdivision, for the purposes of implementing this Plan and administering the Program. The District and any participating political subdivision shall be neither responsible nor liable for the installation, operation, financing, refinancing, or maintenance of Authorized Improvements. Property owners will be solely responsible for the installation, operation, financing, refinancing, and maintenance of the Authorized Improvements. Participation in the Program does not in any way obligate the District or any participating political subdivision to ensure the viability of Authorized Improvements. Owners of assessed real property must pay the special assessments regardless of whether the Authorized Improvements are properly installed or operate as expected.

**By agreeing to and executing this Plan, each owner of real property included in the District (other than any political subdivision that owns real property included in the District) agrees to release, defend, indemnify, and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with participation in the Program. Any political subdivision that owns real property included in the District agrees to release and hold harmless the District and the participating political subdivisions, including their directors, officers, members, agents, independent contractors, and employees, from and against any claims, actions, demands, costs, damages or lawsuits, arising out of or connected with the political subdivision's participation in the Program in its capacity as a property owner.**

#### **X. Changes in the Program Terms; Severability**

Participation in the Program is subject to the District Document terms and conditions in effect from time to time during participation. The District reserves the right to change this Plan and the

terms and conditions of the District Documents at any time without notice. No such change will affect a property owner's obligation to pay special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

#### **XI. Disclosure of Property Owner Information**

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with the law (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio's energy programs, property owners' names and contact information may be disclosed to their current electric utilities. Property owners' names, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

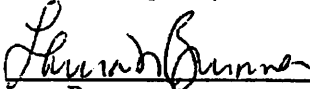
**Each owner of real property located within the District acknowledges that the District is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* Each property owner that executes this Plan agrees to the disclosure of certain property owner information as stated in this Part.**

**BY EXECUTING THIS PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PLAN AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PLAN.**

Date: July 23, 2014

**Property Owner:  
PORT OF GREATER CINCINNATI DEVELOPMENT AUTHORITY**

**Authorized Signatory**



Laura Brunner, as  
President and Chief Executive Officer

Address for notices to Property Owner:

Port of Greater Cincinnati Development  
Authority

299 East Sixth Street, Suite 2A

Cincinnati, Ohio 45202

Description of Real Property Subject to this Plan:

The real property subject to this Plan is located at the commonly used mailing address 1682 Seymour Avenue, Cincinnati, Ohio 45237. The front footage of the real property subject to this Plan is 233.00 feet, and its area is 0.418 acres. The Hamilton County Auditor Parcel ID for the real property subject to this Plan is 117-0007-0064-00. The following is the legal description for the real property subject to this Plan:

**Parcel One**

Situated in the City of Cincinnati, County of Hamilton, State of Ohio in Section 6, Township 3, Fractional Range 2, Millcreek Township and being Lot #1 of Shonae Subdivision, Block A, as recorded in Plat Book 105, Page 44, Hamilton County, Ohio Recorder's records.

**Parcel Two**

[Property Owner Consent to Plan]

The following described real estate situated in Section 6, Town 3, Fractional Range 2, Miami Purchase, in the City of Cincinnati, Hamilton County, Ohio, being part of Lot 2, Part 1, Block "B", Shonae Subdivision as recorded in Plat Book 120, Pages 49 and 50 of the Hamilton County, Ohio records.

Beginning in the Northwest corner of Block "A", Shonae Subdivision as recorded in Plat Book 105, Page 44 of the Hamilton County, Ohio Recorder's office;

Thence North 1 deg. 15' East, a distance of 21.75 feet; thence South 88 deg. 45' East, a distance of 146.46 feet to the Westerly line of Shona Drive; thence Southwardly along the Westerly line of Shona Drive on a curved line deflecting to the right with a radius of 220 feet a distance of 23.16 feet, chord of said curve bears South 21 deg. 16' 35" West, a distance of 23.14 feet to the Northeast corner of said Block "A", Shonae Subdivision, thence North 68 deg. 45' West, a distance of 138.53 feet to the place of beginning.

These parcels are not to be conveyed separately without prior approval of the governmental authority having jurisdiction.

[Property Owner Consent to Plan]

**September 29, 2021**

**To:** Mayor and Members of City Council 202102853  
**From:** Paula Boggs Muething, City Manager  
**Subject:** **Emergency Ordinance - Amending Ord. No. 0388-2020**

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Attached is an Emergency Ordinance captioned:

**AMENDING** Ordinance No. 0388-2020 to correct the designated fund in which the Director of Finance is authorized to deposit proceeds received in connection with the grant of an easement authorized by said ordinance.

The Administration recommends passage of this Ordinance.

cc: Daniel Betts, Director

EMERGENCY

City of Cincinnati

CHM

AWB

An Ordinance No. \_\_\_\_\_

- 2021

AMENDING Ordinance No. 0388-2020 to correct the designated fund in which the Director of Finance is authorized to deposit proceeds received in connection with the grant of an easement authorized by said ordinance.

WHEREAS, on December 16, 2020, Council approved Ordinance No. 0388-2020 authorizing the City Manager to grant a utility easement in favor of Duke Energy Ohio, Inc. over a portion of the City-owned property generally located at 7215 Bridgetown Road in Miami Township, Hamilton County, Ohio ("Property"); and

WHEREAS, the property is under the management of the Cincinnati Recreation Commission; and

WHEREAS, Section 5 of Ordinance No. 0388-2020 authorized the Finance Director to deposit the proceeds from the grant of easement in an incorrect fund; and

WHEREAS, Council hereby amends Ordinance No. 0388-2020 to authorize the Finance Director to deposit the proceeds from the grant of easement in the correct fund; now, therefore,

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

Section 1. That Section 5 of Ordinance No. 0388-2020, approved by Council on December 16, 2020, is hereby amended as follows:

Section 5. That the proceeds from the grant of the easement shall be deposited into Property Management Fund 209 to pay the fees for services provided by the City's Real Estate Services Division in connection with the grant of the easement, and that the City's Finance Director is hereby authorized to deposit amounts in excess thereof, if any, into ~~Miscellaneous Permanent Improvement Fund 757~~ Recreation Permanent Improvement Fund 751.

Section 2. That existing Section 5 of Ordinance No. 0388-2020 is hereby repealed.

Section 3. That all terms of Ordinance No. 0388-2020 not amended in this ordinance remain in full force and effect.

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6 of the Charter, be effective immediately. The reason for the emergency is the immediate need to deposit the proceeds from the grant of easement authorized by Ordinance No. 0388-2020 into the correct fund.

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

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

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

\_\_\_\_\_  
Deletions are struck through. Additions are underlined.






202102306

**Jan-Michele Lemon Kearney**  
*Councilmember*

June 15, 2021

## MOTION

WE MOVE that the City of Cincinnati allocate \$2.5 million from the Fleet Replacement funds in the capital budget to remove the West Fork Incinerator in South Cumminsville. These bonded capital dollars should be allocated from the 40% portion of the fleet replacement funds that are not allocated to police and fire vehicles.

  
\_\_\_\_\_  
Councilmember Jan-Michele Lemon Kearney

_____	_____
_____	_____
_____	_____
_____	_____

CAL → Budget & Finance  
J-MLC

208501931

15 JUN 21 PM 4:31

CLERK OF COUNCIL