

LEASE AGREEMENT

(Portion of Doerr Alley, between W. 12th Street and W. Central Parkway in OTR)

This Lease Agreement ("**Lease**") is made and entered into by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Lease is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **Tender Mercies, Inc.**, an Ohio nonprofit corporation, the address of which for purposes of this Lease is 27 W. 12th Street, Cincinnati, OH 45202 ("**Lessee**").

Recitals:

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

B. Lessee and its affiliates own adjacent properties along W. 12th Street, as shown on Exhibit A.

C. Lessee desires to lease a portion of Doerr Alley from the City (said portion being shown on Exhibit A and referred to herein as the "**Leased Premises**") so that it can restrict vehicular and pedestrian traffic through the area in an effort to reduce loitering, drinking, drug dealing and other illegal and offensive activity.

D. The City's Department of Transportation and Engineering ("**DOT**") has determined that the Leased Premises are not needed for vehicular or pedestrian access.

E. The fair market rental value of the Leased Premises, as determined by appraisal by the City's Real Estate Services Division, is \$475/year, which Lessee has agreed to pay.

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

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

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

NOW THEREFORE, the parties hereby agree as follows:

1. **Grant.** The City does hereby lease the Leased Premises to Lessee, and Lessee does hereby lease the Leased Premises from the City, on the terms and conditions set forth therein. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Premises. The City makes no representations or warranties to Lessee concerning the physical condition of the Leased Premises or the condition of the City's title to the Leased Premises and, on the Commencement Date, Lessee shall accept the Leased Premises in "as is" condition.

2. Term.

(A) The 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**") and, unless sooner terminated as herein provided, shall expire on the day immediately preceding the 5th anniversary thereof.

(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 Lessee 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, Lessee 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, Lessee shall pay the City annual rent for the Leased Premises in the amount of \$475/year.

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

4. Permitted Use. Lessee may use the Leased Premises as a private walkway, for private parking, for placement of tables and chairs for employees to eat lunch, for storage and other uses that serve Lessee's adjacent properties, and for no other purpose unless consented to in writing by DOTE. Lessee shall not bring or permit to be brought onto the Leased Premises any hazardous materials or other contaminants or substances that are harmful to the public or to the environment.

5. Utilities & Other Expenses. During the Term of this Lease, Lessee shall pay, when due, (i) any and all utility expenses associated with the Leased Premises, (ii) any and all real estate taxes and assessments levied against the Leased Premises that become due and payable during the Term, and (iii) any and all other operating expenses associated with the Leased Premises. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Premises during the Term of this Lease.*

6. Maintenance and Repairs. Lessee shall, at its sole expense, keep and maintain the Leased Premises in good, safe, orderly, sanitary, and clean condition and repair, ordinary wear and tear excepted, including without limitation any and all concrete and asphalt pavement, pavers, curbs and sidewalks within the Leased Premises. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Premises. In the event of damage to the Leased Premises, Lessee shall promptly repair such damage at its sole expense. Lessee shall be solely responsible for all snow and ice removal from the Leased Premises. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Premises or any improvements thereon.*

7. Alterations.

(A) Vehicular/Pedestrian Barriers. Lessee, at its expense, shall have the right (but not the obligation) to prevent vehicular and pedestrian use of the Leased Premises or any portion or portions thereof by installing a security fence with a lockable gate and/or other forms of barriers approved by DOTE, at the north end of each alley where it abuts W. 12th Street (each, a "**Barrier**", and collectively, the "**Barriers**"). The Barriers shall provide for a minimum 12 foot horizontal clearance for access by utility maintenance vehicles. All upright posts shall be located no closer than 3 feet to existing underground utility lines. The Barriers shall be constructed so that visibility through the Barriers is not impaired. Lessee, through a licensed street contractor, shall obtain a street opening permit before installing the Barriers and shall pay any and all permit fees imposed by DOTE. Before a street opening

permit can be issued, Lessee's licensed street contractor shall be required to supply two sets of plans to DOTE for approval showing the location of the Barriers in relation to street fixtures and the rights-of-way lines and, if applicable, providing the manufacturer's details of the gate and locking mechanism. Unless otherwise approved by DOTE, the locking mechanism shall include key locking from the outside and panic hardware for pedestrian egress on the inside and such other features as may be required by DOTE. At the end of the Term, and unless DOTE requires that the Barriers remain in place, Lessee shall remove the Barriers and immediately perform all necessary street and sidewalk restoration under a DOTE street opening permit obtained by a licensed contractor. If Lessee fails to timely remove the Barriers and complete such restoration to the satisfaction of the City Engineer, the City may do so at Lessee's expense, which amount shall be payable by Lessee within thirty (30) days after Lessee's receipt of a statement from the City indicating the amount due.

(B) Access by City Departments, Utility Companies and Others. (i) Lessee shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year), including access across Lessee's abutting properties between Doerr Alley, by: (i) DOTE for inspection and all other reasonable purposes; (ii) the City's Police and Fire Departments; (iii) GREATER CINCINNATI WATER WORKS 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. Lessee shall contact Mark Niehe at GCWW (591-7870) at least 2 full working days prior to commencing any construction within the Leased Premises. If Lessee installs gates under paragraph 7(A) above, Lessee shall provide the City and such utility companies, upon their request from time to time and at no cost to them, with a reasonable number of keys to unlock the gates. If Lessee 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 Lessee under this Lease.

(ii) If Lessee's activities within the Leased Premises cause damage to existing utility lines or other utility facilities belonging to a utility provider, Lessee shall immediately notify the appropriate utility provider. All 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 Lessee and shall be payable by Lessee within thirty (30) days after Lessee receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Lessee within the Leased Premises in connection with its inspection, maintenance, repair or replacement of its existing utility facilities in the area, Lessee shall be solely responsible for all costs associated with the repair or replacement of Lessee's improvements.

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

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

(E) No Other Alterations or Signs. Except as permitted under this section, Lessee 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 Lessee proposes to install any permanent structures or other improvements in addition to the Barriers, Lessee shall also obtain the prior written consent of the utility companies that have utilities located within the Leased Premises.

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain Commercial General Liability insurance with respect to the Leased Premises in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City 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 Lessee hereunder shall be issued by insurance companies reasonably acceptable to the City. If Lessee constructs any improvements within the Leased Premises, Lessee 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, Lessee shall furnish to the City a certificate of insurance evidencing the insurance required hereunder.

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

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

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

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

11. Surrender; Holdover.

(A) Surrender; Holdover. At the end of the Term, Lessee shall surrender the Leased Premises to the City in the condition in which Lessee is required to maintain the Leased Premises under the terms of this Lease. If Lessee remains in possession of the Leased Premises after the end of the Term, then, at the City's option, such holdover shall create a tenancy from month-to-month on the same terms and conditions as set forth in this Lease except that rent payable during such month-to-month tenancy shall be equal to the then fair market rental value of the Leased Premises as determined by appraisal by the City's Real Estate Services Division.

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

12. General Provisions. This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Lease may be amended only by a written amendment signed by both parties hereto. Lessee shall not assign its interests under this Lease or sublet any portion of the Leased Premises without the prior written consent of the City, which consent may be withheld in the City's sole discretion; provided, however, that if Lessee sells or transfers its abutting properties to a third party, Lessee may simultaneously assign its interests under this Lease to such transferee. This Lease shall be binding upon the parties and their respective successors and permitted assigns. If the lessee 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 Reports.

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

(B) No building, structure or improvement of any kind shall be made in the lease area which will interfere with access to or operation of the existing water mains. The Greater Cincinnati Water Works ("**GCWW**") would allow gates on the alleys. The City of Cincinnati, Ohio shall not be responsible to any present or future owners of said property or present or future owners of property with rights of ingress and egress over said property for reason of entering for constructing, maintaining or replacing the water mains. Further, the City of Cincinnati, Ohio shall not be responsible to any present or future owners of said property or future owners of property with rights of ingress and egress over said property for any damages which result from disruption or denial of said rights of ingress and egress or other rights of access by reason of entering for constructing, maintaining, or replacing the water main. No grade changes of any kind over any part of the full width profile of this lease area are permitted at any time so not to impact any present or future GCWW operations. Any building, structure or improvement to be constructed in the vicinity of the lease area shall be kept not less than three (3) feet from the existing water mains. The full width of the lease area must always be accessible to the GCWW for future operation and maintenance purposes.

14. Exhibits. The following Exhibits are attached hereto:

Exhibit A – *Site Plan*

Exhibit B – *Copy of consents from abutting property owners*

[SIGNATURE PAGE FOLLOWS]

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

Tender Mercies, Inc.,
an Ohio nonprofit corporation

By: _____
Printed name: _____
Title: _____
Date: _____, 2021

City of Cincinnati

By: _____
Printed name: _____
Title: _____
Date: _____, 2021

Recommended by:

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

Approved as to Form:

Assistant City Solicitor

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

EXHIBIT A
to
Lease Agreement

SITE PLAN

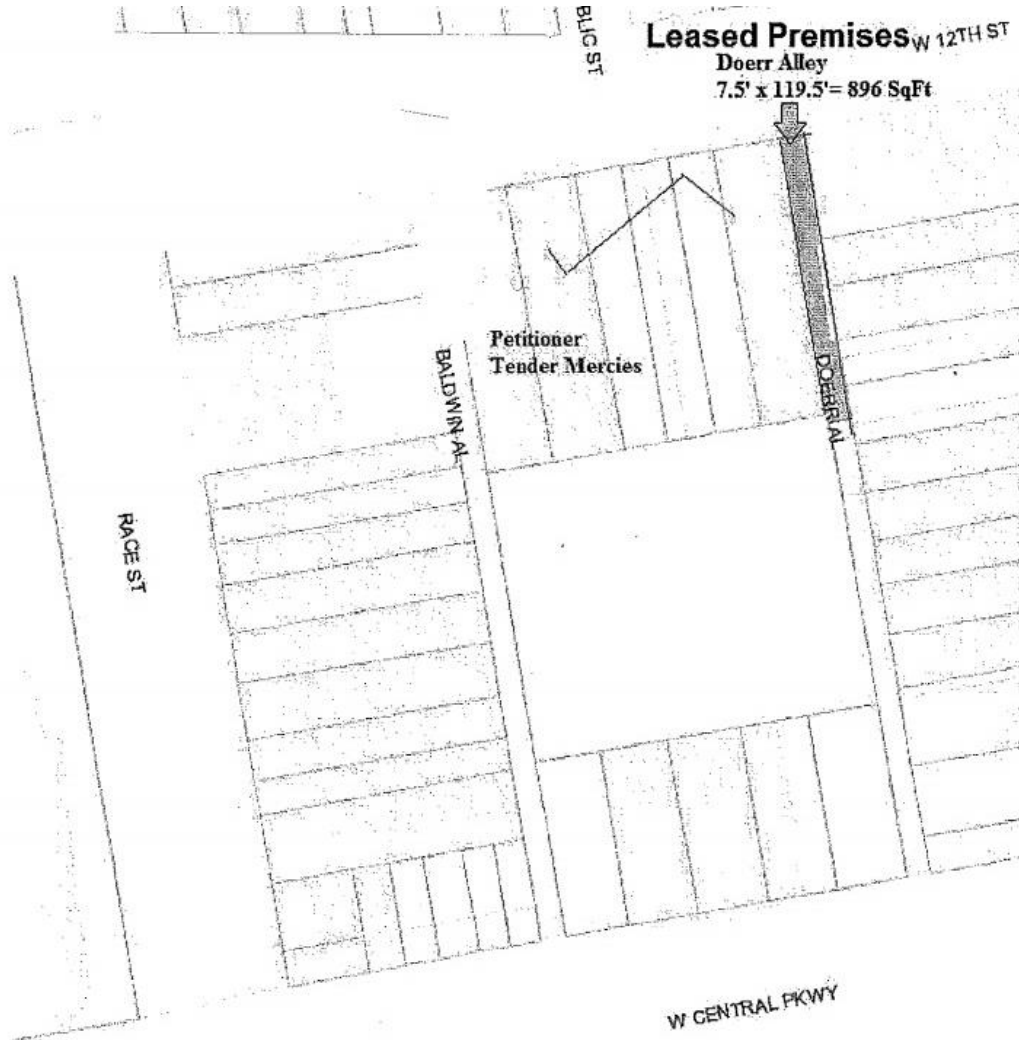


EXHIBIT B
to
Lease Agreement

COPY OF CONSENTS FROM ABUTTING PROPERTY OWNERS



January 14, 2021

Mr. Russell L. Winters
Chief Executive Officer
Tender Mercies, Inc.
27 W. 12th Street
Cincinnati, OH 45202

Dear Mr. Winters,

We understand the City of Cincinnati is requiring you to renew your lease for Doerr Alley between 12th Street and Central Parkway in order to continue maintaining gates to close off the North end of Doerr Alley at 12th Street and at the South end of your property at 15 W 12th.

You require the permission of all abutting properties to allow you to renew your lease of Doerr Alley.

This letter is to give Tender Mercies, Inc. the permission of 1200 Vine LLC who owns the property at 1135 Vine Street and 5 W 12th St. Parcel #'s 076-0002-0356 and 076-0002-0357 to lease the aforementioned alley between 12th Street and Central Parkway and maintain existing gates at the North end of Doerr Alley at 12th Street and at the South end of your property at 15 W 12th. We also understand that should Central Parkway ever be closed off for special events that Tender Mercies will make Baldwin Alley accessible to Ferguson Square during the event.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Adam Gelter', written over a light blue circular scribble.

Adam Gelter
EVP Development



January 12, 2021

Mr. Russell L. Winters
Chief Executive Officer
Tender Mercies, Inc.
27 W. 12th Street
Cincinnati, OH 45202

Dear Mr. Winters,

We understand the City of Cincinnati is requiring you to renew your lease for Doerr Alley between 12th Street and Central Parkway in order to continue maintaining gates to close off the North end of Doerr Alley at 12th Street and at the South end of your property at 15 W 12th to discourage illegal behaviors from taking place in or next to Doerr Alley.

You require the permission of all abutting properties to allow you to renew your lease of Doerr Alley.

This letter is to give Tender Mercies, Inc. the permission of 1200 Vine LLC who owns the property at 1135 Vine Street and 5 W 12th St.

Parcel #'s 076-0002-0356 and 076-0002-0357

to lease the aforementioned alley between 12th Street and Central Parkway and maintain existing gates at the North end of Doerr Alley at 12th Street and at the South end of your property at 15 W 12th. We also understand that should Central Parkway ever be closed off for special events that Tender Mercies will make Baldwin Alley accessible to Ferguson Square during the event.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Lynn Meyers", is written over the typed name.

D. Lynn Meyers
Producing Artistic Director
Ensemble Theatre Cincinnati

1127 Vine Street | Cincinnati, OH 45202 | www.ensemblecincinnati.org | 513.421.3555