

**FINDLAY MARKET**  
**LEASE AND MANAGEMENT AGREEMENT**

(triple net lease; base rent \$1.00/year; 10 years but terminable by either party on 180 days notice)

THIS AGREEMENT 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, 801 Plum Street, Cincinnati, Ohio 45202 (the "**City**"), and the **CORPORATION FOR FINDLAY MARKET OF CINCINNATI**, an Ohio nonprofit corporation, P.O. Box 14727, Cincinnati, Ohio 45250 ("**Manager**").

Recitals:

A. The City owns various land, buildings and surface parking lots in the vicinity of the historic Findlay Market in Over-the-Rhine, as further described in the attached Exhibit A (*Description and Depiction of Findlay Market*) (the land, buildings, and surface parking lots are collectively referred to herein as the "**Market Properties**", which Market Properties are under the management and control of the City's Department of Community and Economic Development ("**DCED**"), which Manager leases and manages for the City pursuant to a (i) *Lease Agreement* dated July 1, 2004 (as subsequently amended, the "**Lease**"), and (ii) *Findlay Market Management Agreement* also dated July 1, 2004 (as subsequently amended, the "**Management Agreement**").

B. The parties desire to combine the Lease and Management Agreement into one document, and to amend certain provisions thereof, which, upon execution of this Agreement, shall automatically terminate the 2004 Lease and Management Agreement.

C. The City Manager, in consultation with DCED, has determined that the Market Properties are not needed for any municipal purpose during the term of this Agreement.

D. Section 13 of Article VIII of the Ohio Constitution provides that, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State, it is a public interest and proper public purpose for the State or its political subdivisions to sell, lease, exchange, or otherwise dispose of property within the State of Ohio for industry, commerce, distribution and research.

E. The City has determined that the City's lease of the Market Properties to Manager is commercial in nature and constitutes a proper public purpose because the City's lease of the Market Properties to Manager will enhance the economic viability of the Market Properties and stimulate economic activity in and around Findlay Market and Over-the-Rhine and therefore benefit the community.

F. The fair market rental value of the Market Properties, as determined by an appraisal by the City's Real Estate Services Division, is approximately \$254,500 per year; however, the City is agreeable to lease the Properties to Manager for less than fair market rental value, namely, \$1.00 per year because the City seeks to secure high-quality management services for the Market Facilities in order to attract employers, create jobs, and to be a safe and attractive destination to facilitate commerce and the use and enjoyment by citizens and visitors. Therefore, the City anticipates that it will receive economic and noneconomic benefits from the Agreement that will equal or exceed the fair market rental value of the Market Properties because they will be managed, at no cost to the City, which will generate economic activity and vitality to Over-the-Rhine, and other benefits for the City and its citizens.

G. The City has determined that eliminating competitive bidding with respect to the City's lease and management of the Market Properties is in the best interest of the public because the City has determined that the management of the Market Properties requires exercise by Manager of discretion and independent judgment, and the City believes that Manager is the most qualified to manage and oversee the operations of said properties throughout the Term (as defined below) of this Agreement because

Manager has demonstrated advanced specialized knowledge, expertise, and experience in its ongoing management of the Market Properties.

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved this Agreement at its meeting on December 3, 2021.

I. Cincinnati City Council authorized the execution of this Agreement by Ordinance \_\_\_\_ - 2021, passed on \_\_\_\_\_, 2021.

NOW, THEREFORE, the parties agree as follows:

1. **Termination of Prior Lease and Management Agreement.** Effective as of the Effective Date, the Lease and Management Agreement are hereby terminated and are of no further force or effect, and are superseded in their entirety by this Agreement.

2. **Grant of Leasehold Interest; City's Removal of Ancillary Market Properties upon Sale.**

(A) Grant. On the terms and conditions set forth in this Agreement, the City does hereby lease to Manager, and Manager does hereby lease from the City, the properties identified as "**Primary Market Properties**" and "**Ancillary Market Properties**" on Exhibit A (List of Properties) hereto (each, a "**Property**", and collectively, the "**Properties**"). The City has not made any representations or warranties concerning the physical condition or other characteristics of the Properties, and Manager acknowledges that Manager is not relying upon any such representations or warranties from the City. The City reserves the right to enter upon the Properties at any time and from time to time, for any proper purpose, and agrees to use reasonable efforts to avoid disrupting the occupants of the Properties (if any) in connection therewith.

(B) Title Matters. The City is leasing the Properties to Manager subject to and together with (as the case may be) any and all easements, covenants, restrictions and other matters of record. Manager shall not take any actions that would violate any existing encumbrances, nor shall Manager grant any new easements or otherwise encumber the City's title to the Properties without the City's prior written consent. The City reserves the right to grant easements and take any other actions affecting the Properties as the City deems necessary or appropriate from time to time, and shall use reasonable efforts to notify Manager in advance thereof if such actions will affect Manager's rights or obligations under this Agreement.

(C) City's Removal of Ancillary Market Properties from this Agreement. At such time as Cincinnati City Council has authorized the City's sale of an Ancillary Market Property to a third party and the City is prepared to close on the sale (a "**Sale Property**"), the City shall have the right to remove the Sale Property from this Agreement by giving Manager no less than ten (10) days prior written notice, whereupon the Sale Property shall automatically be removed from this Agreement on the date specified in the City's notice (which will be a date that is no later than the date of the City's closing on the sale). The parties shall work cooperatively to wind up all operational matters pertaining to the Sale Property prior to the closing, including without limitation ensuring that any and all subtenants, licensees or other occupants of the Sale Property vacate the Sale Property prior to the closing, if required by the City.

3. **Term; Right to Terminate upon 180 Days Notice.**

(A) Term (10 years). The term ("**Term**") of this Agreement shall commence on the Effective Date (also referred to herein as the "**Commencement Date**") and, unless sooner terminated or extended as herein provided, shall continue for a period of ten (10) years. If Manager desires to extend the initial Term for an additional term of 10 years, Manager shall notify DCED thereof approximately 6 months prior to the expiration of the initial 10-year Term, whereupon the parties shall mutually determine whether to extend the Term and, if so, whether any changes in the terms and conditions of this Agreement are necessary or appropriate. Any such extension shall be memorialized in a written amendment to this Agreement.

(B) Right to Terminate Early Upon 180 Days Notice. In addition to any other termination rights under this Agreement, each party shall have the right to terminate this Agreement at any time by giving the other party no less than 180 days prior written notice of the effective date of such termination. Upon such termination, the parties shall work cooperatively to transfer the operation of the Market to the City or the City's designee to ensure a seamless transition, including without limitation returning to the City any and all unused funds that were previously provided by the City to Manager for the operation of the Market. All obligations of the parties under this Agreement that have accrued but have not been fully performed as of the effective date of the termination of this Agreement shall survive such termination until fully performed.

#### **4. Rent.**

(A) Base Rent. \$1.00/year, payable on the Commencement Date and on each anniversary thereof throughout the Term.

(B) Additional Rent. This Agreement constitutes a "triple net" lease, and throughout the Term Manager shall pay all costs associated with the Properties, including without limitation the operating costs and capital expenditures under section 6 below. Manager shall make such payments directly to the persons or entities to whom such payments are owed. To the extent that the City, rather than Manager, pays any costs that would otherwise be payable by Manager under this Agreement, Manager shall reimburse the City for such costs, as additional rent, within 30 days after Manager's receipt of documentation substantiating such costs.

**5. City Funding**. The parties acknowledge that, historically, the City has provided funding to Manager for the operation of the Market, and that the City may continue to provide funding to Manager from time to time, subject to the appropriation of funds for such purpose by Cincinnati City Council. *Manager acknowledges that the City is not certifying any funds under this Agreement, and that any subsequent funding from the City for the operation of the Market will be memorialized in a separate funding agreement or in an amendment to this Agreement.*

#### **6. Collection of Revenue; Payment of Operating Costs and Capital Expenditures; Operating and Capital Reserve Accounts.**

(A) Collection of Revenue. Manager shall be entitled to collect, retain and use all revenue generated by Manager from the operation of the Properties, including without limitation rents received from Manager's subtenants and licensees and parking revenue from the surface parking lots ("**Revenue**"), to be used solely for the purposes permitted under this section 6. Manager shall use reasonable efforts to maximize Revenue. Manager shall maintain records of all revenue received from the operation of Findlay Market (including revenue arising from sponsorship agreements and fundraising and including any funds received by the Manager from the City pursuant to Section 5, which shall be included in Manager's Annual Operating Report (as defined below).

(B) Payment of Expenses. Manager shall use Revenue for the following purposes and in the following priority order. The parties acknowledge that, for accounting purposes, Manager's fiscal year is July 1 – June 30.

(i) First, to pay customary operating expenses associated with the Properties, including without limitation costs for maintenance and repairs, labor, utilities, insurance, janitorial service, security service, pest control, administrative overhead, accounting and legal services, and real estate taxes and assessments (if any) ("**Operating Expenses**"). The City reserves the right to dispute Manager's use of Revenue to pay for Operating Expenses that the City deems to be excessive or not customary, whereupon the parties shall work cooperatively to resolve any disagreement concerning the same;

(ii) Second, to pay debt service on loans obtained by Manager to pay for improvements to the Properties (but for no other loans) ("**Debt Service**");

(iii) Third, to pay for capital expenses associated with the Properties, including without limitation structural repairs; mechanical, electrical, and plumbing upgrades; and resurfacing and other improvements to the surface parking lots (“**Capital Expenses**”). The foregoing notwithstanding, with respect to each such capital project, Manager shall obtain the written approval of the DCED Director prior to incurring capital expenses for such project (in the aggregate) in excess of **\$50,000**;

(iv) Fourth, to fund an Operating Reserve Account at the beginning of each fiscal year, in an amount not less than five percent (**5%**) of the annual Revenue that was generated in the prior fiscal year (with the funds in the Operating Reserve Account to be used by Manager to pay operating expenses under clause (i) above in the event of a shortfall) (the “**Operating Reserve Account**”). (For clarity, the Operating Reserve Account at the start of each fiscal year must have a balance equal to or greater than 5% of the prior year’s Revenue, but payments from the Account can be made throughout the fiscal year to cover operating expense shortfalls under clause (i) above);

(v) Fifth, to fund a Capital Reserve Account at the beginning of each fiscal year, in an amount not less than five percent (**5%**) of the annual Revenue that was generated in the prior fiscal year (with the funds in the Capital Reserve Account to be used by Manager to pay for capital expenses under clause (iii) above in the event of a shortfall) (the “**Capital Reserve Account**”). (For clarity, the Capital Reserve Account at the start of each fiscal year must have a balance equal to or greater than 5% of the prior year’s Revenue, but payments from the Account can be made throughout the fiscal year to cover capital expense shortfalls under clause (iii) above); and

(vi) Sixth, Manager may use excess revenue in each fiscal year (“**Excess Revenue**”), if any, to pay expenses directly associated with furthering the mission of the Manager within the Market; *provided that*, as a condition of using Excess Revenue throughout each such fiscal year, Manager shall have: (i) clearly described, in the financial statements (and accompanying notes) for the prior fiscal year, the amount of Excess Revenue that was spent in such prior fiscal year, and the payees and specific purpose of such expenditures; and (ii) clearly identified, in the budget for the then current fiscal year, the budgeted amount of Excess Revenue for such year. (In other words, generally speaking, Manager shall keep the DCED Director informed of the amount of Excess Revenue available each year, and the purposes for which it is being spent.)

Upon the expiration or termination of this Agreement, Manager shall pay over to the City all Revenue then on hand, excluding so much of the Revenue as is needed to pay then outstanding invoices. *Manager acknowledges that the City is not required to incur or pay any expenses associated with the Properties under this Agreement.*

(C) Pledge of Revenue as Collateral. Manager shall have the right to borrow money from third party lenders to make improvements to the Properties, and to pledge the Revenue as collateral for such loans. Manager shall not have the right to grant a mortgage on its leasehold interest in the Properties or otherwise encumber the title to any of the Properties.

## **7. Operational Matters.**

(A) Permitted Use. Manager shall manage the Properties, on a continuous basis, for the operation of a public market known as “Findlay Market”, and, with respect to the surface parking lots, for employee and visitor parking. Manager shall not allow parking spaces in the parking lots to be used for residential parking. Manager shall operate the Properties in compliance with all applicable federal, state and local laws, codes, ordinances and other governmental requirements.

(B) Days and Hours of Operation. Manager shall operate the Market on such days and during such hours as Manager deems commercially appropriate from time to time.

(C) Subletting. Manager shall have the right to enter into subleases and license agreements with business owners who desire to operate retail businesses at the Market, containing such terms and conditions as Manager determines to be commercially reasonable. No such agreements between Manager and third parties shall affect the City's or Manager's rights or obligations under this Agreement. All such third-party agreements shall automatically terminate upon the termination of this Agreement.

(D) Maintenance & Repairs. Throughout the Term, Manager shall keep the Properties, including all abutting sidewalk areas, in good, clean and safe condition and repair and in compliance with the City's building code and other applicable laws. Manager shall provide all janitorial, security, trash removal, snow/ice removal, and other services for the Properties. The City shall not have any maintenance or repair obligations or any obligation to provide services for the benefit of the Properties under this Agreement.

(E) Reporting of Accidents and Other Significant Occurrences. Manager shall keep the City informed of all reported accidents and other significant, unanticipated occurrences at or otherwise affecting the Properties that involve public health or safety issues or that could lead to adverse publicity. Manager shall notify the City's DCED Director within 48 hours of break-ins and assaults. For all incidents for which a police report is filed, Manager shall promptly obtain a copy of the police report and promptly provide a copy of it to the City's DCED Director.

(F) Parking Rates; Other Parking Restrictions.

(i) Throughout the Term, Manager shall establish commercially reasonable parking rates for the surface parking lots. Manager shall notify DCED of the parking rates prior to or at the time of Manager's execution of this Agreement. The City shall have the right to require Manager to increase or decrease the parking rates from time to time as the City deems appropriate. Manager shall be permitted to hire a third-party parking operator to manage the parking lots.

(ii) Manager acknowledges that the surface parking lots are intended for use primarily by employees and visitors; as such, Manager shall not physically mark any parking spaces as "reserved", nor shall Manager allow monthly parkers to park in the lots except as follows: [a] monthly parkers shall be permitted to park in the lots only on weekdays (M-F); and [b] the number of parking spaces in each lot used by monthly parkers shall not exceed 30% of the total number of parking spaces in each such lot.

(G) Reporting Requirements. Within 60 days of the end of each fiscal year, Manager shall deliver an annual operating report ("**Annual Operating Report**") to the City containing the following information:

(i) Annual Operating Budget – Detailing expected revenues and expenditures for the upcoming year;

(ii) Prior Year Financial Report – Detailing revenues and expenditures for the previous year and any reserves or cash-on-hand at the end of the year;

(iii) Inspection Report – Detailing an internally generated engineering and building system inspection report on the status of the physical conditions of improvements to Findlay Market;

(iv) Attendance Report – Detailing approximate attendance for events at Findlay Market in the previous year; and

(v) Such additional information that the City may reasonably require from time to time.

(H) Periodic Street Closures. The City shall have the right to temporarily close streets in and around the Market from time to time in connection with making street improvements, to facilitate construction activities on adjacent property, or for any other purpose deemed necessary by the City.

**8. Alterations; Signs; No Liens.**

(A) Alterations. Manager shall not make any alterations, additions or other changes to the Properties (except for customary maintenance and repairs, and except for minor alterations costing less than \$10,000) without the City's prior written consent. Any and all alterations made by Manager shall be made in a good and workmanlike manner, in compliance with all legal requirements, and shall be consistent with the quality, design, functionality, and aesthetic appeal of the Market. Once installed, Manager shall not remove such alterations (unless such removal shall have been consented to in writing by the City), and Manager shall surrender the same to the City at the end of the Term as described in Section 12 (*Surrender; Holdover*) below.

(C) No Liens. If any mechanics' lien or other similar lien is filed against the Properties as a result of labor or material furnished at Manager's request, Manager shall cause the lien to be released or bonded off within 30 days following the filing of such lien.

**9. Insurance; Indemnity.**

(A) Insurance. Throughout the Term, Manager shall maintain, or cause to be maintained, the following insurance:

(i) special peril (formerly known as "all-risk") full replacement cost insurance on all buildings located on the Properties, naming the City as the insured;

(ii) property insurance on any and all personal property of Manager from time to time located at the Properties, in such amount as Manager deems commercially reasonable;

(iii) Commercial General Liability insurance covering claims for bodily injury, personal injury or death, and property damage occurring at the Properties in an amount not less than \$2,000,000 per occurrence, combined single limit; \$4,000,000 aggregate; or such additional amounts as the City or its insurance or risk advisors may determine from time to time to be commercially reasonable; naming the City as an additional insured; and

(iv) workers compensation insurance as required by law.

(B) Policy Requirements. Manager'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 30 days prior written notice to the City, and (iii) be primary and non-contributory with respect to insurance maintained by the City. On the Commencement Date and annually thereafter, Manager shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Manager hereunder.

(C) Waiver of Subrogation. Manager hereby waives all claims and rights of recovery, and on behalf of Manager'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 Agreement to be maintained by Manager, 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 Manager shall at all times protect itself against such loss or damage by maintaining adequate insurance. Manager 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 Manager or any employee, agent, representative or any other person acting or purporting to act for or on behalf of Manager. Manager 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 Manager, its agents, employees, subtenants, licensees, contractors, subcontractors, invitees, or anyone else acting at the request or with the permission of Manager.

**10. Casualty.** If any building at a Property is damaged or destroyed by fire or other casualty, the City shall determine whether to repair, rebuild, or demolish it. If the City elects to repair or rebuild such building, the parties shall work cooperatively during such period of time to enable the City to complete the work. If the City elects to demolish such building, the City shall have the right to notify Manager that the City is removing such Property from this Agreement. The City shall be entitled to any and all insurance proceeds payable as a result of damage to the City's buildings. In the event of a taking of any Property or portion thereof by eminent domain, the City shall be entitled to all proceeds payable in connection therewith.

**11. Default; Remedies.**

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

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

(ii) If Manager fails to perform or observe any of the other covenants, terms or conditions contained in this Agreement, and such failure continues for longer than 30 days after Manager receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 30-day period, an event of default shall not be deemed to have occurred if Manager commences to cure such failure within such 30 day period and thereafter diligently pursues such cure to completion and, in fact, cures such failure within 90 days after Manager 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 Manager fails to take corrective action immediately upon discovering such dangerous condition or emergency; and

(iii) The commencement of levy, execution or attachment proceedings against Manager, any principal (which shall be defined as any individual or entity having an ownership interest in Manager of more than 25%) or partner of Manager, or any of the assets of Manager, 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 Manager or any principal or partner of Manager; 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 Manager or any principal or partner of Manager; or the commencement of a case by or against Manager or any principal or partner of Manager 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 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 Agreement by giving Manager 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 Manager, and (iii) exercise any and all other rights and remedies under this Agreement or available at law or in equity, including without limitation pursuing an action for specific performance; all such rights and remedies being cumulative. Manager 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 Manager under this Agreement or the City's enforcement or termination of this Agreement. Manager shall pay all such costs and damages within 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 Agreement shall not constitute a waiver of the breach of such covenant or of such remedy. Nothing contained in this Agreement shall limit or prejudice the right of a party to prove for and obtain as damages incident to a termination of this Agreement 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.

**12. Surrender; Holdover.**

(A) Surrender. On the last day of the Term of this Agreement (or upon the removal of a Property from this Agreement), Manager shall surrender the Properties (or the Property so removed) to the City in good condition and repair, reasonable wear and tear excepted, and free and clear of all mortgages and other monetary liens. On or before the last day of the Term, Manager shall remove all of Manager's personal property from the Properties, and any property not so removed shall be deemed abandoned. Manager shall not remove any signs, trade fixtures, ordinary fixtures or equipment used in connection with the Properties unless the City approves of such removal in writing. Manager shall promptly repair any and all damage to the Properties caused by its removal of any items under this paragraph.

(B) Holdover. If Manager fails to surrender possession of the Properties 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), terminable by the City at any time by giving written notice thereof to Manager. Manager shall be liable for all costs and damages suffered or incurred by the City as a result of Manager's holding over beyond the end of the Term.

(C) Documents to be Delivered to City. At the end of the Term of this Agreement, Manager shall deliver to the City originals of all books and records, unpaid invoices, operating manuals, assignable contracts with third parties that the City desires to assume, warranty information, and all other written materials and documents that are in Manager's possession or under Manager's control and that are reasonably needed in order for there to be a seamless transition with respect to the operation of the Properties.

**13. Notices.** All notices required to be given to any party under this Agreement shall be in writing and (i) personally delivered, (ii) deposited in the United States mail, first class, postage prepaid, or (iii) delivered by a recognized courier service that maintains records of its deliveries, to the parties at the following addresses or such other address as either party may specify from time to time by notice to the other. Notices shall be deemed given upon receipt.

To the City:

City of Cincinnati  
Dept of Community & Economic Development  
805 Central Avenue, Suite 700  
Cincinnati, OH 45202

To Manager:

Corporation for Findlay Market  
P.O. Box 14727  
Cincinnati, OH 45250  
Attention: President/CEO

If Manager sends a notice to the City alleging that the City is in breach of this Agreement, Manager 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.

**14. General Provisions.**

(A) Entire Agreement. This Agreement (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 Agreement may be amended only by a written amendment signed by both parties.

(C) Assignment. Manager shall not assign its rights or obligations under this Agreement to a third party without the City's prior written consent, which may be withheld by the City in its sole discretion.

(D) Governing Law. This Agreement 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 Agreement shall be brought in the Hamilton County Court of Common Pleas, and Manager agrees that venue in such court is proper. Manager hereby waives trial by jury with respect to any and all disputes arising under this Agreement.

(E) Binding Effect. This Agreement 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.

(F) Captions. The captions of the various sections and paragraphs of this Agreement 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 Agreement.

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

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

(I) Time. Time is of the essence with respect to the performance by the parties of their obligations under this Agreement.

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

(K) No Brokers. The City and Manager represent to each other that they have 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 Agreement.

(L) Official Capacity. All representations, warranties, covenants, agreements and obligations of the City under this Agreement 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 Agreement shall be personally liable under this Agreement.

(M) Representation as to Authority. The City and Manager each represents to the other that it has the power and authority to enter into and perform its obligations under this Agreement without the consent of anyone who is not a party to this Agreement and that the execution and performance of this Agreement have been duly authorized by all necessary actions on the part of the performing party.

(N) Certification as to Non-Debarment. Manager represents that neither it nor any of its principals is presently debarred by any federal, state, or local government agency. In carrying out Manager's responsibilities under this Agreement, Manager shall not solicit bids from any contractors or subcontractors who are identified as being debarred by any federal, state, or local government agency. If Manager or any of its principals becomes debarred by any federal, state, or local government agency during the Term of this Agreement, Manager shall be considered in default under this Agreement.

(O) Appropriation of Funds. Notwithstanding anything in this Agreement, the City's performance of its obligations under the Agreement that require the expenditure of money is subject to the appropriation of funds for such purposes by Cincinnati City Council.

(P) Counterparts; E-Signature. This Agreement may be executed via electronic signature and in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

15. **Exhibits**. The following exhibits are attached here and made a part hereof:  
Exhibit A – *List of Properties*

[ SIGNATURE PAGES FOLLOW ]

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

**CORPORATION FOR FINDLAY MARKET OF CINCINNATI,**  
an Ohio nonprofit corporation

By: \_\_\_\_\_  
Joe Hansbauer, President/CEO

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

[ *City Signature Page Follows* ]

**CITY OF CINCINNATI**

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

Printed Name: \_\_\_\_\_

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

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

Recommended By:

\_\_\_\_\_  
Markiea L. Carter, Director  
Department of Community and Economic Development

Approved as to Form:

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

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

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

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

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

**EXHIBIT A**  
to  
Lease and Management Agreement

*List of Properties*

**I. Primary Market Properties:**

(1)	<u>125 Elder</u>	<u>94-8-355</u>	<u>Market House</u>
(2)	<u>Elder</u>	<u>94-8-372</u>	<u>Market House</u>
(3)	<u>Elder</u>	<u>94-8-371</u>	<u>Market House</u>
(4)	<u>133 Elder</u>	<u>94-8-448</u>	<u>commercial space</u>
(5)	<u>129-131 Elder</u>	<u>94-8-145</u>	<u>commercial space</u>
(6)	<u>111-113 Elder</u>	<u>94-8-417 &amp; 419</u>	<u>commercial space</u>
(7)	<u>118 Elder</u>	<u>94-8-440 &amp; 451</u>	<u>commercial space</u>
(8)	<u>120 Elder</u>	<u>94-8-463 &amp; 465</u>	<u>commercial space</u>

**II. Ancillary Market Properties:**

(1)	<u>1712 Logan</u>	<u>133-3-1</u>	<u>west parking lot</u>
(2)	<u>1718 Elm</u>	<u>94-8-127-90</u>	<u>south parking lot</u>
(3)	<u>1709 Pleasant</u>	<u>94-8-134-90</u>	<u>south parking lot</u>
(4)	<u>1711 Pleasant</u>	<u>94-8-135-90</u>	<u>south parking lot</u>
(5)	<u>1713 Pleasant</u>	<u>94-8-136-90</u>	<u>south parking lot</u>
(6)	<u>1715 Pleasant</u>	<u>94-8-137-90</u>	<u>south parking lot</u>
(7)	<u>1717 Pleasant</u>	<u>94-8-138-90</u>	<u>south parking lot</u>
(8)	<u>1719 Pleasant</u>	<u>94-8-139-90</u>	<u>south parking lot</u>
(9)	<u>1721 Pleasant</u>	<u>94-8-140</u>	<u>south parking lot</u>
(10)	<u>1711 Race</u>	<u>94-8-157</u>	<u>south parking lot</u>
(11)	<u>Findlay St</u>	<u>94-8-265-90</u>	<u>north parking lot</u>
(12)	<u>Race St</u>	<u>94-8-303-90</u>	<u>north parking lot</u>
(13)	<u>129-131 Elder</u>	<u>not yet designated</u>	<u>residential space</u>