

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

{00347677-1}

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 5th 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*

{00347677-1}

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

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

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: _____

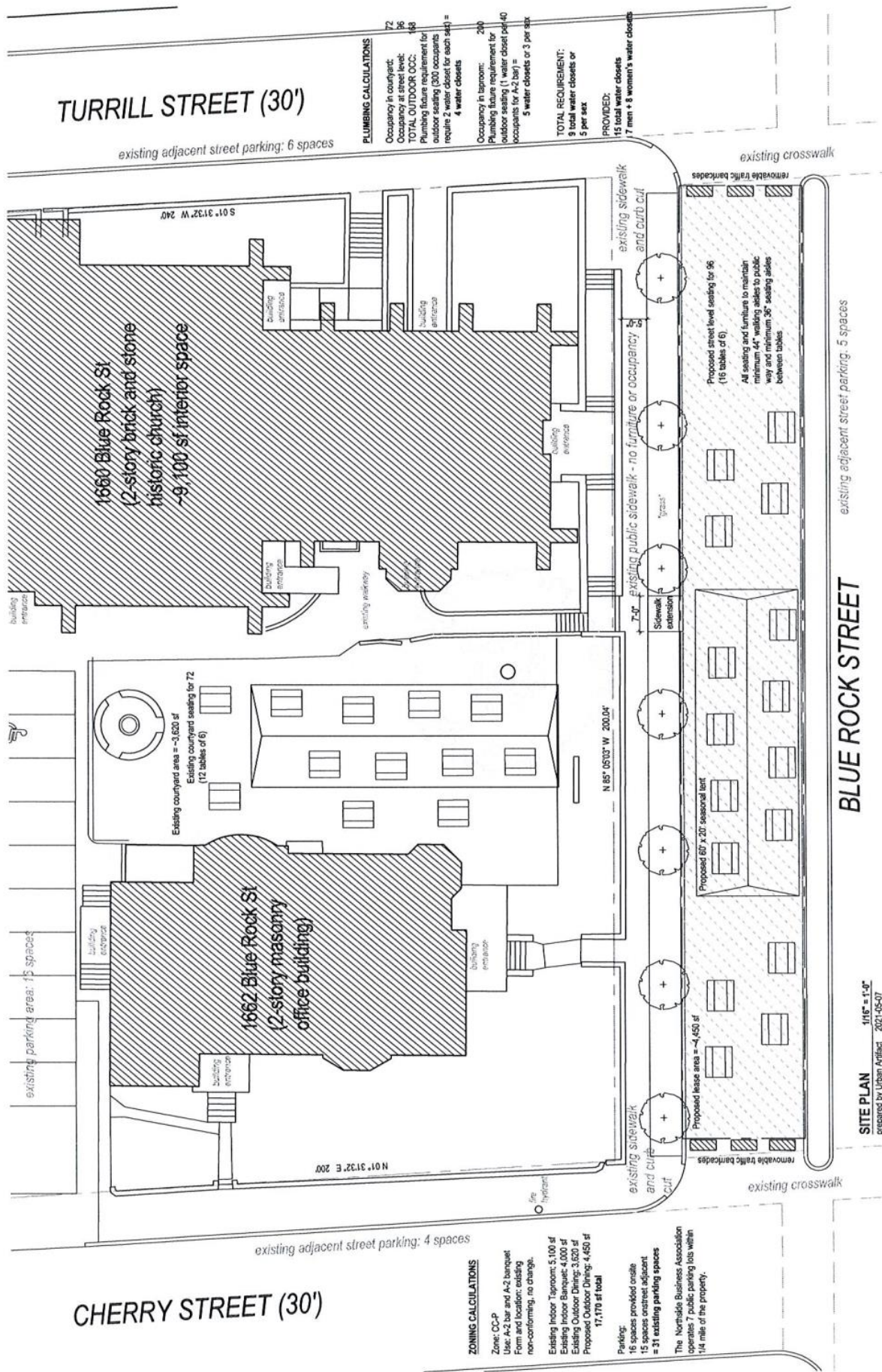
Fund/Code: _____

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')

ZONING CALCULATIONS
 Zone: CC-P
 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.

PLUMBING CALCULATIONS

Occupancy in courtyard: 72
 Occupancy at street level: 156
TOTAL OUTDOOR OCC: 188
 Plumbing fixture requirement for outdoor seating (300 occupants require 2 water closets for each seat) = 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

Proposed street level seating for 96
 (16 tables of 6)
 All seating and furniture to maintain minimum 4' walking aisles 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

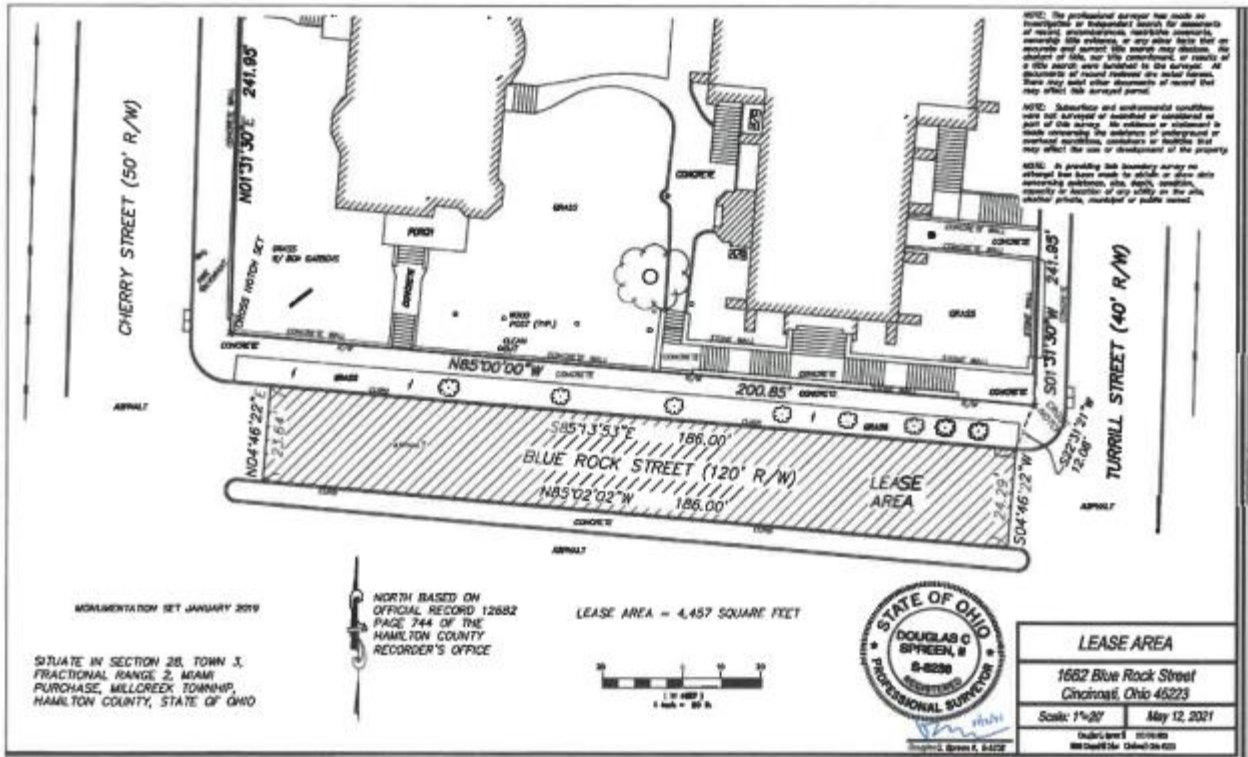


Exhibit "A" - Legal Description

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.



DS 5/12/21