

City of Cincinnati

CHM

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An Ordinance No. _____

- 2022

AUTHORIZING the City Manager to execute a *Lease Agreement* with Colonial Life & Accident Insurance Company, pursuant to which the City will lease a parking lot generally located east of Eggleston Avenue between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati for up to 15 years.

WHEREAS, pursuant to that certain *Agreement* dated April 16, 2003, the State of Ohio, acting through its Director of the Ohio Department of Transportation, leases to the City certain real property identified in the *Agreement* as Lots 14A and 14B located under viaducts supporting Interstate 471 (the "Property"), which Property is under the management of the Department of Transportation and Engineering ("DOT"); and

WHEREAS, the City presently subleases to Colonial Life & Accident Insurance Company, a South Carolina corporation ("Lessee") a portion of the Property (the "Subleased Area") pursuant to a *Lease Agreement* dated January 30, 2007, that expired on November 15, 2021, and the *Lease Agreement* has continued on a month-to-month basis since that time; and

WHEREAS, Lessee desires to continue to lease the Subleased Area as a parking lot for the benefit of an adjacent office building known as the Sawyer Point Building located at 720 E. Pete Rose Way for up to an additional 15 years (namely, an initial 5-year term, followed by two successive 5-year renewal terms), as further described in a *Lease Agreement* attached to this ordinance as Attachment A and incorporated herein by reference (the "Lease"); and

WHEREAS, the City Manager, in consultation with DOT, has determined that (i) the Subleased Area is not needed for a municipal purpose for the duration of the Lease, and (ii) leasing the Subleased Area to Lessee is not adverse to the City's retained interest in the Subleased Area or the Property; and

WHEREAS, 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; and

WHEREAS, the City Manager has determined that the City's lease of the Subleased Area to Lessee is commercial in nature because the City's lease of the Subleased Area to Lessee will enhance the economic viability of the Sawyer Point Building and the maintenance and creation of jobs by ensuring that employees and visitors have adequate parking, for the benefit of the community; and

WHEREAS, the City's Real Estate Services Division has determined by a professional appraisal that the fair market rental value of the Subleased Area is approximately \$14,916 per month, which Lessee has agreed to pay; and

WHEREAS, pursuant to Cincinnati Municipal Code Section 331-5, Council may authorize the lease of City-owned property without competitive bidding in those cases in which it determines that it is in the best interest of the City; and

WHEREAS, the City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the lease of the Subleased Area at its meeting on November 19, 2021; now, therefore,

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

Section 1. That the City Manager is hereby authorized to execute a *Lease Agreement* (the "Lease") with Colonial Life & Accident Insurance Company, a South Carolina corporation ("Lessee"), in substantially the form attached as Attachment A to this ordinance and incorporated herein by reference, pursuant to which the City of Cincinnati will sublease certain real property located in the Central Business District, as more particularly identified in the Lease (the "Subleased Area") for up to 15 years (namely, an initial 5-year term, followed by two successive 5-year renewal terms).

Section 2. That the Subleased Area is not needed for municipal purposes for the duration of the Lease.

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

Section 4. That eliminating competitive bidding in connection with the City's lease of the Subleased Area is in the best interest of the City because the Lease will enhance the economic viability of Lessee's real property, commonly known as the Sawyer Point Building, which is likely to contribute to the maintenance and creation of jobs by ensuring that the commercial

businesses occupying the Sawyer Point Building have adequate parking for their employees and visitors.

Section 5. That the City's Real Estate Services Division has determined by professional appraisal that the fair market rental value of the Subleased Area is approximately \$14,916 per month, which Lessee has agreed to pay.

Section 6. That the proper City officials are hereby authorized to take all necessary and proper actions to carry out the provisions and intent of this ordinance and the Lease, including, without limitation, executing any and all ancillary documents associated with the Lease, such as amendments or supplements to the Lease deemed by the City Manager to be in the vital and best interests of the City.

Section 7. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: _____, 2022

Aftab Pureval, Mayor

Attest: _____
Clerk

ATTACHMENT A

Contract No. _____

Property: Eggleston Avenue between
East Third Street and East Pete Rose Way

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is made and entered into on the Effective Date (as defined on the signature page hereof) by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which is 801 Plum Street, Suite 122, Cincinnati, OH 45202; Attention: Real Estate (the "**City**"), and **Colonial Life & Accident Insurance Company**, a South Carolina corporation, the address of which is 2211 Congress Street, B259, Portland, ME 04122 ("**Lessee**").

Recitals:

A. The City owns or controls certain real property generally located east of Eggleston Avenue, lying between East Third Street and East Pete Rose Way in the Central Business District of Cincinnati, more particularly identified as Hamilton County, Ohio Auditor's Parcel Nos. 85-1-1, 85-1-2, and 85-1-3 (the "**Property**"), which is under the management and control of the City's Department of Transportation and Engineering ("**DOT**").

B. Lessee owns an adjacent office building (known as the Sawyer Point Building) located at 720 E. Pete Rose Way ("**Lessee's Property**"), which is occupied by several commercial businesses.

C. Lessee has leased a portion of the Property pursuant to that certain *Lease Agreement* dated January 30, 2007, by and between the City and Lessee's successor-in-interest CRE Corporation, an Ohio corporation, for private parking serving Lessee's Property, as shown on Exhibit A (*Site Map*) and more particularly described on Exhibit B (*Legal Description*) hereto (the "**Leased Area**"). Upon the expiration of the initial 5-year term of the *Lease Agreement*, the parties extended the *Lease Agreement* for two additional terms of 5 years each (each 5-year term being a "**Renewal Period**").

D. The second Renewal Period expired on November 12, 2021, and Lessee has continued to use the Leased Area on a month-to-month basis since that time.

E. Lessee has petitioned to enter into a new lease with the City for the Leased Area, which the City is agreeable to on the terms and conditions set forth herein.

F. 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.

G. The City has determined that the City's lease of the Leased Area to Lessee is commercial in nature because the City's lease of the Leased Area to Lessee will enhance the economic viability of the Sawyer Point Building and the maintenance and creation of jobs by ensuring that employees and visitors have adequate parking, for the benefit of the community.

H. DOT has determined that the Leased Area is not currently needed for transportation or other municipal purposes.

I. The fair market rental value of the Leased Area, as determined by appraisal by the City's Real Estate Services Division, is approximately \$14,916 per month, which Lessee has agreed to pay.

I. The City has determined that eliminating competitive bidding in connection with the lease of the Leased Area is in the best interest of the public because Lessee owns the adjacent office building and the City is agreeable to leasing the Leased Area to Lessee to help address the parking needs for the building.

J. 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 Area to Lessee at its meeting on November 19, 2021.

K. The City's execution of this Lease was approved by Cincinnati City Council by ordinance no. ____-2022, passed on _____, 2022.

NOW THEREFORE, the parties hereby agree as follows:

1. Grant.

(A) Grant. The City does hereby lease the Leased Area to Lessee, and Lessee does hereby lease the Leased Area from the City, excepting therefrom those portions of land occupied by the supports and foundations of the viaducts and all the air space below the viaducts to a plane at least eight feet below the underside or soffit of the viaducts, on the terms and conditions set forth herein. The rights herein granted to Lessee are subject and subordinate to any and all existing covenants, easements, restrictions and other matters of record affecting the Leased Area. The City makes no representations or warranties to Lessee concerning the physical condition of the Leased Area or the condition of the City's title to the Leased Area and, on the Commencement Date, Lessee shall accept the Leased Area in "as is" condition. The parties acknowledge that Lessee has been using the Leased Area for parking for many years and is familiar with the condition of the Leased Area. 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 Area, and to any and all existing agreements between the City and the State of Ohio, including, without limitation to, that certain *Agreement* dated April 16, 2003, pursuant to which the City leases from the State of Ohio certain real property designated therein as Lots 14A and 14B. Notwithstanding the foregoing, the City hereby reserves right to take immediate possession of the Leased Area in case of national or other emergency, or for the purpose of preventing sabotage and for the protection of the viaducts. Lessee shall be relieved from the performance of all conditions or covenants set forth herein for the duration of such emergency occupancy.

(B) Access by City Departments, Utility Companies, State of Ohio, and Others. Lessee shall ensure continuous access to the Leased Area (24 hours/day, 7 days/week, 52 weeks/year) by the City, its agents, employees, and contractors, the State of Ohio, its agents, employees, and contractors, and any and all utility companies that have utility lines or other utility installations within or near the Leased Area for the purpose of examining the condition of the Leased Area, determining Lessee's compliance with the provisions of this Lease, accessing, maintaining, repairing, replacing, or removing any public utility installations located within or near the Leased Area, and for any other proper purpose. Lessee shall not construct any structures or other improvements above any underground utility lines within the Leased Area that would interfere with a utility company's operation or maintenance thereof or access thereto. If Lessee constructs any improvements within the Leased Area or undertakes any other action that interferes with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Lessee under this Lease, whereupon the City and such third parties shall be permitted to take all actions reasonably necessary to eliminate such interference at Lessee's expense. If Lessee's activities within the Leased Area cause damage to existing utility lines or other utility facilities belonging to a utility provider, Lessee shall immediately notify the appropriate utility provider. All actual, out-of-pocket costs of repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Lessee and shall be payable by Lessee within thirty (30) days after Lessee receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Lessee within the Leased Area in connection with its inspection, maintenance, repair, replacement or removal of its existing utility facilities

in the area, Lessee shall be solely responsible for all costs associated with the repair, removal or replacement of Lessee's improvements. Under no circumstances shall the City be responsible for any damage to the Leased Area or improvements thereon resulting from the entry onto the Leased Area by utility companies and others having the right to enter upon the Leased Area. The foregoing shall not be deemed as precluding Lessee from making a claim directly against a third party whom Lessee alleges wrongfully damages Lessee's improvements.

2. Term.

(A) Initial Term (5 years). The initial term of this Lease (the "**Term**") shall commence on the Effective Date (also referred to herein as the "**Commencement Date**") and shall continue for **five years**, unless extended or sooner terminated as herein provided. On the Effective Date, the prior lease between the City and Lessee pertaining to the Leased Area shall be deemed to have automatically terminated.

(B) Automatic Renewals (two 5-year renewals). Unless the City or Lessee notifies the other party in writing, no less than 3 months prior to the date that the then current Term of this Lease is scheduled to expire, that such party does not wish to extend the Term for an additional five year period, the Term of this Lease shall automatically be extended for up to two consecutive renewal periods of five years each (each, a "**Renewal Period**") (such that the maximum Term of this Lease shall be 15 years). As used herein, the "**Term**" of this Lease means the initial Term, as the same may be extended under this paragraph.

(C) City's Right to Terminate Lease on 90 days Notice. Lessee acknowledges that the Leased Area may be needed in the future for municipal or state highway purposes. Therefore, notwithstanding anything in this Lease to the contrary, the City shall have the right to terminate this Lease at any time, by giving Lessee no less than 90 days prior written notice; whereupon (i) the City shall refund any prepaid base rent to Lessee, (ii) Lessee shall remove any of Lessee's site improvements unless the City instructs otherwise as described in section 11 (*Surrender; Holdover*) below, and (iii) Lessee shall surrender possession of the Leased Area to the City no later than the termination date set forth in the City's termination notice.

3. Base Rent.

(A) Base Rent. Beginning on the Commencement Date, Lessee shall pay annual base rent in equal monthly installments, in advance, on the first business day of each month in the amount of **\$14,916.00** ("**Base Rent**"). Rent shall be payable in advance, without notice or setoff. Rent shall increase upon the commencement of each Renewal Period by a percentage equal to the percentage increase of the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor ("**CPI**") with respect to such five year period (the "**Adjusted Rent**" together with Base Rent, collectively, "**Rent**"). In no event shall there be a reduction of Rent as a result of changes to CPI. The parties acknowledge that, if this Lease is subsequently amended to provide for an extension of the Term beyond 15 years, Rent shall be adjusted at the commencement of such extended term to reflect the then fair market rental value of the Leased Area as determined by the City's Real Estate Services Division.

(B) Late Payment; Place of Payment. If any payment owed by Lessee hereunder is not received by the City on the due date, Lessee shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. All payments shall be made by check payable to the "City of Cincinnati - Treasurer" and mailed to: City of Cincinnati, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, Attention: Real Estate.

4. Permitted Use. Lessee shall use the Leased Area for private parking for employees, agents and invitees to the Sawyer Point Building. Lessee may use the Leased Area for public parking for special events held in the riverfront area after 6:00 p.m. on weekdays and all day on Saturday and Sunday. Lessee shall not use or permit the use of the Leased Area for storage of materials or supplies of any nature. Lessee shall not bring or permit to be brought on the Leased Area (i) vehicles used or designated for the transportation of gasoline or petroleum products, (ii) bulk storage of gasoline or

petroleum products, (iii) explosives or any hazardous materials or other contaminants or substances that are harmful to the public or to the environment, and (iv) wrecked vehicles or parts thereof. Lessee shall not install facilities for, nor operate on the Leased Area, a gasoline supply station. Lessee shall not permit hazardous or objectionable smoke, fumes, or vapors to rise above the grade of the viaduct. Lessee shall not permit vending of any kind or character to be conducted, permitted, or allowed within the Leased Area.

5. Utilities; Real Estate Taxes; Other Expenses. During the Term of this Lease, Lessee shall pay, when due, (i) any and all utility expenses for utilities directly serving the Leased Area, (ii) any and all real estate taxes and assessments levied against the Leased Area, including the two semi-annual tax bills issued by the Hamilton County Treasurer following the expiration or termination of the Term, payable in arrears, and (iii) any and all operating or other expenses associated with the Leased Area. Lessee shall have the right to contest the amount or validity of real estate taxes and assessments by appropriate legal proceedings in its own name. The City shall have the right to participate in such legal proceedings at the City's election. Lessee shall pay all costs and expenses arising from such legal proceedings. *Lessee acknowledges and agrees that the City shall not be liable for any expenses associated with the Leased Area during the Term of this Lease.*

6. Maintenance and Repairs. Lessee shall, at its sole expense, keep and maintain, or cause to be kept and maintained, the Leased Area in good, safe, orderly, sanitary, and clean condition and repair, including without limitation all parking lot site improvements. Lessee shall not permit garbage, debris or unsightly or odorous materials to accumulate within the Leased Area. In the event of damage to the Leased Area, Lessee shall promptly repair such damage, at its sole expense, to the satisfaction of DOTE (however Lessee shall not be required to restore the Leased Area to a better condition than otherwise required under this Lease). Lessee shall be solely responsible for all snow and ice removal from the Leased Area. *During the Term of this Lease, the City shall have no maintenance or repair obligations with respect to the Leased Area or any improvements thereon.*

7. Alterations.

(A) Alterations. Lessee shall not make any alterations or improvements to the Leased Area, including without limitation installing any fences, signs, lighting, or utilities, or remove any existing improvements within the Leased Area, without in each case obtaining the prior written consent of the City. Lessee shall not make any changes in the land grade or level of the Leased Area. If Lessee proposes to install any permanent-type structures or other improvements within the Leased Area, Lessee shall also obtain the prior written consent of all utility companies whose utility facilities might be affected. Lessee acknowledges that, in connection with the City's review of Lessee's proposed alterations, the City may require Lessee to apply for and obtain a separate permit for the work.

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

(C) Signs. Lessee shall not install or erect any directional, operational, or advertising signs within the Leased Area without the written consent of the City.

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

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain: (i) Commercial General Liability insurance in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City of Cincinnati as an additional insured; (ii) worker's compensation insurance in the amount required under Ohio law, (iii) umbrella or excess liability insurance in the amount of not less

than \$1,000,000 per occurrence/\$1,000,000 aggregate; (iv) property insurance on all improvements constructed by Lessee within the Leased Area in such amount as Lessee from time to time deems commercially reasonable; and (v) such additional insurance as the City or its risk advisors may from time to time reasonably require. Lessee's insurance policies shall [x] 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, [y] provide that they may not be canceled or modified without at least thirty (30) days prior written notice to the City, and [z] be primary and non-contributory with respect to insurance maintained by the City. No later than the Commencement Date, and annually thereafter, Lessee shall provide the City with a certificate of insurance evidencing the insurance required to be maintained by Lessee hereunder.

(B) **Waiver of Claims and Subrogation.** All improvements, materials, equipment and other personal property of every kind that may at any time be within the Leased Area shall be within the Leased Area at Lessee's sole risk, and under no circumstances shall the City be liable for any loss or damage thereto, no matter how caused. As a material consideration under this Lease, Lessee hereby waives, as against the City, its employees, agents and contractors, and the State of Ohio, all claims and liability, and on behalf of Lessee's insurers, rights of subrogation, with respect to any and all damage to or loss of property that is covered or that would ordinarily be covered by the insurance required under this Lease to be maintained by Lessee, even if such loss or damage arises from the negligence of the City, its employees, agents, contractors or subcontractors; it being the agreement of the parties that Lessee shall at all times protect itself against such loss or damage by maintaining adequate insurance. Lessee shall cause its property insurance policies to include a waiver of subrogation provision consistent with the foregoing waiver.

(C) **Indemnification.** The City assumes no responsibility for any acts, errors or omissions of Lessee or any employee, agent, contractor, subcontractor, representative or any other person acting or purporting to act for or on behalf of Lessee. Lessee shall defend, indemnify and hold the City, its employees, agents, contractors and subcontractors ("**Indemnified Parties**") harmless from and against all costs (including without limitation legal costs), losses, claims, demands, actions, suits, judgments, claims for relief, damages and liability suffered or incurred by or asserted against the Indemnified Parties or any one or more of them as a result of or arising from the acts of Lessee, its employees, agents, licensees, invitees, contractors, subcontractors or anyone else acting at the request of Lessee in connection with Lessee's activities at or with respect to the Leased Area or in connection with any breach by Lessee under this Lease.

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

10. Default; Remedies.

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

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

(ii) If Lessee fails to perform or observe any of the other covenants, terms or conditions contained in this Lease, and such failure continues for longer than 30 days after Lessee receives written notice thereof from the City; provided, however, that if such failure is not reasonably susceptible of being cured within such 30-day period, an event of default shall not be

deemed to have occurred if Lessee 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 Lessee receives written notice of the default from the City. The foregoing notwithstanding, if the failure creates a dangerous condition or otherwise constitutes an emergency as determined by the City, an event of default shall be deemed to have occurred if Lessee fails to promptly take corrective action upon discovering such dangerous condition or emergency (and in any event within no later than 24 hours, depending upon the nature of the emergency and the steps needed to address it).

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

11. 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 day of receipt if delivered by 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.

12. Surrender; Holdover.

(A) Surrender; Holdover. Upon the expiration or termination of the Term, Lessee shall surrender the Leased Area to the City in the condition in which Lessee is required to maintain the Leased Area under the terms of this Lease. If Lessee remains in possession of the Leased Area after the end of the Term without the City's consent, then, at the City's option, such holdover shall create a tenancy-at-will on the same terms and conditions as set forth in this Lease except that rent payable during such holdover shall be equal to 200% of the amount payable under this Lease at the end of the Term. Lessee shall be liable for all costs and damages that the City may suffer or incur as a result of Lessee's holding over.

(B) Removal of Parking Site Improvements. At the end of the Term, the City shall identify which improvements, if any, Lessee shall be required to surrender (at no cost to the City) and which improvements Lessee shall be required to remove. If Lessee fails to timely remove improvements that are designated for removal by the City and fails to restore the Leased Area to its former condition, or if Lessee fails to remove any items of personal property from the Leased Area, such improvements and items of personal property shall be deemed abandoned by Lessee, whereupon the City may remove, store, keep, sell, discard or otherwise dispose of such improvements and items of personal property, and Lessee shall pay all costs incurred by the City in so doing within ten (10) days after the City's written demand. If the City incurs costs in removing Lessee's improvements and restoring the Leased Area to its

former condition, Lessee shall reimburse the City for all such removal and restoration costs within thirty (30) days after receiving an invoice therefor from the City.

13. Compliance with Laws.

(A) Compliance with Laws. Lessee shall comply with all federal, state and local laws, ordinances, rules and regulations, including without limitation all applicable building and zoning codes of the City of Cincinnati, as the same may be enacted or modified from time to time.

(B) Non-Discrimination. Lessee hereby covenants and agrees that (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subject to discrimination in the use of said facilities; (ii) that in connection with the construction of any improvements on the Leased Area and the furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contactors, by contractors in the selection and retention of first tier subcontractors and by first tier subcontractors in the selection and retention of second tier subcontractors; (iii) that such discrimination shall not be practiced against the public in their access to, and use of the facilities constructed or operated on, over, or under the space of the right of way and; (iv) that Lessee shall use the Lease Area in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation", the purpose of which "is to effectuate the provisions of Title VI of the Civil Rights Act of 1964 . . . to the end that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance from the Department of Transportation," as said regulations may be amended from time to time. Lessee shall defend, indemnify and hold harmless the City from any and all claims and demands of third persons, including the United States of America and the State of Ohio, resulting from Lessee's noncompliance with any of the provisions of this section and shall reimburse the City for any and all losses or expenses incurred by reason of such noncompliance.

14. General Provisions.

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

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

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

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

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

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

{00350953-1}

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

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

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

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

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

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

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

15. Additional Conditions from City's Coordinated Report (CR #8-2021). Lessee shall comply with the following additional terms and conditions:

(A) *Buildings and Inspections*: Lessee shall comply with all applicable parking lot requirements imposed by Cincinnati Municipal Code Section 1411-31 and Cincinnati Municipal Code Chapter 413.

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

[SIGNATURE PAGES FOLLOW]

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

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 acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified hereby.

Notary Public
My commission expires: _____

Approved by:

John S. Brazina, Director
Department of Transportation & Engineering

Approved as to Form:

Assistant City Solicitor

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

[Lessee Signature Page Follows]

EXHIBIT A
to Lease Agreement

Site Map

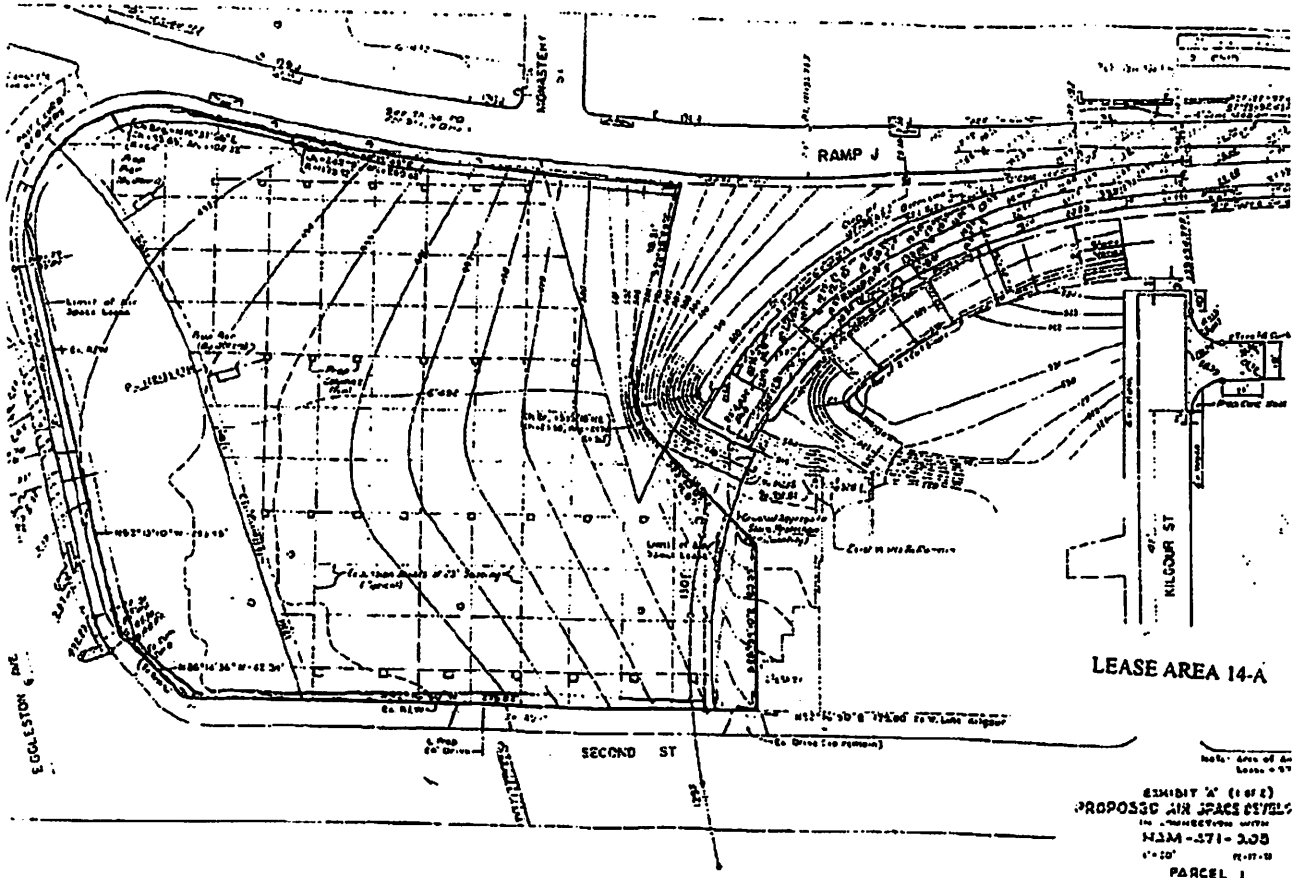


EXHIBIT A (Cont.)

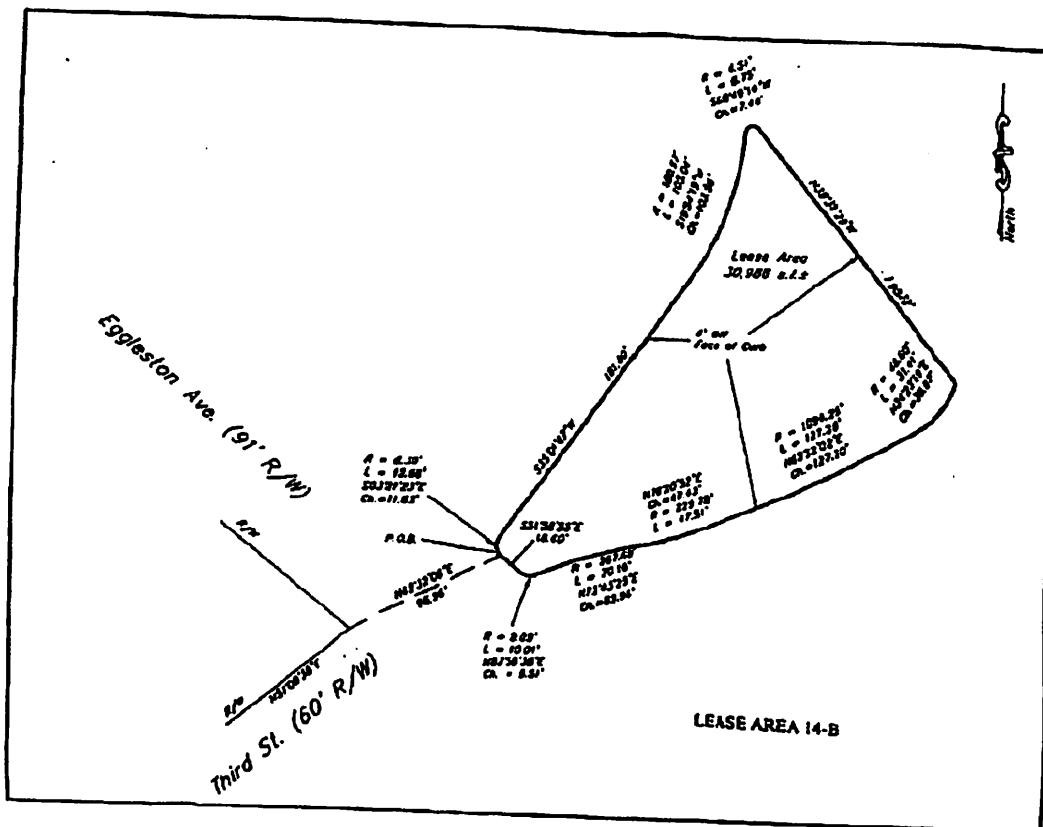


EXHIBIT B
to Lease Agreement

Legal Description

Lease Area No.14-A
Cincinnati-Newport Bridge Approaches
Ham-471-0.08
Auditor's Parcels 85-1-2,3, 8 thru 25

Situate in Section 12, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County, Ohio, and being more particularly described as follows:

From the intersection of the southwesterly line of Kilgour Street (a 40 foot Street) and the northwesterly line of Second Street (a 60 foot street), measure South 52° 16' 50" West, along the northwesterly line of Second Street, a distance of 200.00 feet for the PLACE OF BEGINNING: thence South 52° 16' 50" West, continuing along the northwesterly line of Second Street, a distance of 250.82 feet; thence North 86° 14' 36" West, a distance of 42.39 feet to the northeasterly line of Eggleston Avenue (a 91 foot Street); thence North 52° 13' 10" West, along the northeasterly line of Eggleston Avenue, a distance of 205.95 feet, thence North 37° 46' 50" East, a distance of 7.00 feet; thence northeastwardly along a curve deflecting to the right with a radius of 57.00 feet for a distance of 95.36 feet (the chord of said curve bears North 18° 24' 35" East for 84.62 feet) to the southeasterly line of Ramp "J"; thence northeastwardly along a curve, which is along the southeasterly line of Ramp "J" and tangent to the last described curve, deflecting to the left with a radius of 1,182.92 feet for a distance of 239.96 feet (the chord of said curve bears North 59° 15' 43" East for 239.54 feet); thence South 26° 56' 23" East a distance of 91.80 feet; thence southeastwardly along a curve tangent to the last described course and deflecting to the left with a radius of 30.00 feet for a distance of 29.70 feet (the chord of said curve bears South 55° 18' 11" East for 28.50 feet); thence South 83° 40' East, tangent to the last described curve, a distance of 36.45 feet; thence South 38° 39' 10" East for 104.58 feet to the northwesterly line of Second Street and the Place of Beginning and containing 75,583 square feet, more or less.

Together with the appurtenances, fixtures, rights, privileges and easement thereunto belonging or appertaining, EXCEPTING THEREFROM that portion of the above described land occupied by the supports and foundations of the viaduct and all the air space below the viaduct to a plane at least eight (8) feet below the underside or soffit of the viaduct.

EXHIBIT B (Cont.)

**CITY OF CINCINNATI
Lease Area 14-B
Cincinnati-Newport Bridge Approaches
Ham-471-0.08
Auditor's Parcels 79-5-1 & 3; 79-6-256 thru 258**

Situate in Section 12, Town 4, Fractional Range 1, Cincinnati Township, Hamilton County Ohio, and being more particularly described as follows:

Beginning at the intersection of the West line of Eggleston Ave. (91' R/W), and the North line of Third St. (60' R/W), said North line having a bearing of North 51°08'38" East, measure North 62°32'06" East, 96.96 feet to The Place of Beginning; thence South 51°58'55" East, 16.60 feet to a point; thence on a curve to the left said curve having a radius of 9.09 feet a chord bearing North 87°56'38" East, 9.51 feet, 10.01 feet as measured along said curve to a point; thence on a curve to the right said curve having a radius of 267.60 feet a chord bearing North 72°43'25" East, 69.96 feet, 70.16 feet as measured along said curve to a point; thence on a curve to the left said curve having a radius of 229.78 feet a chord bearing North 70°20'52" East, 47.43 feet, 47.51 feet as measured along said curve to a point; thence on a curve to the left said curve having a radius of 1094.25 feet a chord bearing North 62°22'02" East, 127.20 feet, 127.28 feet as measured along said curve to a point; thence on a curve to the left having a radius of 48.60 feet a chord bearing North 34°23'19" East, 30.87 feet, 31.41 feet as measured along said curve to a point; thence North 38°31'29" West, 190.32 feet to a point; thence on a curve to the left said curve having a radius of 4.51 feet a chord bearing South 68°49'14" West, 7.44 feet, 8.75 feet as measured along said curve to a point; thence on a curve to the right said curve having a radius of 180.57 feet a chord bearing South 19°54'19" West, 103.56 feet, 105.04 feet as measured along said curve to a point; thence South 35°01'47" West, 181.40 feet to a point; thence on a curve to the left said curve having a radius of 8.30 feet a chord bearing South 03°21'23" East, 11.63 feet, 12.88 feet as measured along said curve to The Place of Beginning. Containing 30,986 square feet of land more or less. Bearings based on State Plane Coordinate Monuments

6919 and 6920 as described in the City of Cincinnati Geodetic Control Manual. Subject to all legal highways, easements and all restrictions of record.