

LEASE AGREEMENT

(Portion of Doerr Alley north of Garfield Place and south of Weaver Alley; adjacent to 14 Garfield Place)

This Lease Agreement ("**Lease**") is made and entered into by and between the **City of Cincinnati**, an Ohio municipal corporation, the address of which for purposes of this Lease is 801 Plum Street, Cincinnati, OH 45202 (the "**City**"), and **Daoud Realty, LLC**, an Ohio limited liability company, the address of which for purposes of this Lease is 650 Lunken Park Drive, Cincinnati, OH 45226 ("**Lessee**").

Recitals:

A. The City owns the public right-of-way known as Doerr Alley, north of Garfield Place and south of Weaver Alley in the Central Business District, as shown on Exhibit A (*Site Plan*) hereto.

B. Lessee owns certain real property generally located at the southeast corner of Garfield Place and Doerr Alley, as shown on Exhibit A (the "**14 Garfield Place Property**").

C. Lessee desires to lease a portion of Doerr Alley from the City (said portions being shown on Exhibit A and referred to herein as the "**Leased Premises**") so that it can restrict vehicular and pedestrian traffic through the Leased Premises and repurpose the Leased Premises for outdoor street dining.

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

E. The fair market rental value of the Leased Premises, as determined by appraisal by the City's Real Estate Services Division, is \$1,825/year for the leased portion of Doerr Alley, which Lessee has agreed to pay.

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

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

H. City Planning Commission, having the authority to approve the change in the use of City-owned property, approved the change in use of the Leased Premises at its meeting on March 5, 2021.

NOW THEREFORE, the parties hereby agree as follows:

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

2. Term.

(A) The term of this Lease shall be **five (5) years** ("**Term**") and shall commence on the Effective Date (as defined on the signature page hereof) (herein, the "**Commencement Date**") and, unless sooner terminated as herein provided, shall expire on the 5th anniversary thereof. As used herein, a "**Lease Year**" shall mean the 12-month period from the month and day of the Commencement Date through the day preceding the one-year anniversary thereof.

(B) Early Termination on 30 Days Notice. Notwithstanding anything in this Lease to the contrary, the City may terminate this Lease at any time during the Term, by giving Lessee no less than 30 days prior written notice thereof, if the City determines that it needs the Leased Premises or any portion thereof for a municipal purpose or for any other reason. Similarly, Lessee may terminate this Lease at any time and for any reason by giving the City no less than 30 days prior written notice thereof.

3. Rent.

(A) Base Rent. On the Commencement Date, and on each anniversary thereof during the Term, Lessee shall pay the City annual rent for the Leased Premises in the amount of \$1,825/year for the Leased Premises.

(B) Late Payment. If any payment owed by Lessee hereunder is not received by the City on the due date, Lessee shall pay the City a late charge equal to five percent of the amount past due, together with interest on the past due amount, until paid, at an annual rate of ten percent. If the Term of this Lease is terminated or expires prior to the end of a year, the City shall not be required to refund any portion of the prepaid rent for such year to Lessee. All payments shall be made by check payable to the "City of Cincinnati-Treasurer" and mailed to: City of Cincinnati, Attention: Real Estate, 801 Plum Street, Room 122, Cincinnati, Ohio 45202, or to such other address as the City may from time to time designate in writing.

4. Permitted Use. Lessee may use the Leased Premises as a private walkway 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. Lessee 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. Lessee shall not bring or permit to be brought onto the Leased Premises any hazardous materials or other contaminants or substances that are harmful to the public or to the environment.

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

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

7. Alterations.

(A) Vehicular/Pedestrian Barriers. Lessee, at its expense, shall have the right (but not the obligation) to

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prevent vehicular and pedestrian use of the Leased Premises or any portion or portions thereof by installing removable bollards or planters approved by DOTE, at the north and south ends of the Leased Premises (each, a “Barrier”, and collectively, the “Barriers”). Lessee, through a licensed street contractor, shall obtain a street opening permit before installing the Barriers and shall pay any and all permit fees imposed by DOTE. Before a street opening permit can be issued, Lessee’s licensed street contractor shall be required to supply two sets of plans to DOTE for approval showing the location of the Barriers in relation to street fixtures and the rights-of-way lines and, if applicable, providing the manufacturer’s details. At the end of the Term, and unless DOTE requires that the Barriers remain in place, Lessee shall remove the Barriers and immediately perform all necessary street and sidewalk restoration under a DOTE street opening permit obtained by a licensed contractor. If Lessee fails to timely remove the Barriers and complete such restoration to the satisfaction of the City Engineer, the City may do so at Lessee’s expense, which amount shall be payable by Lessee within thirty (30) days after Lessee’s receipt of a statement from the City indicating the amount due.

(B) Access by City Departments, Utility Companies and Others. (i) Lessee shall ensure continuous access to the Leased Premises (24 hours/day, 7 days/week, 52 weeks/year), 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. Lessee 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 Lessee undertakes any action or constructs any improvements within the Leased Premises that interfere with the access rights reserved to the City and third parties herein, the same shall constitute an immediate default of Lessee under this Lease. If Lessee’s activities within the Leased Premises cause damage to existing utility lines or other utility facilities belonging to a utility provider, Lessee shall immediately notify the appropriate utility provider. All costs of such repairing such damage, including without limitation, all costs of replacing any damaged utility lines and facilities that are not capable of being properly repaired as determined by the applicable utility provider in its sole discretion, shall be borne by Lessee and shall be payable by Lessee within thirty (30) days after Lessee receives documentation substantiating such costs. If any utility company damages or must remove any improvements installed by Lessee within the Leased Premises in connection with its inspection, maintenance, repair or replacement of its existing utility facilities in the area, Lessee shall be solely responsible for all costs associated with the repair or replacement of Lessee’s improvements.

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

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

(E) No Other Alterations or Signs. Except as permitted under this section, Lessee shall not make any alterations or improvements to the Leased Premises, install any signs within the Leased Premises that are visible from outside the Leased Premises, install any new utilities within the Leased Premises, or remove any existing improvements within the Leased Premises, without obtaining the prior written consent of DOTE. If Lessee proposes to install any permanent structures or other improvements in addition to the Barriers, Lessee shall also obtain the prior written consent of the utility companies that have utilities located within the Leased Premises.

8. Insurance; Indemnification.

(A) Insurance. Throughout the Term, Lessee shall maintain Commercial General Liability insurance with respect to the Leased Premises in an amount not less than \$1,000,000 per occurrence, combined single limit/\$1,000,000 aggregate, naming the City as an additional insured, and such additional insurance as DOTE or the City’s Department of Risk Management may from time to time reasonably require. All insurance required to be maintained by Lessee hereunder shall be issued by insurance companies reasonably acceptable to the City. If

Lessee constructs any improvements within the Leased Premises, Lessee shall maintain property insurance on such improvements in the amount of the full replacement cost thereof. On or prior to the Commencement Date and prior to the expiration of each insurance policy, Lessee shall furnish to the City a certificate of insurance evidencing the insurance required hereunder.

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

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

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

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

11. Surrender; Holdover.

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

(B) Removal of Alterations. If Lessee has made improvements to the Leased Premises during the Term, then, at the end of the Term, the City shall identify which improvements Lessee shall be required to

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

12. General Provisions. This Lease constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements of the parties. This Lease may be amended only by a written amendment signed by both parties hereto. Lessee shall not assign its interests under this Lease or sublet any portion of the Leased Premises without the prior written consent of the City, which consent may be withheld in the City's sole discretion. This Lease shall be binding upon the parties and their respective successors and permitted assigns. 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 #76-2020.

(A) DOTE:

- (i.) Lessee must obtain approval for outdoor dining seating prior to installation.
- (ii.) 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.
- (iii.) This lease requires that one adjacent ally segment (Weaver Ally or Doerr north of Weaver) to be changed directionally, which requires a City Council ordinance.
- (iv.) Abutting property owners on Doerr Alley from Garfield to Weaver Alley shall give written consent. Additional owners on the alley that changes direction should also give written consent.
- (v.) Petitioner is responsible for maintenance of the pavement, curb, and sidewalk.

(B) Cincinnati Bell: There are existing underground telephone facilities at this location. The existing facilities must remain in place, in service and able to be accessed. Any damage done to the facilities, or any work done to relocate the facilities as a result of this request will be handled entirely at Lessee's expense.

(C) Buildings and Inspections:

- (i.) Lessee is required to provide a means of egress, no less than 44 inches (3.5 ft) in width, from two emergency exit doors from 22 Garfield.
- (ii.) The seating area will also be required to provide two means of egress, each as well to be required to be 44 inches (3.5 ft) in width.

14. **Exhibits.** The following Exhibits are attached hereto:
Exhibit A – *Site Plan*
Exhibit B – *Copy of consents from abutting property owners*

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**”).

DAOUD REALTY, LLC,
an Ohio limited liability company,

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

City of Cincinnati

By: _____

Printed name: _____

Title: _____

Date: _____, 2021

Recommended by:

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

Approved as to Form:

Assistant City Solicitor

Certified Date: _____

Fund/Code: _____

Amount: _____

By: _____
Karen Alder, City Finance Director

EXHIBIT A
to
Lease Agreement

SITE PLAN

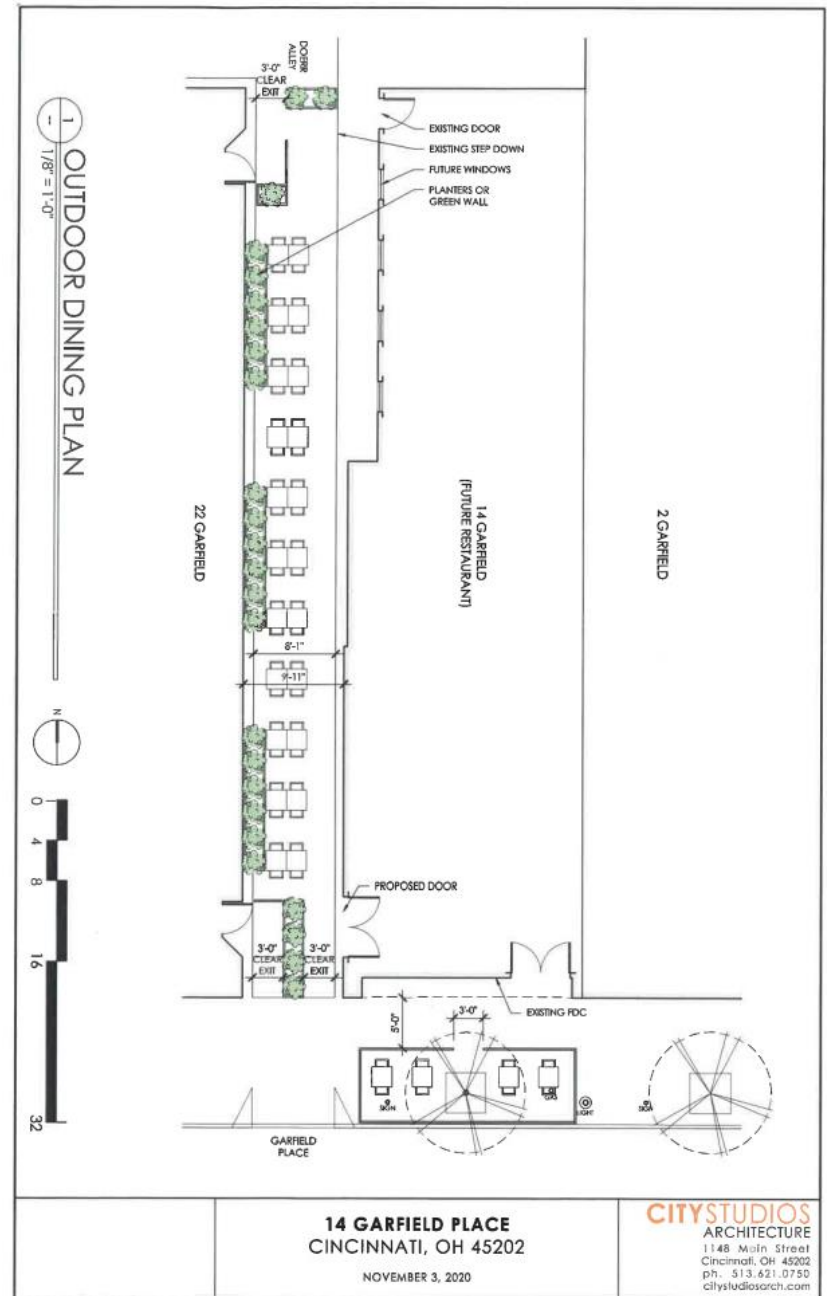


EXHIBIT B
to
Lease Agreement

COPY OF CONSENT FROM ABUTTING PROPERTY OWNER

Right of way: Doerr Alley

Consent of Abutting Property Owner to Lease of Right of Way

Mr. Matthew Kelly, of Garfield Place LLC, the owner of record of that certain real property known as Hamilton County Auditor Parcel Number 077-0003-0027-90 located at 22 Garfield Place, Cincinnati, OH 45202, which parcel abuts the right of way known as Doerr Alley (between Garfield and Ninth St.) in the CBD neighborhood of the City of Cincinnati, Hamilton County, Ohio, hereby consents to the lease for a term of 10 Years, with two (5) Year Options of the portions of Doerr Alley as described/depicted in the attached Exhibit A ("Leased Premises") for use as Outdoor Dining Space.

My signature below represents my support for the lease of the Leased Premises.

Garfield Place, LLC

By: 

Printed name: Matthew Kelly

Title: Owner

Date: 11/23/20

