

RESOLUTION 2021-39

AUTHORIZING A LEASE AGREEMENT WITH THE DOWNTOWN CLEVELAND ALLIANCE FOR PROPERTY ADJACENT TO THE SETTLERS LANDING RAPID TRANSIT STATION LOCATED AT 1199 W. SUPERIOR AVENUE AT ROBERT J. LOCKWOOD JR. DRIVE, CLEVELAND, OHIO, FOR A RENEWAL TERM OF TWO YEARS AT \$10.00 PER YEAR, WITH ONE OPTION TO EXTEND FOR ONE YEAR, FOR USE AS A DOG PARK

WHEREAS, the Greater Cleveland Regional Transit Authority ("GCRTA") is the owner of record of the land located at 1199 W. Superior Avenue at Robert J. Lockwood J. Jr. Drive in the City of Cleveland, Ohio, 44113, which is a portion of the property known as the Settlers Landing Rapid Transit Station and Permanent Parcel Number 101-15-008 (the "Property"); and

WHEREAS, the Property was acquired by GCRTA on December 31, 1998 for the construction of the Waterfront Rapid Transit Line; and

WHEREAS, the Property has been leased to the Downtown Cleveland Alliance ("DCA"), an Ohio not-for-profit corporation, for eight years for the construction, operation and maintenance of a dog park that is used by GCRTA customers, downtown Cleveland area residents, neighboring residents and visitors; and

WHEREAS, Section 470.03 of the Codified Rules and Regulations of the Greater Cleveland Regional Transit Authority provides that leases permitting continuous use of GCRTA property for more than 3 years must be approved by the Board of Trustees; and

WHEREAS, Federal Transit Administration ("FTA") Circular 5010.1E authorizes the GCRTA to renew existing leases at rates and conditions based on current fair market values for similar public amenities created on comparable properties; and

WHEREAS, the GCRTA staff has determined the new lease terms and conditions to be representative of the fair market value for comparable properties; and

WHEREAS, DCA intends to continue to operate and maintain this dog park, a popular public amenity on the Property, and agrees to perform all necessary capital improvements and agrees to maintain and secure the Property in a clean, safe and attractive condition, which represents additional consideration for the Property; and

WHEREAS, this public amenity was determined to be an appropriate use for the site as it is contiguous to the existing Settler's Landing Municipal Park.

WHEREAS, GCRTA intends to offer DCA, as a tenant in good standing, a lease renewal for the Property for a term of two years at \$10.00 per year with one extension option of one additional year and the Authority reserves the right to cancel the lease at any time and for any reason; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County and Ohio:

Section 1. That the General Manager, Chief Executive Officer is hereby authorized to execute a lease agreement with the Downtown Cleveland Alliance ("DCA") for a renewal term of two years with one option to extend for one additional year at \$10.00 per annum for a portion of the property located at 1199 W. Superior Avenue, Cleveland, Ohio and further known as the Settlers Landing Rapid Transit Station and Cuyahoga County Permanent Parcel Number 101-15-008 (the "Property"). The General Manager, Chief Executive Officer is further authorized to exercise the option to extend.

Section 2. That the rental amount of \$10.00 per year along with DCA's agreement to perform all necessary capital improvements and to maintain and secure the Property in a clean, safe and attractive condition represents fair compensation for the Property, as determined by a survey of comparable properties in northeast Ohio and as verified by the Greater Cleveland Regional Transit Authority staff.

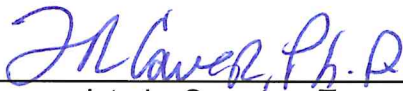
Section 3. That this resolution shall become effective immediately upon its adoption.

Adopted: April 20, 2021



President

Attest:



Interim Secretary-Treasurer



Greater Cleveland Regional Transit Authority
STAFF SUMMARY AND COMMENTS

TITLE/DESCRIPTION:		Resolution No.:
LEASE:	LEASE AGREEMENT FOR PROPERTY AT THE SETTLERS LANDING RAPID TRANSIT STATION, 1199 W. SUPERIOR AVENUE AT ROBERT J. LOCKWOOD DRIVE, CLEVELAND, OHIO 44113	2021-39
		Date: April 15, 2021
LESSEE:	DOWNTOWN CLEVELAND ALLIANCE, AN OHIO NOT- FOR-PROFIT CORPORATION	Initiator: Programming and Planning
TERMS:	TWO YEAR RENEWAL TERM AT \$10.00 PER YEAR WITH ONE OPTION TO EXTEND FOR ONE ADDITIONAL YEAR	
Action Request:		
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____		

1.0 PURPOSE/SCOPE: This resolution seeks approval for a Lease Agreement with the Downtown Cleveland Alliance (“DCA”), an Ohio not-for-profit corporation, for the operation and maintenance of the dog park on GCRTA property adjacent to Settlers Landing Station. The agreement includes the following terms and conditions:

- Property is part of the GCRTA Waterfront Line at the Settlers Landing Rail Station and is contiguous to the Settler’s Landing Municipal Park.
- The renewal term will be for two years with one extension option of one additional year with nominal rent of \$10.00 per annum.
- DCA will perform all necessary capital improvements and maintain the dog park in a clean, safe and attractive condition.
- Insurance requirements are updated.
- GCRTA reserves the right to cancel the lease at any time and for any reason.

2.0 DESCRIPTION/JUSTIFICATION: The Authority acquired this property on December 31, 1998 for construction of the Waterfront Line. The portion of the property proposed for lease renewal is currently used by DCA as a dog park adjacent to the Settlers Landing rail station. DCA is the only not-for-profit Corporation organized solely to improve the environment in downtown Cleveland as a place to live, work and play. DCA constructed and has operated this dog park as a valuable community asset for the past eight years.

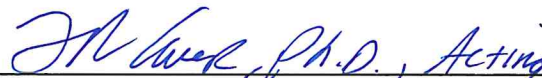
Staff is seeking approval for the lease renewal at this time because Section 470.03 of the Codified Rules and Regulations of the Greater Cleveland Regional Transit Authority provides that leases permitting continuous use of Authority property for more than 3 years must be approved by the Board of Trustees.

The agreement promotes this popular community asset by continuing an amenity for the Authority’s customers, downtown and near neighborhood residents and visitors to the station and the adjacent waterfront park.

The proposed use is supported by the continued use of this popular amenity since its inception in 2014.

- 3.0 PROCUREMENT BACKGROUND: Does not apply.
- 4.0 DBE/AFFIRMATIVE ACTION BACKGROUND: Does not apply.
- 5.0 POLICY IMPACT: The proposed lease of this property is consistent with the Real Estate Policies of the GCRTA.
- 6.0 ECONOMIC IMPACT: The income from rent is nominal at Ten Dollars (\$10.00) per year, however, DCA's agreement to perform all necessary capital improvements and to maintain the Property in a clean, safe and attractive manner reduces the operational costs for GCRTA of the property at the Settler's Landing Station. Federal Transit Administration (FTA) concurrence is authorized under Circular 5010.1E for renewal of existing leases at reasonable terms and conditions.
- 7.0 ALTERNATIVES: The GCRTA can refuse to approve the Lease Agreement and seek a new tenant for the property or close the amenity for public use and maintain the property. Additional costs would be incurred for maintenance of this property.
- 8.0 RECOMMENDATION: The proposed lease agreement was discussed at the April 6, 2021 meeting of the Audit, Safety Compliance and Real Estate Committee and referred to the full Board for further action. Staff recommends the proposed lease agreement for approval to the Board of Trustees.
- 9.0 ATTACHMENTS: A. Draft Lease Agreement, including Exhibits A and B

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.



General Manager, Chief Executive Officer

DRAFT

LEASE BETWEEN

THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

AND

DOWNTOWN CLEVELAND ALLIANCE

This Lease is made and entered into as of this ____ day of _____, 2021 ("Effective Date"), by and between the **Downtown Cleveland Alliance**, an Ohio nonprofit corporation whose principal business office is located at 1010 Euclid Avenue, Suite 300, Cleveland, Ohio 44115 ("Lessee") and the **Greater Cleveland Regional Transit Authority** a political subdivision organized under Ohio Revised Code Chapter 306, whose principal business office is located at 1240 West 6th Street, Cleveland, Ohio, 44113 ("Lessor").

1. Lessor does hereby lease to Lessee and Lessee hereby leases from Lessor the land adjacent to the Settler's Landing transit station, in the City of Cleveland, Cuyahoga County, Ohio, and identified on the document attached hereto and marked as **Exhibit "A"** ("Premises").
2. The term of the Lease shall be for a period of two (2) years, beginning on August 1, 2021 (the "Commencement Date") and terminating on July 31, 2023 with one option to extend for one additional year. Any renewal or extension of this Lease will require the approval of the Lessor's Board of Trustees. Notwithstanding anything contained herein, Lessor reserves the right to cancel the Lease at any time and for any reason.
3. In consideration of said demise, Lessee shall pay to Lessor annual rent of Ten Dollars (\$10.00) payable in advance of the Commencement Date and each yearly anniversary date thereof for the term of the Lease.
4. Lessee may use and occupy the land described in **Exhibit "A"** solely for the purpose of operating a temporary dog park ("Dog Park") on a non-profit basis. The Dog Park must be accessible to the general public. Lessor and Lessee agree this use does not create parkland but that the Dog Park is a temporary use of the land until such time as Lessor has another use for the land. The land described in **Exhibit "A"** shall not be used for any purpose other than permitted herein without the express written consent of the Lessor.
5. The Dog Park shall be fenced around the perimeter with a latching gated entrance, and shall provide seating for individuals using the park. The fence and all gates shall be maintained in a good state of repair at all times.
6. Lessor reserves the right to use (or grant to other parties the right to use) the air rights above the Premises and Lessee will have no right title or interest in the air rights above the Premises.
7. Within fifteen (15) days from the Commencement Date of this Lease, Lessee shall prepare and deliver to Lessor detailed plans and specifications of the improvements to the Premises

to be constructed by Lessee in compliance with **Exhibit "B"** attached hereto and made a part hereof. Within fifteen (15) days following Lessor's receipt of Lessee's plans and specifications, Lessor shall notify Lessee whether Lessee's plans and specifications are acceptable to Lessor. If Lessee's plans and specifications are not acceptable to Lessor, Lessor will advise Lessee of the required modifications to Lessee's plans and specifications. Lessee shall modify and deliver to Lessor its revised plans and specifications within five (5) days from receipt of Lessor's required modifications. Lessor and Lessee will continue this process until Lessor has approved Lessee's plans and specifications ("Lessee's Work"). Within ten (10) days from receipt of Lessor's approval of Lessee's plans and specifications, Lessee will apply for any and all permits and other governmental approvals necessary to perform Lessee's Work and Lessee will diligently pursue such application(s) until approved. Lessee shall not modify Lessee's plans and specifications approved by Lessor without Lessor's prior written consent. Upon Lessor's delivery of the Premises, and provided Lessor has approved Lessee's plans and specifications, or upon Lessor's approval of Lessee's plans and specifications, whichever is later, Lessee will commence construction of Lessee's Work in accordance with the plans and specifications approved by Lessor. Lessee shall not commence any work in the Premises until Lessee delivers to Lessor a policy of public liability and property damage insurance in accordance with the requirements of paragraph 11 of this Lease. If Lessee has not complied with each of the foregoing conditions, Lessor may, in its sole and absolute discretion, reasonably control Lessee's access to the Premises to the extent Lessor deems necessary without such actions affecting the term of this Lease as set forth in paragraph 2 of this Lease. Lessee will complete construction of Lessee's Work prior to occupancy or use by the public. Lessee must receive Lessor's consent to its signage plans and specifications prior to installation of Lessee's signage upon the Premises. Lessee shall perform all work associated with the granting of this Lease at its sole cost and expense.

8. Lessee shall be responsible for the maintenance of the Dog Park constructed on the Premises and shall maintain said Premises in a clean, safe, and attractive condition. Lessee shall keep and maintain the Premises and any fixtures, facilities, or equipment therein, in good condition and repair. Lessee shall be responsible for cleaning, repairing and remediating all portions of the Premises.
9. Neither the Premises nor any part thereof shall be sublet nor shall this Lease be assigned without the express consent, in writing, of the Lessor.
10. The relationship between the parties hereto is wholly that of Lessor and Lessee, and is not and never shall be deemed to be a partnership or joint venture.
11. To the fullest extent permitted by law and to the full extent of Lessee's intentional, reckless or negligent acts or omissions, the Lessee shall, at its sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless Lessee and its officials, agents, representatives, and employees from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits, for Lessee's breaches of this Lease, or wrongful, intentional, reckless or negligent acts or omissions arising out of or resulting from the subject matter of this Lease, or the acts or omissions of any person or contracted entity directly or indirectly employed or contracted by Lessee.

Nothing herein shall be construed as making Lessee liable for any claims, actions, judgments, costs, penalties, liabilities, damages or losses and expenses caused by the sole negligence and/or misconduct of Lessor. Lessee accepts the land described in **Exhibit "A"** in an "AS IS" condition without warranty by Lessor of any kind or nature, express or implied. Lessor shall not be liable (i) for any damage to Lessee's property located on the Premises, nor (ii) for any condition of the Premises whatsoever.

To the extent that any portion of this provision is found to be in violation of any applicable law, said portion(s) of this provision are stricken but all remaining portions of this provision shall remain in full force and effect.

12. Insurance

- a. The Lessee shall obtain and maintain for the term of this Lease the following minimum insurance coverages. Such insurance shall protect the Lessee from claims which may arise out of or result from the Lessee's operations under this Lease and for which the Lessee may be legally liable, whether such operations be by the Lessee or by a subcontractor or by anyone employed directly or indirectly by any of them, or by anyone for whose acts any of them may be liable.

Approval by the Lessor: Approval of the insurance by the Lessor shall not relieve or decrease the liability of the Lessee hereunder and shall not affect the obligations of Lessee pursuant to paragraph 11 of this Lease. Lessor does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Lessee's interests or liabilities.

In the event the Lessee neglects, refuses or fails to provide the insurance required under the contract documents, or if such insurance is cancelled for any reason, the Lessor shall have the right but not the duty to procure the same at Lessee's cost.

Lessor reserves the right to request a copy of all policies and endorsements prescribed herein.

At its sole expense, Lessee shall obtain and maintain:

- i. **Commercial General Liability (CGL) Insurance** in the amount of \$1,000,000 combined single limit each occurrence for bodily injury and/or property damage and with a \$1,000,000 annual aggregate.
- ii. **Business Automobile Liability (BAL) Insurance** in the amount of \$1,000,000 combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with Lessee's Work and use that is the subject of this Lease.
- iii. **Statutory Workers' Compensation Coverage** in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this Lease and under the control of the Lessee. Employers' Liability coverage in the amount of \$1,000,000 per accident / \$1,000,000 per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under subpart i above. In Ohio, a copy of a certificate of premium payment from the Industrial Commission and Bureau of

Workers Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly shall be sufficient proof of the coverages required by this subpart iii.

b. General Requirements:

i. The Lessee shall not have access to the Premises until it has obtained the required insurance and has received written approval of such insurance by the Lessor. **Lessee shall furnish evidence of such insurance in the form of a certificate (Accord or similar form).**

ii. The certificate shall provide the following:

- The policy shall be written on an occurrence basis. If any insurance specified above is written on a "Claims Made" (rather than an "occurrence" basis), then in addition to the coverage requirements stated herein, Lessee shall:
 - (a) Ensure that the Retroactive Date is shown on the policy, and such date shall be before the Effective Date of the Lease or any work beginning under this Lease.
 - (b) Maintain and provide evidence of similar insurance for at least three (3) years following project completion, including the requirement of adding all additional insureds; and
 - (c) If insurance is cancelled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the Lease Effective Date, Lessee shall purchase "extended reporting" coverage for a minimum of three (3) years after completion of the work.
- Name the Lessor as an additional insured for all CGL, BAL, and, if applicable, CPL liability coverage for claims arising out of operations in conjunction with this Lease
- Contain a waiver of subrogation in favor of the Lessor.
- Specify that the insurance is primary and non-contributory as respects any insurance or self-insurance programs maintained by Lessor.
- Contain a specific reference to this Lease.
- Specify all deductibles & Self-Insured Retentions (SIR), as applicable.
- In the event the insurance should be changed or cancelled, such change or cancellation shall not be effective until 15 days after the Lessor has received written notice of such change or cancellation from the Lessee. Such notice shall be mailed by certified mail, return receipt requested, to the Lessor's Property Manager.
- An insurance company having less than an A-X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by the Lessor. The Lessor shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or SIR.

iii. Lessor will accept any combination of primary CGL along with Excess or Umbrella policies, as well as primary BAL along with Excess or Umbrella policies, to meet the minimum coverage requirements contained herein.

13. Lessee agrees that all construction and maintenance activities permitted or required hereunder will be performed by its own employees or a contractor of Lessee. If any such activities are to be performed by other than employees of Lessee, then Lessee will so advise Lessor and Lessee's contractor(s) will have to obtain and maintain insurance in the amounts specified above. Lessor shall be an additional named insured on such policies and evidence of said coverage must be presented to the Lessor before any work is permitted to begin.
14. This Lease shall be governed by, construed, and enforced in accordance with the laws of the State of Ohio. Lessee shall maintain and operate the Dog Park and the Premises in accordance with all laws of the State of Ohio and local ordinances.
15. Any notice concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified or registered mail to the respective address of each party as set forth herein.

Address of Notice:

Lessor: 1240 West 6th Street
Cleveland, Ohio 44113
Attn: Property Manager

Lessee: 1010 Euclid Avenue, Suite 300
Cleveland, Ohio 44115
Attn: Joseph Marinucci

16. Lessee shall remove any and all fencing, fixtures, improvements and personal property from the Premises upon receipt of notice from Lessor or termination or cancellation of this Lease and return the Premises to its original condition or to a condition satisfactory to Lessor in its sole discretion.
17. This Lease constitutes the entire agreement between the parties and any prior understanding or representation of any kind before the date of this Lease shall not be binding upon either party, except to the extent it is incorporated into this Lease. Any modification of this Lease will be binding only if evidenced in writing and signed by both parties.
18. Each Exhibit referenced in, and attached to, this Lease is incorporated in this Lease by such reference as if fully rewritten in this Agreement.
19. Surrender and Holding Over. Lessee shall deliver up and surrender to Lessor possession of the Premises upon the expiration of the term of this Lease or earlier termination for any reason. If Lessee remains in possession of the Premises after the expiration or earlier termination of this Lease, Lessee shall be a month-to-month tenant and be bound by the terms and provisions of this Lease. Lessee shall (with no additional notice required by Lessor) pay to Landlord monthly rent in the amount of Ten Dollars (\$10.00) per month, in advance, on the first day of each calendar month for any period during which Lessee shall hold the Premises after the Lease term shall expire or may have terminated. Monthly rent and Additional Rent (as hereinafter defined) shall be prorated on a per diem basis (based upon a thirty (30) day

calendar month) for any partial month Lessee occupies the Premises during such holdover period.

20. Additional Rent. Any amounts to be paid by Lessee to Lessor pursuant to the provisions of this Lease or at law, whether such payments are periodic or recurring, shall be deemed to be "additional Rent" and otherwise subject to all provisions of this Lease and of law as to the default in the payment of rent.

21. Counterparts. This Lease may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, each party to this Lease has caused it to be executed by an individual authorized to enter into said Lease and on the date specified herein.

WITNESSES:

LESSOR: Greater Cleveland Regional
Transit Authority
1240 West 6th Street
Cleveland, Ohio 44113-1331

By: _____
India L. Birdsong
General Manager
Chief Executive Officer

Approved as to Legal Form:

Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

WITNESSES:

LESSEE: Downtown Cleveland Alliance
1010 Euclid Avenue, Suite 300
Cleveland, Ohio 44115

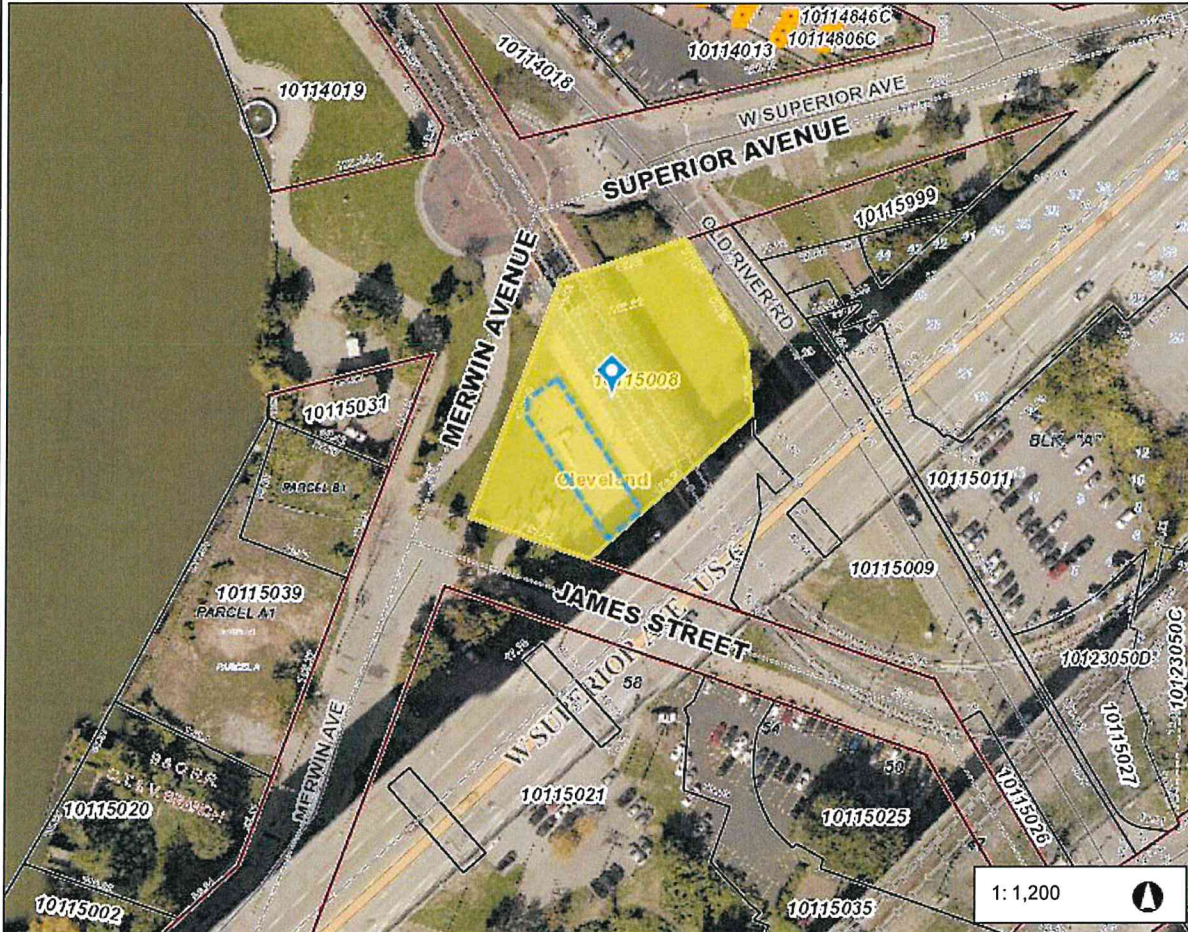
By: _____
Joseph Marinucci

EXHIBIT "A"

(THE PREMISES)



EXHIBIT A - DCA DOG PARK LEASE - PPN 101-15-008



Date Created: 7/9/2018

Legend

- Municipalities
- Point Parcels
- Air Parcels
- Right Of Way
- Platted Centerlines
- Parcels
- Point Parcel
- Air Parcel
- Survey Parcel

1:1,200

200 0 100 200 Feet

Projection:
WGS_1984_Web_Mercator_Auxiliary_Sphere

This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.
THIS MAP IS NOT TO BE USED FOR NAVIGATION

CUYAHOGA COUNTY
GIS GEOGRAPHICAL
INFORMATION
SYSTEMS

EXHIBIT "B"
(TENANT'S WORK)

1. Neither Lessor, nor any, officers, employees, agents, or representatives of Lessor (all of the foregoing, collectively, the "Lessor Parties) shall be liable for any injury, damage or loss of any nature whatsoever to person or property arising out of the performance and construction of the Lessee's improvements. Lessee hereby agrees to indemnify, protect, defend and hold harmless the Lessor Parties from and against any and all claims, damages, liability, loss, cost and expense related to or arising out of the performance and construction of the Lessee's improvements by Lessee or any other party working on Lessee's behalf. The terms and conditions of this Section 1 shall survive the termination of the Lease.
2. All work performed in connection with the Lessee's improvements, shall be performed in a lien-free, good and workmanlike manner and in accordance with the requirements of all applicable government ordinances, codes, regulations and laws. In the event any mechanics' or materialman's lien is filed against the Premises or any other real property of Lessor in connection with the Lessee's improvements or on behalf of Lessee, then Lessee shall, within seven (7) days after notice of filing, cause the same to be discharged of record.
3. Lessee shall neither do nor suffer anything to be done or kept in or about the Premises which contravenes Lessor's insurance policies.
4. Lessee shall promptly clean up and maintain all rubbish, garbage and waste generated from the Lessee's improvements and use of the Premises and shall permit no refuse generated from Lessee's improvements and use of the Premises to accumulate around the exterior of the Premises.
5. Lessee shall comply with all reasonable rules and regulations which Lessor may from time to time establish for the use and care of the Premises.
6. Lessee shall not permit or cause the presence of Hazardous Materials in, on or under the premises. Lessee shall defend, protect, indemnify and hold the Lessor Parties harmless from and against any and all claims, causes of action, liabilities, damages, costs and expenses, including without limit, attorney fees, arising because of any alleged personal injury, property damage, death, nuisance, loss of business or otherwise, by Lessor, any Lessor Party, or from and against any governmental act or enforcement, arising from or in any way connected with conditions existing or claimed to exist with respect to Hazardous Materials (as hereinafter defined) within the Premises or any adjacent property, which are the result of Lessee's use or occupancy of the Premises, or performance of the Lessee's improvements. As used herein the term "Hazardous Materials" shall be defined as any hazardous substance, contaminant, pollutant or hazardous release (as such terms are defined in any federal, state or local law, rule, regulation or ordinance, including without, limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended) and other said wastes. In the event Lessee shall cause or permit the presence of Hazardous Materials in, on, around, or under the Premises, Lessee shall promptly, at Lessee's sole cost and expense, take any and all action necessary (as required by appropriate government authority or otherwise) to return the areas affected thereby to the condition existing prior to the presence of any such Hazardous materials thereon, subject to Lessor's prior written consent. This Section 6 shall survive termination of the Lease.