

ORDINANCE NO. 24-084

AN ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A PARKING LOT LEASE AGREEMENT WITH BUCKEYE COMMUNITY TWENTY TWO, LP, FOR THE USE OF PARKING SPACES AT 202 WEST MARKET STREET DURING THE CONSTRUCTION OF THE COLUMBUS AVENUE RECONSTRUCTION AND STREETScape PROJECT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.

WHEREAS, this City Commission declared the necessity for the City to proceed with the proposed Columbus Avenue Reconstruction and Streetscape Project by Resolution No. 015-24R, passed on March 11, 2024; and

WHEREAS, at the direction of City Commission to obtain public access to private parking as it has been an area of concern in the community regarding the Columbus Avenue Reconstruction and Streetscape Project, an agreement was reached with Buckeye Community Twenty Two, LP to utilize a portion of the parking lot at 202 West Market Street during the construction phase of the project; and

WHEREAS, the Lease Agreement will allow public access to the parking lot with the exception of eight (8) parking spaces reserved for Buckeye Community Twenty Two, LP, beginning on September 1, 2024 through April 30, 2025, at no cost to the City; and

WHEREAS, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to approve the terms and execute the Lease Agreement prior to April 12, 2024, as requested by Buckeye Community Twenty Two, LP; and

WHEREAS, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments, including the Department of Community Development, of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter upon its adoption; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. The City Manager is authorized and directed to enter into a Parking Lot Lease Agreement with Buckeye Community Twenty Two, LP, for the use of parking spaces at 202 West Market Steet during the construction of the Columbus Avenue Reconstruction and Streetscape Project for the period of September 1, 2024, through April 30, 2025, substantially in the same form as

PAGE 2 - ORDINANCE NO. 24-084

Exhibit "1", a copy of which is attached to this Ordinance and is specifically incorporated as if fully rewritten herein, together with such revisions or additions as are approved by the Law Director as not being adverse to the City and as being consistent with carrying out the terms of this Ordinance.

Section 2. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 3. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 4. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



RICHARD R. BRADY
PRESIDENT OF THE CITY COMMISSION



ATTEST:

CATHLEEN A. MYERS
CLERK OF THE CITY COMMISSION

Passed: April 9, 2024

PARKING LOT LEASE

THIS PARKING LOT LEASE (“Lease”) is made effective as of March 12, 2024 (the “Effective Date”) by and between Buckeye Community Twenty Two, LP, an Ohio limited partnership (“Lessor”), and the City of Sandusky, Ohio, an Ohio municipal corporation (“Lessee”). Lessor and Lessee are collectively referred to herein as the “Parties”.

WHEREAS, in order to provide for the public good and to temporarily replace parking spaces occupied by construction, Lessee desires to lease, and Lessor desires to lease to Lessee, up to eighteen (18) parking spaces on the real property described on Exhibit A attached hereto and incorporated herein by reference (the “Premises”).

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Term.** The term of the Lease shall be from September 1, 2024 until April 30, 2025.
2. **Premises.** The eight (8) closest parking spaces near the entrance to the adjacent building are reserved spaces and not available for use other than by Lessor (the “Reserve Spaces”). The remaining Spaces are available to Lessee to use as public parking accessible without charge.
3. **Use of Premises.** The Premises shall be used exclusively as a parking lot. Lessee’s use and occupation of the Premises shall be consistent with: (i) the covenants and easement and all other matters of records as of the date of this Lease; and (ii) all present and enacted laws, ordinances and regulations, including environmental regulations, of any governmental authority having jurisdiction over the Premises. In addition, Lessee shall have the right during the term of this lease to place signage identifying the non-reserved spaces as public parking.
4. **Rent.** Provided that Lessee complies with the terms of the Lease, Lessor shall not charge Lessee rent for use of the Premises during the term of the Lease.
5. **Default.** Failure to perform according to the terms of this Lease shall constitute a default.
6. **Remedies for Default.** In the event of default by Lessee and failure to cure such default by the specified date after notice as provided for herein, Lessee’s right to enter the Premises shall cease, this Lease shall be terminated, and the Parties shall have no further rights, duties or obligations hereunder, except for those obligations which are expressly stated to survive termination. Lessor may then re-enter and take possession of the Premises or any part thereof, repossess the same, expel Lessee and those claiming through or under Lessee, and remove the effects of both or either (forcibly, if necessary) without being deemed guilty of any manner of trespass.
7. **Holding Over.** Lessee shall not use or remain in possession of the Premises after the expiration or sooner termination of this Lease. Any holding over, or continued use or occupancy by Lessee after the termination of this Lease, without the written consent of Lessor, shall not constitute a tenant-at-will interest on behalf of Lessee, but Lessee shall become a tenant-at-

sufferance. There shall be no renewal whatsoever of this Lease by operation of Law. The Lease may only be renewed by a writing signed by both Parties.

8. Insurance.

- a. Policies. Lessee will, at Lessee's own expense, procure and maintain during the term of the Lease, the following insurance policies covering the Premises. Such insurance shall not be altered or cancelled without thirty (30) days' written notice to Lessor; .
 - i. Comprehensive general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000.00) each occurrence and Two Million Dollars (\$2,000,000.00) aggregate. The general liability policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), and blanket contractual, independent contractors, products and completed operations;
 - ii. Workers' Compensation Insurance as required by the Laws of the State. Lessee shall require all subcontractors performing work under this Lease to obtain an insurance certificate showing proof of Workers' Compensation and Employer's Liability Insurance;
- b. Certificates. Upon the commencement of this Lease, Lessee shall furnish to Lessor insurance certificates or, if requested by Lessor, certified copies of policies, evidencing all insurance required to be carried by Lessee in accordance with the Lease.

9. Assignment. Lessee may not assign this Lease without the prior express written consent of Lessor.

10. Sublease. Lessee may not sublease the Premises without the express written consent of Lessor.

11. Limitation of Lessor's Liability. If Lessor sells, assigns, or otherwise transfers (whether by operation of Law or otherwise) all or part of its interests in the Premises or this Lease: (a) Lessor shall be relieved of all obligations and Liabilities of Lessor under this Lease accruing after the effective date of such transfer; and (ii) the transferee shall be deemed to have assumed all of Lessor's obligations and Liabilities under this Lease effective from and after the effective date of the transfer. Lessor, its partners, members, officers, directors, employee, and principals, whether disclosed or undisclosed, shall have no personal liability under or in connection with this Lease. Lessee agrees that it shall look solely to Lessor's interest in the Premises and this Lease for the satisfaction of Lessee's remedies or to collect any judgment requiring payment of any money by Lessor.

12. Severability. In the event any provision, or any portion of any provision of this Lease is held invalid, the other provisions of this Lease and the remaining portion of said provision, shall not be affected thereby and shall continue in full force and effect.

13. **Time Is of the Essence.** All time limits stated in this Lease are of the essence of this Lease.

14. **Entire Agreement.** The making, execution, and delivery of this Lease by Lessee has not been induced by any representations, statements, covenants, or warranties by Lessor except for those contained in this Lease. This Lease constitutes the full, complete, and entire agreement between and among the parties hereto; no agent, employee, officer, representative, or attorney of the parties hereto has authority to make, or has made, any statement, agreement, representation, or contemporaneous agreement, oral or written, in connection herewith modifying, adding to, or changing the provisions of this Lease. No amendment of this Lease shall be binding unless such amendment shall be in writing, signed by both parties hereto and attached to, incorporated in and by reference made a part of this Lease.

15. **No Agency.** Nothing in this Lease is intended, or shall in any way be construed, so as to create any form of partnership or agency relationship between the parties. The Parties hereby expressly disclaim any intention of any kind to create any partnership or agency relationship between themselves. Nothing in this Lease shall be construed to make either party liable for any of the indebtedness of the other, except as specifically provided in this Lease.

16. **Notices.** Any notice or demand required or permitted to be given will be deemed received when hand-delivered, or three (3) days after when mailed by certified mail, postage prepaid, addressed to the party to receive it at the address below, or at any other address or addresses which the receiving party has designated in writing.

If to Lessor:

Steven J. Boone
Buckeye Community Twenty Two, LP
3021 E. Dublin Granville Road
Columbus, OH 43231

If to Lessee:

John Orzech
City of Sandusky
240 Columbus Avenue
Sandusky, OH 44870

17. **Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(Remainder of this page intentionally left blank – Signature page follows)

Executed as of the Effective Date.

LESSOR:

BUCKEYE COMMUNITY TWENTY TWO, LP

By: _____
Name: _____
Its: _____

LESSEE:

CITY OF SANDUSKY, OHIO

By: _____
Name: John Orzech
Its: City Manager

EXHIBIT "A"

This Instrument prepared by:

Joshua S. Peterson, Attorney at Law
Carpenter Lipps LLP
280 N. High St., Suite 1300
Columbus, OH 43215

EXHIBIT A

Legal Description

Situated in the City of Sandusky, County of Erie and State of Ohio, part of lots 8 & 10 Jackson Street, part of lots 7 & 9 Columbus Avenue, in the original town plat, First Ward, being described as follows:

Commencing at a pk nail set in the intersection of the centerline of Market Street (82.50 feet wide) and with the centerline intersection of Jackson Street (82.50 feet wide); Thence North $65^{\circ} 39' 22''$ East along the centerline of said Market Street a distance of 224.87 feet to a point; Thence South $24^{\circ} 11' 38''$ East a distance of 41.25 feet to a drill hole set in the southerly right of way line of Market Street at the northwesterly corner of land conveyed to Rose & William D'Agostino as recorded in RN 200409414, Erie County Deed Records, said drill hole being the place of beginning:

- (1.) Thence South $24^{\circ} 11' 38''$ East along the easterly line of Rose & William D'Agostino a distance of 6.70 feet to a drill hole set;
- (2.) Thence South $65^{\circ} 39' 22''$ West along a southwesterly line of Rose & William D'Agostino a distance of 1.30 feet to a drill hole set;
- (3.) Thence South $24^{\circ} 11' 38''$ East along the easterly line of said Rose & William D'Agostino a distance of 70.92 feet to a drill hole set;
- (4.) Thence South $65^{\circ} 39' 22''$ West along a southwesterly line of said Rose & William D'Agostino a distance of 2.40 feet to a drill hole found;
- (5.) Thence South $24^{\circ} 11' 38''$ East along the easterly line of said Rose & William D'Agostino a distance of 56.06 feet to a pk nail found at the northwesterly corner of land conveyed to the First Federal of Lorain, as recorded in OR 43, PG 792-793, Erie County Deed Records;
- (6.) Thence North $65^{\circ} 46' 52''$ East along the northeasterly line of said First Federal of Lorain a distance of 64.00 feet to a pk nail found in the westerly line of land conveyed to Erie County Commissioners of Erie County as recorded in OR 331, PG 534, Erie County Deed Records;
- (7.) Thence North $24^{\circ} 19' 21''$ West along the westerly line of said Erie County Commissioners of Erie County a distance of 133.81 feet to a drill hole set in the southerly right of way line of Market Street;
- (8.) Thence South $65^{\circ} 39' 22''$ West along said southerly right of way line of Market Street a distance of 60.00 feet to the place of beginning, containing 0.1916 acre more or less, but subject to all legal highways, easements and restrictions of record.

Bearings are assumed for the purpose of indicating angles only. The above description was prepared from an actual survey made by me in August 2004.

Rudy O. Hartung P.S. # 8164