

A RESOLUTION AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR TO ENTER INTO CERTAIN LONG-TERM LEASES FOR THE PROVISION OF PUBLIC PARKING IN THE VILLAGE OF PLAIN CITY, OHIO.

WHEREAS, the Village of Plain City wishes to promote the redevelopment and vibrance of the Uptown area of the community; and

WHEREAS, the Village has identified a need for more public parking in the Uptown area to allow for commercial redevelopment that will benefit the area and the entire Village; and

WHEREAS, Village Council deems it necessary and appropriate to enter into certain lease agreement with certain property owners in the Uptown area of Plain City to provide free public parking;

NOW THEREFORE BE IT RESOLVED by the Council of the Village of Plain City, Ohio, as follows:

Section 1. The Village Council hereby authorizes and directs the Village Administrator to enter into lease agreements with certain property owners of the Village in general accordance with the draft lease agreements identified as Exhibits A and B, attached hereto and made a part hereto.

Section 2. The Village Administrator is further authorized and directed to take subsequent action, upon execution of said lease agreements, to fulfill the Village's requirements under said lease agreements.

Section 3. This Resolution shall be effective from and after the earliest period provided by law.

Passed: May 13, 2019.

Attest: Renee Smelt
Village Fiscal Officer

Dorrian Lane
Mayor

First reading: April 22, 2019.

Second reading: May 8, 2019.

Third reading: May 13, 2019. Vote: 6 yea ___ nay ___ abstain

Certificate of Publication

The undersigned, being Village Fiscal Officer of the Village of Plain City, hereby certifies that the foregoing was published by posting for 15 days as required by law and in accordance with Section 123.01 of the Codified Ordinances. The posting was done from 5.23, 2019 to 12.31, 2019 at the Office of the Fiscal Officer located at 213 South Chillicothe Street; the Plain City Public Library located at 305 W. Main Street; the Security National Bank located at 105 W. Main Street; the Richwood Banking Co. located at 601 W. Main Street; all being in the Village of Plain City, Ohio and the Village of Plain City Website at www.pain-city.com.

Date: May 22, 2019


Village Fiscal Officer

LAND LEASE

This Land Lease ("Lease") is made and entered into this 7TH day of JULY, 2019 by and between the Buckeye Brass & Winds, LLC, an Ohio limited liability corporation 202 N. Chillicothe Street, Plain City, Ohio 43064 hereinafter sometimes referred to as the Lessor and the Village of Plain City, 213 S. Chillicothe Street, Plain City, Ohio 43064, an Ohio municipal corporation, hereinafter sometimes referred to as Lessee.

WITNESSETH:

PREMISES LEASED

Lessor, in consideration of the rent hereby reserved and of the terms and conditions of this Lease to be observed and performed by the Lessee, hereby leases, grants and lets unto Lessee the real property identified as parcel number 04-00709.000 by the Madison County, Ohio, Auditor's Office, said property being hereinafter referred to as the "premises." The premises shall be subject to all easements, restrictions, legal highways, zoning restrictions, and to any state of facts that an accurate survey and/or a personal inspection would reveal. Lessor agrees that Lessee may construct, at Lessee's sole cost and expense, certain improvements as generally depicted in Exhibit "A" attached hereto and made a part hereto. Excluded from the premises are up to 10 parking spots, to be designated by the Lessor. Lessor, at its expense, shall erect signs restricting parking for said spaces. Provided, however, that Lessor agrees to indemnify and hold Lessee harmless for any damage or injury actually suffered by any person using the those exempted parking spaces. Lessee may, at its expense, place waste containers on the premises. The appearance and locations of

such containers shall be approved in advance by Lessor, which consent shall not be unreasonably withheld.

TERM

To have and to hold the premises together with all rights, easements, privileges and appurtenances thereunto belonging or appertaining unto the Lessee for and during the term of fifty (50) years commencing on the July 1, 2019 and to be fully completed and ended at midnight on the July 1, 2069.

RENT

Lessee shall pay or cause to be paid to the Lessor as fixed rent for the premises the sum of \$1.00 per year payable in advance with the first payment being due and payable on or before the commencement date hereof and payments in like amounts (subject to the balance of this paragraph) being due and payable on each annual anniversary date occurring during the Term. All payments of rent shall be delivered to Lessor on or before the due date at the address of Lessor set forth in the paragraph of this Lease entitled Notices, without necessity of notice or demand and with no set-offs, allowances or deductions.

REAL ESTATE TAXES, ASSESSMENTS

The parties acknowledge that the premises is currently subject to property taxation. Lessee agrees to take reasonable steps to apply for an exemption from property taxation for the leased area. Lessor agrees to pay any and all property taxes assessed against the premises during the term of this Lease.

IMPROVEMENTS BY LESSEE

As soon as is reasonably possible following the commencement date of this Lease,

Lessee shall make improvements to the premises as may be permitted under applicable governmental regulations as generally depicted in Exhibit "A" attached hereto and made a part hereto. All improvements shall be made in a workmanlike manner and in accordance with all applicable law. The parties agree that Lessee's installation of said improvements over a period of up to three years is considered reasonable under this agreement.

The parties agree that if the Lessor finds it necessary to excavate the premises in order to perform work on underground lines, the Lessor shall have the obligation to restore same to the condition they were in prior to such work, at Lessor's sole cost and expense.

LIABILITY INSURANCE

Lessee will, at its expense, at all times during the Term carry and maintain in effect insurance for the benefit of Lessee and Lessor, as their respective interests may appear, covering claims for bodily injury and/or property damage arising out of the use or occupancy of the premises, including any improvements thereon, in amounts not less than \$3,000,000.00 for injury or death to any one person and \$1,000,000.00 for injury or death from any single occurrence and

\$300,000.00 for property damage. All such insurance coverage shall be provided through one or more reputable insurance companies licensed to do business in the State of Ohio and approved in advance by the Lessor, and every insurance policy shall provide that it may not be amended, modified or cancelled without twenty (30) days' written notice to Lessor. Each such insurance policy, or a memorandum copy or a certificate thereof, shall be deposited with the Lessor at the time this Lease is signed by Lessor and Lessee. Lessee shall also deliver to Lessor each insurance policy, or a memorandum or certificate evidencing each renewal of the coverage that is in place on the commencement date of this lease.

OBSERVANCE OF LAWS, ORDINANCES AND PROHIBITIONS

During the term of this Lease, Lessee shall observe promptly and at its own expense comply with and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority having jurisdiction over the premises. Lessee may not use or permit the premises to be used for the storage of any vehicles owned or leased by Lessee or any third party, nor shall sales or solicitations by or on behalf of Lessee or any third party be conducted on the premises.

MAINTENANCE

Lessee shall at all times during the Term keep the premises, including all improvements made thereon by the Lessee, in a first-class state of order and repair and in a clean and sanitary condition. Lessee shall, at its sole cost and expense, remove snow, ice, and debris from the premises. Lessor shall have no obligations with regard to the maintenance of the premises or of any improvements now or hereafter existing thereon.

NO WASTE, UNLAWFUL USE

Lessee shall use and occupy the premises in a careful and proper manner and shall not make or suffer any waste or unlawful use of the premises or any use of the premises which is so improper or offensive as to constitute a nuisance to any person or entity.

NO SUBLEASE, ASSIGNMENT

Lessee may not sublet all or any portion of the premises and may not assign all or any portion of this Lease without the prior written express consent of Lessor. In the event such consent is given it shall not be deemed to release Lessee from any obligations under this Lease. Lessee also agrees to cooperate with the Lessor to subordinate said lease to future mortgages on the premises so long as such subordination does not adversely impact Lessee's right to the premises under this Agreement in the event of foreclosure proceedings.

LIENS

Lessee shall not cause or suffer the creation of mechanics' lien, judgment lien or any other type of lien whatsoever against the premises (other than liens for real estate taxes and assessments, if any). Should any such lien be filed, Lessee shall indemnify and hold Lessor harmless against the same and shall use all means to remove said liens as soon as possible including so called "bonding off" the lien.

SURRENDER OF LEASE

At the expiration of this Lease or at any earlier termination which may be provided for herein, Lessee shall quietly and peaceably quit and surrender the premises (leaving all improvements which have been affixed thereto) in as good condition as they were on the commencement date hereof, or if constructed or installed during the Term, in as good condition as they were in immediately following the installation thereof, whichever is appropriate, reasonable wear and tear excepted. No tenancy of any duration shall be created by a holding over beyond the end of the Term.

QUIET ENJOYMENT

Lessor covenants that it has the full right, power and authority to lease the estate in the premises and that, if Lessee pays the rent as herein provided and keeps and performs all of its

other obligations hereunder, the Lessee shall quietly have, hold and enjoy the estate leased for the Term set forth above without hindrance or molestation by the Lessor or by any other person or entity lawfully claiming by, through or under the Lessor. This covenant shall not be deemed to be a personal covenant by Lessor except as to the Lessor's interest in the premises, and if Lessor's interest in the property is terminated or transferred the Lessor shall be released from this covenant and it shall become effective upon Lessor's successor in interest.

INSPECTION

Lessor and its agents and representatives shall have the right to enter upon the premises at any reasonable times during the Term of this Lease for the purpose of examining the premises, observing and inspecting the operation, state of repair and condition of the same, and for all other purposes appropriate under the term of this Lease.

NOTICES

Notices, demands and communications of any sort under this Lease shall be deemed to have been served, given or made if mailed to the Lessor or Lessee by registered or certified mail, postage prepaid, at the respective addresses set forth below:

Lessor: Buckeye Brass & Winds,
LLC
202 N. Chillicothe Street
Plain City, OH 43064
Attn: Robert Phillips

Lessee: Village of Plain City
213 S. Chillicothe Street
Plain City, OH 43064
Attn: Village Administrator

or to such other address as either party may give to the other party to this Lease through such written notice.

IMPROVEMENTS AS PROPERTY OF LESSOR

At the expiration of this Lease or at any earlier termination as provided herein, all improvements which have been made to the premises by Lessee, shall be deemed to constitute the sole property of Lessor so as to terminate any ownership interest Lessee may have in such improvements.

TITLES FOR CONVENIENCE

The titles of various paragraphs in this Lease have been inserted only for purposes of convenience and no title, caption or heading shall be considered to have substantive meaning in the interpretation or construction of any provisions of this Lease.

NO WAIVER

Acceptance of rent by Lessor shall not be deemed to be a waiver of any breach by Lessee of any provision of this Lease. Lessor's waiver of any breach by Lessee or the failure of Lessor to enforce any right it may hold under this Lease shall not be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition of this Lease or to constitute a waiver of Lessor's power to exercise such a right or to set a precedent that the failure of Lessee to perform a term or condition of this Lease (which failure constituted the breach waived by Lessor) will not constitute a breach of the requirements of this Lease Agreement.

COSTS OF PERFORMANCE

Every obligation or requirement to be performed by either party under this Lease shall be paid or performed at the sole expense of that party unless expressly stated to the contrary in this Lease.

MEMORANDUM OF LEASE

The parties shall execute and acknowledge a written memorandum of this Lease at the time the original Lease is executed in order that said memorandum, rather than the original Lease itself, may be filed for record with the Recorder of Madison County, Ohio.

LESSOR NOT RESPONSIBLE FOR DAMAGE, INJURY

Lessor shall not be responsible for any latent or patent defect in the premises or for any change of condition in the premises or for any injury or damage to any person(s) or goods or things resulting from the premises; and Lessee hereby assumes all risk and responsibility with reference to such matters. The provisions of this paragraph do not in any way affect or modify Lessor's obligation to indemnify Lessee set forth in the paragraph hereof entitled "Leased Premises".

AMENDMENT, MODIFICATION

None of the obligations, terms or conditions of this Lease shall be altered, modified or cancelled except by a written amendment to this Lease or by a new lease signed and acknowledged by both Lessee and Lessor.

COPIES AS ORIGINALS

The parties have executed this Lease in duplicate, any one of which shall be deemed to be an original.

BREACH OF LEASE

If Lessee fails to pay where and when due any installment of the rent or any other amount provided for herein, or if there is a failure by Lessee to perform any other requirement contained in a term or condition of this Lease, such failure shall constitute a breach of this Lease and shall give rise to the remedies described in the following paragraphs.

REMEDIES FOR BREACH

The following remedies shall be cumulative at the option of Lessor, and the mention herein of any particular remedy or right shall not preclude Lessor from any other remedy or right available at law or in equity.

1. Lessor may file suit against Lessee to enforce this Lease and thereby to collect any and all sums of money due from Lessee, leaving the Lessee in possession and without ending the Term, or otherwise terminating this Lease.
2. The parties agree that this Lease and the performance thereof constitutes a unique understanding and that a breach by Lessee will cause irreparable damage to Lessor, the extent of which is impossible to ascertain accurately; and the parties further agree that legal remedies are therefore inadequate.

Accordingly, Lessor shall be entitled, in the event of any breach of this Lease by Lessee to preliminary and permanent equitable orders to prevent any threatened, imminent or pending failure of Lessee to make timely payment of any amount due hereunder or failure to perform any other term or condition of this Lease, and may also obtain preliminary and permanent equitable orders compelling specific performance of any obligation, term or condition of this Lease. Further, Lessor shall be entitled to obtain, and Lessee will not oppose the issuance of, temporary ex-parte restraining orders, without bond, to continue in effect only until a hearing on a preliminary injunction can be held, at which hearing the issue shall be whether or not a breach has occurred or is threatened, imminent or pending.

NO ACCORD AND SATISFACTION

No payment by Lessee or receipt by Lessor of a lesser amount than the annual rent herein

stipulated or other amount due hereunder shall be deemed to be other than on account of the earliest payment due, nor shall any endorsement or statement on any check (or on any letter accompanying any check or payment of rent) be deemed an accord and satisfaction; and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or other amount or to pursue any other remedy provided in this Lease.

GOVERNING LAW

This Lease shall be governed by, construed under, and enforced in accordance with the laws of the State of Ohio.

NO AGENCY, PARTNERSHIP OR JOINT VENTURE

The parties hereto state that they have not created and do not intend to create by this Lease any agency, joint venture, or partnership between them, it being understood that the provisions of this Lease with regard to payments by the Lessee and acceptance thereof by Lessor are as rent and consideration for the execution of this Lease.

SEVERABILITY

If any provision of this Lease shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of the Lease shall continue in full force and effect at the option of Lessor.

COVENANTS RUNNING WITH THE LAND

The undertakings, terms and conditions of this Lease shall be deemed to touch and concern the premises and shall be construed to be covenants running with the land.

SUCCESSORS AND ASSIGNS


The undertakings, terms and conditions in this Lease shall be binding upon and shall inure to the benefit of the successors of the respective parties and the assigns of Lessor. Whenever reference

is made in this Lease to either of the parties, it shall be held to include and apply also to such successors and assigns.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day and year first above written.

Signed and acknowledged in
the presence of:

LESSOR:
BUCKEYE
Buckeye Brass & Winds, LLC

 7-23-19

BY: 
Its: PRES / OWNER


Brenda K Blanton

LESSEE:
VILLAGE OF PLAIN CITY
BY: 
Its Village Administrator

Exhibit "A"



