

# Resolution

# Distribution

Stark County Commissioners

City of Canton  
File

Adopted September 1, 2021

Subject **A Resolution approving a Lease of Stark County Real Property to the City of Canton.**

Commissioner Creighton moved for the adoption of the following Resolution which was seconded by Commissioner Regula:

**Whereas**, The City of Canton is desirous of leasing real property located in the plaza area adjacent to and west of the Stark County Courthouse, between Tuscarawas Avenue West and Second Street N.W; and

**Whereas**, the Board of Stark County Commissioners is desirous to lease said real property for a period of ten (10) years and one (1) ten (10) year extension if mutually agreed upon by the both parties prior to the initial termination date; and

**Whereas**, annual payments of \$500.00 will be due on the anniversary date of the lease.

**Now Therefore Be It Resolved** that The Board of Stark County Commissioners authorizes itself to sign an Agreement of Lease on real property located in the plaza area adjacent to and west of the Stark County Courthouse, between Tuscarawas Avenue West and Second Street N.W for a period of ten (10) years and one (1) ten (10) year extension if mutually agreed upon by the both parties prior to the initial termination date with annual payments of \$500.00 due on the anniversary date of the lease.

Upon roll call the vote resulted as follows:

Mr. Smith - yes      Mrs. Creighton - yes      Mr. Regula - yes

C-E-R-T-I-F-I-C-A-T-E

I, the undersigned, hereby certify the foregoing to be a true and correct record of the Resolution adopted by the Board.

Richard Flory

AGREEMENT OF LEASE

This Agreement of Lease is made at Canton, Ohio this 15 day of September, 2021 by and between the Board of Commissioners of Stark County, Ohio, hereinafter referred to as "Lessor," and the city of Canton, hereinafter referred to as "Lessee."

WITNESSETH:

WHEREAS, Lessor desires to lease to Lessee the real property located in the plaza area adjacent to and west of the Stark County Courthouse, lying between Tuscarawas Avenue West and Second Street, N.W., as more fully described on Exhibit A, attached hereto and incorporated by reference, hereinafter referred to as the "Leasehold Premises."

WHEREAS, Lessee desires to lease from Lessor the Leasehold Premises for the operation of a public ice-skating rink/outdoor activity area and public building to be used as a snack bar/restaurant associated with the ice-skating rink/outdoor activity area, and for related municipal purposes, hereinafter referred to as the "Leasehold Improvements."

WHEREAS, the parties desire to execute a long-term lease in an effort to revitalize downtown Canton; and

WHEREAS, Lessor under the laws of the State of Ohio has authorized the granting of this Lease to Lessee for public purposes by Resolution duly passed on the 15 day of September, 2021. Said Resolution authorizes Lessor to enter into this Lease Agreement under the terms and conditions set forth hereinafter; and

WHEREAS, Council for the city of Canton has, by Ordinance No. 132/2021 on the 12 day of July, 2021, authorized the Mayor of the city of Canton to enter into this Lease upon the terms and conditions set forth hereinafter;

NOW, THEREFORE, in consideration of the covenants, terms, and conditions hereinafter set forth, the parties hereto agree as follows:

SECTION 1. LEASED PREMISES.

Lessor does hereby lease unto the Lessee the following described premises: See Exhibit A, attached hereto and incorporated herein by reference. The Leasehold Premises shall include only such portions of the subsurface of the real property as are necessary to support the Leasehold improvements and shall specifically exclude any portion of the real property subsurface utilized in any manner in the construction of the Stark County underground parking garage facility. Further, the Leasehold Premises shall not include the two above-ground parking garage entrances located on the eastern most side of property described on Exhibit A.

SECTION 2. TERM OF LEASE.

The parties previously executed an agreement pertaining to the Leasehold Premises. That agreement's term has not yet expired. It is the parties' intention to terminate the previous agreement as of the Effective Date (hereinafter defined) of this Lease Agreement. The term of this Lease Agreement shall be 10 years commencing on the 1<sup>st</sup> day of September, 2021 ("Effective Date), and running through the 31<sup>st</sup> day of August, 2031. This Lease may be terminated earlier than the termination date as provided for in Section 12 of this Lease Agreement. There shall be one (1) ten (10) year extension if mutually agreed upon by the parties prior to the initial termination date.

SECTION 3. RENT

Lessee shall pay to Lessor as rent for the Leasehold Premises the sum of \$500.00 per year payable on the anniversary date of this Lease.

SECTION 4. USE OF THE LEASED PREMISES.

Lessee proposes to utilize the Leasehold Premises for operation of a public ice skating rink/outdoor activity area and public building to be used as a snack bar/restaurant associated with the ice skating rink/outdoor activity area and for related municipal purposes. This may include a

liquor license if obtained by any future sub-lessee. All use and activity by the Lessee taking place during normal weekday business hours from 8:00 a.m. to 4:30 p.m. shall not use sound amplification and must not disrupt the operations of the Stark County Courthouse.

#### SECTION 5. MAINTENANCE AND REPAIR

During the term of this Agreement, Lessee, at its sole expense, shall keep and maintain in good condition and repair the Leasehold Premises. It is expressly understood that the Lessor shall have no maintenance obligations for the Leasehold Premises during the term of this Lease. Lessee shall regularly remove refuse from the refuse containers located on the Leasehold, so that said containers are not overflowing or going for several days without being emptied.

#### SECTION 6. UTILITIES

Lessee shall pay all utility charges that may be incurred for the Leasehold Premises during this Lease Agreement.

#### SECTION 7. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Lessee shall be entitled to make any alterations, additions, and improvements Lessee deems necessary in order to implement Lessee's proposed use of the Leasehold Premises. Lessor shall not restrict nor prohibit Lessee from making any such alterations, additions, or improvements so long as they can be structurally accommodated by the existing underground parking garage facility. The plans for any additional structures, equipment, or fixtures pertaining to any additional uses approved by the Lessor (see Section 4) must be reviewed and approved by the Lessor's designated architect or engineer, which approval shall not be unreasonably withheld.

Lessee shall submit all preliminary and final plans and drawings for the Improvements to Lessor's architects and/or consultants to assure that no structural damage to Lessor's underground parking garage facility will be caused by the Improvements; provided however, Lessee shall not be liable in any respect to Lessor for any damage to the underground parking garage facility unless caused by Lessee's use of the Leasehold Premises.

#### SECTION 8. UNDERGROUND PARKING FACILITY

Due to the presence of the underground parking facility, Lessee shall not permit vehicles to be driven onto the plaza area nor is heavy equipment allowed with the exception of a Tractor/Ice Resurfacer operated by the Lessee, or at the Lessee's behest, for the maintenance of the Ice Rink during the Ice Rink's operating hours. The parties acknowledge that an underground parking garage facility constructed, owned, and operated by the Lessor underlies a portion of the Leasehold Premises.

#### SECTION 9. INSURANCE

During the term of this Lease, Lessee shall be self-insured or carry liability insurance covering bodily injury, wrongful death and property damage occurring on the Leasehold Premises. In the event Lessee carries public liability insurance, it shall obtain liability limits which the Lessee deems adequate in order to protect itself from liability exposure. Lessee shall be responsible to protect any personal property located on the Leasehold Premises from loss either through self-insurance or property insurance in such amounts as Lessee deems necessary and prudent.

#### SECTION 10. INDEMNIFICATION

Each party shall defend, indemnify and hold the other party, its officers, employees, and agents harmless from all liability, loss, expense (including attorneys' fees), claims for damages arising out of the performance of this Agreement, but only as allowed by Chapter 2744 of the Ohio Revised Code, and only in proportion to and the extent such liability, loss expense, attorney's fees, or claims for damages are caused by or resulting from the negligent or intentional acts or omissions of the indemnifying party, its officers, employees, or agents.

#### SECTION 11. DEFAULT

The parties hereto agree that each shall have all remedies available under Ohio law in the event a party defaults under the terms and conditions set forth in this Agreement. Neither party shall bring an action at law or equity for any alleged default until a notice of default is served upon the defaulting party and the defaulting party is given 90 days to cure any alleged default.

SECTION 12. TERMINATION

Lessor may, upon 270 days' written notice to Lessee, terminate this Lease Agreement for any reason.

SECTION 13. ASSIGNMENT AND SUBLETTING.

Lessee shall be permitted to assign or sublet all or any parts of its rights and/or duties under the contract. Lessor understands that said assignment and subletting must be done utilizing a public bidding process. Lessee will promptly notify lessor of all agreements resulting from this process if applicable.

SECTION 14. ENTIRE AGREEMENT.

This Agreement constitutes the final and complete and exclusive written expression of the intention of the parties and supersedes all previous verbal and written communications, representations, agreements, promises or statements. No amendment, modification or alteration of this Agreement shall be binding unless in writing, dated subsequent to the date hereof, and duly executed by the parties herein.

SECTION 15. SEVERABILITY.

If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, the Agreement shall be construed as if such invalid, illegal or unenforceable provisions were not contained herein.

SECTION 16. OHIO LAW

This Agreement shall be construed according to, be subject to and governed by the laws of the State of Ohio.

SECTION 17. NOTICES.

Notices required hereunder shall be given only by certified letter and shall be deemed given when the notice is received by the party to whom it is addressed. Any notices given shall be addressed as follows:

To Lessor: Board of Stark County Commissioners  
110 Central Plaza South, Suite 250  
Canton, OH 44701

With Copy to:  
Stark County Prosecutor's Office  
110 Central Plaza South, Suite 510  
Canton, OH 44702

To Lessee: City of Canton Mayor's Office  
218 Cleveland Ave. SW, 8<sup>th</sup> floor  
Canton, OH 44702

With copy to:  
Canton Law Director  
218 Cleveland Ave. SW, 7<sup>th</sup> floor  
Canton, OH 44702

SECTION 18. AUTHORITY OF OFFICERS.

Each person executing this Agreement as an officer of one of the parties hereto hereby personally represents and warrants to the other party that such officer is duly authorized to execute this Agreement for an on behalf of such party and that upon the execution of all parties hereto such officer's execution of this Agreement shall cause this Agreement to constitute a legal, valid, and binding obligation of such party.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and place first written above.

*Signatures on the following page*

LESSOR:

BOARD OF STARK COUNTY COMMISSIONERS

By: [Signature]  
By: [Signature]  
By: [Signature]

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
[Signature]  
ASST PROSECUTING ATTORNEY

STATE OF OHIO, STARK COUNTY, SS:

Before me, a Notary Public, in and for said county, personally appeared the above-named Board of Stark County Commissioners, by William C. Smith, Janet Creighton and Richard Regula who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said Corporation, and their free act and deed.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal at Canton, Ohio, this 15 day of September, 2021.

[Signature]  
Notary Public

LESSEE

CITY OF CANTON

By: [Signature]



Jennifer R. Odey  
Notary Public, State of Ohio  
My Commission Expires  
July 14, 2024

STATE OF OHIO, STARK COUNTY, SS:

Before me, a Notary Public, in and for said county, personally appeared the above-named John Highman, Director of Public Service for the City of Canton who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said Corporation, and the free act and deed of them personally and as such officers.

IN TESTIMONY WHEREOF, I hereunto set my hand and official seal at Canton, Ohio, this 27<sup>th</sup> day of July, 2021.

[Signature]  
Notary Public

APPROVED AS TO FORM:

Assistant Stark County Prosecutor <sup>APS</sup>  
[Signature]  
Canton Law Director



TAMMY DIENER  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
04-05-2022  
Recorded in  
Stark County



