

ORDINANCE NO. 2023 - 86

**AN ORDINANCE AUTHORIZING THE ADMINISTRATION TO ENTER INTO
A LEASE AGREEMENT FOR THE USE OF PARCEL NUMBER 471-03-053
WITH THE CATHOLIC DIOCESE OF CLEVELAND DBA HOLY NAME HIGH
SCHOOL, AND DECLARING AN EMERGENCY**

BE IT ORDAINED by the Council of the City of Parma Heights, County of Cuyahoga and State of Ohio:

Section 1. In accordance with the Charter and Ordinances of the City of Parma Heights, the Administration is authorized and directed to enter into a Lease Agreement between the City of Parma Heights and the Catholic Diocese of Cleveland DBA Holy Name High School for the use of Parcel Number 471-03-053 substantially in the form attached hereto as "Exhibit A" and made a part hereof by reference, as if fully rewritten.

Section 2. This Council finds and determines that all formal actions of this Council concerning and relating to the adoption of this Ordinance were taken in an open meeting of this Council and that all deliberations of the Council and of any of its Committees comprised of a majority of the members of the Council that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 3: This Ordinance is declared to be an emergency measure necessary for the public peace, health, and safety of the Municipality, and for the further reason it is necessary to prepare the property prior to the return of students after the holidays; wherefore, this Ordinance shall be in full force and effect immediately upon its passage by Council and approval by the Mayor.

PASSED: December 11, 2023 Thomas Rounds
PRESIDENT OF COUNCIL

ATTEST: Barbara Allen December 11, 2023
CLERK OF COUNCIL APPROVED

FILED WITH THE MAYOR: December 11, '23 Marie Gallo
MAYOR MARIE GALLO

EXHIBIT A

LEASE AGREEMENT

THIS LEASE (the "Lease") is entered into by and between **CITY OF PARMA HEIGHTS, OHIO, WITH RESPECT TO PROPERTY HELD BY THE PARMA HEIGHTS LAND REUTILIZATION PROGRAM** (the "Lessor") and **THE CATHOLIC DIOCESE OF CLEVELAND D/B/A HOLY NAME HIGH SCHOOL**, 6000 Queens Hwy, Parma Heights, OH 44130 (the "Lessee"). This Lease shall be effective on the date signed by Lessor, if Lessor is last to sign, or on the date signed by Lessee, if Lessee is last to sign (the "Effective Date").

WITNESSETH:

1. **PREMISES.** Lessor holds title to certain property described herein and Lessor does hereby let and lease unto the Lessee for the term and upon the payment of the rents and keeping, performance and observance of all the terms, covenants, provisions, conditions and limitations set forth herein, a portion of such property situated in the City of Parma Heights, County of Cuyahoga and State of Ohio, and known as the entirety of Parcel Number 471-03-053 located at Queens Highway, Parma Heights, OH 44130 (the "Premises").

2. **TERM AND OCCUPANCY.**

2.1 **Term:** This Lease shall be for a term of ten (10) years commencing on the first day of _____, 20__, and ending on the last day of _____ 20__ (the "Term").

2.2 **Occupancy:** Lessee shall be granted occupancy of the Premises commencing on the Effective Date. Lessor agrees that it shall reasonably cooperate with Lessee in obtaining any necessary permits so long as all costs associated with such permit shall be borne by the Lessee.

3. **RENEWAL TERMS.** Subject to the termination rights in Paragraph 12, the Lessee may exercise an option to renew the Lease for a second Term of five (5) years based upon and pursuant to the terms and conditions herein, and based upon \$50.00 dollar increase in Rent. The Lessee shall issue notification of its intention to exercise its option to renew the Lease, in writing, on or before the end of the initial Term, and further pay tendering payment of additional Rent.

4. **RENT.**

4.1 **In General.** Lessee agrees to pay to Lessor rent for the use and occupancy of the Premises ("Rent"). Rent shall be paid on or before the first (1st) day of each and every calendar year (prorated for any partial year) and shall be paid directly to the attention of the Director of Finance at the place which notices are required to be sent hereunder.

4.2 Rent. As Rent for the term of this Lease, Lessee shall pay Lessor \$100 (one hundred dollars) per year.

5. PURPOSE, USES, AND COMPLIANCE WITH LAWS. Lessee shall bear full responsibility for the operation and use of the Premises, and ensure its use is exclusively limited to school signage, and for no other purpose. Lessee shall use and occupy the Premises in a careful, safe and proper manner; will not commit or suffer waste therein; will comply with all present and future laws, ordinances, rules, regulations and requirements of the United States of America, the State of Ohio and the appropriate local government respecting said Premises and the use and occupation thereof.

6. SIGNS. Lessee may erect such signage upon the Premises upon the prior written consent of the Lessor, and as may be in compliance with appropriate local government regulations respecting such signage ("Signage"). Lessee must solicit and obtain Lessor's consent prior to filing application for necessary sign/building permits, including variances, if required. Such Signage shall be and remain the property of Lessee, unless abandoned as provided herein.

7. ALTERATIONS AND FIXTURES. Lessee may from time to time during the term hereof or any extension hereof, make such improvements, alterations, additions, and/or changes (the "Alterations") in and to the signage on the Premises as it finds necessary or convenient for its purposes upon the prior written consent of the Lessor, and all such work shall be done in a professional, good, and workmanlike manner and comply with all applicable ordinances, laws and regulations of all authorities having jurisdiction over the Premises and Lessee's use of said premises. The Signage and all alterations thereto shall remain the property of Lessee unless abandoned as otherwise provided herein.

8. REPAIRS AND CUSTODIAL REQUIREMENTS. Lessee shall maintain the Premises in good order and condition in accordance with good business practices including lawn cutting, tree trimming, snow removal, all at the Lessee's expense.

9. UTILITIES AND OTHER SERVICES. It is not anticipated that Lessee will use any utilities in connection with its use of the Premises. In the event that Lessee elects to utilize electricity in connection with its use of the Premises, the Lessee shall, upon the prior written consent of the Lessor, and upon applying for and receiving building permits as required by law, maintain all electrical systems at its expense.

10. LESSOR'S RIGHT TO ACCESS AND EXAMINE PREMISES. Lessor and its agents and representatives may enter upon the Premises at any time for the following purposes: (i) inspecting the Premises; (ii) making repairs, replacements, or alterations as allowed or required by the Lease; (iii) showing the Premises to prospective purchasers, tenants, or lenders; or (iv) confirming that the Lessee is complying with all terms of this Lease. Lessor shall use reasonable efforts not to unreasonably interfere with Lessee's use of the Premises and shall give Lessee reasonable notice (which may be oral notice) of Lessor's intent to enter upon the Premises. In the case of a real or apparent emergency, no such notice shall be required.

11. **EXPIRATION OR TERMINATION; REMOVAL OF SIGN.** Lessee will surrender and deliver up the Premises upon the expiration or termination of this Lease in good order and condition, reasonable use and natural wear and tear thereof, and damage by fire and unavoidable casualty, excepted. If, at any time, this Lease terminates, whether as a result of any Default by the Lessee, termination by Lessor or Lessee, or simply by the expiration of the Term, the Lessee shall promptly remove Lessee's sign from the Premises. By failing to remove the sign within a reasonable time following termination of this Lease not to exceed one hundred twenty days (120) days, Lessee shall be deemed to have forever abandoned such property and Lessor may remove and dispose of the same in any manner it chooses, at Lessee's cost. Lessee shall hold Lessor harmless from any claims, costs, or damages arising from its use of the premises, including but not limited to the signage.

12. **DEFAULT AND TERMINATION.**

12.1 **Default.** The following shall be deemed an event of default on the part of the Lessee:

- i) Failure to comply with any provisions of this Lease for thirty (30) days after written notice thereof by Lessor; provided that if the nature of such Default is such that the same cannot reasonably be cured within such period, Lessee shall not be deemed to be in Default if Lessee shall within such period commence to cure such Default and thereafter diligently prosecute the same to completion;
- ii) Lessee becomes bankrupt or insolvent or files or has filed against it a petition in bankruptcy or for reorganization or arrangement or other relief under the National Bankruptcy Act or makes an assignment for the benefit of creditors.

12.2 **Occurrence of Default.** Upon the occurrence of a default by Lessee, Lessor may, without prejudice to any other remedies, peaceably re-enter and take possession of the Premises. At any time during which Lessee is in default, Lessor may also terminate this Lease, without obligation to do so.

12.3 **Termination by Lessee.** Lessee may terminate this Lease Agreement without further obligation upon thirty (30) days advance written notice issued in accordance with the notice provisions as set forth in paragraph 18 herein if, at any time, Lessee is prohibited by any law, regulation, or order from placing or maintaining a sign on the Premises suitable to Lessee's needs. All rights and duties under this Lease agreement shall terminate after the thirty (30) day notice period has expired, with exception of Lessee's obligation to pay any rent which may be due through the termination date.

12.4 **Termination by Lessor.** Lessor may terminate this Lease Agreement without further obligation upon ninety (90) days advance written notice issued in accordance with the notice provisions as set forth in paragraph 18 herein if, at any time, Lessor is prohibited by any

law, regulation, or order from leasing real property to Lessee or in the event that such said premises are determined, in the sole discretion of Lessor, to be necessary or useful for municipal purposes. All rights and duties under this Lease agreement shall terminate after the ninety (90) day notice period has expired, with exception of Lessee's obligation to pay any rent which may be due through the termination date.

13. **DAMAGE OR DESTRUCTION.** In the event that the Premises shall be destroyed or so injured by the elements, or other cause, as to be unfit for occupancy, Lessee shall thereupon surrender possession of the Premises to the Lessor, and thereupon this Lease shall cease and be utterly void without further obligation on either party hereto, with the exception of any claims or causes of action resulting from any acts or omissions on the part of the Lessee.

14. **QUIET ENJOYMENT.** Lessor hereby covenants and agrees that upon Lessee's performance of all the covenants, conditions and agreements herein stipulated to be performed on Lessee's part, Lessee shall at all times during the term of this Lease have the peaceable and quiet enjoyment and possession of the Premises without any manner or hindrance from Lessor, or any person or persons claiming by, through or under, Lessor.

15. **SUCCESSORS OF THE PARTIES.** This Lease shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns, but nothing in this paragraph shall authorize an assignment or subleasing of Lessee's interest herein without the express written consent of the Lessor.

16. **SEVERABILITY.** All agreements and covenants contained in this Lease are severable and in the event that any of them shall be held invalid by any competent court, this Lease shall be interpreted as if such invalid agreements and covenants were not contained herein.

17. **TAXES.** Lessee acknowledges that as of the Effective Date the Premises are exempt from real estate taxes but not assessments. To the extent any real estate taxes, assessments (whether special or otherwise, ordinary or extraordinary), or charges of any kind or nature whatsoever, are levied, assessed, or imposed against the Premises, any part thereof, or on any improvements thereon during the tax years occurring during the Term, then Lessee shall pay to Lessor, not later than thirty (30) days after Lessee receives from Lessor an invoice or request for payment, an amount equal to all such taxes, assessments, or charges regardless of whether such taxes are due and payable during the Term or subsequent to the Term. Lessee's obligations under this Section shall survive the expiration or termination of the Lease.

Lessor shall have no obligation to contest the imposition of any such taxes, assessments, or charges against the Premises, the amount of such, or the assessed valuations on which they are based, except to the extent that Lessee requests that Lessor do so and provided that Lessee will pay any and all costs associated with such contest, including but not limited to reasonable attorney fees.

In the event that payment of taxes pursuant this Section becomes an economic hardship for Lessee as determined in Lessee's discretion, Lessee may terminate this Lease upon 30 days notice to the Lessor, and this Lease shall terminate at the end of such 30 period as if it had expired. In such a case, Lessee shall be responsible for the payment of all taxes that have accrued through the termination date of the Lease in addition to any other charges, costs, or other

liabilities accrued as of the termination for which Lessee is responsible under this Lease.

18. **NOTICE**. Wherever in this Lease it shall be required or permitted that notice or demand be given or served by either party to this Lease to or on the other, such notice or demand shall be in writing and shall be deemed given to each party at the following addresses or fax numbers, in the case of a faxed notice: (a) if delivered personally (including by overnight express or messenger), upon delivery; (b) if delivered by registered or certified mail (return receipt requested), upon the earlier of actual delivery or three days after being mailed; or (c) if given by facsimile, upon confirmation of transmission by facsimile.

Lessor:

City of Parma Heights
6281 Pearl Road
Parma Heights, Ohio 44130
Attn: Law Department

Fax: (440) 842-3055

Lessee:

Holy Name High School
6000 Queens Hwy
Parma Heights, OH 44130
Attn: President

Fax: _____

With a copy to:

Diocese of Cleveland Legal Office
1404 East Ninth St. – Suite 701
Cleveland, OH 44114

Fax: 216-781-7732

19. **EMINENT DOMAIN**. If all or any part of the Premises shall be taken or appropriated for public or quasi-public use by the right of eminent domain, either party hereto shall have the right at its option, exercisable within thirty (30) days of receipt of notice of such taking, to terminate this Lease as of the date possession is taken by the condemning authority, provided, however, that before either party may terminate this Lease by reason of taking or appropriation as provided herein above, such taking or appropriation shall be of such an extent and nature as to substantially impair Lessee's use of the Premises.

20. **RELATIONSHIP OF THE PARTIES**. Nothing contained in this Lease shall be deemed or construed by the parties hereto nor by any third party as creating the relationship of principal and agent or of a partnership or of a joint venture between the parties hereto, or any relationship other than that of Lessor and Lessee.

21. **LESSEE'S REPRESENTATIVE**. The President of Holy Name High School shall serve as Lessee's representative for the purposes of this Lease.

22. **LEASE CONTINGENCY.** The obligations set forth in this Lease shall be contingent upon Lessee obtaining all necessary approvals and permits in order to erect a sign suitable to Lessee on the Premises.

23. **ENTIRE UNDERSTANDING; MODIFICATION.** This Lease sets forth the entire understanding between the parties with respect to all matters referred to herein, and may not be changed or modified except by an instrument in writing signed by both parties.

24. **EXHIBITS AND ATTACHMENTS.** Any and all exhibits, amendments, addenda, or attachments, if any, attached to this Lease are fully incorporated herein and made a part hereof by this reference.

25. **CAPTIONS.** The captions used as headings for the various sections of this Lease are used as a matter of convenience for reference purposes only.

26. **OHIO LAW.** This Lease shall be construed and enforced in accordance with the laws of the State of Ohio.

27. **COUNTERPART SIGNATURES.** This Lease may be executed in multiple counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Signature pages of any counterpart may be appended to any other counterpart and shall constitute an original document. This Lease may be transmitted between the parties hereto by facsimile or in ".pdf" format via email, and the parties hereto intend that "fax" or emailed signatures shall constitute original signatures and any "faxed" or emailed Lease containing the signature (original or "faxed" or emailed) of a party hereto shall be binding upon such party.

28. **BROKER COMMISSION.** Neither Lessor nor Lessee has dealt with any broker or agent in connection with the negotiation or execution of this Lease. Lessor and Lessee hereby each indemnify the other against all costs, expenses, attorneys' fees, liens and other liability for commissions or other compensation claimed by any broker or agent claiming the same by, through, or under the indemnifying party. The provisions of this Section 43 shall survive the expiration or earlier termination of this Lease.

(Signature page to follow)

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the dates set forth below.

LESSOR

LESSEE

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

STATE OF OHIO)
COUNTY OF CUYAHOGA)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named _____ who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed in his capacity as _____.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio this ____ day of _____, 20__.

NOTARY PUBLIC