PARKING RIGHTS AND AGREEMENT
REGARDING
MID-AMERICA CENTER AND 20 ARENA WAY

This agreement ("Agreement") is entered into between the City of Council Bluffs, Iowa, a municipality ("City") and CAVE Industries, LLC, an Iowa limited liability company ("Owner") on this ___ day of _____, 2021 and assign its rights and obligations under this Agreement to accommodate such transactions, as approved by City Council Resolution No. 16-82 on April 25, 2016.

PARKING LOT USAGE

The drive aisle surrounding the Mid-America Center and three additional parcels described in attached "Exhibit A" make up what will referred to as the Common Access and Parking Areas for The "Mid-America Center", The "Fieldhouse", The "Retail Spine" and the "Hotel", as those terms are used in this Agreement.

City, as owner of the Mid-America Center and the Common Access and Parking Areas, hereby grants to Owner, for the benefit of its owners, tenants, customers and invitees, the non-exclusive rights of pedestrian and vehicular ingress and egress (including for emergency vehicles) in, on and over The Common Access and Parking Areas, together with parking in all parking lots of the Mid-America Center, as those terms are used in this agreement and described in "Exhibit A" hereto. These rights of ingress, egress and parking do not apply to the parking lot of the Hotel, which sits on privately owned ground under the exclusive control of the owner of the Hotel.

The owners are aware that the above rights to use such parking lots are not exclusive and that from time to time when events are occurring at the Mid-America Center or at the other facilities, parking for their customers will be as available on a first come first served basis.

TERM

The term of this Agreement shall commence on the date of this Agreement and continue for a period of twenty (20) years thereafter. Following such twenty (20) year initial term, Owner may extend the term for two (2) five (5) year option periods on the same terms and conditions set forth herein by delivering written notice of such election to City at least sixty (60) days prior to the expiration of the initial twenty (20) year term or first such five (5) year option period, subject to further extension as set forth in the last paragraph of the section titled "CONSIDERATION FOR PARKING LOT USAGE."

PARKING LOT MAINTENANCE

It shall be the responsibility of City to maintain the parking lots identified above surrounding and serving the Mid-America Center, Fieldhouse, Retail Spine and Hotel. Parking lot maintenance shall include proper marking, repair and replacement as needed, including repaving and restriping and to keep it free of snow and treated for ice in a manner that is consistent with other commercial parking areas utilized by retail establishments. These functions will be performed by City, its employee's agents and assigns with the management company of the Mid-America Center being

responsible for the day-to-day operations and maintenance of the parking lots but with the ultimate responsibility resting with City.

CONSIDERATION FOR PARKING LOT USAGE

Owner or its assigns shall pay to City $500.00 monthly when fully occupied. This amount is based upon the size and proposed uses of the property, which would create a demand for approximately 175 stalls; provided, however, that Owner shall be permitted to utilize additional parking stalls based upon additional occupancy by Owner or its tenants.

- The Fee is of $13.90 for every 1,000 sq. ft. of occupied space.
- Owner shall provide to City no later than December 15, 2021, a list of all tenants and the amount of enclosed square feet that they occupy.
- City shall start billing Owner based upon the above stated fee for the occupied space effective January 1, 2022.
- This fee shall remain in place through the term of this Agreement, unless otherwise expressly modified pursuant to the terms of this Agreement.

City, at its discretion may give notice of its' intent to renegotiate the Fee set forth in this Agreement at least three months prior to the conclusion of every fifth (5^{th}) year of the initial twenty (20) year term and both five (5) year option periods; provided, however, in no event shall the Fee ever be increased by more than ten percent (10%) as part of any such renegotiation. If City fails to give notice of its intent to renegotiate the consideration aspect of this Agreement in a timely manner or simply elects not to give notice, the terms and conditions shall continue and to the extent this Agreement will otherwise expire at the end of such five (5) year period, an additional 5-year term shall be granted under the terms and conditions set out above. This same process will be repeated at the conclusion of all subsequent 5-year terms.

LIGHTING

City has installed and will maintain artificial lighting for the parking area. The Developer shall not be responsible to pay for or reimburse City for such expense. Such lighting shall remain on while a majority of the businesses in the Retail Spine are open for business. If artificial lighting for a time later than the foregoing ("After Hours Lighting") is needed by an owner or a tenant then such artificial lighting to service such owner or tenant shall be separately metered and all expenses thereof shall be paid by such retail spine owner or tenant.

INSURANCE

City will be responsible for maintaining a commercially reasonable and adequate amount of general liability insurance to cover claims that might arise wherein it is alleged that the basis for the claim is related to City's responsibilities for maintaining and lighting the parking lot as setout herein. City will indemnify defend and hold harmless the owners/operators of the different facilities identified herein for any and all claims and or lawsuits that may arise wherein these allegation are specifically made.

Exception. The above obligation of City to indemnify defend and hold harmless in instances wherein it is also alleged that an owner/operator their agents and or employees of one of the different facilities is also alleged to have contributed to the claim of the injured party.

City's obligation to maintain insurance may be met by City directly obtaining a policy or having a policy maintained by the management company at the Mid-America Center.

NOTICES

Unless otherwise specified in the Agreement all notices required shall be in writing and delivered to:

In case of City:
To the attention of the City Clerk
209 Pearl Street
Council Bluffs, Iowa 51503

In the case of Owner:
To the attention of Vice President
Ashley Jankowski
20 Arena Way #2
Council Bluffs, Iowa 51501

MISCELLANEOUS

As assignments of the facilities occur, it shall be the responsibility of Owner to notify City of the notice information of each Assignee. This Agreement shall be recorded. All the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of and be enforceable by the owners of the Mid-America Center, Fieldhouse, Retail Spine and Hotel and their respective successors and assigns. This Agreement amends any and all prior documents related to parking or egress, or both, in, on or over Outlot A, the Common Access and Parking Areas, the Mid-America Center, the Fieldhouse, the Retail Spine and the Hotel, or any of them, including Plat and Dedication of Plaza at the M.A.R.C.C., with restrictions and easements, filed March 27, 2002 in Book 102, Page 75013.

CITY OF COUNCIL BLUFFS, IOWA

By: _____
MATTHEW J. WALSH
Mayor
209 Pearl Street
Council Bluffs, Iowa 51503

CAVE INDUSTRIES, LLC

By_____
ASHLEY JANKOWSKI
Vice President
20 Arena Way #2
Council Bluffs, Iowa 51501

STATE OF IOWA)
) SS
COUNTY OF POTTAWATTAMIE)

On this ___ day of _____, 2021, before me, a Notary Public in and for said State, personally appeared Matthew J. Walsh, to me personally known, who being duly sworn, did say that he is the Mayor of the City of Council Bluffs, Iowa, a Municipality created and existing under the laws of the State of Iowa, and that the seal affixed to the foregoing instrument is the seal of said Municipality, and that said instrument was signed and sealed on behalf of said Municipality by authority and resolution of its City Council on April 25, 2016 by Resolution 16-82, and said Mayor acknowledged said instrument to be the free act and deed of said Municipality by its voluntarily executed.

_____
Notary Public

STATE OF IOWA)
) SS
COUNTY OF POTTAWATTAMIE)

On this ___ day of _____, 2021, before me, a Notary Public in and for said State, personally appeared Ashley Jankowski, to me personally known, who being duly sworn, did say that she is the Vice President of CAVE Industries, LLC and that said instrument was signed on behalf of said CAVE Industries, LLC. and that the said Vice President as such officer, acknowledged said instrument to be the voluntary act and deed of CAVE Industries, LLC, by them voluntarily executed.

_____
Notary Public

"EXHIBIT A"

Legal Description of The Common Access and Parking Areas, Mid-America Center, Fieldhouse, Retail Spine and Hotel

"Common Access and Parking Areas": LOTS 1, 4 AND 5 AND OULOT A (Arena Way), HOTEL PLAZA AT THE M.A.C. REPLAT ONE, AS SURVEYED, PLATTED AND RECORDED IN POTTAWATTAMIE COUNTY, IOWA.

"**Mid-America Center**": LOT 6, HOTEL PLAZA AT THE M.A.C. REPLAT ONE, AS SURVEYED, PLATTED AND RECORDED IN POTTAWATTAMIE COUNTY, IOWA.

"**Fieldhouse**": LOT 2, HOTEL PLAZA AT THE M.A.C. REPLAT ONE, AS SURVEYED, PLATTED AND RECORDED IN POTTAWATTAMIE COUNTY, IOWA.

"**Retail Spine**": LOTS 1 AND 2 AND OUTLOT 1, PLAZA AT THE M.A.R.C.C., AS SURVEYED, PLATTED AND RECORDED IN POTTAWATTAMIE COUNTY, IOWA. IOWA.

"**Hotel**":
LOT 3, HOTEL PLAZA AT THE M.A.C. REPLAT ONE, AS SURVEYED, PLATTED AND RECORDED IN POTTAWATTAMIE COUNTY, IOWA, ALONG WITH A PORTION OF OUTLOT 1, PLAZA AT THE M.A.R.C.C. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCE AT THE EASTERNMOST CORNER ON THE SOUTHERNMOST BOUNDARY LINE OF SAID LOT 3, SAID CORNER ALSO LYING ON THE WESTERLY BOUNDARY LINE OF SAID OUTLOT 1, PLAZA AT THE M.A.R.C.C.; THENCE NORTH 00°20'04" EAST ALONG THE OUTER BOUNDARY LINE OF SAID OUT LOT 1, A DISTANCE OF 57.25 FEET; THENCE NORTH 89°39'56" WEST ALONG THE OUTER BOUNDARY LINE OF SAID OUT LOT 1, A DISTANCE OF 12.00 FEET TO A POINT OF CURVATURE; THENCE NORTHWESTERLY ALONG THE OUTER BOUNDARY LINE OF SAID OUT LOT 1 BEING CURVED TO THE RIGHT AND HAVING A RADIUS OF 6.00 FEET AND A CENTRAL ANGLE OF 90°00'00", AN ARC DISTANCE OF 9.42 FEET (CHORD=8.49', CHORD BEARING=N44°39'56"W) TO A POINT OF TANGENCY; THENCE NORTH 00°20'04" EAST ALONG THE OUTER BOUNDARY LINE OF SAID OUT LOT 1, A DISTANCE OF 35.75 FEET TO THE POINT OF BEGINNING THENCE CONTINUE NORTH 00°20'04" EAST ALONG THE ORIGINAL OUTER BOUNDARY LINE OF SAID OUT LOT 1, A DISTANCE OF 74.61 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG THE ORIGINAL OUTER BOUNDARY LINE OF SAID OUT LOT 1 BEING CURVED TO THE RIGHT AND HAVING A RADIUS OF 18.00 FEET AND A CENTRAL ANGLE OF 80°22'23", AN ARC DISTANCE OF 25.25 FEET (CHORD=23.23',

CHORD BEARING=N40°31'50”E) TO A POINT OF REVERSE CURVATURE; THENCE EASTERLY ALONG THE ORIGINAL OUTER BOUNDARY LINE OF SAID OUT LOT 1 BEING CURVED TO THE LEFT AND HAVING A RADIUS OF 262.00 FEET AND A CENTRAL ANGLE OF 5°40'06”, AN ARC DISTANCE OF 25.92 FEET (CHORD=25.91', CHORD BEARING=N77°53'32”E) TO A POINT OF REVERSE CURVATURE; THENCE SOUTHEASTERLY ALONG THE ORIGINAL OUTER BOUNDARY LINE OF SAID OUT LOT 1 BEING CURVED TO THE RIGHT AND HAVING A RADIUS OF 18.00 FEET AND A CENTRAL ANGLE OF 80°49'56”, AN ARC DISTANCE OF 25.39 FEET (CHORD=23.34', CHORD BEARING=S64°31'58”E) TO A POINT OF TANGENCY; THENCE SOUTH 24°07'25” EAST ALONG THE ORIGINAL OUTER BOUNDARY LINE OF SAID OUT LOT 1, A DISTANCE OF 32.08 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG THE ORIGINAL OUTER BOUNDARY LINE OF SAID OUT LOT 1 BEING CURVED TO THE LEFT AND HAVING A RADIUS OF 913.00 FEET AND A CENTRAL ANGLE OF 4°10'10”, AN ARC DISTANCE OF 66.44 FEET (CHORD=66.42', CHORD BEARING=S26°12'08”E); THENCE NORTH 89°20'01” WEST, A DISTANCE OF 104.38 FEET TO THE POINT OF BEGINNING.