

**CITY OF COATESVILLE  
COUNTY OF CHESTER**

**AN ORDINANCE AUTHORIZING THE CITY OF COATESVILLE TO ENTER A LEASE WITH PROUDFOOT INVESTMENTS XX, LLC, FOR THE PROPERTY LOCATED AT 300 EAST LINCOLN HIGHWAY, COATESVILLE, COUNTY OF CHESTER, UPI NO. 16-5-258, FOR THE PURPOSE OF OPERATING A PARKING LOT, FOR A ONE-YEAR TERM, WITH AUTOMATIC ANNUAL RENEWAL, WITH AN ANNUAL RENTAL PAYMENT OF ONE DOLLAR, AND THE INITIAL PAYMENT PAID IN ADVANCE AT THE EXECUTION OF THE LEASE AGREEMENT.**

WHEREAS, the City of Coatesville (hereinafter the “City”) is a Home Rule Municipality operating by means of a home rule charter and the laws of the Commonwealth of Pennsylvania; and

WHEREAS, §2964 of the Home Rule Charter and Optional Plans Law, provides, in relevant part, that municipalities adopting a home rule charter shall have the power to adopt any ordinances as may be required; and

WHEREAS, §2-301.G of the City Charter requires that the City to pass an ordinance to lease real property; and

WHEREAS, the City seeks to lease property that is owned by Proudfoot Investments XX, LLC, and located at 300 East Lincoln Highway, Coatesville, County of Chester, UPI No. 16-5-258 (the “Property”) for the purpose of operating a parking lot; and

WHEREAS, the City desires to enter the Parking Lot Lease Agreement, attached hereto as Exhibit “A”; and

WHEREAS, operating the parking lot will provide the City with revenue and is otherwise beneficial to the City and its residents.

NOW THEREFORE, in accordance with the foregoing authority, which incorporates all rights and powers granted to the City of Coatesville under its Charter and the laws of the Commonwealth of Pennsylvania, it is hereby enacted and ordained as follows:

1. The City Council of the City of Coatesville authorizes the President of Council and the City Manager to execute the Parking Lot Lease Agreement with Proudfoot Investments XX, LLC, in substantially the form attached hereto as Exhibit “A” with such modifications, other than the term of the lease and rents to be paid, as may be necessary to comport with the City Charter, the General Laws of the City of Coatesville, this Ordinance, and as may be in the best interest of the City of Coatesville.
2. All ordinances or parts of ordinances conflicting with any provisions of this ordinance are hereby repealed insofar as the same affects this ordinance.

3. If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts hereof.
4. This Ordinance shall be effective thirty (30) days after publication following final adoption in accordance with the City Charter.

ENACTED AND ORDAINED this 8<sup>th</sup> day of August, 2022.

  
Linda Lavender-Norris, President City Council

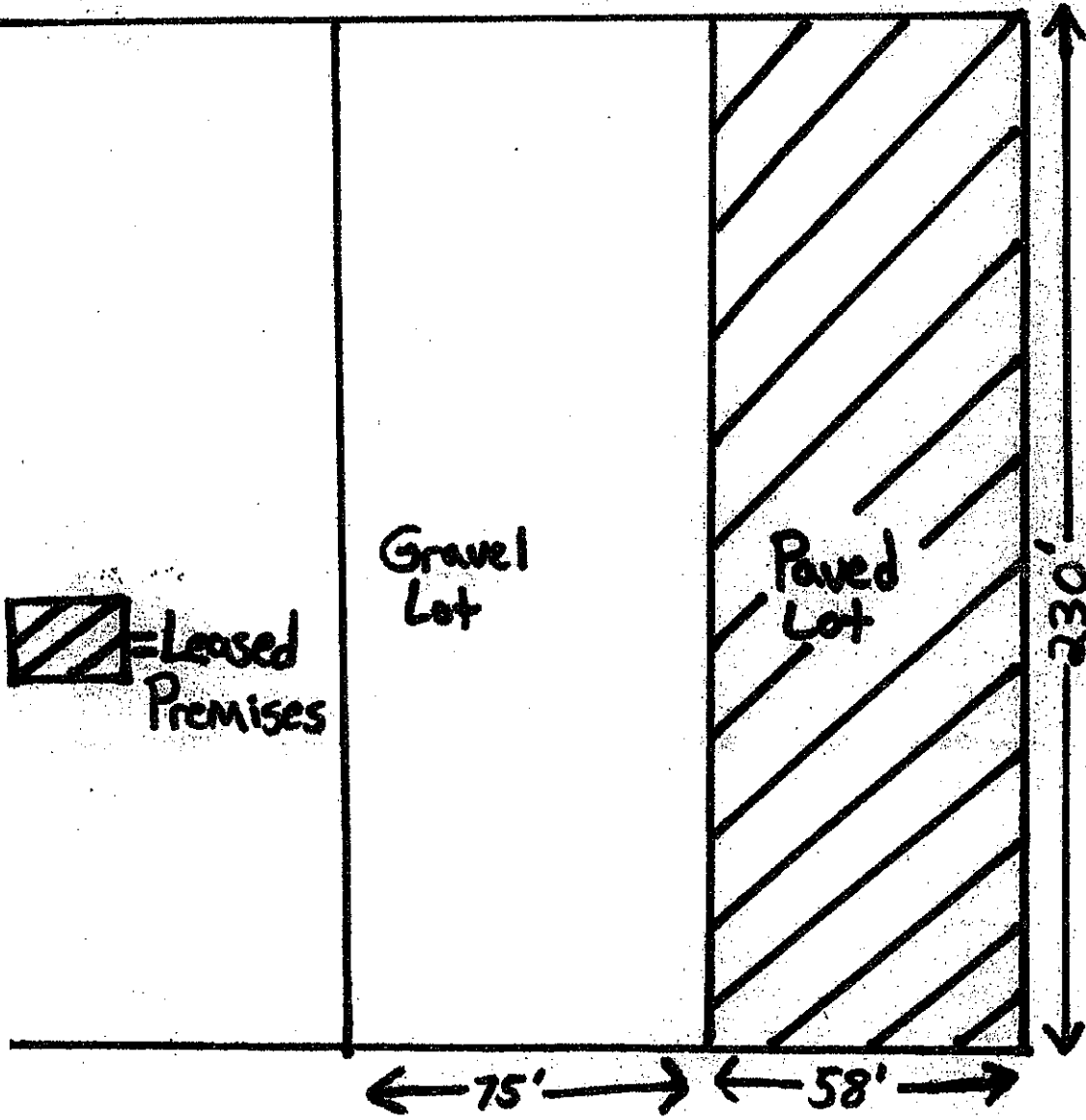
ATTEST:

  
James Logan, City Manager

CERTIFICATION

I HEREBY CERTIFY that the foregoing Ordinance was introduced on the 11<sup>th</sup> day of July, 2022, was duly enacted by the Council of the City of Coatesville, Chester County, Pennsylvania, on the 8<sup>th</sup> day of August, 2022, and that the vote upon the said Ordinance has been recorded in the Minutes of the City Council and that the Ordinance has been fully recorded.

# Exhibit "A"



 = Leased Premises

Gravel Lot

Paved Lot

230'

← 75' →

← 58' →

S. Third Ave.

E. Lincoln Highway

**PARKING LOT LEASE AGREEMENT**

**THIS PARKING LOT LEASE AGREEMENT** (the "Agreement"), made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between **PROUDFOOT INVESTMENTS XX, LLC**, (hereinafter the "Owner") and the **CITY OF COATESVILLE**, a body corporate and politic of the Commonwealth of Pennsylvania (hereinafter the "City").

**BACKGROUND**

A. Owner is the record title owner of certain real property located in the City of Coatesville at 300 East Lincoln Highway (Tax Parcel No. 16-5-258) (the "Property"), which consists of a vacant lot that is partially paved and partially covered with gravel;

B. Proudfoot Investments XX, LLC, desires to lease to the City the paved portion of 300 E. Lincoln Highway for parking and other public purposes (the "Leased Premises"), excluding the gravel portion of the Property.

C. Owner and City are desirous for the City to lease the Property from the Owner and for the City to undertake such actions as are necessary under the Third Class City Code and Section 2-301 of the City Charter to authorize such lease for public purposes.

D. Owner and City wish to memorialize the terms and conditions for such lease of the Leased Premises portion of the Property in this Parking Lot Lease Agreement (the "Agreement").

**NOW, THEREFORE**, the parties hereto, intending to be legally bound hereby, agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated herein by reference as though set forth in their entirety.

2. **Lease of Parking Lot.** For and in consideration of One Dollar (\$1.00) per year, with the initial payment paid in advance at the execution of this Agreement, together with the mutual promises herein exchanged and other good and valuable consideration, Owner hereby leases the Leased Premises to City for a period of one (1) year commencing on \_\_\_\_\_ and renewing thereafter from year to year, terminable by either Owner or City upon the giving of ninety (90) days' prior written notice to the other party. A copy of a sketch plan of the Property showing the Leased Premises paved portion and the excluded gravel portion is attached hereto and incorporated herein as **Exhibit "A"**.

3. **Authorized Uses, Additional Terms.**

(a) Owner and the City agree that the use of the Leased Premises is limited to the following authorized uses: Public parking for cars, trucks, and other vehicles (hereinafter "Parking Uses"), but excluding tractor trailers and/or any vehicle or equipment whose dimensions exceed ten (10) feet in width and/or twenty (20) feet in length, which are not authorized uses.

(b) The lease includes the rights of ingress, egress, and regress on, over, and across the Leased Premises in connection with the Parking Uses, as well as any maintenance and/or repairs to the Leased Premises by the City.

(c) The City shall issue and/or post on the Leased Premises such restrictions and/or conditions affecting the Leased Premises and/or the Parking Uses as may be required by City ordinance or other applicable laws and regulations.

(d) The City shall retain all parking related revenue derived from the City charging members of the public parking fees in connection with the Parking Uses.

(e) Owner shall take all such appropriate action necessary to ensure that the "Gravel Lot" identified on Exhibit "A" hereto (and part of Tax Parcel 16-5-258) shall be made inaccessible to unauthorized parking by the public. This shall include signage to inform the public that the public is prohibited from using this "Gravel Lot" for public parking (i.e., to evade the available parking lot leased by the City), as well as the installation of parking bumpers. Nothing contained herein shall limit the ability of Owner to allow use of, and grant ingress and egress to and from, the "Gravel Lot" to parties under written agreement with the Owner for specific uses on the Gravel Lot that are authorized by Owner.

#### **4. General Conditions of the Property**

(a) The Leased Premises are leased in "AS IS" and "WHERE IS" condition to the City.

(b) No Liens - Neither City nor Owner shall allow or permit the creation of liens against the Leased Premises or Property without the prior written consent of the other.

(c) Non-assignability or Sub-Letting- Owner and City each agree that it may not assign this Agreement or sublet the Leased Premises without the advance written approval of the other.

#### **5. Maintenance and Repair.**

(a) All maintenance of and repairs to the Leased Premises (including but not limited to, removal of snow and/or ice; any grass cutting, and/or removal of trash, debris, weeds; installation of any landscaping; stormwater management facilities; paving and/or repaving; striping and/or painting; replacement of lightbulbs, signage, etc.) are the sole responsibility of the City and shall be conducted at City's sole expense and pursuant to all applicable laws, regulations, and ordinances.

(b) City agrees to conduct maintenance of and repairs to the Leased Premises on a regular basis. Owner may, but is not obligated to, notify the City in writing of the need for City to perform maintenance and repairs to the Leased Premises.

#### **6. Emergency.**

For purposes of this Agreement, the term "Emergency" means a combination of circumstances or the resulting state that requires immediate action in order to prevent harm or damage to persons or property. In the event of an Emergency, the Owner and the City are both authorized to take such action as may reasonably be necessary to protect the public health, welfare, and safety or prevent damage to property, e.g., setting a barricade to close off access to a portion of the Leased Premises. As soon as a party to this Agreement knows or has or reason to know of an Emergency occurring at the Leased Premises, that party shall immediately notify the other party by telephone (followed by written notification) of the nature of the Emergency and any action taken by the party giving the notice of the Emergency. Notwithstanding any provision in this Agreement to the contrary, any actions that may be necessary to respond to an Emergency situation shall be commenced as soon as possible under the circumstances.

## 7. **Remedies.**

(a) **Injunctive and Other Remedies.** In addition to any other rights available to the parties under this Agreement, the parties hereto shall have the right to specific performance of any or all of the terms and provisions hereof, and the right to injunctive relief in the event of a breach. In the event of a failure of the City to perform any maintenance or repair responsibility hereunder which remains uncured thirty (30) days after notice from the Owner, the Owner may, but shall not be obligated to, use self-help to remedy such failure, and the costs thereof shall be recoverable as damages against the Owner, together with interest at the legal rate. In the event of any dispute under this Agreement, the prevailing party shall be entitled to recover the reasonable costs and expenses incurred in enforcing the terms hereof, including reasonable attorneys' fees.

(b) **Nonwaiver.** No delay or omission of either party in the exercise of any right accruing upon any default of the other party shall impair such right or be construed to be a waiver thereof, and every such right may be exercised at any time during the continuance of such default. A waiver by a party of a breach of, or a default in, any of the terms and conditions of this Agreement by the other party shall not be construed to be a waiver of any subsequent breach of or default in the same or any other provision of this Agreement or a waiver on behalf of the other party. Except as otherwise specifically provided in this Agreement: (i) no remedy provided in this Agreement shall be exclusive but each shall be cumulative with all other remedies provided in this Agreement; and (ii) all remedies at law or in equity shall be available.

(c) **Force Majeure.** In the event any party shall be delayed or hindered in or prevented from the performance of any act required or to be performed by such party by reason of an event beyond the reasonable control of such party, including, but not limited to, Acts of God, failure of power, riots, insurrections, strikes, embargoes, or adverse weather conditions preventing the performance of work, then the time for performance of such act shall be extended for a period equivalent to the period of such delay. Lack of adequate funds or financial inability to perform shall not be deemed to be a cause beyond

the control of such party.

## **8. Property Damage and Liability Insurance**

(a) City shall maintain casualty policies covering the Leased Premises and its improvements, and liability insurance covering the activities associated with the Parking Uses at the Leased Premises.

(b) The policies shall be issued by a company licensed to do business in the Commonwealth of Pennsylvania and determined to be mutually acceptable by the Owner and the City. Such policies shall have minimum coverage limits of One Million Dollars (\$1,000,000.00) per claim, Two Million Dollars (\$2,000,000.00) aggregate, and the Owner shall be listed as Additional Insured on such policies.

(c) City shall arrange for Owner to receive at least thirty (30) days' prior written notice of any termination or cancellation of coverage. City shall provide proof of such insurance coverage and policy terms to Owner on or before the signing of this Agreement, and thereafter within twenty (20) days of Owner's request.

## **9. Indemnification**

(a) City agrees to indemnify, defend and hold harmless Owner and its directors, officers, employees, representatives, agents, successors, and assigns (all of the foregoing are collectively referred to as the "Indemnified Parties"), from and against all claims for personal injury, death, damages to property, demands, actions, causes of action, assessments, judgments, debts, losses, liabilities, settlements, costs and expenses, including interest, penalties and attorneys' fees and expenses, of any kind or nature, known or unknown, fixed, accrued, absolute or contingent, liquidated or unliquidated, asserted against, resulting to, imposed upon or incurred by any member of the Indemnified Parties, directly or indirectly, arising from any claims associated with the Parking Uses and/or acts, omissions or breaches of this Agreement by the City, but such indemnification obligations shall not extend to the negligent or intentionally tortious acts or omissions of the Owner.

(b) City also agrees to indemnify, defend, and hold harmless the Owner from any increase in tax assessment of the Leased Premises or Property or any part thereof resulting from or associated with the Parking Uses. The parties agree that City, at its sole expense, is authorized to file any tax assessment appeal that may be needed in connection with such assessment, and that Owner, at no cost to Owner, shall reasonably cooperate with the making of such tax assessment appeal.

(c) If within fifteen (15) days after written notice of any claim against any Indemnified Party, the indemnifying party fails to defend against such claim, the Indemnified Party/Parties shall have the right to undertake the defense, compromise or settlement of such claim, subject to the right of the indemnifying party to assume the defense of such claim at any time prior to settlement, compromise or final determination thereof. The indemnifying party will have the right to participate in the defense of any claim and the Indemnified Party/Parties will cooperate and cause

its/their counsel to fully and promptly cooperate with such indemnifying party's/parties' counsel with respect to its/their participation in the defense of the claim. The parties shall provide access to all records and documents relating to any such claim.

(d) Nothing herein shall be interpreted or construed as waiving the defense of sovereign immunity on the part of either City or Owner.

#### **10. Miscellaneous.**

(a) No Third Party Beneficiaries. This Agreement is intended to benefit only the City and the Owner as the named parties hereunder, and no other person or entity has any rights, express or implied, under this Agreement. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Leased Premises to any member or members of the general public, it being the intention of the City and the Owner and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any person, other than the City and the Owner and their successors and assigns, any rights or remedies under or by reason of this Agreement.

(b) Severability. If this Agreement is invalid or unenforceable in part or under certain circumstances, the rest of this Agreement and its application under other circumstances is valid and enforceable to the fullest extent permitted by law.

(c) Governing Law. This Agreement shall be governed by and construed under Pennsylvania law.

(d) No Partnership. Neither of the parties intends to create a relationship of partner or joint venturer of or with the other party under this Agreement and neither party shall be liable for the other's obligations.

(e) Notices. All communications required or permitted under this Agreement shall be by one of the following methods: (1) Personal Delivery with signed receipt; or (2) certified mail, return receipt requested, with postage prepaid; or (3) by nationally recognized overnight courier service which provides for a signature upon receipt. Notices required by law or this Agreement are made when given in any manner described in this section. Notices shall be sent to the parties at the following addresses:

To Owner:

Proudfoot Investments XX, LLC  
PO Box 307  
Bryn Mawr, PA 19010



To City:

City of Coatesville  
One City Hall Place  
Coatesville, PA 19320  
Attn: James Logan, City Manager

w/copy to:

Robert C. Jefferson, Esquire  
17 East Gay Street, Suite 100  
P.O. Box 562  
West Chester, PA 19381-0562

Either party may designate a different address by written notice to the other party. Notices shall be effective on the date received or rejected by the recipient.

- (f) Captions. Captions of sections are for convenience only and not for interpretation.
- (g) Integration. This Agreement represents the complete agreement between the parties with regard to the items set forth herein, and there are no representations, covenants, warranties, agreements or conditions, oral or written, between the parties not set forth in this Agreement. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties unless in writing and signed by them.
- (h) Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be regarded as an original, and all of which together shall constitute one and the same instrument.
- (i) Binding. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, assigns and grantees.

**IN WITNESS WHEREOF**, the parties hereto, intending to be legally bound, have caused this Agreement to be duly executed as of the day and year first above written

Attest:

Proudfoot Investments XX, LLC

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Attest:

City of Coatesville

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_