

**Lease Agreement  
Between the City of Toledo  
and Crestline Paving and Excavating Co., Inc.**

**FOR FORMER CHAMPION SPARK PLUG  
750 Montrose, Parcel 0411812**

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This Lease Agreement (“**Lease**”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 2018 between the City of Toledo (“**City**” or “**Landlord**”), an Ohio municipal corporation with a principal place of business at One Government Center, Suite 2200, Toledo, Ohio 43604-2293, and Crestline Paving and Excavating Co., Inc., (“**Crestline**” or “**Tenant**”) an Ohio corporation, with a principal place of business at 1913 Nebraska, Toledo, Ohio 43607.

**WITNESSETH**

**WHEREAS**, the parties are engaged in cooperative efforts to make productive use of real property located at 750 Montrose in Toledo, Ohio; and

**WHEREAS**, the City is the owner of the land on which the lease will be placed; and

**WHEREAS**, the City is authorized to enter into this Lease for a five (5) year period pursuant to City Council authorization Ordinance XXX-18; and

**WHEREAS**, the premises intended use is the storage of construction equipment and material supplies;

**NOW, THEREFORE**, in consideration of the fees, covenants, and conditions set forth below, the parties agree as follows:

**Article I  
Premises and Term,**

**1.1 Premises.** The City leases to Crestline a parcel of land located at 750 Montrose, Toledo, Ohio 43607, County of Lucas, ( “Premises”), aerially depicted on **Exhibit** “A”, incorporated by reference, and more legally described in **Exhibit** B, incorporated by reference.

**1.3 Term and Renewal Term.** The period of this Lease is five (5) years, commencing October 1, 2018 and terminating September 30, 2023 (“**Initial Term**”); provided that either party may for any reason terminate Lease by serving prior written notice of termination upon the other party thirty (30) days before the effective termination date. Notwithstanding the foregoing, Crestline has the option of renewing Lease for one five (5) year term by providing City written notice thirty (30) days before the expiration of the Initial Term.

**Article II  
Operating Expenses Rent and Limited Reimbursement**

2.1 Operating Expenses. This is a “triple net lease” and Crestline shall pay all charges and expenses related to the Premises that arise or accrue during the Term of this Lease, including, but not limited to, utility costs, maintenance costs, real estate taxes and assessments, if any, and insurance costs. Crestline may not be subject to any costs associated with environmental compliance or other laws as required by this Lease.

2.2 Rent. Crestline shall pay the City annually One Dollar (\$1.00) (“**Rent**”) which shall be payable by or on the 1<sup>st</sup> day of each year.

2.3 Limited Reimbursement. Only if the lease is terminated during the Initial Term may Crestline be reimbursed for expenses associated with fencing and lighting improvements up to but not exceeding Ten Thousand Dollars (\$10,000) provided that evidence of receipts and accounting demonstrate to the satisfaction of City such expenditures.

### **Article III** **Utilities**

3.1 Utilities. Crestline agrees to pay or cause to be paid all charges for gas, electricity, water, sewage, telephone, security systems and other utility or communication or similar service used, rendered, supplied and/or installed upon or in connection with the Premises during the term of this Lease, and to indemnify and save the City harmless against any liabilities or damages on account of such charges.

### **Article IV** **Insurance and Indemnification**

4.1 Insurance. Crestline shall at all times during each term of this Lease obtain and secure for its protection, and require any of its agents or contractors who work on or manage the Premises to obtain and secure, commercial general public liability and property damage insurance, including automobile insurance, in an amount of at least One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate. It is recognized that this is a contractual limit and does not limit operations liability under this Lease. Policies of insurance coverage required by this Lease shall contain a waiver of subrogation in favor of Crestline and the City. Crestline’s failure to provide and keep in force the aforementioned insurance shall be regarded as a material default of this Lease, entitling the City to exercise any or all of the remedies provided in this Lease.

The primary insured of such insurance policies shall be solely responsible for the payment of any and all deductibles that apply to any claim that is made under such policy.

Crestline and its agents or contractors shall meet all statutory requirements for workers’ compensation insurance and shall maintain Ohio Stop Gap insurance for events including those “substantially certain to occur” in the following amounts: bodily injury by accident \$1,000,000 each accident, bodily injury by disease \$1,000,000 aggregate, bodily injury by disease \$1,000,000 each employee. Any agent or contractor of Crestline shall be required to voluntarily, expressly and specifically waive their respective Workers’ Compensation employer immunity granted under Section 35, Article II of the Ohio Constitution and all Ohio statutory provisions, including Section 4123.74 of the Ohio Revised code or any other state’s similar statutory or

constitutional provisions, to the extent necessary to permit the City to be fully indemnified, defended and held harmless under this Lease. Documentary evidence of workers' compensation insurance shall be furnished annually to the City and notices of cancellation shall be furnished at least thirty (30) days prior to the effective date of cancellation.

All insurance policies required by this Lease shall name the City of Toledo and its directors, officers, employees, agents and representatives as additional insureds.

The City shall have the right to increase or otherwise modify the insurance requirements of this Lease in accordance with industry standards or governmental requirements and Crestline and its agents or contractors shall so comply with the increase or modification of insurance within thirty (30) days of its receipt of written notice by the City of such revised insurance requirements.

4.2 Failure to Procure or Maintain Insurance. In the event Crestline fails to procure or maintain its policies or certificates of its insurance as required herein, the City may cause such insurance to be issued and bills for such premiums shall be rendered by the City to Crestline at such items as the City may elect, and shall be due from and payable by the Crestline when rendered and the premium amount(s) of the insurance shall be determined to be, and paid as, "Additional Rent."

4.3 Release of the Parties. To the extent permitted by law, the Crestline shall be liable for and shall release and hold the City harmless from liability, loss, injury (including death), costs (including reasonable legal fees) and damages finally awarded to third parties under claims which arise directly out of Crestline's willful misconduct or negligence in connection with this Lease or which otherwise result from any act under this Lease, including, but not limited to, the use and occupancy of the Premises..

4.4 Environmental Matters. Each party shall provide the other party with copies of all communications regarding the Premises from any governmental agency relating to any Environmental Law (as hereinafter defined) or any person with respect to any claim relating to any Environmental Law ("**Environmental Claim**"). Crestline shall be liable for any breach of Environmental Law or its responsibilities under this Lease by its officers, directors, employees, agents, contractors, or subcontractors, related to the construction or management of the Project, including obligations related to Hazardous Substances (as hereinafter defined) associated with the Project. The requirements of this paragraph 4.4 shall not be deemed to limit the Crestline or the City's ability to recover any such costs or damages incurred from or against third parties. The provisions of this Section 4.4 shall survive the expiration or termination of this Lease. For purposes of this Section 4.4, the following capitalized terms shall have the meanings ascribed below:

"Environmental Law(s)" means any governmental law or statute, rule, regulation, ordinance, code, policy or rule of common law now or hereafter in effect relating in any way to the environment, health, safety or any Hazardous Substances.

"Hazardous Substances/Materials" shall mean (i) oil or other petroleum products; (ii) "hazardous substances" as defined by the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*; as amended (iii) "hazardous wastes" as defined by the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901

*et seq.* as amended (iv) “toxic substances” as defined by the Toxic Substances Control Act, 15 U.S.C. §§ 2601 *et seq.* as amended; (v) “hazardous materials” as defined by the Hazardous Materials Transportation act, 49 U.S.C. § 1802 *et seq.* as amended; (vi) radioactive materials, including those subject to the Atomic Energy Act, 42 U.S.C. §§ 2011 *et seq.* as amended and (vii) and other pollutant, chemical or substance whose presence creates a hazard to human health or the environment, or substance, material or waste which is or becomes regulated by any local, state, or federal government as such laws may be modified or amended from time to time.

Crestline, its agents, employees, contractors or invitees shall not cause or permit any Hazardous Substances to be generated, treated, stored, used, installed or disposed in, on, under or about the Premises in any material amounts except in compliance with Environmental Laws. Crestline indemnifies City from and against any breach of the above stated obligation, and agrees to defend and hold City harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of the Premises, the loss or restriction on use of space or of any amenity in the Premises, any adverse impact on marketing of space in the Premises, and sums paid in settlement of claims, attorneys’ fees, consultant fees, and expert fees) which arise during or after the Lease Term as a result of such breach. This indemnification includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial removal, or restoration work required by any governmental agency or political subdivision because of Hazardous Material present in, on or under the Building. Without limiting the foregoing, if the presence of any Hazardous Material caused or permitted by Crestline results in any contamination of the Building, Crestline shall promptly take all actions, at Crestline’s sole expense, as are necessary or advisable (in City’s discretion) to return the Premises to the condition existing prior to the introduction of such Hazardous Materials to the Premises; provided that City’s approval of such actions and the contractors to be used by Crestline shall first be obtained, which approval will not be unreasonably withheld.

Crestline agrees to use good commercial practices to minimize the release of any such products to the environment during the term of the Lease. Crestline agrees to comply with all current or future Environmental Laws enacted by any applicable jurisdiction.

## **Article V** **Use and Occupancy**

**5.1 Use of Premises.** Crestline shall have the right to manage and operate its business on the property, including, storage and maintenance of construction equipment and operation of a material supply yard.. All other improvements must be approved by the City in writing. Tenant will not commit waste upon the Premises nor suffer or permit the Premises or any part of them to be used in any manner, or suffer or permit anything to be done in or brought into or kept in the Premises which would: (i) violate any law or requirement of public authorities, (ii) cause injury to the Building or any part thereof, or (iii) constitute a public or private nuisance; provided that Tenant shall not cause or maintain any nuisance in or about the Premises, and shall keep the Premises free of debris, rodents, vermin and anything of a dangerous, noxious or offensive nature or which may create a fire hazard (through undue load on electrical circuits or otherwise) or undue vibration, heat, noise, or odor and that if Tenant does engage in such conduct that thirty (30) days after written notice from Landlord shall abate such nuisance, which determination of a

nuisance and abatement compliance shall be determined within in the sole discretion of Landlord, or Tenant shall be in default of Lease.

5.2 Zoning and Building Permits. The City will assist Crestline in applying for and obtaining any zoning use or building permits necessary for the construction of the Project and other authorized improvements.

5.3 Non-Discrimination. Crestline, for itself, its personal representatives, and successors in interest, covenants and agrees to use the Premises in compliance with all applicable federal, state and local laws that prohibit the discrimination of individuals based on race, creed, color, national origin, ancestry, sex, gender, age, and/or disability.

5.4 Compliance with Laws. Crestline, at its sole cost, shall at all times comply with all applicable federal, state, and local laws, ordinances, regulations, as they may be hereafter modified or amended and as applicable to the Crestline' use of the Premises, including but not limited to . Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.* as amended, and those for the correction, prevention and abatement of nuisance, unsafe conditions, or other grievances arising from or pertaining to the use or occupancy of the Premises. Crestline shall procure and maintain at its cost, or cause to be procured or maintained, all licenses, permits, and other similar authorization required for the construction, management, and operation of the Project on the Premises.

## **Article VI** **Maintenance and Repair**

6.1 Maintenance of Leased Premises and Improvements. Crestline shall, at its cost and expense, keep the Premises and all structures or other improvements on the Premises in good and safe repair and order, free from trash, litter and debris. Regardless of source, Crestline shall not commit or suffer waste or the maintenance of any nuisance on the Premises. Crestline shall have all trash, litter and debris removed from the Premises at its sole expense. Crestline shall not engage in conduct on the Premises which cause noxious odors or the emission of smoke, gases, or other pollutants that are above levels permitted by law.

6.2 Lawn Maintenance. Crestline shall pay for all lawn maintenance of the Premises, including grass in the right-of-way along the east side of Montrose and the north side of Nebraska.

## **Article VII** **Affirmative Covenants**

7.1 Affirmative Covenants. Crestline covenants and agrees that during the term of this Lease:

7.1.1 Taxes, Fees, and Assessments. Crestline shall pay, or cause to be paid, all applicable taxes, fees, assessments and governmental charges or liens that accrue upon the Premises as a result of the operations under this Lease before becoming delinquent and shall pay, or cause to be paid, all lawful claims of any nature, which, if unpaid, might become a lien upon such property, assets, income, or profits, except that Crestline shall not be required to pay (1) any such claim if its validity is being contested in good faith or

(2) taxes, fees, assessments, government charges, or liens applicable to periods before the commencement date of this Lease.

7.1.2 Conduct of Others. Crestline shall require that business operations on the Premises are conducted in a careful, safe, proper, and professional manner.

7.1.3 Operation. During the Term of this Lease, Crestline shall operate and maintain the Project.

## **Article VIII** **Default**

8.1 Default. Any one or more of the following shall constitute an Event of Default under this Lease:

- A. Crestline fails to pay Rent, or other expense required under this Lease, within thirty (30) days after the City delivers written notice to Crestline that such payment is past due;
- B. Crestline fails to observe or perform any other of the terms, conditions or covenants of this Lease to be observed or performed by Crestline, and such failure is not cured within thirty (30) days after written notice of such failure from the City to Crestline, unless Crestline has begun to reasonably cure within such thirty (30) day period and continues thereafter to diligently process such cure;
- C. Crestline ceases operating the at the Premises, or vacates or abandons the Premises for thirty (30) or more days;
- D. Crestline should file for relief, or have filed against them, an action under any provision of any state or federal bankruptcy or insolvency law or
- E. This Lease shall pass to or devolve upon, by law or otherwise, anyone other than Crestline, except as herein provided

8.2 Remedies. If an Event of Default occurs, in addition to all the remedies which the City may have under this Lease or at law or in equity, the City shall have any one or more of the following remedies at the City's election:

- A. Re-take and recover possession of the Premises, and terminate this Lease,
- B. Re-take and recover possession of the Premises, without terminating this Lease, in which event Landlord may re-rent the Premises as agent for and for the account of Tenant and recover from Tenant the difference between the rental herein specified and the rent provided in such re-rental, less all of Landlord's costs and expenses of re-renting, including, without limitation, attorneys' fees plus all other sums due hereunder.
- C. Permit the Premises to remain vacant in which event Tenant shall continue to be responsible for all rental and other payments due hereunder.

- D. Re-take and recover possession of the Premises, and accelerate and immediately collect all Rent and Operating Expenses due hereunder for the balance of the term of this Lease.
- E. Take any other action as may be permitted at law or in equity.

All of the Landlord's remedies contained in this Lease shall be cumulative and election by Landlord to take any one remedy shall not preclude Landlord from taking any other remedy not by its nature absolutely incompatible with any previously or contemporaneously elected remedy. The Landlord may, at its option, apply any sums received from the Tenant against any amounts due and payable by the Tenant under this Lease in such manner as the Landlord sees fit and regardless of the express purpose for which the tender was made and regardless of any endorsement placed on the check by which payment is made. The Tenant expressly waives the service of any demand for the payment of rent or for possession and the service of any notice of the Landlord's election to terminate this Lease or to re-enter the Premises, including any and every form of demand and notice prescribed by a statute or other law, and agrees that the simple breach of any covenant or provision of this Lease by the Tenant shall, of itself, without the service of any notice or demand whatsoever, constitute a forcible detainer by the Tenant of the Premises within the meaning of the statutes of the State of Ohio.

#### 8.3 Miscellaneous Default Provisions.

- A. In the event of a breach or threatened breach by Crestline of any provision of this Lease, the City shall have the right of injunction as if other remedies were not provided for herein.
- B. In case of any default by Crestline under this Lease, the City shall be entitled to cure such default on the Crestline' behalf. Crestline shall pay the cost of such cure to the City, plus a five percent (5%) charge to cover the City's administrative costs, within ten (10) days of demand by the City.
- C. The City shall not be required to cure any default by Crestline, nor shall the City be required to mitigate damages in any respect following a default by Crestline.
- D. The parties hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters arising out of or in any way connected with this Lease, Crestline' use of the Premises, and/or any claim of injury or damage relating to the Premises.

8.4 No Waiver. No failure by either party to insist upon the strict performance of any agreement, covenant or condition of this Lease, or to exercise any right or remedy arising out of a default, shall constitute a waiver of any such default or of such agreement, covenant or condition. No agreement, covenant or condition, and no default under this Lease, shall be waived, altered, or modified except by a written instrument executed by both parties. No waiver of any default shall alter this Lease; every agreement, covenant and condition of this Lease shall continue in full force and effect with respect to any subsequent default thereof.

8.5 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative, and shall be in addition to every other right and remedy provided for in this Lease or now or

hereafter existing at law or in equity. The exercise or beginning of the exercise by the City of any one or more of its rights or remedies in this Lease, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by either party of any or all other rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity.

## **Article IX** **Assignment and Subletting**

**9.1 Written Consent.** Crestline shall not assign, sublet, mortgage, or pledge the Premises, or any interest or part thereof, without the prior consent in writing of the City, which consent may be arbitrarily withheld at City's sole discretion.

**9.2 Binding Effect of Lease.** All covenants, stipulations, and provisions in this Lease shall extend to and bind the legal representatives, successors, and assigns of the parties if City consents.

## **Article X** **Entry of Premises by City**

Crestline shall permit the City and the City's authorized agents to enter upon the Premises and/or enter the buildings at reasonable times, so long as the City does not unreasonably interrupt any business operations on the Premises, for the purpose of inspecting the Premises and of ascertaining the Crestline's compliance with the terms and conditions of this Lease.

## **Article XI** **Miscellaneous**

**11.1 Paragraph Headings.** All paragraph headings are included for reference purposes only and shall not affect the interpretation or construction of the provisions and conditions of this Lease.

**11.2 Notices.** All notices required or permitted to be given to the parties shall be given in writing by either hand delivery or by depositing the same in the United States mail, postage paid marked "Certified Mail Return Receipt Requested" and addressed to the party for which such notice is intended at the address specified below, or at such other address as either party designates by written notice:

To Crestline:

Crestline Paving and Excavating Co., Inc.  
1913 Nebraska  
Toledo, Ohio 43607  
Attn: Chris James

To City:

City of Toledo  
One Government Center  
Toledo, Ohio 43604  
Attn: Director of Neighborhoods and Business  
Development  
cc: Department of Law



11.3 Choice of Law. The provisions of this Lease shall be construed, interpreted and governed by Ohio law.

11.4 Modifications. Any modification or amendment to this Lease must be evidenced in a writing that is signed by both parties.

11.5 Entire Agreement. This Lease constitutes the entire agreement between Crestline and the City in respect of the subject matter of this Lease as of the date first written above.

11.6 Force Majeure. With the exception of the payment of Rent and other charges due hereunder, Crestline and City shall be relieved of the consequences of any breach, default, penalty, or deficiency hereunder that results from a cause or causes beyond its control. Excused causes include, without limitation, war, insurrection, strikes or other labor disputes, riot, interruption of transportation facilities, inability to procure materials, rationing, civil disobedience, fire, flood, epidemic, hurricane, severe weather, explosion, action of the elements, earthquake, acts, actions, proceedings or regulations of any governmental authority and any act of God. Existence of such causes of delay or failure shall extend the time for performance only to such extent as may be reasonably necessary to enable the complete performance in the exercise of reasonable diligence after the causes of delay or failure have been removed.

11.7 No Partnership. This Lease shall not be construed by the parties or any other person as creating a joint venture, partnership, or principal-agent relationship of any character or nature between the Crestline and the City nor shall the employees of one party be deemed or considered employees or agents of the other party.

11.8. Surrender of Premises. Upon expiration or earlier termination of this Lease, Crestline shall surrender the Premises to the City in good condition and repair, except for ordinary wear and tear, depreciation, and obsolescence, loss by fire or other casualty and subject to the environmental provisions of Section 4.4.

11.9. Ownership and Surrender of Improvements. The Project and related improvements, including all materials and equipment incorporated into such improvements, and all appurtenances and additions thereto, shall belong to Crestline until the expiration or earlier termination of Crestline's leasehold interest in the Premises. Upon expiration or earlier termination of Crestline's leasehold interest in the Premises, Crestline shall transfer to the City all improvement made to the Premises by Crestline during the Lease term.

11.10. Subject to Encumbrances. This Lease and the Premises are subject to all present liens, encumbrances, conditions, rights, easements, restrictions, rights of way, covenants, other matters of record, and zoning and building laws, ordinances, regulations, and codes affecting or governing the Premises or that may affect and govern the Premises after the execution of this Lease.

11.11. Ingress and Egress. Crestline agrees that the primary ingress to and egress to and from the property and Premises will be through an entrance on Nebraska Avenue to limit truck traffic on Montrose Avenue in Toledo, Ohio.

11.12. Easements and Fence. City grants Crestline the right to erect a perimeter fence around the Premises, as graphically depicted on Exhibit A, and which fence must be approved by City before installation, for the sole purpose of securing and protecting the Premises and property. In addition, City agrees to cooperate and assist Crestline rights and/or easement on the Premises to construct, maintain, and use gas, electric, water, sewer, telephone and other utility services for its benefit.

**IN WITNESS WHEREOF**, the parties hereto set their hands on the date first set forth above.

**City of Toledo, An Ohio Municipal Corporation**

By: \_\_\_\_\_  
Wade Kapszukiewicz, Mayor

**Crestline Excavating and Paving Co., Inc.**

By: \_\_\_\_\_  
Chris James, Authorized Representative

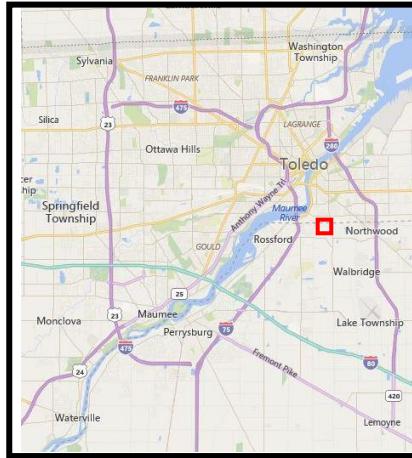
**Approved as to Content:**

\_\_\_\_\_  
Director, Department of Neighborhoods and  
Business Development

**Approved as to Form:**

\_\_\_\_\_  
Director, Department of Law

## EXHIBIT A





**Exhibit B:** Legal Description

DORR ST STATION ADDN LOTS 26 TO 28 & 68 TO 75 & 125 FT STRIP BET LOTS 69 & 70 &  
NLY RR & LOTS 52 TO 89 NORWOOD & UPTON AVE VAC & ADJ TO LOTS 52 TO 70 & LOTS  
821 TO 873 2ND EXTN