

RESOLUTION NO. 21-16
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Surr ON THE 28TH
DAY OF MARCH, 2016.

A RESOLUTION BY THE CENTERVILLE CITY COUNCIL, MONTGOMERY COUNTY, STATE OF OHIO, DECLARING THE INTENT OF THE CITY OF CENTERVILLE TO APPROPRIATE REAL PROPERTY LOCATED AT 5501 WILMINGTON PIKE FOR THE WILMINGTON PIKE PHASE II ROAD PROJECT FOR WIDENING AND ENHANCEMENT OF WILMINGTON PIKE FROM BROWN ROAD TO I-675 AND THE WIDENING AND ENHANCEMENT OF EAST WHIPP ROAD.

WHEREAS, the City of Centerville is engaged in the acquisition of certain interests in real property in connection with a public roadway improvement within the corporate limits of Centerville; and

WHEREAS, the acquisition of the within described property for roadway purposes is immediately necessary for roadway purposes in connection with construction of the improvement; and

WHEREAS, the Council has determined that the property hereinafter described is necessary for public roadway construction in connection with such project so there will be no delay for the immediate preservation of the public peace, health, safety and welfare.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, STATE OF OHIO, THAT:

SECTION 1: It is hereby declared by the Council of the City of Centerville, Ohio to be its intention to appropriate certain real property described more fully in Section 2 below; a permanent standard highway easement, a water main easement and an easement for construction purposes, the following property for the purpose of widening and improving Wilmington Pike and East Whipp Road which are roads open to the public without charge and heretofore approved by the City.

SECTION 2: That the property to be appropriated include the following described real property being necessary for a public right-of-way and road improvement:

Permanent Take Parcel as identified in Exhibit "A" and depicted in Exhibit "D", both exhibits hereby attached and incorporated by reference.

Water Main Easement as identified in Exhibit "B" and depicted in Exhibit "D", both exhibits hereby attached and incorporated by reference.

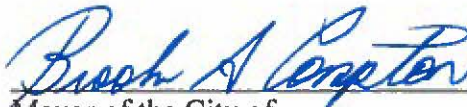
Temporary Construction Easement as identified in Exhibit "C" and depicted in Exhibit "D", both exhibits hereby attached and incorporated by reference.

SECTION 3: It is further determined that for said road improvement to be constructed it is necessary that the City of Centerville take immediate possession of said land, permanent and temporary rights-of-way and easements for construction purposes.

SECTION 4: Upon passage of the within Resolution, it is hereby authorized and directed that written notice of the passage of the same be given to the owner of, persons in possession of, or persons having an interest of record in said property in accordance with Sections 163.04, 163.041 and 719.05 of the Revised Code.

SECTION 5: This resolution shall take effect at the earliest time allowed by law.

PASSED THIS 28th day of March, 2016.



Mayor of the City of
Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 21-16, passed by the Council of the City of Centerville, Ohio on the 28th day of March, 2016.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney



CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone ▶ 513.779.7851
fax ▶ 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
CHICKEN LITTLE REAL ESTATE LLC
0.057 ACRES**

Situated in Section 15, Town 2, Range 6, M.Rs., City of Centerville, Montgomery County, Ohio being part of a 0.995 acre (deed) tract of land conveyed to Chicken Little Real Estate LLC in IR Deed 13-000334 of the Montgomery County Recorder's Office, the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin set in the west right of way line of Wilmington Pike, said point being N04°49'20"E a distance of 161.02 feet from a 1/2" iron pin found at the northeast corner of Lot 2 of Archon Plaza as recorded in P.B. 162 Pg. 42;

Thence through said 0.995 acre tract, along new division lines, the following five (5) courses:

1. N85°10'40"W a distance of 4.46 feet to a 5/8" iron pin set;
2. Along a curve to the left an arc distance of 26.29 feet to a 5/8" iron pin set, said curve having a radius of 30.00 feet, a central angle of 50°12'17" and a chord bearing N20°16'48"W a distance of 25.45 feet;
3. Along a curve to the left an arc distance of 24.43 feet to a 5/8" iron pin set, said curve having a radius of 38.00 feet, a central angle of 36°50'15" and a chord bearing N63°48'04"W a distance of 24.01 feet;
4. N07°46'48"E a distance of 3.00 feet to a 5/8" iron pin set;
5. Along a curve to the right an arc distance of 167.65 feet to a 5/8" iron pin set in the east line of the aforementioned Lot 2, said curve having a radius of 882.00 feet, a central angle of 10°53'26" and a chord bearing N76°46'29"W a distance of 167.40 feet;

Thence along said east line, N04°48'49"E a distance of 8.78 feet to a 5/8" iron pin set in the existing south right of way line of Whipp Road;

Thence along said right of way line, along a curve to the left an arc distance of 189.87 feet to a 5/8" iron pin set, said curve having a radius of 821.25 feet, a central angle of 13°14'48" and a chord bearing S78°21'46"E a distance of 189.45 feet;

Thence continuing, along a curve to the right for an arc distance of 23.51 feet to a 5/8" iron pin set in the west right of way line of Wilmington Pike, said curve having a radius of 15.00 feet, a central angle of 89°48'30" and a chord which bears S40°04'55"E a distance of 21.18 feet;



Thence along said west right of way line, S04°49'20"W a distance of 30.57 feet to the Point of Beginning;

Containing 0.057 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates are identical at the base point.

The above description is based upon a field survey made by The Kleingers Group under the direction of Matthew D. Habedank, Ohio Professional Surveyor No. 8611. A plat of survey is recorded in Volume _____ Page _____ of the Montgomery County Engineers Record of Land Surveys.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESSIONAL SURVEYOR NO. 8611

DATE



CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone ▶ 513.779.7851
fax ▶ 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
CHICKEN LITTLE REAL ESTATE LLC
WATER MAIN EASEMENT**

Situated in Section 15, Town 2, Range 6, M.Rs., City of Centerville, Montgomery County, Ohio being part of a 0.995 acre (deed) tract of land conveyed to Chicken Little Real Estate LLC in IR Deed 13-000334 of the Montgomery County Recorder's Office, the boundary of a water main easement being more particularly described as follows:

Beginning at a 5/8" iron pin set in the west right of way line of Wilmington Pike, said point being N04°49'20"E a distance of 44.00 feet from a 1/2" iron pin found at the northeast corner of Lot 2 of Archon Plaza as recorded in P.B. 162 Pg. 42;

Thence through said 0.995 acre tract the following three (3) courses:

1. N85°10'40"W a distance of 7.00 feet;
2. N04°49'20"E a distance of 44.00 feet;
3. S85°10'40"E a distance of 7.00 feet to a point in the aforesaid west right of way line of Wilmington Pike;

Thence along said west right of way line, S04°49'20"W a distance of 44.00 feet to the Point of Beginning;

Containing 0.007 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

The above description is based upon a field survey made by The Kleingers Group under the direction of Matthew D. Habedank, Ohio Professional Surveyor No. 8611. A plat of survey is recorded in Volume _____ Page _____ of the Montgomery County Engineers Record of Land Surveys.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESIONAL SURVEYOR NO. 8611

DATE



CINCINNATI
COLUMBUS
DAYTON

6305 Centre Park Drive
West Chester, OH 45069
phone ▶ 513.779.7851
fax ▶ 513.779.7852
www.kleingers.com

**LEGAL DESCRIPTION
CHICKEN LITTLE REAL ESTATE LLC
TEMPORARY CONSTRUCTION EASEMENT**

Situated in Section 15, Town 2, Range 6, MRs, City of Centerville, Montgomery County, Ohio being part of a 0.995 acre (deed) tract of land conveyed to Chicken Little Real Estate LLC in IR Deed 13-000334 of the Montgomery County Recorder's Office, the boundary of a temporary construction easement being more particularly described as follows:

Beginning at a ½" iron pin found at the northeast corner of Lot 2 of Archon Plaza as recorded in P.B. 162 Pg. 42 and being in the west right of way line of Wilmington Pike;

Thence along the south line of said 0.995 acre tract, N85°11'11"W a distance of 17.00 feet;

Thence through said 0.995 acre tract the following six (6) courses:

1. N43°34'14"W a distance of 32.30 feet;
2. N04°49'20"E a distance of 55.50 feet;
3. S85°10'40"E a distance of 30.15 feet;
4. N04°49'20"E a distance of 88.92 feet;
5. N40°27'54"W a distance of 24.93 feet;
6. Along a curve to the right an arc distance of 176.35 feet to a point in the east line of the aforesaid Lot 2, said curve having a radius of 894.00 feet, a central angle of 11°18'07" and a chord bearing N77°10'12"W a distance of 176.06 feet;

Thence along said east line, N04°48'49"E a distance of 12.35 feet;

Thence along the proposed south right of way line of Whipp Road the following five (5) courses:

1. Along a curve to the left an arc distance of 167.65 feet, said curve having a radius of 882.00 feet, a central angle of 10°53'26" and a chord bearing S76°46'29"E a distance of 167.40 feet;
2. S07°46'48"W a distance of 3.00 feet;
3. Along a curve to the right an arc distance of 24.43 feet, said curve having a radius of 38.00 feet, a central angle of 36°50'15" and a chord bearing S63°48'04"E a distance of 24.01 feet;
4. Along a curve to the right an arc distance of 26.29 feet, said curve having a radius of 30.00 feet, a central angle of 50°12'17" and a chord bearing S20°16'48"E a distance of 25.45 feet;



5. S85°10'40"E a distance of 4.46 feet to a point in the west right of way line of Wilmington Pike;

Thence along said west right of way line, S04°49'20"W a distance of 73.02 feet;

Thence along a proposed water main easement the following three (3) courses:

1. N85°10'40"W a distance of 7.00 feet;
2. S04°49'20"W a distance of 44.00 feet;
3. S85°10'40"E a distance of 7.00 feet to a point in the aforesaid west right of way line of Wilmington Pike;

Thence along said right of way line, S04°49'20"W a distance of 44.00 feet to the Point of Beginning;

Containing 0.136 acres of land more or less and being subject to easements and rights of way of record.

Bearings are based on the Ohio State Plane Coordinate System (OSPC) – South Zone. The project coordinates are based on OSPC and has been scaled to ground by using a project adjustment factor of 1.0000942433 applied at a base point of N: 608674.24 E: 1515391.69. Grid and ground coordinates area identical at the base point.

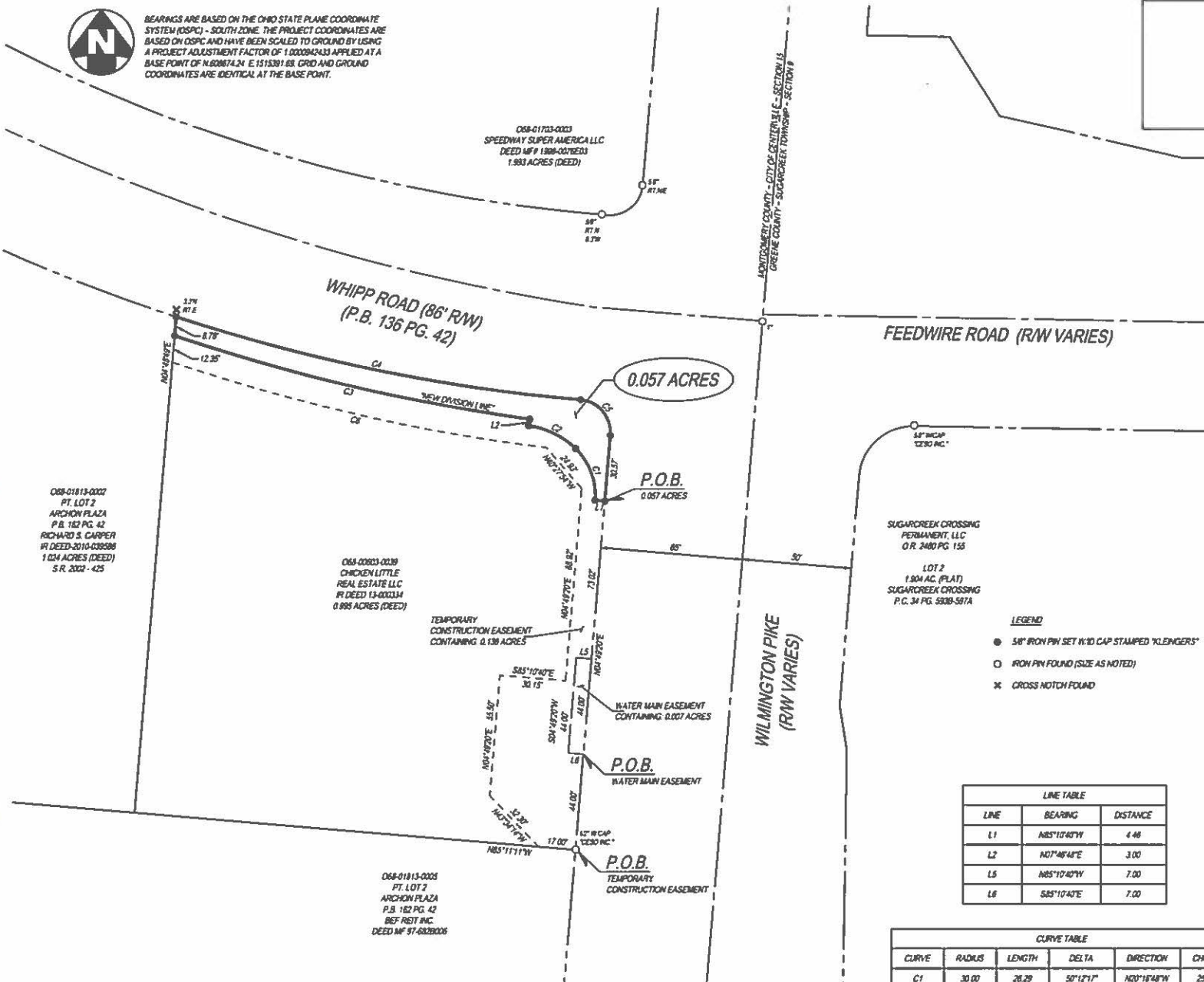
The above description is based upon a field survey made by The Kleingers Group under the direction of Matthew D. Habedank, Ohio Professional Surveyor No. 8611. A plat of survey is recorded in Volume _____ Page _____ of the Montgomery County Engineers Record of Land Surveys.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESIONAL SURVEYOR NO. 8611

DATE



BEARINGS ARE BASED ON THE OHIO STATE PLANE COORDINATE SYSTEM (OSPC) - SOUTH ZONE. THE PROJECT COORDINATES ARE BASED ON OSPC AND HAVE BEEN SCALED TO GROUND BY USING A PROJECT ADJUSTMENT FACTOR OF 1.000284233 APPLIED AT A BASE POINT OF N.620874.24 E.1515391.89. GRID AND GROUND COORDINATES ARE IDENTICAL AT THE BASE POINT.



LEGEND

- 5/8" IRON PIN SET W/ID CAP STAMPED "KLEINGERS"
- IRON PIN FOUND (SIZE AS NOTED)
- ✕ CROSS NOTCH FOUND

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N85°17'40"W	4.46
L2	N21°48'14"E	3.00
L5	N85°17'40"W	7.00
L6	S85°17'43"E	7.00

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	DIRECTION	CHORD
C1	30.07	26.29	50°12'17"	N20°16'48"W	25.45
C2	38.00	24.43	36°50'15"	N63°48'04"W	24.01
C3	882.00	167.65	19°53'28"	N78°46'29"W	167.40
C4	821.25	189.87	13°14'48"	S78°21'46"E	189.45
C5	15.00	23.51	89°48'30"	S40°04'53"E	21.18
C6	694.00	178.35	11°18'07"	N77°18'12"W	178.06

I HEREBY CERTIFY THAT THIS PLAT IS BASED ON A SURVEY MADE UNDER MY DIRECTION.

MATTHEW D. HABEDANK, P.S.
OHIO PROFESSIONAL SURVEYOR NO. 8611

DATE

NOTES

1. ALL MONUMENTS FOUND IN GOOD CONDITION
2. SOURCE DOCUMENTS ARE AS NOTED
3. OCCUPATION IS AS SHOWN

THE KLEINGERS GROUP
 CIVIL ENGINEERING SURVEYING LANDSCAPE ARCHITECTURE
 www.kleingers.com
 6305 Centre Park Dr. West Chester, OH 45399
 613.778.7651



NO.	DATE	DESCRIPTION
1	11/16/15	INITIAL SURVEY - DNY
2	2/23/2016	REVISE R/W - MDH

BOUNDARY SURVEY
0.057 ACRES
 SECTION 15, TOWN 2, RANGE 8, M.R. 6
 CITY OF CENTERVILLE
 MONTGOMERY COUNTY, OHIO

PROJECT NO: 150173VSD000
 DATE: 11/16/15

SCALE: 1" = 30'

SHEET NAME:
CHICKEN LITTLE

SHEET NO:
1 OF 1

WORK AGREEMENT AND RIGHT OF ENTRY AGREEMENT

by and between

Chicken Little Real Estate, LLC

and

The City of Centerville, Ohio

Chicken Little Real Estate, LLC, a Mississippi limited liability company, the owner(s) ["Owner"] of the property located at 5501 Wilmington Pike which is further identified as parcel O68-00603-0039 ["Property"] in consideration of there being no costs, assessments, or other expenses to Owner for the work hereinafter described and for other valuable consideration, hereby authorizes the City of Centerville ["City"], an Ohio Municipal Corporation, and its duly authorized employees, agents, and contractors to enter upon said Property within the boundaries depicted in Exhibit 1 for the purposes of performing the work related to the Wilmington Pike Phase II roadway improvement project ["Project"] attached hereto and by reference incorporated herein ["Authority to Enter"]. The Parties acknowledge that the City intends to take legislative action in the near future to appropriate a portion of the Property as shown in Exhibit 1 and the execution of this Agreement is a cooperative effort between the Parties to assist in the expediting of the Project in advance of the City completing its appropriation pursuant to the Ohio Revised Code.

This Authority to Enter granted to the City shall commence on or after March 31, 2016 and will terminate on July 1, 2016, or at such time the City acquires ownership of the subject area of the property through an agreed upon sale between the Parties or by appropriation, whichever comes first. City shall be granted authority to enter after July 1, 2016, only by the express written approval of Owner, which approval shall not be unreasonably withheld. Owner shall have five (5) business days to grant said written approval to City upon submission of City's written request. In the event that Owner denies entry to City at any time after July 1, 2016, the denial of entry shall be deemed to be Owner's full acceptance of all work performed on Owner's property. City shall have no further obligation or requirement to perform any additional restoration or repair work on Owner's property and Owner shall waive all legal rights to compel further work by City.

Owner hereby grants to City, the right to enter onto Owner's property for all purposes related herein, including, but not limited to the following:

1. Have access to the Property for the purpose of construction of roads or sidewalks and related facilities;
2. Bring one or more contractors onto the Property for the construction of roads, sidewalks and related work including utility coordination;

3. Secure the Property with a fence or other control devices and to limit, but maintain, access to the Property;
4. Secure all required permits and approvals for the construction, if any; and
5. To place signs on the Property regarding the Project, if any.

All necessary work to be conducted within the project boundaries as generally depicted in Exhibit 1 shall be performed in accordance with the plans and specifications prepared by The Kliengers Group for the City of Centerville for the Project.

Owner hereby releases City and its employees from any and all damages or claims for damages resulting by reason of the above described work and operations. It is understood that any contractor engaged for the purposes described above is an *Independent Contractor*, and is solely responsible for any and all damages or claims for damages arising from any conduct not within the control of City.

It is further understood that City assumes no obligation for the maintenance of any area outside the limits of the project construction limits depicted on the plans and specifications.

This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, and the heirs, legal representatives, successors and assigns of the parties to this Agreement.

The terms of this agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of either party to require performance of any of the provisions of this Agreement shall, in no manner, affect the right at a later date to enforce such provisions.

The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed without the written consent of the other party to this Agreement.

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute but one and the same instrument.

No amendment or modification of this Agreement shall be valid or binding upon the parties unless it is made in writing, cites this Agreement, and is signed by both Owner and City.

The parties hereto, namely the City of Centerville, Ohio, and Chicken Little Real Estate, LLC, have executed this Agreement on the date(s) indicated immediately below their respective signatures.

CITY :
CITY OF CENTERVILLE, OHIO


CITY MANAGER

By: Gregory B. Horn
Its: City Manager

Approved as to Form

By: [Signature]
Scott A. Liberman, Municipal Attorney

OWNER:
CHICKEN LITTLE REAL ESTATE, LLC, a
Mississippi limited liability company

By: [Signature]
Its: Sean A. Tuohy
Managing member

STATE OF OHIO)
)
COUNTY OF MONTGOMERY)

SS:



The foregoing instrument was acknowledged before me this 15th day of March,
2016 by Gregory B. Horn, City Manager.

Holly Bricker
Notary Public
State of Ohio
Comm. Exp. Oct. 28, 2019

[Signature]
Notary Public

STATE OF TN)
)
COUNTY OF Shelby)

SS:

BE IT REMEMBERED, that on this 1st day of March, 2016, before me,
the subscriber, a Notary Public in and for said County and State, personally came
Sean A. Tuohy, the owner of Chicken Little Real Estate, LLC, which executed the
foregoing instrument, who acknowledged that he did sign said instrument as such owner of said
property; that said instrument was signed as his free act and deed individually.

[Signature]
Notary Public

