

RESOLUTION NO. 20-14
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gusham ON
THE 19th DAY OF MAY, 2014.

**RESOLUTION AUTHORIZING AND DIRECTING THE CITY
MANAGER TO TAKE ALL STEPS AND EXECUTE ALL DOCUMENTS
NECESSARY IN ORDER TO AFFECT THE PURCHASE OF REAL
PROPERTY AND A RIGHT OF ENTRY AGREEMENT WITH
SUGARCREEK CROSSING PERMANENT, LLC FOR PROPERTY
LOCATED ALONG WILMINGTON PIKE AND FEEDWIRE ROAD IN
GREENE COUNTY.**

WHEREAS, Council has determined that it would be in the best interest of its citizens to purchase property located in the City of Centerville from Sugarcreek Crossing Permanent, LLC, for the purpose of road and signalization improvements along Wilmington Pike and Feedwire Road; and

WHEREAS, the City initiated an Appropriation action to take the property from Sugarcreek Crossing Permanent, LLC; and

WHEREAS, Sugarcreek Crossing Permanent, LLC has agreed to accept the City's offer of compensation and avoid the appropriation of its property; and

WHEREAS, instead the City of Centerville has negotiated the purchase of this real property from Sugarcreek Crossing Permanent, LLC, upon terms acceptable to the City; and

WHEREAS, the City Manager in prior consultation with the Council at an open meeting work session called pursuant to §121.22, Ohio Revised Code, discussed the purchase of the property and was instructed by the Council to execute a contract for the purchase of property for the amount of \$18,158; and

WHEREAS, it is also necessary for the City to enter upon additional property of Sugarcreek Crossing Permanent, LLC, for the purpose of the construction project; and

WHEREAS, Council has the power to enter into such Real Property Purchase Agreement and a Right of Entry Agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution;

NOW THEREFORE, BE IT RESOLVED:

Section 1: That the City Manager is hereby authorized to execute a contract with Sugarcreek Crossing Permanent, LLC for the purchase of property for \$18,158.00 in a form substantially similar to the purchase Agreement marked Exhibit "A" and incorporated herein.


Section 2: That the City Manager is hereby authorized to execute a Right of Entry Agreement in a form substantially similar to Exhibit "B" with Sugarcreek Crossing Permanent, LLC for the purpose of allowing the City to enter upon the property for the construction project. Said Agreement is attached hereto as Exhibit "B" and incorporated herein.

Section 2: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreements.

PASSED THIS 19th day of May, 2014.


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. 20-14, passed by the Council of the City of Centerville, Ohio on the 19th day of May, 2014.


Clerk of the Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.

Department of Law
Scott A. Liberman, Municipal Attorney

OFFER TO PURCHASE REAL ESTATE

Centerville, Ohio
May _____, 2014

1. **OFFER.** The undersigned Purchaser offers to buy on the terms and conditions set forth below, the real property (the "Property") located in the City of Centerville, County of Greene and State of Ohio and more particularly described as set forth in Exhibit "A" attached hereto and incorporated herein.

2. **INCLUDED IN THE SALE.** The Property shall include the land, all appurtenant rights, privileges and easements.

3. **PRICE.** The Purchaser agrees to pay for the Property the sum of EIGHTEEN THOUSAND ONE HUNDRED FIFTY-EIGHT DOLLARS (\$18,158.00) payable in full at closing as follows:

The sum of Four Thousand, Eight Hundred Dollars (\$4,800.00) to Sugarcreek Crossing Permanent, LLC and the sum of Thirteen Thousand, Three Hundred Fifty-Eight Dollars (\$13,358.00) to Cracker Barrel.

4. **DEED.** Sellers shall furnish a transferable and recordable General Warranty Deed conveying to Purchaser, or nominee, a marketable title to the Property (as determined with reference to the Ohio State Bar Association Standard of Title Examination) with dower rights, if any, released, free and clear of liens, rights to take liens, and encumbrances whatsoever except (a) legal highways; (b) all installments of taxes and assessments becoming due and payable after closing; (c) zoning and other laws.

5. **TITLE EXAMINATION.** The securing of any title examination shall be Purchaser's obligation.

6. **GOVERNMENT NOTICES.** By acceptance of this Offer, Seller warrants that Seller has not received, nor is Seller aware of any notification from any Building, or Safety or Health Department, or any other governmental or quasi-governmental authority or official requiring any work to be done on the Property. Seller warrants and agrees that Seller will promptly furnish Purchaser copies of any and all such notices received by Seller prior to the Closing. Upon learning of any work required by any such authority or official to the Property, Purchaser shall have ten (10) days to advise the Seller of any such work that is objectionable to Purchaser, and unless Seller performs such work prior to the Closing, Purchaser may elect to terminate this Agreement or to complete the purchase of the Property. Purchaser plans to demolish the existing building so this provision does not apply to any condition of the said building.

7. **DELIVERY OF THE PROPERTY.** Seller shall deliver vacant possession of the Property to Purchaser at closing and the Property shall be free and clear of all debris, trash and foreign material.

8. **HAZARDOUS SUBSTANCES.** In order to induce Purchaser to enter into this Agreement and to Purchase the Property, Seller warrants to Purchaser that Seller has no actual notice or knowledge either (1) of the existence of "Hazardous Materials" (as defined hereinafter) on or within the ground or groundwater of the Property, in contravention of any applicable laws or (2) that any such Hazardous Materials are now or ever have been used, stored (above or below ground) spilled, released, or disposed of on or within the Property or within any improvements thereto in contravention of any applicable laws. As used herein the term "Hazardous Material" means any "hazardous substances" or "hazardous waste," as defined in or with reference in the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq. and/or the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., as amended; or any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended.

9. **TAXES AND OTHER EXPENSES.** There shall be no conveyance fee since Purchaser is a municipality. At closing, Seller shall pay or credit on the Purchase Price (a) all real estate taxes and assessments, including penalties and interest, which became due prior to the closing, (b) a prorata share, calculated as of the Closing Date in the manner set forth below, of the taxes and assessments becoming due and payable after closing, and (c) the amount of any agricultural tax savings accrued as of the Closing Date which would be subject to recoupment if the Property were converted to a non-agricultural use (whether or not such conversion actually occurs). The tax proration shall be made in accordance with the custom of Greene County, Ohio.

10. **SELLER'S REPRESENTATIONS.** In addition to the representations set forth above, Seller further represents that those signing this Contract constitute all of the owners of the Property, together with their respective spouses; that no work has been performed or improvements constructed that may result in future assessments; that Seller has no actual knowledge that underground storage tanks are currently located on the Property nor have been previously removed from the Property and that Seller truly believes that none of the Property consists of wetlands nor have any former wetlands on the Property been filled in and has no actual knowledge to the contrary. All representations contained in this Contract shall survive the Closing for a period of one (1) year.

11. **CLOSING.** The Closing for the delivery of the Deed and payment of the Purchase Price shall be on or before June 30, 2014. In the event of a failure of the parties to agree, the Closing shall be held on the last day designated in this paragraph and Purchaser and Seller shall designate the time and place of Closing; provided, however, in the event of a failure

to agreement as to the time and place for the closing, Purchaser must designate some place in Montgomery County, Ohio. Closing costs shall be borne equally by the parties.

12. GENERAL PROVISIONS. Upon acceptance, this Offer shall become a complete agreement binding upon and inuring to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors, and assigns, and shall be deemed to contain all of the terms and conditions agreed upon, there being no oral conditions, representations, warranties or agreements. Any subsequent conditions, representations, warranties or agreements shall not be valid and binding upon the parties unless in writing signed by both parties. Time is of the essence of all provisions of this Contract.

13. BROKER'S COMMISSIONS. There is no real estate commission due to any real estate broker.

Witness:

City of Centerville, Ohio, an Ohio municipal corporation

By: _____
Gregory B. Horn, City Manager
PURCHASER

Make Deed To: City of Centerville, Ohio

ACCEPTANCE

Date: _____, 2014

The undersigned Seller accepts the foregoing Offer.

Witness:

Sugarcreek Crossing Permanent, LLC, an Ohio limited liability company

By: _____
SELLER



CINCINNATI
COLUMBUS
DAYTON

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

**LEGAL DESCRIPTION
SUGARCREEK CROSSING, LLC
0.008 ACRES**

Situated in Section 9, Town 2, Range 6, MRs, City of Centerville, Greene County, Ohio being part of Lot 2 of Sugarcreek Crossing as recorded in P.C. 34 Pg. 593B-597A as conveyed to Sugarcreek Crossing Permanent, LLC in O.R. 2460 Pg. 155 of the Greene County Recorder's Office the boundary of which being more particularly described as follows:

Beginning at a 5/8" iron pin set in the south right of way line of Feedwire Road, being N89°00'37"W a distance of 185.91 feet from a cross notch found at the northeast corner of said Lot 2;

Thence through said Lot 2, S83°51'53"W a distance of 40.46 feet to a 5/8" iron pin set;

Thence, S57°02'51"W a distance of 32.79 feet to a 5/8" iron pin set in the east right of way line of Wilmington Pike;

Thence along said east right of way line, along an arc distance of 37.60 feet to a 5/8" iron pin found, said curve having a radius of 25.00 feet, a central angle of 86°10'03" and a chord which bears, N47°54'22"E a distance of 34.15 feet;

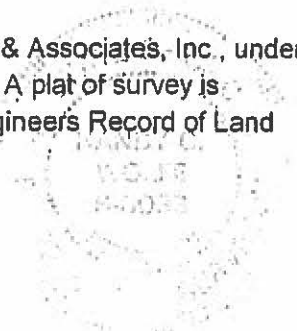
Thence along the south right of way line of the aforesaid Feedwire Road, S89°00'37"E a distance of 42.41 feet to the Point of Beginning;

Containing 0.008 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 Kleingers & Associates, Inc., under the direction of Randy C. Wolfe, Ohio Professional Surveyor No. 8321. A plat of survey is recorded in Volume _____ Page _____ of the Greene County Engineers Record of Land Surveys.

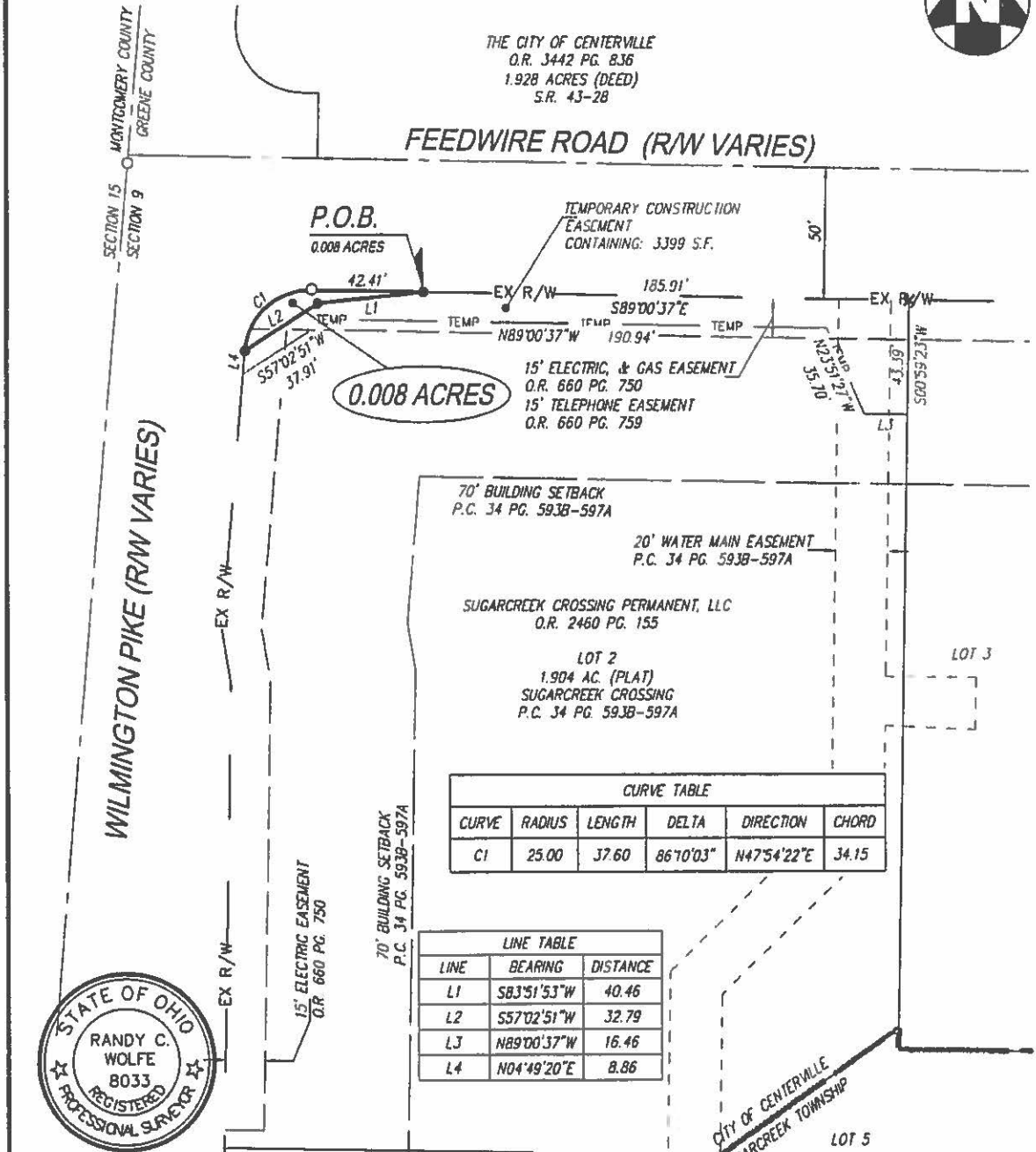
Randy C. Wolfe
3/11/14





THE CITY OF CENTERVILLE
 O.R. 3442 PG. 836
 1.928 ACRES (DEED)
 S.R. 43-28

FEEDWIRE ROAD (R/W VARIES)



0.008 ACRES

70' BUILDING SETBACK
 P.C. 34 PG. 593B-597A

20' WATER MAIN EASEMENT
 P.C. 34 PG. 593B-597A

SUGARCREEK CROSSING PERMANENT, LLC
 O.R. 2460 PG. 155

LOT 2
 1.904 AC. (PLAT)
 SUGARCREEK CROSSING
 P.C. 34 PG. 593B-597A

CURVE TABLE					
CURVE	RADIUS	LENGTH	DELTA	DIRECTION	CHORD
C1	25.00	37.60	86°10'03"	N47°54'22"E	34.15

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S83°51'53"W	40.46
L2	S57°02'51"W	32.79
L3	N89°00'37"W	16.46
L4	N04°49'20"E	8.86



- NOTES:**
1. 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 1.0000942433 APPLIED AT A BASE POINT OF N: 608674.24 E: 1515391.69. GRID AND GROUND COORDINATES ARE IDENTICAL AT THE BASE POINT.
 2. ALL MONUMENTS FOUND IN GOOD CONDITION.
 3. SOURCE DOCUMENTS ARE AS NOTED.
 4. OCCUPATION IS AS SHOWN.

**BOUNDARY SURVEY
 and DIVISION
 0.008 ACRES**

- LEGEND**
- 5/8" IRON IN SET W/D CAP STAMPED "KLEINGERS"
 - 5/8" IRON PIN FOUND W/D CAP STAMPED "CESO"
 - × CROSS NOTCH FOUND



THE
KLEINGERS
 GROUP

CIVIL ENGINEERING SURVEYING LANDSCAPE ARCHITECTURE
 www.kleingers.com
 6305 Centre Park Dr
 West Chester, OH 45069
 513.779.7851

GRANTOR SUGAR CREEK CROSSING, LLC
 GRANTEE THE CITY OF CENTERVILLE

LOCATION:
 Section 9, Town 2, Range 6, MRs

CITY OF CENTERVILLE
 GREENE COUNTY, OHIO

Date 3/10/14 JOB NO.: 130384VS0000

SURVEYED BY:
Randy C. Wolfe 3-11-14
 Randy C. Wolfe Reg. Surveyor No. 8033

APPROVED
 Greene County Engineer

By _____ Date _____

APPROVED BY: _____ DATE _____
 ZONING _____ DATE _____

RPCC, CITY, OR VILLAGE _____ DATE _____

RIGHT OF ENTRY AGREEMENT

THIS RIGHT OF ENTRY AGREEMENT is entered into by and between the **City of Centerville**, an Ohio municipal corporation, whose principal business office is located at 100 West Spring Valley Road, Centerville, Ohio (hereinafter referred to as "Centerville") and **Sugarcreek Crossing Permanent, LLC**, an Ohio limited liability company, whose principal office is located at 9380 Montgomery Road, Suite 202, Cincinnati, OH 45242 (hereinafter referred to as "Sugarcreek").

RECITALS:

A. Sugarcreek owns a fee simple interest in a tract of real estate located on the corner of Feedwire Road and Wilmington Pike, Centerville, Ohio and more particularly described in Exhibit A, which is attached hereto and made a part of this Agreement (hereinafter referred to as the "Property").

B. Centerville and Sugarcreek have entered into a Purchase Agreement for the a portion of the Property described in Exhibit B, which is attached hereto and made a part of this Agreement (hereinafter referred to as the "Corner Property"); whereby Centerville agrees to purchase and Sugarcreek agrees to sale the Corner Property.

C. Centerville is proceeding with a road and signalization construction project on Feedwire Road (the "Project") which involves both the Property and the Corner Property (collectively referred to in this Agreement as the "Property"). Access to and upon the Property is necessary for the construction project.

D. Completion and closure on the agreement between Sugarcreek and the City of Centerville, whereby Centerville will acquire the Corner Property is not anticipated prior to issuance of this Agreement, or prior to the desired starting date of construction.

E. The construction project anticipates a need to temporarily be on the Property beyond the Corner Property for the purposes of the project.

F. The parties have therefore agreed that Sugarcreek shall grant to Centerville a right of entry onto the Property for the purpose of construction of the road and signalization improvements and other activities, as set forth below.

NOW, THEREFORE, in consideration of the mutual obligations and undertakings contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement do hereby agree as follows:

1. Consideration.

Sugarcreek acknowledges and agrees that Centerville will make no payments to Sugarcreek pursuant to this Agreement. Sugarcreek acknowledges and agrees that the grant of the right of entry by Sugarcreek to Centerville which will allow Centerville to maintain the construction schedule as they, (i.e. Centerville), have solely defined, is complete and sufficient consideration for the covenants and agreements of Sugarcreek in this Agreement.

2. Right of Entry.

A. General Grant of Right. Sugarcreek hereby grants to Centerville, the right to enter onto the Property for all purposes related generally to:

All rights granted within this Agreement will be limited by, and subject to, those rights and claims of record as pre-established prior to the effective date of this Agreement, regarding all property described in Exhibit "A" of this Agreement. Said claims of record including, but not limited to, any existing easements, right-of-ways, and/or permits.

B. Specific Rights Granted to Centerville. In addition to the general rights granted to Centerville above, Sugarcreek also specifically authorizes Centerville to:

1. Have access to the Property for the purpose of construction of roads, sidewalks and related facilities including signalization.
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;
6. To provide for excavation and/or embankment work.

3. Compliance with Laws. Centerville will adhere and will require by contract that all contractors and subcontractors on the Property adhere to all applicable federal, state and local laws and regulations at all times during the construction.

4. Term. The term of this Agreement shall commence upon the execution hereof by both parties hereto and will expire on the date of completion of the Project.

5. **Miscellaneous**

A. **Construction of Agreement.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Ohio.

B. **Execution of Instruments.** The parties to this Agreement shall execute (and, if necessary, acknowledge) and deliver any and all documents and papers and take all such further action as may be necessary or desirable to carry out and effectuate the full purpose and intent of this Agreement.

C. **Cumulative Rights and Remedies.** The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right of such party to use any or all other rights and remedies. The rights and remedies provided by this Agreement are given in addition to any other rights and remedies the parties may have by law, statute, ordinance, in equity or otherwise.

D. **Exhibits.** All exhibits, schedules and any other documents attached to this Agreement are incorporated into this Agreement by this reference and shall be deemed a part of this Agreement as if set forth in full in this Agreement. References to "this Agreement" and words of similar import refer to this Agreement (including all Exhibits and schedules to this Agreement) as an entirety.

E. **Waiver.** The terms, covenants, representations, warranties and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time 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. No waiver by any party of any condition, or breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

F. **Nontransferability of Agreement.** The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed in any manner by any party without the prior, written consent of all other parties to this Agreement.

G. **Benefit.** Subject to the restrictions contained in this Agreement with respect to transfer, assignment and conveyance, 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.

H. **Entire Agreement.** This Agreement (including the exhibits attached to this Agreement), and the other documents referred to in this Agreement or delivered pursuant to this

Agreement contain the entire understanding of the parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement.

I. Amendment. This Agreement may be amended at any time by the joint act of the parties to this Agreement; provided, however, that no amendment shall be valid unless the amendment is in writing and signed by all parties to this Agreement.

J. Headings. The headings used in this Agreement are for convenience only and this Agreement shall be interpreted as if such headings were omitted.

K. Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement. No new counterparts shall be valid unless the counterpart has been approved in writing and signed by all parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of _____, 2014.

City of Centerville, Ohio, an Ohio municipal corporation

By: _____
Gregory B. Horn, City Manager

Sugarcreek Crossing Permanent, LLC, an Ohio limited liability company

By: _____
Its: _____

EXHIBIT A

Description of the Property



CINCINNATI
COLUMBUS
DAYTON

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

**LEGAL DESCRIPTION
SUGARCREEK CROSSING, LLC
TEMPORARY CONSTRUCTION EASEMENT**

Situated in Section 9, Town 2, Range 6, MRs, City of Centerville, Greene County, Ohio being part of Lot 2 of Sugarcreek Crossing as recorded in P.C. 34 Pg. 593B-597A as conveyed to Sugarcreek Crossing Permanent, LLC in O.R. 2460 Pg. 155 of the Greene County Recorder's Office the boundary of a temporary construction easement being more particularly described as follows:

Beginning at a cross notch found at the northeast corner of said Lot 2, being in the south right of way line of Feedwire Road;

Thence along the east line of said Lot 2, S00°59'23"W a distance of 43.39 feet;

Thence through said Lot 2 the following four (4) courses:

1. N89°00'37"W a distance of 16.46 feet;
2. N23°51'27"W a distance of 35.70 feet;
3. N89°00'37"W a distance of 190.94 feet;
4. S57°02'51"W a distance of 37.91 feet to a point in the east right of way line of Wilmington Pike;

Thence along said east right of way line, N04°49'20"E a distance of 8.86 feet;

Thence along a proposed right of way line, N57°02'51"E a distance of 32.79 feet;

Thence continuing, N83°51'53"E a distance of 40.46 feet to a point in the aforesaid south right of way line of Feedwire Road;

Thence along said south right of way line, S89°00'37"E a distance of 185.91 feet to the Point of Beginning;

Containing 3,399 square feet more or less and being subject to easements and rights of way of record.

THE
KLEINGERS
GROUP



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.



Randy C. Wicks
3/11/14