

RESOLUTION NO. 16-11
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER John Beals ON THE 18th
DAY OF April, 2011.

**A RESOLUTION RATIFYING THE ACTION OF THE CITY
MANAGER, ON BEHALF OF THE CITY OF CENTERVILLE, IN
SIGNING A SITE AGREEMENT TO LOCATE THE
CENTERVILLE FARMERS MARKET AT 892 S. MAIN STREET.**

WHEREAS, the City of Centerville has operated a seasonal Farmers Market since 2008; and

WHEREAS, it is in the best interests of the City of Centerville to establish a location with increased visibility; and

WHEREAS, the City Manager signed the Site Agreement with 4032 Linden Avenue, LLC which includes a non-exclusive license to use a portion of the property located at 892 S. Main Street for the purpose of operating a Farmers Market at the cost of \$1 per year.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Council hereby ratifies the action of the City Manager in signing the agreement with 4032 Linden Avenue, LLC to locate the Centerville Farmers Market at 892 S. Main Street, a copy which is attached as Exhibit "A" and incorporated herein.

Section 2. This resolution becomes effective on the earliest date allowed by law.

PASSED THIS 18th day of April, 2011.

G. Mark Keupel
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
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. 16-11, passed by the Council of the City of Centerville, Ohio on the 18th day of April, 2011.

Debra A. James
Clerk of the Council

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

Department of Law
Scott A. Liberman
Municipal Attorney

LICENSE AGREEMENT

THIS LICENSE AGREEMENT made as of this 30th day of March, 2011 by and between 4032 LINDEN AVENUE, LLC, an Ohio limited liability company, with a mailing address of 462 N. Springboro Pike, West Carrollton, Ohio 45449 ("Owner"), and the CITY OF CENTERVILLE, OHIO, an Ohio Municipal corporation, with a mailing address of 100 W. Spring Valley Road, Centerville, Ohio 45458 ("Licensee").

WHEREAS, Owner desires to grant a non-exclusive license to use a portion of the property located at the Centerville Shopping Place located at 892 S. Main Street, Centerville, Ohio to Licensee, for the sole purpose of operating an open-air farmer's market; and

WHEREAS, Licensee desires to obtain said non-exclusive license, as described herein, to operate an open-air farmer's market and all related activities on the Premises (described below) upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises contained herein, and intending to be legally bound hereby, Owner and Licensee hereby agree as follows:

Section I. Licensed Premises

The Premises subject to this License Agreement (hereinafter Premises) are comprised of a 7,700 square foot parking/drive area offset by the driveway entrance near the AutoZone sign and the Kabuki sign. The Premises are more fully shown in the diagram attached hereto, and incorporated by reference herein, as Exhibit A. Licensee acknowledges and agrees that the Premises are being accepted by it in "As Is" condition without any warranty whatsoever and assumes the risk of the condition of the Premises.

Section II. Term; Gratuitous License; Termination

The term of this license shall commence on May 1, 2011 and shall continue year to year until terminated. Owner grants said license to Licensee in consideration of \$1.00 and for the obligations imposed on Licensee by this License Agreement.

Either party may terminate this License Agreement by giving the other party written notice ninety (90) days prior to the effective date of the termination. Any such notice shall be given in accordance with the notice provisions set forth in Section XIV, below.

Section III. Scope of License

Licensee shall have a non-exclusive license to the use and enjoyment of the Premises to operate an open-air farmers market and any related activities during its Hours of Operation.

As used herein, Licensee's Hours of Operation shall be each and every Thursday, May through October, from 2:30 p.m. to 6:30 p.m., and on the third Thursday of November and December, from 3:00 p.m. to 6:00 p.m. Notwithstanding any other provision to the contrary, the license hereby conferred shall be limited to the Hours of Operation, and any time immediately before or after the Hours of Operation as is necessary to effect the purposes of this License Agreement.

Section IV. Other Areas

Owner also grants to Licensee the non-exclusive use of certain other areas outside of the Premises for necessary and appropriate activities incidental to Licensees operations. These uses include: (1) during the times immediately (*i.e.*, up to thirty (30) hours) before the Hours of Operation, Licensee or its representative may post temporary signage advertising Licensees operations; (2) Licensee will deliver and install barricades to cordon off site as described in Section I of this agreement up to twenty-four (24) hours before the Hours of Operation; (3) Licensee's invitees shall be permitted to use parking spaces ordinarily reserved for customers of Owners retail-shopping areas.

Any signage displayed by Licensee pursuant to this License Agreement shall not be considered against any future zoning applications made by the Owner to the City of

Centerville.

Section V. Obligations of Licensee

Licensee hereby accepts and agrees to the following:

A. Surrender of Premises

Upon termination or cancellation of this License Agreement, Licensee shall no longer have any right to the use, possession or enjoyment of the Premises, or any right incidental to such use, possession or enjoyment. Upon completion of the Hours of Operation each week, Licensee shall restore the Premises to the same condition as existed prior to the Hours of Operation, including without limitation the removal of all awnings, stands, merchandise, debris, and the like associated with Licensee's operations; within twenty-four hours of completion of the Hours of Operation each week, Licensee shall (1) remove all barricades and trash receptacles and (2) surrender all possession, use and/or enjoyment of the Premises to Owner.

B. Insurance

Owner shall receive from Licensee a certificate of insurance for \$1,000,000.00 coverage which shall identify 4032 Linden Avenue LLC as additional insured party.

C. Restroom Facilities

Licensee has arranged for staff and/or vendors to have access to restroom facilities at Kabuki located at 848 S. Main Street during the Hours of Operation. These efforts shall be solely for the benefit of Licensees staff and/or vendors. Licensee shall not permit or advise invitees or others to use the restroom facilities contemplated under this provision. Licensee shall instruct its staff and/or vendors as to the rules and regulations and use of the rest room and shall use its best efforts to determine that these rules and regulations are enforced.

Section VI. Obligations of Owner

A. Taxes

Owner shall pay any taxes, impositions or other levies applicable to the Centerville Shopping Place, the Premises and/or the underlying real property.

B. Noninterference

Owner shall allow licensee to operate as set forth above and have the property available for use.

Section VII. Sublicense or Assignment

Licensee may not sublicense, assign or mortgage any right or interest granted under this License Agreement, without owner's consent. This Agreement is assignable by owner to any subsequent owner. All terms of this agreement are to be in full force and effect during any subsequent ownership.

Section VIII. Entire Agreement

This License Agreement, including Exhibit A (which is incorporated herein by reference), contains the sole and entire agreement between Owner and Licensee. There are no other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

Section IX. No Partnership

This License Agreement shall not be construed to create a partnership, joint venture, or any legal relationship other than that of licensor and licensee.

Section X. Governing Law; Severability

This license shall be construed under and governed by the laws of the State of Ohio. Should any provision of this License Agreement be declared or determined to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected by such declaration and said illegal or invalid part, term, or provision shall be deemed not to be part of this License Agreement. All provisions of this License Agreement remaining thereafter shall have continued force and effect.

Ht

Section XI. No Recording

Licensee shall not record this Agreement without the prior written consent of Owner.

Section XIV. Notices

Any written notice required or allowed by this License to be given either to Owner or to Licensee shall be deemed given upon receipt by certified mail or registered mail, postage prepaid, properly addressed to the parties as follows:

Owner: 4032 Linden Ave, LLC, 462 N. Springboro Pike, West Carrollton, Ohio 45449

Contact: Hiram Gutterman, 937-291-1177

Licensee: City of Centerville, 100 W. Spring Valley Road, Centerville OH 45458

Contact: Jennifer Wilder, 937-428-4711

IN WITNESS WHEREOF, the parties hereto have duly executed this License Agreement as of the date first written above.

WITNESSES:

Kathryn M. Balon

OWNER:

Hiram Gutterman agent for
4032 Linden Ave, LLC

WITNESSES:

Holly Bricker

LICENSEE:




Gregory B. Han
GREGORY B. HAN
CITY MGR.

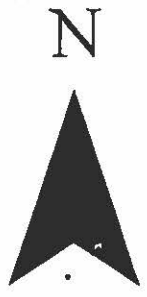
Exhibit A

Farmer's Market - 2011

848 South Main St.

Legend

-  Parcel Line
- Easement Type**
-  Drainage
-  All Others



Aerial from 2010

