

RESOLUTION NO. 40-05  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Huskam ON THE 15<sup>th</sup> DAY  
OF August, 2005.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN EASEMENT AGREEMENT WITH CENTERVILLE INVESTORS, LLC FOR GRANT OF UTILITY, INGRESS, EGRESS PARKING AND RELATED EASEMENTS FOR THE AREA NORTH OF WEST FRANKLIN STREET AND WEST OF MAIN STREET IN THE APD.

WHEREAS, the Breads of the World Acquisitions, Ltd. And the City have executed a Purchase, Sale and Development Agreement dated April 16, 2004, as amended, for the purpose of developing certain parcels and Breads of the World Acquisitions, Ltd. Has assigned its interest in the Development Agreement to Centerville Investor, LLC; and

WHEREAS, the City desires to grant certain easements and rights to Centerville Investor, LLC for the area North of W. Franklin Street and West of Main Street in the APD; and

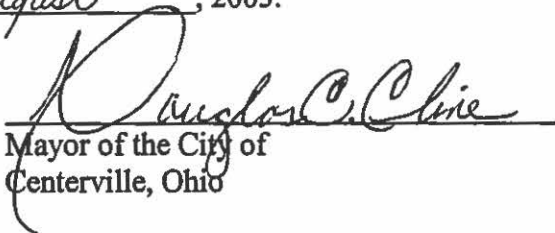
WHEREAS, the parties have successfully negotiated an agreement whereby the City will provide and maintain public parking in the town center in exchange for Centerville Investors, Ltd. purchasing and developing a lot for the intended purpose of a Panera Restaurant; and

WHEREAS, this Council has determined that it would be in the best interests of the citizens of Centerville to enter into said agreement.


NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into an Easement Agreement with Centerville Investors, Ltd. for the grant of utility, ingress, egress and parking rights in accordance with the terms of said agreement, copy of which is attached hereto as Exhibit "A" and incorporated herein.

PASSED THIS 15<sup>th</sup> day of August, 2005.

  
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. 40-05, passed by the Council of the City of Centerville, Ohio on the 15<sup>th</sup> day of August, 2005.

  
Clerk of the Council

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

Revised 7/18/05

**EASEMENT AGREEMENT**

This Easement Agreement is made at Centerville, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2005, by and between the City of Centerville, Ohio, whose mailing address is 100 W. Spring Valley Road, Centerville, OH 45458, hereinafter called "Grantor" and Centerville Investors, LLC, an Ohio limited liability company, whose mailing address is c/o Rookwood Properties, 8160 Corporate Park Drive, Suite 220, Cincinnati, OH 45242, hereinafter called "Grantee".

**WHEREAS**, Grantor is an Ohio Municipal Corporation; and

**WHEREAS**, Grantee is an Ohio Limited Liability Company; and

**WHEREAS**, Breads of the World Acquisitions, Ltd. and Grantor have executed a Purchase, Sale and Development Agreement dated April 16, 2004, as amended (the "Development Agreement"), for the purpose of developing certain parcels and Breads of the World Acquisitions, Ltd. has assigned its interest in the Development Agreement to the Grantee; and

**WHEREAS**, the Grantee owns a certain parcel of land described on the plat set forth as Exhibit "A" attached hereto and made a part hereof and identified as "Lot 1" and the Grantor owns a certain parcel of land described on Exhibit "A" attached hereto and made a part hereof and identified as "Lot 2"; and

**WHEREAS**, the Grantor also owns a certain parcel of land described on Exhibit "A-1" (the "43 West Franklin Parcel") and is the beneficiary of certain easements and agreements for parking and access (the "Parking Access Rights"). The Parking Access Rights are intended to benefit Lot 1 and Lot 2 and other property in the area and are shown on the site and parking plan attached as Exhibit "B."

**WHEREAS**, the Grantor desires to grant certain easements and rights to the Grantee over portions of Lot 2, the 43 West Franklin Parcel and in the Parking Access Rights so that Lot 1 may be developed and operated as a parcel integrated with Lot 2 as contemplated by the Development Agreement; and

**WHEREAS**, the parties desire to create and establish these easements and mutual obligations with respect to the easements;

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the parties hereby agree as follows:

#### **Grant of Utility Easement**

1. The Grantor hereby grants to the Grantee and its successors and assigns a nonexclusive easement for the installation, use, maintenance, repair and replacement of utilities and related facilities, including all utility lines, wires, pipes, conduits, sanitary sewers and storm drainage lines into, upon, and over any and all portions of Lot 2; provided, however, that those utilities shall be installed and maintained at the approximate location as shown on the site and parking plan marked Exhibit "B", attached hereto and made a part hereof. This grant includes the right to install, use, maintain, repair and replace the water lines, sanitary sewer lines and storm water lines in the area designated for such services on Exhibit "B" and the right to connect to existing water, sanitary sewer and storm water facilities adjacent to such area and to discharge into such sewer and storm water facilities. None of the utility easements granted by this Agreement are intended, nor shall be construed to create any rights in or for the benefit of the general public.

#### **Requirements and Limitations on Utilities**

2. The utility easements shall include the right to construct, replace, repair, and maintain all the lines, conduits, and facilities designated on Exhibit "B". The utilities shall be

installed with the least possible interference with the use of any improvements existing or to be constructed on the respective parcels owned by the Grantor, and any party making an installation, replacement, or repair shall promptly restore all paving and landscaping to its former condition. The Grantor, by reasonable notice to the Grantee, require that utilities required for the benefit of the Grantee's parcel to be located on the Grantor's parcel be installed at the same time all other utilities are installed on the Grantor's parcel. All utility lines, conduits, and facilities shall be buried beneath the surface of the ground as required by standard engineering practice for underground lines, conduits, and facilities, and in conformity with the requirements of the City Engineer of the City of Centerville, but if such utility lines are customarily overhead lines, the lines shall be installed overhead in a manner that will cause the minimum of interference in the use of the improvements to be constructed on the respective parcels.

#### **Ingress, Egress, Parking and Related Easements**

3. The Grantor hereby grants to the Grantee, and its tenants, successors, and assigns, for the benefit of all owners and occupants of Lot 1 or any part thereof and their tenants, licensees, customers, agents, and employees, (i) a nonexclusive, irrevocable easement and right-of-way for pedestrian and vehicular traffic over and upon the parking areas located on Lot 2, the 43 West Franklin Parcel and, subject to Paragraph 4, below, the areas covered by the Parking Access Rights (collectively, the "Parking Areas"), all as designated as "Parking Areas" on Exhibit "B", together with the right to use the Parking Areas for unobstructed pedestrian and vehicular passage for access and ingress to and from and between Lot 1, and the streets, highways, and alleys adjacent to and abutting Lot 1 and Lot 2 and to and from the individual parking places and the parking areas; (ii) the nonexclusive, irrevocable right to use all common facilities and improvements on the Parking Areas for the purposes for which they were construed; (iii) the nonexclusive, irrevocable right to park automobiles and other vehicles in and

on individual parking places in the Parking Areas provided that no overnight parking or storage of vehicles shall be permitted in the Parking Areas; and (iv) an easement for loading and unloading vehicles in the area marked "Loading Dock Area" on Exhibit "B;" and (v) an easement to construct, use and maintain the landscape areas adjacent to Lot 1 as shown on Exhibit "B."

#### **No Dedication**

4. It is mutually agreed that the grants contained in this Agreement are not intended and shall not be construed as a dedication of Lot 1, Lot 2, the 43 West Franklin Parcel or any portion thereof for public use and the parties may take whatever steps may be necessary to avoid dedication. No changes, modifications, or alterations of the Parking Areas on Lot 2 may be made without the prior written approval of the owner of Lot 1. The owner of the Parking Areas shall have the right, from time to time, without obtaining approval of the owner of Lot 1, to make changes, modifications, or alterations in the Parking Areas on its own parcel (other than on Lot 2), provided that (a) the accessibility to, from, and between Lot 1, the Parking Areas and adjacent streets to pedestrian and vehicular traffic is not unreasonably restricted, and (b) the total amount of the parking spaces on the Parking Areas (which may include additional areas to which the City of Centerville obtain rights for public parking within 400 feet of Lot 1) is not reduced below 95 non-exclusive spaces. Grantor will abide by the terms of the agreements creating the Parking Access Rights and will not terminate or modify any such agreement unless both (a) and (b) above are satisfied. Notwithstanding anything set forth herein, (i) the rights of the Grantee in the areas covered by the Parking Access Rights are subject to, and limited by the terms of, the agreements creating the Parking Access Rights; and (ii) the Grantor represents to the Grantee that the Parking Access Rights to S.R. 725 over the property currently owned by John T. Gramman and Roberta J. Gramman are created by prescriptive easement and/or common law

dedication are useable by the owners and tenants of Lot 1 and their licensees, customers, agents and employees.

#### **Maintenance**

5. Each party agrees, at its expense, to maintain or cause to be maintained all improvements, including the Parking Areas, located on its parcel, in good order, condition, and state or repair unless such responsibility is assigned and assumed. The Grantor has the right to convey its obligations for the purpose of maintenance to a Community Improvement Corporation, downtown improvement district or similar entity established under the laws of the City of Centerville and/or State of Ohio provided that special maintenance charges will not be assessed against Lot 1 for a period of 20 years from the date hereof. The Grantor and its successors will not charge patrons, employees or visitors for parking in the Parking Areas. Each party agrees that if there are facilities to provide public utility service or water or sanitary storm sewers to serve the parcel of the other party on its respective parcel, those facilities shall be kept and maintained in good order, condition, and repair by the party on whose parcel the portion of the facilities or systems requiring the expenditure shall be located (except to the extent that the services or systems may be operated and maintained by public agencies or utilities) and that the cost shall be borne and paid by the respective parties pro rata based on the relation of the floor area in each building served by the facilities to the combined floor area of all buildings served by the facilities.

#### **Parking Signage**

6. Grantor agrees to install, maintain, and employ all necessary and adequate signs and markings to designate all parking areas subject to this Agreement and to reasonably control the flow of traffic. Grantor will install a 1' x 2' sign at the access drive to the Parking Areas at

the 43 West Franklin Parcel and will identify the user of Lot 1 on such sign, subject, however, to applicable zoning and planning approvals.

#### **Right to Cure**

7. If either party fails to perform any obligation required by this Agreement in a manner and within the time provided, including without limitation failure to maintain the Parking Areas and utilities on its parcel in proper order and sightly condition as provided in this Agreement, the other party may serve written notice on the first party specifying in detail the need for work, and if the first party fails within 30 days to commence curative action, the other party may (but is not required to) perform the work on behalf of and at the expense of the defaulting party, and shall be entitled to recover from the defaulting party the reasonable cost of the work.

#### **Definition**

8. The parties agree that as used in this Agreement, the term "maintenance" shall mean that the Parking Areas shall be kept, at all times, in good order, sightly condition, and state of repair in accordance with present reasonable standards of retail center operation of comparable type, including, without limitation, the keeping of the center in a clean and sanitary condition, the proper removal of all rubbish, litter, snow, ice and surface water, the resurfacing, striping, marking and repair, including periodic patching, of all access drives, parking areas and parking spaces.

#### **Rules and Regulations**

9. The parties having control of the respective parcels may, by mutual consent, jointly establish, and from time to time thereafter supplement and amend, any rules and regulations deemed necessary for the proper and efficient maintenance and operation of the



Parking Areas. The rules and regulations may not be inconsistent with this Agreement, nor shall they affect any easement rights granted in this Agreement.

#### **Insurance**

10. Each party will, commencing with the date of this Agreement, at its expense, maintain or cause to be maintained general public liability insurance against claims for personal injury or death and property damage, occasioned by accident occurring in, on, or about its respective parcel. The insurance in each case shall have a combined single limit of not less than \$2,000,000 for total claims for any one occurrence. The insurance required to be maintained by each party under this paragraph shall name the party owning the other parcel as named insured as its interest may appear, and any policy shall provide that it cannot be cancelled without at least 60 days prior written notice to that party. The insurance shall cover only that portion of each respective parcel as is not covered by the joint policy identified below.

#### **Transfers**

11. Upon the sale or other transfer of Lot 1 or Lot 2, or any part of or interest in either of them, the purchaser, or transferee, by the acceptance of a deed or other instrument of transfer, shall expressly assume all of the terms, conditions and obligations contained in this Agreement to the extent applicable to the interest transferred, and a copy of this Agreement shall be delivered to any purchaser or transferee of any interest in Lot 1 or Lot 2. Thereafter, the grantor or transferor shall be released from any liability or responsibility under this Agreement with respect to the property so sold or transferred arising or accruing after the date of the purchase or transfer.

#### **Duration**

12. The easements granted hereunder shall be perpetual, subject, however, to any existing limitations on term which may be contained in certain of the Parking Access Rights.

### **Covenants Running With the Land**

13. The covenants, easements, and agreements contained in this Agreement shall run with the land known as Parcels 1, Lot 2 and the 43 West Franklin Parcel and shall be binding upon Lot 1 and Lot 2 and the 43 West Franklin Parcel, and each portion of those parcels, as provided in this Agreement, and the covenants, easements, and agreements shall be binding upon the successive owner of both of the parcels and of each of the parcels or of any portion of the parcels, and shall be for the benefit of each successive owner and any first mortgagee in possession (and any person taking by, through, or under any mortgagee) of each parcel, or any portion.

### **No Joint Venture**

14. Nothing contained in this Agreement shall be construed to make the parties partners or joint venturers or to render any party liable for the debts or obligations of the other, except as expressly provided in this Agreement.

### **Notices**

15. Any notice, request, demand, approval, or consent given or required to be given under this Agreement shall, except as otherwise expressly provided, be in writing and shall be deemed to have been given when mailed by United States registered or certified mail, postage prepaid, to the other party at the address set forth in the preamble of this Agreement or at the last changed address given by the party by notice, and to any successors or assigns of any party at the address given by notice.

### **Modifications**

16. No agreement shall be effective to add to, change, modify, waive, or discharge this Agreement in whole or in part unless that agreement is in writing and signed by parties

owning Lot 1 and Lot 2, and to the extent affecting the 43 West Franklin Parcel, the party owning the 43 West Franklin Parcel.

IN WITNESS WHEREOF, the parties hereto have, by their duly authorized officers, executed this Reciprocal Easement Agreement as of the day and year first mentioned above.

**THE CITY OF CENTERVILLE, OHIO,**  
an Ohio municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CENTERVILLE INVESTORS, LLC,**  
an Ohio limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF OHIO                    )  
  ) SS  
COUNTY OF MONTGOMERY        )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the subscriber, a Notary Public in and for said County and State, personally came **Gregory B. Horn**, the City Manager of the municipal corporation which executed the foregoing instrument, who acknowledged that he did sign said instrument on behalf of said municipal corporation; that said instrument was signed as his free act and deed individually, and the free act and deed of said municipal corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF OHIO )  
 ) SS  
COUNTY OF MONTGOMERY )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the subscriber, a Notary Public in and for said County and State, personally came \_\_\_\_\_, the member of Centerville Investors, LLC, the limited liability company which executed the foregoing instrument, who acknowledged that he/she did sign said instrument as such member on behalf of the limited liability company, duly authorized; that said instrument was signed as his/her free act and deed individually and the free act and deed of said limited liability company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

This Instrument was prepared by:

Scott A. Liberman, Esq.  
Altick & Corwin Co., L.P.A.  
1700 One Dayton Centre  
One South Main Street  
Dayton, Ohio 45402

E. Richard Oberschmidt, Esq.  
FROST BROWN TODD LLC  
2200 PNC Center  
201 E. Fifth Street  
Cincinnati, Ohio 45202  
(513) 651-6800

**EXHIBIT A**

**Record Plan – Centerville  
Benjamin Robbins Plat – Section One  
(being a replat of part of Lots 19, 20, 21 and  
all of Lot 26 of the Benjamin Robbins Plat and  
all of a 0.2560-acre tract conveyed to  
the Trustees of Washington Township)**

**EXHIBIT A**

0.52 Ac.  
Betty Ann Perkins &  
Robert J. Perkins, Tr.  
MF# 99-407B11

0.344 Ac.  
Richard L. Stewart  
Pt. Lot 27  
I.R. Deed # 04-088652  
SURVEY 2004-0202

**Lot # 3**  
0.6699 Acres ( Total Net )

**BENJAMIN ROBBINS PLAT**  
P.B. 1, PG. 11  
**LOT 28**

TRUSTEES OF WASHINGTON TOWNSHIP  
D.B. 298, PG. 216  
0.4916 AC.  
0.4191 Net Ac.

**Lot # 2**  
0.5109 Acres ( Net )

**Lot # 1**  
0.2109 Acres ( Net )

Pt. Lot 20  
City of Centerville  
I.R. # 03-021366 Deed  
( 0.3469 Ac. )  
0.1642 Ac.

TRUSTEES OF WASHINGTON TOWNSHIP  
MF# 71-223E03  
0.2868 AC

**PART LOT 21**  
**PARKING LOT**  
**LEASE AGREEMENTS**  
M.F. 82-5864A05

Pt. Lot 21  
W. Richard &  
Debra Tessler  
I.R. # 02-127089 Deed  
0.3092 AC

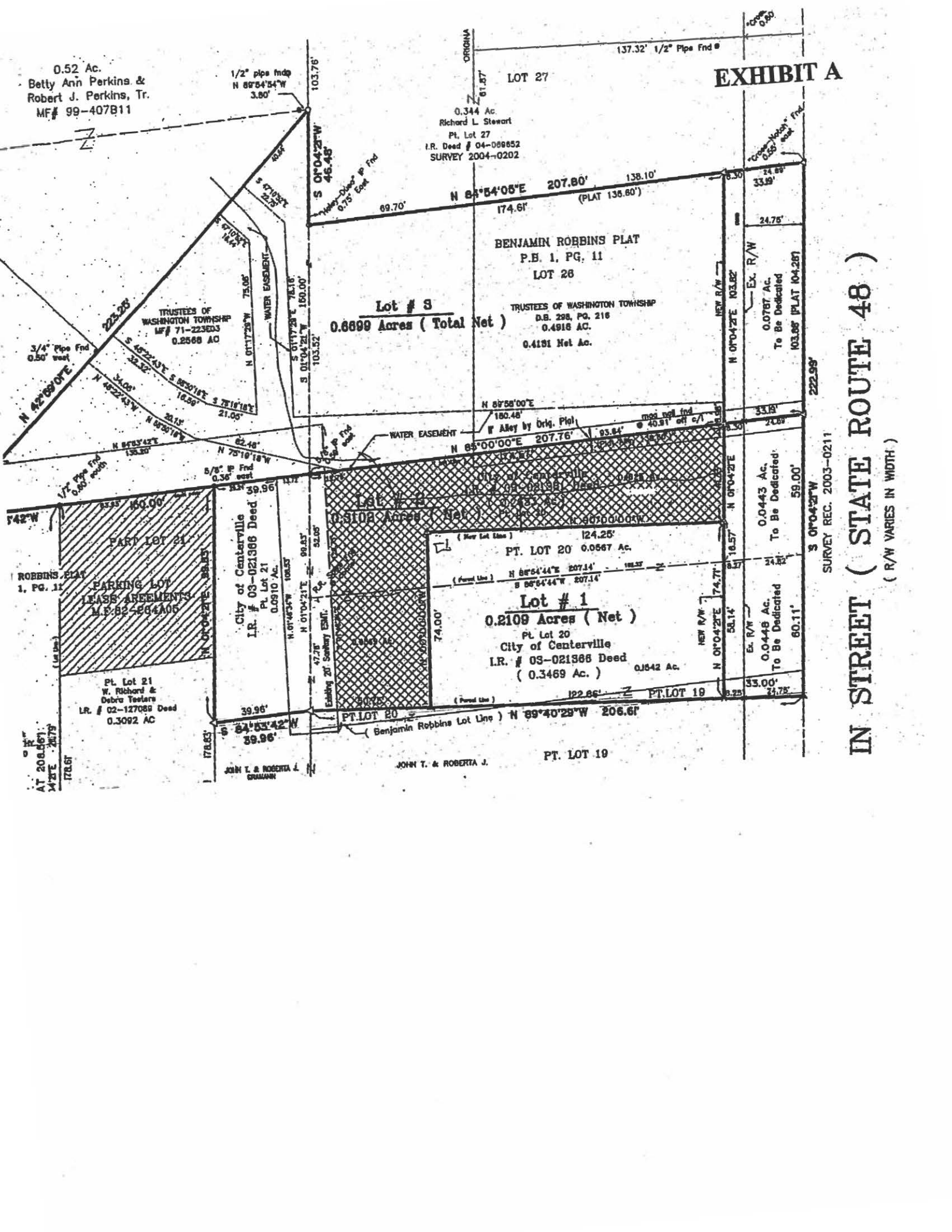
JOHN T. & ROBERTA J. GRAMANN

JOHN T. & ROBERTA J.

PT. LOT 19

**IN STREET ( STATE ROUTE 48 )**  
( R/W VARIES IN WIDTH )

SURVEY REC. 2003-0211



**EXHIBIT A-1**

**Description of 43 West Franklin Parcel**

**MONUMENT LEGEND**

- indicates iron pin found
- indicates iron pipe found
- ✕ indicates r.r. spike / nail found
- ▣ indicates highway monument box found with 1" Bar
- indicates "axle" found
- ✕ indicates cross notch found
- ▲ indicates mag nail set
- indicates 6/8" rebar set "McMC-7736" Cap.

March

Plat of Survey / Division

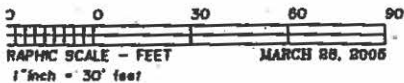
**PART LOT 23**

Benjamin Robbins Plat - P.B. 1, Pg. 11  
SECTION 25, TOWN 2, RANGE 6 M.R.S.

City of Centerville  
Montgomery County, Ohio  
Tract A - 0.1802 Acres / Tract B - 0.0876 Acres

**EXHIBIT A-1**

Bearings based on the centerline of Main Street (S.R. 48) as shown on Survey Record 2003-0211 (N 01°04'21" E) of the Montgomery County Engineer's Office.



**McDougall, Marsh & Chico**

Surveyors and Civil Engineers  
8529 Byers Road Tel: 937-847-2660  
Miamiburg, Ohio 45342 Fax 937-847-2670

**SURVEY NOTES:**

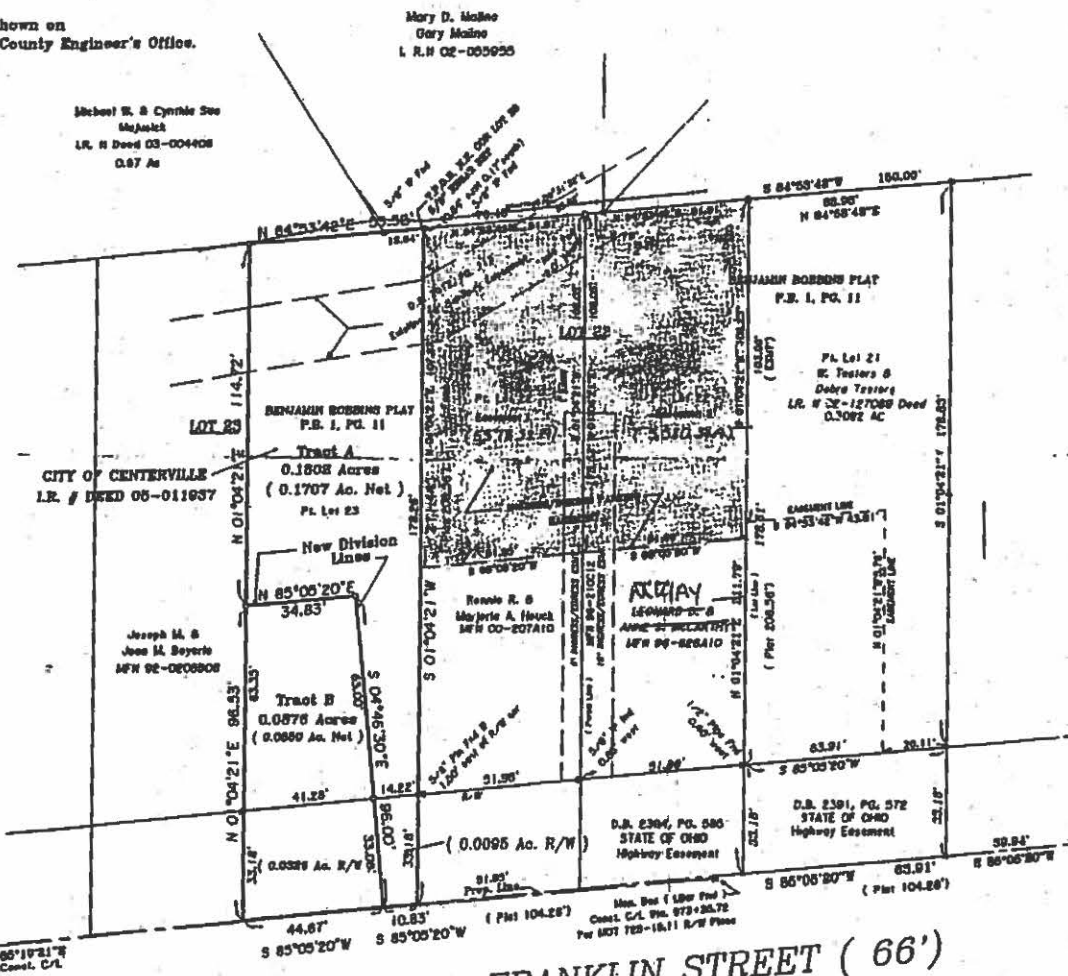
ALL DEED, SURVEY AND PLAN RECORDS SHOWN ON THIS SURVEY WERE USED IN THE PERFORMANCE OF THIS SURVEY.

LINE OF OCCUPATION (WHERE EXISTING) IN GENERAL AGREE WITH PROPERTY LINES.

ALL MONUMENTATION FOUND IN GOOD CONDITION UNLESS NOTED OTHERWISE.

IRON PINS SET ARE 30" x 5/8" REBAR WITH PLASTIC CAP STAMPED "McMC 7736"

SURVEY PREPARED IN THE ABSENCE OF A COMPLETE AND UP TO DATE TITLE REPORT.



**W. FRANKLIN STREET (66')**

**REFERENCES:**

- PLATS: BENJAMIN ROBBINS PLAT - P.B. 1, PG. 11; RIDGEWAY DRIVE - P.B. "U-87"; HIGHWAY PLAN MOT 725-18.11 R/W PLANS
- RECORDS: TRUSTEES OF WASHINGTON TOWNSHIP - D.B. 298, PG. 216, MP# 71-222503;
- CITY OF CENTERVILLE - I.R. DEED # 06-011057; RONNIE R. & MARJORIE A. HOUCK - MP# 96-807AD1; LEONARD D. & ANNE S. MCCARTHY - MP# 96-886A10;
- HIGHWAY EASEMENTS - D.B. 2304, PG. 586; D.B. 2391, PG. 578; D.B. 2391, PG. 678;
- SURVEY RECORDS - SUR 2003-0211; SUR 2004-0202;

**CERTIFICATION:**

I HEREBY CERTIFY THAT THE DRAWING HEREIN IS REPRESENTATIVE OF A TRUE AND ACCURATE SURVEY BY McDougall, Marsh & Chico, THAT THE PREMISES ESTABLISHED BY ACTUAL FIELD MEASUREMENTS, THAT PROPERTIES SURVEYED AND DESCRIBED ARE CONTIGUOUS ALONG THEIR ENTIRE BOUNDARIES AND ARE ENCLOSED WITHIN THE PERIMETERS THEREIN.

McDOUGALL, MARSH & CHICO

*Thomas K. Marsh*  
Thomas K. Marsh, P.S. # 7736





**McDougall, Marsh & Chico**  
Surveyors & Civil Engineers

8529 Byers Road, Miamisburg, OH 45342  
Tel: 937-847-2660 Fax: 937-847-2670

**Part Lot 23**  
**Tract A - 0.1802 Acres**  
City of Centerville, Montgomery County, Ohio

Situate in Section 25, Town 2, Range 6 M.Rs., the City of Centerville, Montgomery County, Ohio and being part of Lot 23 of the Benjamin Robbins Plat as recorded in Plat Book 1, Page 11 of the Recorder's Office and as conveyed to the City of Centerville by I.R. Deed # 05-011937 ( no acreage recorded ) of the Deed records of Montgomery County, Ohio, and being a tract of land more particularly described as follows:

**Beginning** at a 5/8" rebar set at the northeast corner of said Lot 23 and also being the northwest corner of Lot 22 of said Benjamin Robbins Plat, also being the northwest corner of a parcel of land ( Pt. Lot 22 ) as conveyed to Ronnie R. & Marjorie A. Houck by Deed MF# 00-207A10;

Thence S 01°04'21" W with the east line of said Lot 23 and being the west line of said Lot 22 ( witness a 5/8" rebar set at 178.26 feet ) for a total distance of 211.44 feet to a mag nail set at the southeast corner of said Lot 23;

thence S 85°05'20" W with the south line of Lot 23 a distance of 10.83 feet to a mag nail set for a new corner;

thence N 04°46'30" W with a new division line through said Part Lot 23 ( City of Centerville ) witness a 5/8" rebar set at 33.00 feet for a total distance of 96.00 feet to a 5/8" rebar set for a new corner;

thence S 85°05'20" W continuing with a new division line through said Part Lot 23 ( City of Centerville ) a distance of 34.83 feet to a rebar set for a new corner in the east line of a parcel of land ( Pt. Lot 23 ) as conveyed to Joseph M. & Joan M. Beyerle by MF# 92-0206D08;

thence N 01°04'21" E with the east line of said Beyerle parcel a distance of 114.72 feet to a 5/8" rebar set at the northeast corner of said Beyerle parcel and also being in the south line of a 0.67 acre ( by deed ) tract as conveyed to Michael W. & Cynthia Sue Majusick by I.R. # Deed 03-004408;

thence N 84°53'42" E with the south line of said 0.67 acre tract and its eastward extension a distance of 55.52 feet to the **True Point of Beginning**, containing 0.1802 acres. Subject to all legal conditions, easements and rights-of-way of record. This description prepared by McDougall, Marsh, & Chico, based on a survey made by same in January 2003 and October 2004. Bearings are based on the centerline of right-of-way ( N 01° 04'21" E ) as shown on recorded Survey 2003-0211 of the Montgomery County Engineer's Office.

*Thomas K. Marsh*  
Thomas K. Marsh, P.S. #7735



**EXHIBIT B**

**Layout Plan – Panera Bread  
Site and Public Parking**

**Revision dated \_\_\_\_\_,  
prepared by McDougall, Marsh and Chico**



**PARKING LOT EXPENSE AGREEMENT**

THIS AGREEMENT made at Centerville, Ohio by and between the City of Centerville, Ohio, 100 West Spring Valley Road, Centerville, Ohio 45458, an Ohio municipal corporation (hereinafter "the City") and the Board of Township Trustees of Washington Township, Montgomery County, Ohio, 8200 McEwen Road, Dayton, Ohio 45458, an Ohio political subdivision (hereinafter "the Township").

**WITNESSETH:**

WHEREAS, the City has developed a non-exclusive use of a parking lot located at 11 N. Main Street, Centerville, Ohio, the purpose of which use is to provide additional public parking in the town center and to benefit the businesses located in the area; and

WHEREAS, both the City and the Township own portions of said parking lot; and

WHEREAS, the parties hereto are of the opinion that said additional parking would benefit all of the citizens of Washington Township, Montgomery County, Ohio whether they reside in the incorporated or unincorporated area; and

WHEREAS, the parties wish to enter into this agreement in order to equally share the expenses (whether rent, capital, maintenance or otherwise) associated with the occupation and use of said parking lot.

NOW THEREFORE, in consideration of the foregoing recitations and the benefits to them mutually accruing, the parties agree as follows:

Section 1. Both the City and Township, as owners of respective portions of said parking lot, shall have the obligation to improve and maintain said parking lot as the City, in its sole discretion, shall determine is necessary from time to time. Further, the parties agree to execute recordable cross easements for ingress and egress over their respective properties for the benefit of each other.

Section 2. Annually, commencing on the first anniversary date of this Agreement and on the same day of each year thereafter, the City shall submit to the Township its invoice for one half of all expenses (whether rent, capital, maintenance or otherwise) incurred by it during the previous year. These expenses include, but are not limited to lighting, landscaping and general maintenance. Authorized representatives of the Township shall, upon request, have the right to inspect and copy any documentation the said representatives feel is necessary to support the invoice.

Section 3. The Township agrees to pay the amount of said annual invoice no later than thirty (30) days after its receipt of same.

Section 4. During the term of this Agreement, the Township shall reimburse the City for one-half of the cost incurred by the City to resurface and expand said lot. The parties

estimate that the total cost of the project is Six Hundred Thirty Thousand Dollars (\$630,000.00). Payment shall be made by the Township as follows: A payment of One Hundred Five Thousand Dollars (\$105,000.00) no later than December 31, 2004; a second payment of One Hundred Five Thousand Dollars (\$105,000.00) no later than June 5, 2005 and a payment of the balance upon the date of the completion of the project but no earlier than January 1, 2006. The amount of the final payment shall be adjusted to reflect the actual "as built" cost. If the project is completed prior to January 1, 2006 and final payment is made by the City for same, the Township shall pay the City interest at 3% per annum on its share of the final cost from the date same is paid by the City until the date the Township makes its final payment to the City.

**Section 5.** The initial term for this Agreement shall be for a period of twenty-five (25) years. The Agreement shall be automatically renewed for successive twenty-five (25) year periods unless either party gives written notice to the other party of its' election not to renew at least three hundred sixty-five (365) days prior to the renewal date.

**Section 6.** The Township shall be permitted to advertise that said parking lot is available for use, at no expense, by individuals attending or participating in events at the Washington Township Town Hall. The construction and message of the signage for same shall be subject to mutual agreement of the parties.

**Section 7.** If requested by the Township during the term of this Agreement, the City shall include Washington Township, its Board of Trustees, employees, agents, and volunteers as additional insureds on the policy of insurance it is required to obtain and maintain, if any. Any additional premium charge incurred by the City as a result of designating said parties as additional insureds on said policy shall be paid by the Township.

**Section 8.** If requested by the City during the term of this Agreement, the Township shall include the City of Centerville, its Council, employees, agents and volunteers as additional insureds on the policy of insurance it is required to obtain and maintain, if any. Any additional premium charge incurred by the Township as a result of designating said parties as additional insureds on said policy shall be paid by the City.

**Section 9.** This Agreement shall be binding on and shall inure to the benefit of the parties named herein and to their respective successors and assigns.

**Section 10.** This Agreement shall be construed and interpreted according to the laws of the State of Ohio.

**Section 11.** This Agreement constitutes the entire undertaking between the parties hereto and supersedes any and all prior and contemporaneous agreements, arrangements and understandings between the parties. No amendment or modification shall be effective unless in writing and signed by duly authorized representatives of both parties.

IN WITNESS WEHEREOF, the parties hereto have executed this Agreement as of the day and year set forth beneath each party's respective signature.

WITNESS:

Linda R. Schmitt  
Cory Greve

CITY OF CENTERVILLE, OHIO

By: [Signature]  
Gregory B. Horn, City Manager  
Date: 11-18, 2004

BOARD OF TOWNSHIP TRUSTEES OF  
WASHINGTON TOWNSHIP, MONTGOMERY  
COUNTY, OHIO

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_, 2004

## ASSIGNMENT OF LEASE

This Assignment of Lease, made this 21 day of <sup>MARCH</sup>~~February~~, 2003 by and between CHARLES EARLEY a.k.a. CHARLES J. EARLEY, herein called the Assignor, and CITY OF CENTERVILLE, OHIO, herein called the Assignee:

1. Assignor, in consideration of One Dollar (\$1.00) and other good and valuable considerations, receipt of which is hereby acknowledged, does hereby sell, assign, transfer and set over to said Assignee that certain Lease from Kenneth C. Savage and Sandra L. Savage, as Lessor, to said Assignor, as Lessee, dated April 23, 1982, and recorded at Microfiche No. 82-264A05 of the Lease Records of Montgomery County, Ohio, of the premises therein described as follows:

A portion of the parking lot located behind the building at 27 W. Franklin Street, Centerville, Montgomery County, Ohio, which is bounded on the east, west and north by the east, west and north boundary lines of the lot described below; and on the south by a line extending from the said east and west boundary lines and parallel to and seventy-two feet (72') south of the said north boundary line, and all of which demised premises are a part of the following described real estate, to-wit:

Situate in the City of Centerville, County of Montgomery and State of Ohio and being Lot Numbered Twenty-One (21) on the West side of Main Street and North side Franklin Street in Benjamin Robbins Plat in the City of Centerville, containing ½ acre and excepting 40 feet in width running parallel with the East line off the East side of said Lot numbered 21 conveyed by Elmira Lincoln and others to the Trustees of Center Lodge K of P 683 by Deed executed September 20, 1902, and recorded in Deed Book 253, Page 117, and excepting therefrom that part sold to the State of Ohio by Deed dated October 10, 1967, and recorded in Deed Book 2391, Page 572.


Together with all the estate, title and interest of the Assignor in said Lease and in said premises; subject, however, to all the conditions, covenants and provisions contained in said Lease.

The Assignor covenants and agrees that said Lease is in full force and effect; that it has good right and power to assign the same; that the interest hereby assigned is free and clear from all encumbrances; and that there has been no default in any of the conditions, covenants and other provisions on the part of said Assignor to be kept and performed.

The Assignee covenants and agrees, in consideration of this assignment, to keep and perform all of the conditions, covenants and provisions of said Lease to be kept and performed by the Lessee therein, including all payments coming due after date hereof, and to indemnify and save harmless the Assignor from and against all loss and expense by reason of any default of the Assignee in respect thereto.

In Witness Whereof, the Assignor and Assignee hereunto set their hands by their duly authorized representatives the day and year first above written.

Assignor:

  
Charles Earley a.k.a. Charles J. Earley

Assignee:

City of Centerville, Ohio

*Gregory B. Horn*  
By: *Gregory B. Horn*  
Its: *CITY MANAGER*

State of Ohio, County of Montgomery, SS:

The foregoing agreement was acknowledged before me this *10th* day of ~~February~~ <sup>*March*</sup>, 2003, by Charles Earley a.k.a. Charles J. Earley.

*[Signature]*  
Notary Public

State of Ohio, County of *Montgomery*, SS:

The foregoing agreement was acknowledged before me this *21st* day of February, 2003, by City of Centerville, Ohio, by *Gregory B. Horn*, its: *City Manager*.

*Marilyn J. McLaughlin*  
Notary Public

MARILYN J. McLAUGHLIN, Notary Public  
In and for the State of Ohio  
My Commission Expires September 29, 2004



DEBORAH L. DELONEY  
Notary Public  
In and for the State of Ohio  
My Commission Expires  
June 1, 2005

This instrument was prepared by William H. Frapwell, Attorney at Law.



AGREEMENT OF LEASE

09327

This lease is made as of this 7<sup>th</sup> day of April, 1982, by and between KENNETH C. SAVAGE and SANDRA L. SAVAGE, (hereinafter called "Lessor"), and DOWNTOWN SQUARE INVESTMENTS, LTD., a limited partnership, (hereinafter called "Lessee").

Lessor hereby leases to Lessee and Lessee hereby leases from Lessor a portion of the parking lot located behind the building at 27 W. Franklin Street, Centerville, Montgomery County, Ohio which is bounded on the east, west and north by the east, west and north boundary lines of the lot described below; and on the south by a line extending from the said east and west boundary lines and parallel to and seventy-two feet (72') south of the said north boundary line, and all of which demised premises are a part of the following-described real estate, to-wit:

situate in the City of Centerville, County of Montgomery and State of Ohio and being Lot Numbered TWENTY-ONE (21) on the West side of Main Street and North side of Franklin Street in Benjamin Robbins Plat in the City of Centerville, containing 1/2 acre and excepting 40 feet in width running parallel with the East line off the East side of said Lot Numbered 21 conveyed by Elmira Lincoln and others to the Trustees of Center Lodge K of P. 683 by Deed executed September 20, 1902 and recorded in Deed Book 253, Page 117 and excepting therefrom that part sold to the State of Ohio by Deed dated October 10, 1967 and recorded in Deed Book 2391, Page 572.

The above-described premises include a total of twenty-eight (28) parking spaces, including the title and interest of the Lessor in and to all roads, streets, and lanes, whether public or private, bounding said premises; said demised premises include seventeen (17) parking spaces as described on an attached illustrative drawing (Exhibit B) showing the layout of parking spaces which are the subject of this lease. If any conflict arises between the verbal description of the demised premises contained in this lease agreement and the graphic illustration of Exhibit B, the verbal description shall be definitive. Exhibit B is intended to be a guide to the parties in understanding the concept of this lease agreement and is not a legal plot plan.

1. Term. The term of this lease shall commence on April 23, 1982, and terminate on April 22, 2032, unless sooner terminated as herein provided.
2. Base Rent. Lessee shall pay to Lessor annual base rental of One Dollar (\$1.00) in lawful money of the United States at the time of payment, in advance on the first day of each anniversary during the term of this lease. Payment is to be made at 5790 Mad River Road, Centerville, Ohio 45459, or at such other place as Lessor may from time to time designate in writing hereafter.
3. Taxes and Governmental Charges. Lessee shall pay to Lessor as additional rent, the portion of property taxes, assessments, or other governmental charges assessed on 50% of the land value only. The Lessee shall have the right, during reasonable business hours, to examine the Lessor's tax, assessment, or governmental charge statements, as applicable, to verify the total tax, assessment, or governmental charge amounts.

CKI D. PEGG  
RECORDER

APR 26 1 43 PM '82

MONTGOMERY CO., OHIO

42672  
I hereby certify that said instrument was duly recorded in the Office of the Recorder  
By *Sandra L. Savage*  
Deputy

- 82264A05 -

4. Use. Lessee shall use the demised premises only for the parking of motor vehicles, for periods not to exceed twenty-four (24) consecutive hours per vehicle.
5. Repairs and Maintenance. Lessee shall pay annually on demand, as additional rent, to Lessor seventy percent (70%) of the annual cost of normal repair and maintenance on the entire Lot Numbered Twenty-One (21) of the said Plat. Normal repair and maintenance shall include, without limitation, the following: re-stripping parking lines; patching holes; snow removal; debris removal; re-sealing; and re-surfacing.
6. Signage. Lessee may erect a sign or signs upon the demised premises so as to designate which parking areas are assigned to the Lessee; providing, however, the Lessee shall first have obtained the written approval of the said signs by Lessor, which approval shall not be unreasonably withheld; and providing, further, that the signs may describe and contain only the name or address of the business establishment to which they apply.
7. Binding Effect. This lease and the agreements of Lessor and Lessee contained herein shall be binding and inure to the benefit of the heirs, devisees, executors, administrators, successors and assigns of the respective parties.
8. Access. Lessor and its agents shall have the right to enter the premises at all reasonable times for the purposes of examining, inspecting, repairing or maintaining the same.
9. Indemnity of Lessor. Lessee shall indemnify and hold Lessor harmless against and from any and all claims arising from Lessee's use of the demised premises or the conduct of his business or profession, or from any activity, work, or thing done, permitted, or suffered by the Lessee in or about the premises.
10. Assignment. Lessee shall have the right to transfer or assign this lease to any person or persons or entity or entities, so long as said assignee has an ownership interest in whole or in part in the building located at 17 N. Main Street, Centerville, Ohio.
11. Defaults. A failure to observe or perform any other provision of this lease to be observed or performed by Lessee, where such failure continues for thirty (30) days after written notice thereof by Lessor to Lessee shall constitute a default of the provisions of this lease agreement. In the event of any such default by Lessee, Lessor may, at any time thereafter at Lessor's option, and without limiting Lessor in the exercise of any other right or remedy which Lessor may have by reason of such default at law or in equity, with notice or demand;

Give written notice to Lessee of termination of this lease, re-enter the premises with process of law and take possession of the same and expel or remove Lessee and any other parties occupying the premises. In such event lessor shall thereupon be entitled to recover from Lessee the worth, at the time of such termination, of the excess, if any, of the rent and other charges required to be paid by Lessee hereunder for the balance of the term hereof (if this lease had not been so terminated) over the then reasonable rental value of the premises for the same period together with such other expenses as Lessor may incur by reason of Lessee's default; including, without limitation, placing the same in good order and condition, improving, altering, or repairing the same for reletting, and all other expenses, commissions and charges, including attorney fees which Lessor may have paid or incurred in connection with such termination and reletting.

12. Surrender of Premises. At the termination of this lease Lessee shall surrender the premises to Lessor in good condition, excepting normal wear and tear.
13. Subordination to Mortgages. This lease and all rights of Lessee hereunder are subject and subordinate to any mortgage or mortgages, blanket or otherwise, and including any deeds or deed of trust, which do now or may hereafter affect the real property of which the demised premises form a part (and which may also affect other property) and to any and all renewals, modifications, consolidations, replacements and/or extensions thereof. It is the intention of the parties that this provision be self-operative and that no further instrument shall be required to effect such subordination of this lease. Lessee shall, however, upon demand at any time or times, execute, acknowledge and deliver to Lessor, without expense to Lessor, any and all instruments that may be necessary or proper to subordinate this lease and all rights of Lessee hereunder to any such mortgage or mortgages, or to confirm or evidence said subordination; and in the event that Lessee shall fail or neglect to execute, acknowledge and deliver any such subordination instrument or certificate, Lessor, in addition to any other remedies, may, as the agent or attorney-in-fact of Lessee, execute, acknowledge and deliver the same and Lessee hereby irrevocably nominates, constitutes and appoints Lessor to be Lessor's proper and legal attorney-in-fact for such purposes. Lessee covenants and agrees, in the event any proceedings are brought for the foreclosure of any mortgage; to attend to the purchaser upon any such foreclosure sale and to recognize such purchaser as the Lessor under this lease. Lessee agrees to execute and deliver at any time and from time to time, upon the request of Lessor or of such holder, any instrument which, in the sole judgement of Lessor or such holder, may be necessary or appropriate in any such foreclosure proceedings or otherwise to

evidence such attornment. Lessee hereby appoints Lessor and the holder of such mortgage, or either of them, the attorney-in-fact, irrevocably, of Lessee to execute and deliver for and on behalf of Lessee any such instrument. Lessee further waives the provisions of any statute or rule of law, now or hereafter in effect, which may give or purport to give Lessee any right or election to terminate or otherwise adversely affect this lease and the obligation of Lessee hereunder in the event any such foreclosure proceeding is brought; and agrees that this lease shall not be affected in any way whatsoever by any such foreclosure proceedings.

14. Waste. Lessee shall not commit or permit to be committed any form of waste upon the demised premises, including, without limitation, economic waste.
15. Barriers to Thoroughfare. Lessee and Lessor shall at all times permit the free and uninhibited thoroughfare of vehicular and pedestrian traffic across the demised premises, along a north/south corridor for such traffic; and no barrier, temporary or permanent, shall be erected or permitted to exist by Lessee. Lessee may erect concrete abutment along northwest property line where eight parking spaces are marked, reference Exhibit B.
16. Entire Agreement. This document contains the complete and entire understanding and agreement of the parties hereto; and the said understanding and agreement supercedes all prior discussions, agreements, or understanding, written or oral, relating to the matters contained herein.
17. Amendments. The understanding and agreement contained in this document may be amended only by subsequent written amendments or agreements, supported by further consideration, and signed by all the parties to be bound thereby.

IN WITNESS WHEREOF, the parties hereto have signed duplicate counterparts of this lease agreement as of the date first above written.

Signed and acknowledged in the presence of:

W. Michael Conway

Kenneth C. Savage  
KENNETH C. SAVAGE

Sandra L. Savage

Sandra L. Savage  
SANDRA L. SAVAGE

DOWNTOWN SQUARE INVESTMENTS, LTD.

W. Michael Conway  
Sandra L. Savage

By Lawrence S. Connor  
LAWRENCE S. CONNOR  
General Partner

STATE OF OHIO  
COUNTY OF MONTGOMERY

On this, the 23<sup>RD</sup> day of April, 1982, before me, a Notary Public in and for said County and State, personally came KENNETH C. SAVAGE and SANDRA L. SAVAGE, the Lessors named in the foregoing lease, and acknowledged the signing thereof to be their voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

Susan Hill  
Notary Public  
SUSAN HILL, Notary Public  
In and for the State of Ohio  
My Commission Expires MAY 8, 1983

STATE OF OHIO  
COUNTY OF MONTGOMERY

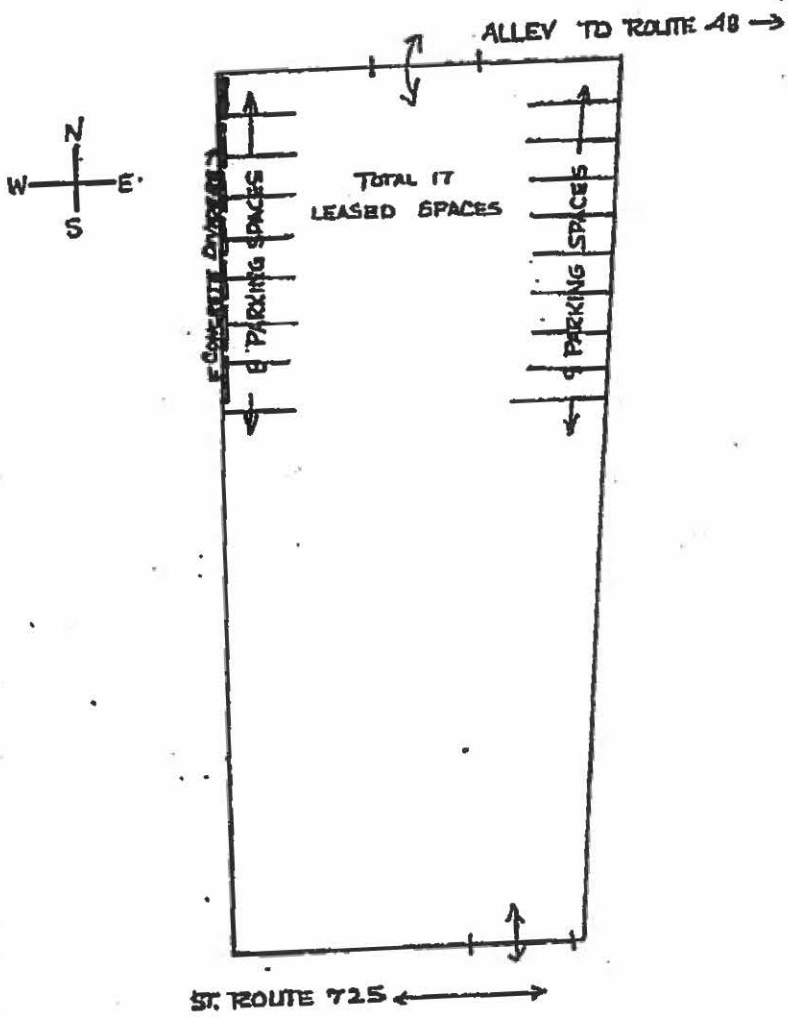
On this, the 23<sup>RD</sup> day of April, 1982, before me, a Notary Public in and for said County and State, personally came DOWNTOWN SQUARE INVESTMENTS, LTD., a limited partnership, by LAWRENCE S. CONNOR, sole general partner, the Lessee named in the foregoing lease, and acknowledged the signing thereof to be his voluntary act and deed and is the free act and deed of said limited partnership.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my official seal on the day and year aforesaid.

Susan Hill  
Notary Public  
SUSAN HILL, Notary Public  
In and for the State of Ohio  
My Commission Expires MAY 8, 1983

THIS INSTRUMENT PREPARED BY:  
W. MICHAEL CONWAY, Attorney at Law  
1408 Talbott Tower  
Dayton, Ohio 45402  
(513) 222-6926

EXHIBIT B



- 82264A10 -

**PARKING, INGRESS/EGRESS & UTILITY EASEMENT**

RONNIE R. HOUCK and MARJORIE A. HOUCK, husband and wife, Grantors, of Montgomery County, Ohio for valuable consideration paid and the agreements set forth below, GRANTS to the CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation, as trustee for the public, whose address is 100 West Spring Valley Road, Centerville, Ohio 45458, a non-exclusive perpetual easement for the public to park vehicles of every kind, to pass on foot or by vehicles of every description over the property of the Grantors as described in Exhibit "A" attached hereto and incorporated herein (the Property), and to install, maintain and replace utilities and a driveway/parking area on said Property.

Grantee shall construct and maintain the way that is the subject of this easement.

Grantors shall have the right to use the way for purposes not inconsistent with Grantee's full enjoyment of the easements granted.

The grant of easement shall run with the land and be binding on and inure to the benefit of the parties, their heirs, successors and assigns.

Prior Instrument Reference: Microfiche #00-207A10 of the Deed Records of Montgomery County, Ohio.

In Witness Whereof, the Grantors have executed this PARKING, INGRESS/EGRESS & UTILITY EASEMENT this 13<sup>th</sup> day of APRIL, 2005.

*PH 4/13/05*

*[Signature]*  
RONNIE R. HOUCK

*[Signature]*  
MARJORIE A. HOUCK

STATE OF OHIO  
MONTGOMERY COUNTY SS:

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of APRIL, 2005, by RONNIE R. HOUCK and MARJORIE A. HOUCK, husband and wife, the Grantors.

*[Signature]*  
NOTARY PUBLIC

APRIL S. BURCHETT  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES 07-18-05

This Instrument Prepared By:  
Scott A. Liberman, Esq.  
Altick & Corwin Co., L.P.A.  
1700 One Dayton Centre  
One South Main Street  
Dayton, OH 45402

*\* with Addendum*

# Houck Remodeling

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April 13, 2005

## **ADDENDUM to EASEMENT**

1. Removal of mulberry tree at west side of building by city contractors included.
2. Construct a paved entrance off of west public parking area to meet existing paved parking area at 39 W Franklin St. Area to be 20' wide.
3. Permanent encroachment onto property for the purpose of making the entrance/exit wider for public parking on west property line is granted.
4. Ballard protection for the AC compressor are to be installed by city contractor.



 **McDougall, Marsh & Chico**  
Surveyors & Civil Engineers

8529 Byers Road, Miamisburg, OH 45342  
Tel: 937-847-2660 Fax: 937-847-2670

## INGRESS/EGRESS & UTILITY EASEMENT – I

Situate in the City of Centerville, Montgomery County, Ohio and being an ingress/egress and utility easement for the purpose of vehicular and pedestrian traffic, installation, maintenance and replacement of said utilities upon Part Lot 22 of the Benjamin Robbins Plat as recorded in Plat Book 1, Page 11 and as conveyed to Ronnie R. & Marjorie A. Houck by MF# 00-207A10 of the deed records of Montgomery County, Ohio and being more particularly described as follows:


Beginning at a 5/8" rebar set at the northwest corner of said Lot 22 and also being the northwest corner of said Houck Parcel and the True Point of Beginning for the herein described ingress/egress and utility easement;

thence N 84°53'42" E with the north line of said Part Lot 22 a distance of 51.97 feet to a 5/8" rebar set at the northeast corner of said Houck Parcel;

thence S 01°04'21" W with the east line of said Houck Parcel a distance of 108.05 feet to a mag nail set;

thence S 85°05'20" W through said Houck Parcel a distance of 51.95 feet to a mag nail set in the west line of said Lot 22 and also being the west line of said Houck Parcel;

thence N 01°04'21" E with the west line of said Lot 22 and also being the west line of said Houck Parcel a distance of 107.87 feet to the True Point of Beginning, subject to all legal conditions, easements and rights-of-way of record. This description prepared by McDougall, Marsh, & Chico, based on a survey made by same in January 2003 and October 2004. Bearings are based on the centerline of right-of-way ( N 01° 04'21" E ) as shown on recorded Survey 2003-0211 of the Montgomery County Engineer's Office.

  
Thomas K. Marsh, P.S. #7735



PARKING, INGRESS/EGRESS & UTILITY EASEMENT

MULAY HOLDINGS, LLC, an Ohio Limited Liability Company, Grantors, of Montgomery County, Ohio for valuable consideration paid and the agreements set forth below, GRANTS to the CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation, as trustee for the public, whose address is 100 West Spring Valley Road, Centerville, Ohio 45458, a non-exclusive perpetual easement for the public to park vehicles of every kind, to pass on foot or by vehicles of every description over the property of the Grantor as described in Exhibit "A" attached hereto and incorporated herein (the Property), and to install, maintain and replace utilities and a driveway/parking area on said Property.

Grantee shall construct and maintain the way that is the subject of this easement.

Grantor shall have the right to use the way for purposes not inconsistent with Grantee's full enjoyment of the easements granted.

The grant of easement shall run with the land and be binding on and inure to the benefit of the parties, their heirs, successors and assigns.

Prior Instrument Reference: Microfiche \_\_\_\_\_ of the Deed Records of Montgomery County, Ohio.

Executed by a representative of the Grantor this 13th day of May, 2005.

MULAY HOLDINGS, LLC

David M. Mulay  
By: David M. Mulay  
Its: member

STATE OF OHIO  
MONTGOMERY COUNTY SS:

The foregoing instrument was acknowledged before me this 13th day of May, 2005, by David M. Mulay, the member of Grantor.

Kay E. Sandusky  
NOTARY PUBLIC

This Instrument Prepared By:  
Scott A. Liberman, Esq.  
Altick & Corwin Co., L.P.A.  
1700 One Dayton Centre  
One South Main Street  
Dayton, OH 45402



KAY E. SANDUSKY, Notary Public  
In and for the State of Ohio  
My Commission Expires April 30, 2010

 **McDougall, Marsh & Chico**  
Surveyors & Civil Engineers

8529 Byers Road, Miamisburg, OH 45342  
Tel: 937-847-2660 Fax: 937-847-2670

## INGRESS/EGRESS, PARKING & UTILITY EASEMENT - II

Situate in the City of Centerville, Montgomery County, Ohio and being an ingress/egress, parking and utility easement for the purpose of vehicular and pedestrian traffic, installation, maintenance and replacement of said utilities upon Part Lot 22 of the Benjamin Robbins Plat as recorded in Plat Book 1, Page 11 and as conveyed to Mulay Holdings, LLC. by I.R.# Deed \_\_\_\_\_ of the deed records of Montgomery County, Ohio and being more particularly described as follows:

Beginning at a 5/8" rebar set at the northeast corner of said Lot 22 and also being the northeast corner of said Mulay Holdings Parcel and the True Point of Beginning for the herein described ingress/egress and utility easement;

thence S 01°04'21" W with the east line of said Part Lot 22 and also being the east line of said McCarthy Parcel a distance of 108.23 feet to a mag nail set;

thence S 85°05'20" W through said Mulay Holdings Parcel a distance of 51.89 feet to a mag nail set;

thence N 01°04'21" E with the west line of said Mulay Holdings Parcel a distance of 108.05 feet to a 5/8" rebar set in the north line of said Part Lot 22 and also being the northwest corner of said Mulay Holdings Parcel;

thence N 84°53'42" E with the north line of said Part Lot 22 a distance of 51.91 feet to the True Point of Beginning, subject to all legal conditions, easements and rights-of-way of record. This description prepared by McDougall, Marsh, & Chico, based on a survey made by same in January 2003 and October 2004. Bearings are based on the centerline of right-of-way ( N 01° 04'21" E ) as shown on recorded Survey 2003-0211 of the Montgomery County Engineer's Office.

  
Thomas K. Marsh, P.S. #7735

