

RESOLUTION NO. 66-05
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Susan Lunsford ON
THE 5th DAY OF December, 2005.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A RECIPROCAL EASEMENT AGREEMENT WITH WASHINGTON TOWNSHIP, OHIO FOR GRANT OF INGRESS, EGRESS AND PARKING EASEMENT FOR THE AREA NORTH OF WEST FRANKLIN STREET AND WEST OF MAIN STREET IN THE APD.

WHEREAS, the City of Centerville, Ohio and Washington Township, Montgomery County, Ohio, have executed a Parking Lot Expense Agreement dated November 27, 2004 which called for a Reciprocal Easement Agreement; and

WHEREAS, the City desires to grant certain easements and rights to Washington Township for the area north of West Franklin Street and West of Main Street in the APD; and

WHEREAS, the Washington Township has agreed to grant certain easements and rights to the City of Centerville for the area north of West Franklin Street and West of Main Street in the APD; and

WHEREAS, the parties have successfully negotiated an agreement whereby the City and Township will jointly provide and maintain public parking in the Town Center; and

WHEREAS, the City Council has determined that it would be in the best interest of the citizens of the City of Centerville to enter into said Agreement.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized and directed to enter into the Reciprocal Easement Agreement with Washington Township for the grant of ingress, egress and parking easements in accordance with the terms of the Parking Lot Expense Agreement. A copy of the Reciprocal Easement Agreement is attached hereto as Exhibit "A" and incorporated herein.

Section 2. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 5th day of December, 2005.

C. Mark Kingreed
Mayor of the City of Centerville, Ohio

ATTEST:

Debra A. James
Clerk of Council, City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 66-05, passed by the Council of the City of Centerville, Ohio, on the 5th day of December, 2005.

Debra A. James
Clerk of Council

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

EXHIBIT "A"

RECIPROCAL EASEMENT AGREEMENT

This Reciprocal Easement Agreement is made in Centerville, Ohio this ____ day of _____, 2005, by and between the City of Centerville, Ohio, whose mailing address is 100 W. Spring Valley Road, Centerville, Ohio 45458, hereinafter called "Centerville", and Washington Township, Ohio, whose mailing address is 8200 McEwen Road, Dayton, Ohio 45458, hereinafter called "Washington Township."

WHEREAS, Centerville is an Ohio Municipal Corporation; and

WHEREAS, Washington Township is an Ohio Township; and

WHEREAS, Centerville 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 2" and Washington Township owns a certain parcel of land described on Exhibit "A" attached hereto and made a part hereof and identified as "Lot 3"; and

WHEREAS, Centerville also owns a certain parcel of land described as Exhibit "B" (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, Lot 2, and Lot 3 and other property in the area shown on the site and parking plan attached as Exhibit "C"; and

WHEREAS, Centerville desires to grant certain easements and rights to Washington Township and Washington Township desires to grant certain easements and rights to Centerville; and

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

WHEREAS, the parties entered into a Parking Lot Expense Agreement dated _____, which requires the filing of a cross-easement agreement for ingress and egress over their respective properties;

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

Grant of Ingress, Egress, and Parking Easements

1. Centerville hereby grants Washington Township, its tenants, successors, and assigns, for the benefit of all owners and occupants of Lot 3 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 all areas 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 3, and streets, highways, and alleys adjacent to and abutting Lot 2 and Lot 3 and to and from the individual parking places and parking areas

on Lot 2; (ii) the nonexclusive, irrevocable right to use all common facilities and improvements on the Parking Areas for the purposes for which they were construed; and (iii) the nonexclusive, irrevocable right to park automobiles and other vehicles in and on the Parking areas for not more than twenty-four hours.

2. Washington Township hereby grants Centerville, its tenants, successors, and assigns, for the benefit of all owners and occupants of Lot 2 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 3 and all areas 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 2, and streets, highways, and alleys adjacent to and abutting Lot 2 and Lot 3 and to and from the individual parking places and parking areas on Lot 3; (ii) the nonexclusive, irrevocable right to use all common facilities and improvements on the Parking Areas for the purposes for which they were construed; and (iii) the nonexclusive, irrevocable right to park automobiles and other vehicles in and on the Parking areas for not more than twenty-four hours.

Maintenance

3. Each party's rights and obligations shall continue as set forth in the Parking Lot Expense Agreement.

Right to Cure

4. 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 defaulting party fails within thirty-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.

Rules and Regulation

5. 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 or the Parking Lot Expense Agreement unless both parties agree in writing, nor shall they affect any easement rights granted in this Agreement.

Transfer

6. Upon the sale or other transfer of Lot 2 or Lot 3, 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 2 or Lot 3. 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 of transfer.

Duration

7. The easements granted hereunder shall be for a period of twenty-five (25) years from the date of filing. Said term shall be automatically renewed for successive twenty-five (25) year periods unless either party gives written notice to the other party of its' election to not renew at least three hundred sixty-five (365) days prior to the renewal date. This term is to be the same as the term contained in the Parking Lot Expense Agreement.

Covenants Running with the Land

8. The covenants, easements, and agreements contained in this Agreement shall run with the land known as Lot 2, Lot 3, and the 43 West Franklin Parcel, and each portion of those parcels, as provided

in this Agreement, and 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 persons taking by, through, or under any mortgagee) of each parcel, or any portion.

No Joint Venture

9. 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

10. 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

11. 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 2 and Lot 3.

EXECUTED this ____ day of _____, 2005.

THE CITY OF CENTERVILLE, OHIO

By: _____
(Print Name)

Its: _____

WASHINGTON TOWNSHIP, OHIO

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 _____, the _____ of the corporation which executed the foregoing instrument, who acknowledged that he/she did sign said instrument as such officer on behalf of said corporation **and by authority of the City Council**; that said instrument was signed as his/her free act and deed individually, and the free act and deed of said 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 _____ of the **Township** which executed the foregoing instrument, who acknowledged that he/she did sign said instrument as such officer on behalf of said **Township** and by authority of the Board of **Trustees**; that said instrument was signed as his/her free act and deed individually, and the free act and deed of said 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: _____