

RESOLUTION NO. 21-03  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Roger W. Kross ON THE 21<sup>st</sup> DAY  
OF April, 2003.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO  
ENTER INTO AN AGREEMENT WITH HAMMERHEAD-CENTERVILLE LLC  
TO PURCHASE REAL PROPERTY.

WHEREAS, this council has undertaken a project to revitalize the business district in the  
center of the City; and

WHEREAS, representatives of the City have successfully negotiated with Hammerhead-  
Centerville LLC to purchase real property to be used for a municipal parking lot.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY  
RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into an agreement with  
Hammerhead-Centerville LLC to purchase real property for the sum of TWO HUNDRED  
EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$288,750.00) on  
behalf of the City. A copy of said agreement is attached hereto as Exhibit "A" and  
incorporated herein.

PASSED THIS 21<sup>st</sup> day of April, 2003.

Cally D. Beale  
Mayor of the City of  
Centerville, Ohio

ATTEST:

Maureen J. Sargent  
Clerk of Council  
City of Centerville, Ohio

Post-it* Fax Note	7671	Date	7/29	# of pages	▶
To	Chris Suzuki	From	M McHughlin		
Co./Dept.		Co.	Centerville		
Phone #		Phone #			
Fax #	614 227-2390	Fax #			

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 21-03, passed by the Council of the City of Centerville, Ohio on the 21st day of April, 2003.

Maureen J. Slaughter  
Clerk of the Council

Approved as to form, consistency with the  
Charter and Constitutional Provisions.  
Department of Law  
Robert N. Farquhar  
Municipal Attorney

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement") dated as of April \_\_\_, 2003 (the "Effective Date"), is made by and between HAMMERHEAD-CENTERVILLE LLC, an Ohio limited liability company with a mailing address of 2555 Bethel Road, Columbus, Ohio 43220 ("Seller"), and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation with a mailing address of 100 West Spring Valley Road, Dayton, Ohio 45458 ("Purchaser").

### WITNESSETH:

WHEREAS, Seller has made an offer to purchase real property located at the northeast corner of Main and Franklin Streets in Centerville, Ohio and more particularly described in Exhibit A attached hereto and incorporated herein ("MVH Property");

WHEREAS, if Seller is successful in closing the purchase of MVH Property, then Purchaser will purchase from Seller and Seller will sell to Purchaser a portion of MVH Property and more particularly described in Section 1 of this Agreement under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing, of the covenants, promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Purchaser will agree as follows:

### 1. PROPERTY.

a. Description. Subject to the terms and conditions of this Agreement, and for the consideration herein set forth, Seller agrees to sell and transfer, and Purchaser agrees to purchase and acquire, all of Seller's rights, title, and interest in and to the following (collectively, the "Property"):

i. Certain land located in the City of Centerville, County of Montgomery, State of Ohio, and more particularly described in Exhibit B attached hereto and incorporated herein (the "Land"); and

ii. The buildings, parking areas, improvements, and fixtures now situated on the Land (the "Improvements").

That portion of MVH Property that is not being sold to Purchaser as contemplated in this Agreement is more particularly described in Exhibit C attached hereto and incorporated herein (the "Seller's Portion").

b. “As-Is” Purchase. Purchaser acknowledges and agrees that it has been given a full opportunity to inspect and investigate every aspect of the Property, including all matters related to legal status or requirements, physical condition, title and other matters of significance. Purchaser specifically acknowledges and agrees that the Property is being sold in an “AS IS” condition and “WITH ALL FAULTS” as of the date of this Agreement and as of the Closing. Except as expressly set forth in this Agreement, no representations or warranties have been made or are made and no responsibility has been or is assumed by Seller or by any member, officer, person, firm, agent or representative acting or purporting to act on behalf of Seller as to any matters concerning the Property, including, without limitation, the condition or repair of the Property or the value, expense of operation, income potential thereof or as to any other fact or condition which has or might affect the Property or the condition, repair, value, expense of operation or income potential of the Property or any portion thereof. The parties agree that all understandings and agreements heretofore made between them or their respective agents or representatives are merged in this Agreement and the Exhibits hereto annexed, which alone fully and completely express their agreement, and that this Agreement has been entered into after full investigation, or with the parties satisfied with the opportunity afforded for full investigation. Purchaser is not relying upon any statement or representation by Seller unless such statement or representation is specifically embodied in this Agreement or the Exhibits annexed hereto. Without limiting the foregoing, Seller makes no representations or warranties as to whether the Property contains asbestos or harmful or toxic substances or pertaining to the extent, location or nature of same. Further, to the extent that Seller has provided or hereafter may provide to Purchaser information from any inspection, engineering or environmental reports concerning asbestos or harmful or toxic substances, Seller makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports. Purchaser acknowledges that Seller has requested Purchaser to inspect fully the Property and investigate all matters relevant thereto and to rely solely upon the results of Purchaser’s own inspections or other information obtained or otherwise available to Purchaser, rather than any information that may have been provided by Seller to Purchaser.

c. Agreement to Convey. Seller agrees to convey, and Purchaser agrees to accept title to the Property by General Warranty Deed referenced in Section 6 of this Agreement.

## 2. **PRICE AND PAYMENT.**

a. Purchase Price. The purchase price for the Property (the “**Purchase Price**”) is TWO HUNDRED EIGHTY-EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$288,750.00).

b. Payment. Payment of the Purchase Price is to be made in cash or immediately available funds at the Closing (as hereinafter defined).

c. Closing. Payment of the Purchase Price and the closing hereunder (the "Closing") will take place on the Closing Date (as hereinafter defined) at the offices of Chicago Title Insurance Company ("Chicago Title"), Dayton, Ohio or at such other time and place as may be agreed upon in writing by Seller and Purchaser. Each party agrees to close the transactions contemplated in this Agreement (i) on the same day that Seller closes its purchase of the MVH Property from Miami Valley Hospital and (ii) within ten (10) days after the Lot Split, as referenced in Section 7 of this Agreement, is approved by the appropriate officials of Montgomery County, Ohio (the "Closing Date"); provided, however, in the event that Seller shall elect to accelerate its acquisition of the MVH Property prior to the time that the Lot Split shall have occurred, Seller, in Seller's sole discretion, may do so, in which event the Closing hereunder shall occur within ten (10) days after the Lot Split. In any event, if the Closing does not occur by July 31, 2003, either party has the right to terminate this Agreement by written notice to the other party.

### 3. CITY APPROVAL.

a. Council Approval. The transaction contemplated herein is conditioned upon the governing body of Purchaser (i.e. city council) approving the transaction on or before April 23, 2003 (the "Approval Date") and notifying Seller of same in writing. In the event that Purchaser does not notify Seller in writing of Purchaser's approval on or before the Approval Date, this Agreement shall terminate unless extended by mutual consent of Seller and Purchaser.

b. Title and Survey.

i. Purchaser has obtained a title insurance commitment ("Title Commitment"), and upon Closing, will obtain a title insurance policy, at Purchaser's expense, from Chicago Title relative to the Property. Any title insurance commitment and/or policy desired by Seller as to Seller's Portion of the MVH Property shall be obtained from Chicago Title at Seller's expense. Purchaser shall not be obligated to complete the transaction contemplated herein if there shall be any additional liens or other matters of record which materially and adversely affect Purchaser's intended use of the Property and first appear after the date of issuance of Purchaser's Title Commitment.

ii. Purchaser, at Purchaser's expense, has ordered and shall obtain a current certified land title survey of the MVH Property, with topographical and other information required by Purchaser and Seller (the "Survey"), sufficiently detailed as to be satisfactory to obtain the Lot Split referenced in Section 7 of this Agreement.

### 4. REPRESENTATIONS AND WARRANTIES.

a. By Seller. Seller represents and warrants to Purchaser that Seller is an Ohio limited liability company duly organized, validly existing and in good standing under the laws of the State of Ohio, is authorized to do business in the State of Ohio, has duly

authorized the execution and performance of this Agreement, and such execution and performance will not violate any material term of its Articles of Organization or its organizational documents.

b. By Purchaser. Purchaser represents and warrants to Seller that:

i. Purchaser is an Ohio municipal corporation and by the Approval Date will have duly authorized the execution and performance of this Agreement or this Agreement shall terminate by its terms; and

ii. The MVH Property is located in an urban redevelopment area, community improvement district or such other pre-designated area such that upon proper filing of an application by Seller upon completion of Seller's intended building improvements on Seller's Portion of the MVH Property ("Seller's Building Improvements"), Seller's Building Improvements shall be eligible for a one hundred percent (100%) real estate tax abatement for fifteen (15) years.

c. Mutual. Seller and Purchaser represent to each other that it has had no dealings, negotiations, or consultations with any broker, representative, employee, agent or other intermediary in connection with this Agreement or the sale of the Property. Seller shall indemnify, defend and hold harmless Purchaser from and against any claim by any third party to a commission in connection with the transaction provided for herein, and Purchaser shall indemnify, defend and hold harmless Seller from and against any claim by any third party to a commission in connection with the transaction provided for herein.

## 5. TAXES.

a. Tax Escrow Account. Seller and Purchaser agree that an escrow account (the "**Tax Escrow Account**") shall be established at Closing for the payment of real estate taxes relating to the MVH Property for the years 2002 (second half) and 2003. It is anticipated that by the time the tax bills for 2004 are due and payable (i.e. January of 2005), separate tax bills for the Property and Seller's Portion of the MVH Property shall be available, obviating the need for any further escrow. Seller and Purchaser shall establish the Tax Escrow Account with Chicago Title. Seller shall contribute funds equal to forty percent (40%) of the expected 2002 and 2003 real estate taxes on the MVH Property. Purchaser shall contribute funds equal to sixty percent (60%) of the expected 2002 and 2003 real estate taxes on the MVH Property. Seller shall also cause Miami Valley Hospital to contribute all funds to the Tax Escrow Account which Seller is entitled to receive from Miami Valley Hospital relative to Seller's acquisition of the MVH Property. Seller and Purchaser agree to cooperate in using their best efforts to reasonably estimate the amounts required for the Tax Escrow Account. Seller and Purchaser hereby authorize Chicago Title to pay the 2002 and 2003 real estate tax bills on the MVH Property when

due and further agree to contribute their share (40% Seller, 60% Purchaser) to the Tax Escrow Account to make up any shortfall.

b. Termination of Tax Escrow Account. At such time as Seller and Purchaser begin receiving separate tax bills for their parcels, Seller and Purchaser will each receive its proportionate share of any remaining funds and cause the Tax Escrow Account to be closed.

## 6. CLOSING.

a. Seller's Deliverables. Seller shall deliver at the Closing the following documents, each executed and, if required, acknowledged:

i. A General Warranty Deed to the Property, in substantially the form attached hereto as Exhibit D;

ii. An Agreement for Right of First Refusal to Purchase, in substantially the form attached hereto as Exhibit E;

iii. An Easement Agreement in substantially the form attached hereto as Exhibit F;

iv. A License Agreement, in substantially the form attached hereto as Exhibit G; and

v. Documentation of Seller's authorization to carry out the transactions contemplated herein.

b. Purchaser's Deliverables. At the Closing, Purchaser shall: (i) pay Seller the Purchase Price; (ii) execute and deliver to Seller the agreements referred to in Subsection 6(a) (ii), (iii) and (iv) above; and deliver to Seller documentation of Purchaser's authorization to carry out the transactions contemplated herein.

## 7. ADDITIONAL MATTERS.

a. Parking Area. In accordance with the terms and conditions of the Easement Agreement, Purchaser shall develop a parking area on the Property to fulfill all governmental parking requirements for use of Seller's Portion of the MVH Property, including Seller's Building Improvements. Seller and Purchaser shall establish reasonable rules for said parking area (i) to provide a reasonable amount of parking spaces for customers of Seller and any third party lessees of Seller's Portion of the MVH Property and (ii) to provide a reasonable amount of parking spaces for use by the general public. Purchaser shall be responsible for all aspects of the permanent maintenance of the parking area including, without limitation, sealing, striping, resurfacing, lighting and utilities.

Notwithstanding the foregoing, Seller shall be responsible for daily maintenance such as snowplowing, leaf removal and picking up litter on the parking area.

b. Demolition. Seller shall cause the existing Improvements on the MVH Property to be razed and the MVH Property cleared. The demolition costs of the existing improvements on the MVH Property shall be shared by Seller and Purchaser equally. Purchaser shall pay its share of the demolition costs to Seller ten (10) days after receipt of a written notice of the demolition costs from Seller.

c. Lot Split. Prior to Closing, Purchaser agrees to be responsible for obtaining approval of the lot split of MVH Real Property into Seller's Portion and the Property (the "Lot Split") from the necessary governmental agencies. Purchaser shall be solely responsible for all costs and expenses in connection with obtaining approval for the Lot Split.

d. Easements. Purchaser agrees to obtain all necessary utility easements for the Property and Seller's Portion. At Closing, each party agrees to grant the easements contemplated in the Easement Agreement.

e. Landscaping. Purchaser agrees to provide and maintain all landscape areas required by zoning ordinances and any other landscape areas deemed appropriate by Purchaser in the additional right-of-way area obtained on the west and southwest corner of the Property. Purchaser and Seller shall use their best efforts to agree to the type and design of the landscape areas on the Property.

f. Board of Architectural Review. Seller acknowledges (i) that the MVH Property is located in the Architectural Preservation District of Centerville, Ohio (the "APD") and (ii) that all design, exterior lighting and zoning approvals must be obtained from the Board of Architectural Review prior to any use or construction within the APD.

g. Transformer; Power Pole; Street Light. Purchaser agrees to relocate the transformer, power pole(s), and street light(s) to another location on the Property, subject to Seller's approval, which approval shall not be unreasonably withheld. Purchaser agrees to pay for all utilities charges related to said transformer, power pole(s) and street light(s) and relocation of same.

h. Revocable License. At Closing, Purchaser and Seller shall enter into the License Agreement attached hereto as Exhibit G.

i. Trash Improvements. Purchaser agrees to allow trash receptacles, fence and concrete pad and apron (the "Trash Improvements") to be placed on the Property for use by Seller and its tenants, employees, agents, invitees, guests, licensees, successors and assigns. Seller agrees to pay for the installation and maintenance of the Trash Improvements and pay for the trash removal services. Purchaser and Seller agrees to use



its best efforts to schedule the construction and installation of the Trash Improvements and to plan for sufficient weight-bearing support for the Trash Improvements.

**8. NOTICES.**

Any notice required or permitted to be given hereunder shall be deemed to be given when delivered by hand, by a nationally recognized next day courier delivery service or by facsimile transmission with written acknowledgment of receipt, in any case addressed to the parties at their respective addresses referenced below:

If to Seller: Hammerhead-Centerville LLC  
2555 Bethel Road  
Columbus, Ohio 43220  
Attn: Maury Levine and  
Clay Cookerly  
Phone: (614) 442-0622  
Fax: (614) 442-0633

With a copy to: Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215  
Attn: Charles McCreary, Esq.  
Phone: (614) 227-2300  
Fax: (614) 227-2390

If to Purchaser: City of Centerville, Ohio  
100 West Spring Valley Road  
Dayton, Ohio 45458  
Attn: City Manager  
Phone: (937) 433-7151  
Fax: ( ) \_\_\_\_\_

With a copy to: Altick & Corwin Co., L.P.A.  
One Dayton Centre  
Dayton, Ohio  
Attn: Robert N. Farquhar, Esq.  
Phone: (937) 425-6056  
Fax: (937) 463-2620

or, in each case, to such other address as either party may from time to time designate by giving notice in writing to the other party. Effective notice will be deemed given only as provided above.

**9. MISCELLANEOUS.**

a. Entire Agreement. This Agreement, together with the Exhibits attached hereto, all of which are incorporated by reference, is the entire agreement between the parties with respect to the subject matter hereof, and no alteration, modification or interpretation hereof shall be binding unless in writing and signed by both parties.

b. Severability. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law. In lieu of each term, covenant or condition that is found to be invalid and unenforceable, a provision may be added as a part of this Agreement that is mutually agreeable to both Seller and Purchaser and is as similar to the invalid and unenforceable term, covenant or condition as may be possible and be valid and enforceable.

c. Applicable Law. This Agreement shall be interpreted and enforced under the laws of the State of Ohio.

d. Assignability. Neither Seller nor Purchaser may assign this Agreement without first obtaining written consent from the other party. Any assignment in contravention of this provision shall be void. No assignment, whether or not permitted, shall release the assignor from any obligation or liability under this Agreement. The assignor and any permitted assignee shall be jointly and severally liable for all such obligations and liabilities. Any permitted assignee shall be deemed to have made any and all representations and warranties made by assignor hereunder, as if the assignee were the original signatory hereto.

e. Successors Bound. This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective successors and permitted assigns.

f. Captions. The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

g. No Partnership. Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the parties or their successors in interest.

h. Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

i. Recordation. Purchaser and Seller agree not to record this Agreement or any memorandum hereof.

j. Proper Execution. The submission by Seller to Purchaser of this Agreement in unsigned form shall be deemed to be a submission solely for Purchaser's consideration and not for acceptance and execution. Such submission shall have no binding force and effect, shall not constitute an option, and shall not confer any rights upon Purchaser or impose any obligations upon Seller irrespective of any reliance thereon, change of position or partial performance. The submission by Seller of this Agreement for execution by Purchaser and the actual execution and delivery thereof by Purchaser to Seller shall similarly have no binding force and effect on Seller unless and until Seller shall have executed this Agreement and a counterpart thereof shall have been delivered to Purchaser.

i. Survival. All terms, conditions, representations and warranties contained in this Agreement shall survive the Closing of the transactions contemplated in this Agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, Seller and Purchaser have each caused this Agreement to be executed on the date first written above.

HAMMERHEAD-CENTERVILLE  
LLC

By: Hammerhead Investments LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

CITY OF CENTERVILLE, OHIO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

GUARANTY

The undersigned hereby agrees to guarantee the full and timely performance of each and every obligation of Seller under this Agreement as of the Effective Date.

SUPERIOR TASTING PRODUCTS, INC.,  
an Ohio corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

## LIST OF EXHIBITS

<u>Exhibit A</u>	Description of MVH Property
<u>Exhibit B</u>	Description of Land
<u>Exhibit C</u>	Description of Seller's Portion
<u>Exhibit D</u>	Form of General Warranty Deed
<u>Exhibit E</u>	Form of Agreement for Right of First Refusal
<u>Exhibit F</u>	Form of Easement Agreement
<u>Exhibit G</u>	Form of License Agreement

EXHIBIT D

GENERAL WARRANTY DEED

HAMMERHEAD-CENTERVILLE LLC, an Ohio limited liability company (the "Grantor"), for valuable consideration paid, grants with general warranty covenants to CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "Grantee") whose tax mailing address is 100 West Spring Valley Road, Dayton, Ohio 45458 , the following **REAL PROPERTY**: Situated in the County of Montgomery, in the City of Centerville and State of Ohio:

Being \_\_\_\_\_ acres, more or less, as more particularly set forth in Exhibit "A" attached hereto and incorporated herein by reference.

Parcel No. \_\_\_\_\_  
Address: \_\_\_\_\_

Subject to any and all real estate taxes and assessments not yet due and payable, zoning ordinances, legal highways and covenants, restrictions, conditions and easements of record, if any.

Prior instrument reference: Deed Book Volume \_\_\_\_\_, Page \_\_\_\_\_, Recorder's Office, Montgomery County, Ohio.

Witness the hand of the authorized representative of Grantor this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

HAMMERHEAD-CENTERVILLE LLC,  
an Ohio liability company

By: Hammerhead Investments LLC  
an Ohio limited liability company,  
its sole member

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

STATE OF OHIO,  
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, the subscriber, a notary public in and for said county and state, personally came \_\_\_\_\_ the \_\_\_\_\_ of Hammerhead Investments LLC, an Ohio limited liability company, the sole member of Hammerhead-Centerville LLC, an Ohio limited liability company, the Grantor in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed on behalf of the limited liability companies.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on this day and year aforesaid.

\_\_\_\_\_  
Notary Public  
Commission Expiration: \_\_\_\_\_

This instrument was prepared by: Charles H. McCreary, Esq., Bricker & Eckler LLP,  
100 South Third Street, Columbus, Ohio 43215



**EXHIBIT "A"**

## EXHIBIT E

### AGREEMENT FOR RIGHT OF FIRST REFUSAL

THIS AGREEMENT FOR RIGHT OF FIRST REFUSAL (this "Agreement"), dated as of \_\_\_\_\_, 2003, by and between HAMMERHEAD-CENTERVILLE LLC, an Ohio limited liability company with a mailing address of 2555 Bethel Road, Columbus, Ohio 43220 ("Grantor"), and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation with a mailing address of 100 West Spring Valley Road, Dayton, Ohio 45458 ("Grantee").

#### WITNESSETH:

For and in consideration of the covenants, promises and undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor, for itself and its successors and assigns, hereby grants unto Grantee and its successors and assigns, the right of first refusal to purchase a certain \_\_\_ acre tract of real property situated in the City of Centerville, County of Montgomery and State of Ohio, commonly known as 2 North Main Street, and more particularly described in Exhibit A attached hereto and incorporated herein, including all easements and appurtenances thereto and improvements thereon (the "Premises"), upon the terms and conditions described below:

#### 1. RIGHT OF FIRST REFUSAL; NOTICE; EXERCISE.

##### a. Right of First Refusal. On the occurrence of either of:

i. Grantor receiving a bona fide offer from a third party to purchase the Premises and Grantor wishing to accept said offer; or

ii. Grantor offering to sell the Premises to a third party and a bona fide third party wishing to accept Grantor's offer;

Grantor shall give Grantee the privilege of purchasing the Premises upon the same terms and conditions as offered by said third party or offered to said third party, as the case may be (the "Right of First Refusal").

##### b. Notice. On the occurrence of either of:

i. Grantor receiving a bona fide offer from a third party to purchase the Premises and Grantor wishing to accept said offer; or

ii. Grantor offering to sell the Premises to a third party and a bona fide third party wishing to accept Grantor's offer;

Grantor shall give Grantee written notice, by hand delivery or by a nationally recognized next day delivery service, not less than forty-five (45) days prior to the closing of such proposed transaction ("Grantor's Notice"). Said notice shall set forth the full material terms and

conditions of such offer including, but not limited to, a statement of Grantor's intention to sell the Premises, the name of the prospective purchaser and the purchase price.

iii. Notices for each party shall be delivered to the address stated above or such other address as each party may subsequently designate in writing to the corresponding party.

c. Exercise.

i. If Grantee wishes to exercise its Right of First Refusal, Grantee shall send to Grantor a written notice of exercise, by hand delivery or by a nationally recognized next day delivery service, within fifteen (15) days of receipt of Grantor's Notice.

ii. If Grantee exercises its Right of First Refusal, the purchase of the Premises by Grantee shall be consummated within thirty (30) days following such exercise upon the same terms and conditions as set forth in Grantor's Notice.

iii. If Grantee (i) expressly declines to exercise its right or (ii) gives no notice to Grantor within the fifteen (15) day period, Grantee's Right of First Refusal shall be deemed waived, and Grantor may consummate the sale of the Premises as proposed in Grantor's Notice, free and clear of this Right of First Refusal. Thereafter, Grantee shall execute any document reasonably requested to terminate this Right of First Refusal.

iv. If the sale of the Premises shall not be consummated as proposed in Grantor's Notice, Grantee retains its Right of First Refusal for a future proposed sale.

v. If the proposed transaction in Grantor's Notice is not consummated and Grantor considers consummating the sale on terms and conditions materially less favorable to Grantor, Grantor shall first reoffer to Grantee the Premises on such materially less favorable terms and conditions with the foregoing procedure.

2. **MISCELLANEOUS.**

a. Nonassignability. Grantee agrees and acknowledges that the Right of First Refusal is not transferable.

b. Successors and Assigns. The terms of this Agreement shall inure to the benefit of and be binding upon Grantor's successors and assigns.

c. Change of Control. The Right of First Refusal shall not be triggered by (but shall survive) the signing and/or closing of any transaction or series of related transactions (including, without limitation, any reorganization, merger, sale of all or substantially all assets or consolidation) that will result in Grantor no longer being the fee simple titleholding entity of the Premises so long as (i) the surviving entity continues the same or substantially the same line of business of Grantor is engaged in as of the date hereof; or (ii) Grantee consents to the change of control in writing.

d. Subordination to Mortgage Financing. Grantee's Right of First Refusal is hereby made expressly subordinate and subject to the lien of any bona fide mortgage financing place on the Premises and Grantee further agrees to execute any document reasonably requested to evidence such subordination.

e. Governing Law. This Agreement shall be governed by the laws of the State of Ohio.

f. Amendment. Any provision of this Agreement may be amended by the written consent of Grantor and Grantee.

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

GRANTOR'S SOURCE OF TITLE: \_\_\_\_\_.

[Remainder of the Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Grantor and Grantee have each caused this Agreement to be executed on the date first written above.

**HAMMERHEAD-CENTERVILLE LLC,  
an Ohio limited liability company**

By: Hammerhead Investments LLC,  
an Ohio limited liability company  
and its sole member

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY OF CENTERVILLE, OHIO**

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

STATE OF OHIO:  
COUNTY OF FRANKLIN, SS:

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ of Hammerhead Investments LLC, an Ohio limited liability company, and the sole member of Hammerhead-Centerville LLC, an Ohio limited liability company, on behalf of the limited liability companies.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_

STATE OF OHIO:  
COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ of City of Centerville, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_

This Instrument Was Prepared by Charles H. McCreary, Bricker & Eckler LLP, 100 South Third Street, Columbus, OH 43215.

## EXHIBIT F

### EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Agreement") is made to be effective as of the \_\_\_ day of \_\_\_\_\_, 2003, by and between HAMMERHEAD-CENTERVILLE LLC, an Ohio limited liability company with a mailing address of 2555 Bethel Road, Columbus, Ohio 43220 ("**Building Owner**"), and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation with a mailing address of 100 West Spring Valley Road, Dayton, Ohio 45458 ("**Lot Owner**");

#### WITNESSETH:

WHEREAS, all of the terms used in this Agreement which have initial capital letters and are not otherwise defined herein are defined in Article I hereof;

WHEREAS, Building Owner and Lot Owner are each the owner of certain real property located at the northeast corner of Main and Franklin Streets in the City of Centerville, Montgomery County, Ohio;

WHEREAS, Building Owner is the owner of the fee simple title to the Graeter's Parcel more particularly described in Exhibit A attached hereto and incorporated herein;

WHEREAS, Lot Owner is the owner of fee simple title to the Parking Lot more particularly described in Exhibit B attached hereto and incorporated herein;

WHEREAS, Building Owner and Lot Owner deem it mutually beneficial to create certain easements and define certain rights of Building Owner and Lot Owner, and all of their respective tenants, employees, agents, mortgagees, invitees, guests, licensees, successors and assigns with respect to the Graeter's Parcel and the Parking Lot;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Building Owner and Lot Owner do hereby create, grant and convey to each other the following easements and, by the grant and acceptance of the same, do hereby make the following agreements on, and subject said easements to, the following terms, conditions, covenants, reservations, restrictions and provisions:

## ARTICLE I

### DEFINITIONS

"**Access Improvements**" means those portions of the Property which are to be or have been developed with driveways, roadways, aprons, sidewalks and related improvements designed for use for pedestrian and vehicular ingress and egress as now or hereafter located upon the Property.

"**Graeter's Parcel**" means that certain \_\_\_\_\_ acre tract of land described on Exhibit A attached hereto, made a part hereof and incorporated herein by reference, which is designated as the "Graeter's Parcel" on the Site Plan.

"**Parking Lot**" means that certain \_\_\_\_\_ acre tract of land described on Exhibit B attached hereto, made a part hereof and incorporated herein by reference, which is designated as the "Parking Lot" on the Site Plan.

"**Property**" means the Graeter's Parcel and Parking Lot, collectively.

"**Site Plan**" means the site plan on Exhibit C attached hereto, made a part hereof and incorporated herein by reference, depicting the Property.

"**Trash Improvements**" means such trash receptacles, fencing, concrete pad and apron, and any other improvements, as shall from time to time have been constructed or installed on or at the Parking Lot.

"**Utility Lines**" means such water, storm sewer and sanitary sewer lines, telephone, cable TV, electric, gas lines, and any other utility lines, as shall from time to time have been constructed or installed on or at the Property, as such lines may be extended from time to time in the future, and as subject to relocation in accordance with Section 3.5 hereof. "**Utility Line**" shall mean any individual segment or type of line from among the Utility Lines.

## ARTICLE II

### ACCESS AND PARKING EASEMENTS

2.1 Building Owner to Lot Owner. Subject to the terms and conditions set forth in this Agreement, Building Owner, for itself and its successors and assigns as the owners of the fee simple title to the Graeter's Parcel, grants to Lot Owner, its successors and assigns, as an easement appurtenant to the Parking Lot, an irrevocable, non-exclusive easement for pedestrian ingress and egress in, over and upon those portions of the Access Improvements which are now or hereafter located at the Graeter's Parcel. Notwithstanding the foregoing, in granting the easement described in this Section 2.1, Building Owner reserves, for itself and its successors and assigns as the owners of the fee simple title to the Graeter's Parcel, the right to use the Graeter's

Parcel likewise for pedestrian ingress and egress and the construction, removal, reconstruction, repair and maintenance of Access Improvements. Use of the easement granted and rights reserved in this Section 2.1 is limited to use of the Access Improvements for the respective purposes for which they are designed, but is not confined to the present or presently contemplated uses of the Parking Lot or Graeter's Parcel, or means of transportation.

2.2 Lot Owner to Building Owner. Subject to the terms and conditions set forth in this Agreement, Lot Owner, for itself and its successors and assigns as the owners of the fee simple title to the Parking Lot, grants to Building Owner, its successors and assigns, as an easement appurtenant to the Graeter's Parcel, an irrevocable, non-exclusive easement for pedestrian and vehicular ingress and egress in, over and upon those portions of Access Improvements which are now or hereafter located on the Parking Lot, for use of the Trash Improvements and for vehicle parking on the Parking Lot. Lot Owner agrees to establish and enforce parking lot rules that provide for adequate parking for Building Owner and its tenants, employees, agents, invitees, guests, licensees, successors and assigns and that meet Building Owner's approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, in granting the easement described in this Section 2.2, Lot Owner reserves, for itself and its successors and assigns as the owners of the fee simple title to the Parking Lot, the right to use the Parking Lot likewise for pedestrian and vehicular ingress and egress and the construction, removal, replacement, repair and maintenance of Access Improvements. Use of the easement granted and rights reserved in this Section 2.2 is limited to use of the Access Improvements for the respective purposes for which they are designed, but is not confined to the present or presently contemplated uses of the Graeter's Parcel or Parking Lot, buildings thereon or means of transportation. Lot Owner agrees that any interference with Building Owner's rights to use the Parking Lot granted in this Agreement, even if temporary, shall be subject to the terms and conditions contained in Section 7.2 hereinbelow and shall be as minimal and short in duration as possible.

2.3 Runs with the Land. All of the easements described in this Article II have been granted for the use and benefit of the respective present and future owners of the Graeter's Parcel and the Parking Lot, and all of their respective tenants, employees, agents, mortgagees, guests, licensees and invitees.

2.4 Reconfiguration Procedures. Building Owner, for itself and its successors and assigns, reserves the right, subject to all legal and permitting requirements, at its sole expense to relocate or materially alter, modify or change the Access Improvements which are subject to the easement granted by Building Owner to Lot Owner in this Article II after advance written notice to Lot Owner, so long as such proposed relocation or material alteration, modification or change does not interfere with Lot Owner's uninterrupted access to the Graeter's Parcel.

Lot Owner, for itself and its successors and assigns, agrees that its right to relocate or materially alter, modify or change the Parking Lot or the Access Improvements which are subject to the easement granted by Lot Owner to Building Owner in this Article II shall be subject to Building Owner's approval, in Building Owner's discretion which shall not be unreasonably withheld, after advance written notice to Building Owner, and even then, shall provide for the continuous use by and availability to Building Owner of its loading area/zone.



## ARTICLE III

### UTILITY EASEMENTS

3.1 Building Owner to Lot Owner. Subject to the terms and conditions set forth in this Agreement, Building Owner, for itself and its successors and assigns as the owner of the fee simple title to the Graeter's Parcel, grants to Lot Owner, its successors and assigns, as an easement appurtenant to the Parking Lot, an irrevocable, non-exclusive easement on, across, under and through those portions of the Graeter's Parcel which are not improved with or planned to be improved with buildings for the purpose of (i) tapping into and running extensions of the Utility Lines and laterals from said extensions, (ii) drawing service from water Utility Lines, and (iii) discharging into storm and sanitary sewer Utility Lines, all of the foregoing to be done at and from the water, storm sewer and sanitary sewer tap points reasonably made available by Building Owner. Building Owner hereby further grants Lot Owner a right of entry and construction easement on the Graeter's Parcel for purposes of effectuating Lot Owner's tapping rights hereunder within the boundaries of the Graeter's Parcel, such right being limited to those portions of the Graeter's Parcel reasonably necessary to be accessed and worked upon for such purpose; and to enter upon and construct, remove, reconstruct, repair and maintain the Utility Lines to service the Parking Lot therefrom in, through, under and upon the Graeter's Parcel, such right being limited to those portions of the Graeter's Parcel reasonably necessary to be accessed and worked upon for such purpose. All such Utility Lines constructed pursuant to the easement granted under this Section 3.1 shall be paid for and maintained and repaired by Lot Owner.

In granting the easements described in this Section 3.1, Building Owner reserves, for itself and its successors and assigns as the owner of the fee simple title to the Graeter's Parcel, the right to likewise tap into, use, draw service from, construct, remove, reconstruct, repair and maintain the Utility Lines in, over, through, under and upon the Graeter's Parcel and the right to grant easements to others for such purposes in, over, through, under and upon the Graeter's Parcel.

3.2 Lot Owner to Building Owner. Subject to the terms and conditions set forth in this Agreement, Lot Owner, for itself and its successors and assigns as the owner of the fee simple title to the Parking Lot, grants to Building Owner, its successors and assigns, as an easement appurtenant to the Graeter's Parcel, an irrevocable, non-exclusive easement on, across, under and through those portions of the Parking Lot which are not improved with or planned to be improved with buildings for the purpose of (i) tapping into and running extensions of the Utility Lines and laterals from said extensions, (ii) drawing service from water Utility Lines, and (iii) discharging into storm and sanitary sewer Utility Lines, all of the foregoing to be done at and from the water, storm sewer and sanitary sewer tap points reasonably made available by Lot Owner. Lot Owner hereby further grants Building Owner a right of entry and construction easement on the Parking Lot for purposes of effectuating Building Owner's tapping rights hereunder within the boundaries of the Parking Lot, such right being limited to those portions of the Parking Lot reasonably necessary to be accessed and worked upon for such purpose; and to enter upon and construct, remove, reconstruct, repair and maintain the Utility Lines to service the Graeter's Parcel therefrom in, through, under and upon the Parking Lot, such right being limited

to those portions of the Parking Lot reasonably necessary to be accessed and worked upon for such purpose. All such Utility Lines constructed pursuant to the easement granted under this Section 3.2 shall be paid for and maintained and repaired by Building Owner.

In granting the easements described in this Section 3.2, Lot Owner reserves, for itself and its successors and assigns as the owner of the fee simple title to the Parking Lot, the right to likewise tap into, use, draw service from, construct, remove, reconstruct, repair and maintain the Utility Lines in, over, through, under and upon the Parking Lot and the right to grant easements to others for such purposes in, over, through, under and upon the Parking Lot.

3.3 Approval. Building Owner, for itself and its successors and assigns, reserves the reasonable right to review and approve any plans and to approve any contractor to be used by Lot Owner for the purpose of effectuating Lot Owner's tapping rights hereunder within the boundaries of the Graeter's Parcel.

Lot Owner, for itself and its successors and assigns, reserves the reasonable right to review and approve any plans and to approve any contractor to be used by Building Owner for the purpose of effectuating Building Owner's tapping rights hereunder within the boundaries of the Parking Lot.

3.4 Relocation of Utilities. Building Owner, for itself and its successors and assigns, reserves the right to relocate the Utility Lines and thus the easement granted by Building Owner in this Article III upon advance written notice to the Lot Owner as long as the proposed relocation does not eliminate or materially interrupt any utility service to the Parking Lot, reduce the capacity of any utility service to the Parking Lot or render access by the Parking Lot to any Utility Line substantially less convenient than prior to such proposed relocation.

Lot Owner, for itself and its successors and assigns, reserves the right to relocate the Utility Lines and thus the easement granted by Lot Owner in this Article III upon advance written notice to the Building Owner as long as the proposed relocation does not eliminate or materially interrupt any utility service to the Graeter's Parcel, reduce the capacity of any utility service to the Graeter's Parcel or render access by the Graeter's Parcel to any Utility Line substantially less convenient than prior to such proposed relocation.

3.5 Runs with the Land. All of the easements granted in this Article III have been granted for the use and benefit of the respective present and future owners of the Graeter's Parcel and Parking Lot, their respective tenants and all of their respective mortgagees and licensees.

3.6 Mechanic's Liens. In the event any mechanics' or materialmen's lien(s) is filed against the Graeter's Parcel, or any part thereof, in connection with any work performed by or on behalf of Lot Owner pursuant to this Agreement, Lot Owner shall either pay or cause to be paid the same and have it discharged of record, promptly, or shall take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from the Graeter's Parcel, and in any event shall have such lien discharged prior to the foreclosure of such lien. Upon Building Owner's request, Lot Owner shall, at Lot Owner's expense, furnish such security as may be required to and for the benefit of Building Owner and its mortgagees, if any, or any

title insurance company designated by Building Owner, to permit a report of title to be issued relating to the Graeter's Parcel, without showing thereon the effect of such lien or insuring over such lien.

In the event any mechanics' or materialmen's lien(s) is filed against the Parking Lot, or any part thereof, in connection with any work performed by or on behalf of Building Owner pursuant to this Agreement, Building Owner shall either pay or cause to be paid the same and have it discharged of record, promptly, or shall take such action as may be required to reasonably and legally object to such lien, or to have the lien removed from the Parking Lot, and in any event shall have such lien discharged prior to the foreclosure of such lien. Upon Lot Owner's request, Building Owner shall, at Building Owner's expense, furnish such security as may be required to and for the benefit of Lot Owner and its mortgagees, if any, or any title insurance company designated by Lot Owner, to permit a report of title to be issued relating to the Parking Lot, without showing thereon the effect of such lien or insuring over such lien.

3.7 Restoration and Liability. Notwithstanding any contrary provisions of this Agreement, each party performing any construction hereunder: (i) shall repair and restore to its prior condition any portions of the property of any other party to this Agreement to the extent such property is disturbed, altered or damaged in such construction, such repair and restoration to include without limitation the backfilling and recompaction of disturbed soils, and the repaving of any excavated areas, as appropriate to restore prior conditions, and to be performed to the reasonable satisfaction of the owner of the property so disturbed, altered or damaged; and (ii) shall carry adequate liability insurance, and require that its contractors carry adequate contractor's liability insurance and workers' compensation insurance, to protect against claims which may arise during such construction, with all other owners of property subject to this Agreement to be considered additional insureds thereon, and with the minimum coverage level on any and all such liability policies to be One Million Dollars (\$1,000,000.00) combined single limit per incident. Nothing in (i) or elsewhere in the sentence immediately preceding is intended to create or imply any greater rights of entry for construction purposes than the other provisions of this Agreement may grant.

## ARTICLE IV

### MAINTENANCE

4.1 By Building Owner. Building Owner, for itself and its successors and assigns, as the owners of the fee simple title to the Graeter's Parcel, covenants and agrees, for the benefit of and as an appurtenance to the Parking Lot, that Building Owner shall perform or cause to be performed:

(a) all repairs, maintenance and replacements necessary to keep and maintain all Access Improvements, lighting, Trash Improvements and Utility Lines, except for those constructed by Lot Owner, now or hereafter located on the Graeter's Parcel, in a condition of good repair and maintenance;

(b) such leaf, snow and ice removal from the Graeter's Parcel and the Parking Lot as shall be necessary to prevent unreasonable accumulations thereof; and

(c) such clean up services on the Graeter's Parcel and the Parking Lot as shall be necessary to prevent unreasonable accumulations of trash and debris thereon.

4.2 By Lot Owner. Lot Owner, for itself and its successors and assigns, as the owners of the fee simple title to the Parking Lot, covenants and agrees, for the benefit of and as an appurtenance to the Graeter's Parcel, that Lot Owner shall perform or cause to be performed:

(a) all repairs, maintenance and replacements necessary to keep and maintain all Access Improvements, lighting, and Utility Lines, except for those constructed by Building Owner, now or hereafter located on the Parking Lot, in a condition of good repair and maintenance including, but not limited to, the periodic sealing, striping and resurfacing of the Parking Lot; and

(b) all landscaping maintenance necessary to keep and maintain a reasonably good quality appearance;

4.3 Expenses. The respective owners of the Graeter's Parcel and the Parking Lot shall pay the maintenance expense of their respective parcels, except (a) that the Lot Owner shall also maintain the landscaping area on the Graeter's Parcel identified on the Site Plan and (b) Building Owner shall also pay for the performance of the obligations set forth in Section 4.1(a-c). Anything to the contrary notwithstanding, the sole remedy of either party for a failure of the other party, its successors and assigns, to perform the respective obligations set forth in these Sections 4.1 and 4.2 shall be the remedy set forth in Section 7.4 hereof.

4.4 Real Estate Taxes. The owners of the fee simple titles to the Graeter's Parcel and Parking Lot shall be responsible to pay before delinquency the real taxes and assessments which become a lien upon their respective parcels.

## ARTICLE V

### CONSTRUCTION

5.1 Building Owner to Lot Owner. Building Owner agrees to diligently proceed with the construction of the Graeter's Parcel improvements. Following construction of the Graeter's Parcel and Parking Lot improvements, Building Owner agrees to restore any areas or improvements on the Parking Lot which are damaged in connection with its exercise of its easements rights described herein to the condition they were in prior to being damaged, reasonable wear and tear and casualty excepted.

5.2 Lot Owner to Building Owner. Lot Owner grants, bargains, sells and conveys to Building Owner an irrevocable easement on and over the Parking Lot for the purpose of the development, construction, erection and maintenance of the Graeter's Parcel and its related improvements. Once the Building Owner has finished using the Parking Lot area for its staging area and heavy construction traffic area in connection with Building Owner's construction of the Graeter's Parcel improvements, Building Owner shall notify Lot Owner of same in writing. Thereafter, Lot Owner agrees to construct the Parking Lot improvements in accordance with the layout shown on the Site Plan and to utilize its best efforts to ensure that the construction of the Parking Lot improvements shall precede or coincide with the completion of the Graeter's Parcel improvements so that the Parking Lot improvements will be open to the public by the time the Graeter's Parcel improvements shall open to the public.

## ARTICLE VI

### TRASH IMPROVEMENTS EASEMENT

6.1 Building Owner to Lot Owner. Subject to the terms and conditions set forth in this Agreement, Building Owner, for itself and its successors and assigns, as owner of the fee simple title to the Graeter's Parcel, agrees to maintain the Trash Improvements in a condition of good repair and maintenance and agrees to pay for the costs of trash removal.

6.2 Lot Owner to Building Owner. Subject to the terms and conditions set forth in this Agreement, Lot Owner, for itself and its successors and assigns, as owner of the fee simple title to the Parking Lot, grants to Building Owner, its successors and assigns, an irrevocable easement on and over the Parking Lot for the purposes of development, construction, erection, maintenance, and use of the Trash Improvements.

## ARTICLE VII

### MISCELLANEOUS

7.1 Applicability. Building Owner, for itself and its successors and assigns as the owner of the fee simple title to the Graeter's Parcel, makes the covenants and agreements with

respect to its obligations hereinafter set in this Agreement, for the benefit of and as appurtenances to the Parking Lot. Lot Owner, for and itself and its successors and assigns as the owner of the fee simple title to the Parking Lot, makes the covenants and agreements with respect to its obligations hereinafter set forth in this Agreement, for the benefit of and as appurtenances to the Graeter's Parcel.

7.2 Disruptions. If Building Owner or Lot Owner shall at any time intend to disturb the surface of any area subject to an easement hereunder for the purpose of constructing, removing, repairing, maintaining or reconstructing any improvement, it shall give reasonable prior notice of the disturbance to the other party and, upon completion of such work, shall promptly restore, at its sole expense, the area to substantially the same condition as shall have existed prior to such disturbance. Notwithstanding the foregoing, if any proposed disturbance of a surface area by either party would materially adversely affect the other party, such disturbance shall be undertaken only in accordance with the following: (a) the party proposing the same shall give the other party ten (10) days' prior notice of the timing, nature and methods for the undertaking of such disturbance and shall thereafter confer with such other party concealing alternatives to such disturbance and reasonable methods for mitigating the adverse effects of such disturbance on such other party; and (b) if such conferring does not result in agreement on a reasonable alternative to the proposed disturbance which does not materially adversely affect such other party, then the party proposing such disturbance shall undertake the same utilizing such reasonable methods for mitigating the adverse effects of such disturbance on the other party.

7.3 Compliance with Laws. Building Owner and Lot Owner shall each comply with all laws and other requirements of any governmental authorities with respect to their respective uses of the easements granted in this Agreement.

7.4 Default. If either Building Owner or Lot Owner, or any of their successors and assigns shall fail to perform or observe any of its respective covenants or obligations under this Agreement and such failure shall continue uncured for thirty (30) days after the other party gives written notice of such default, then the party giving such notice may, at its election, take such action as it determines to be necessary to cure such default for and on behalf of the defaulting party. Any amounts which the electing party may expend for such purpose or which otherwise may be due from the defaulting party to the electing party under this Agreement shall be paid to the electing party on demand, together with interest thereon, at the lesser of eighteen percent (18%) per annum or the maximum rate permissible from time to time under Ohio law, from the date of such expenditure to the date that payment is made by the defaulting party.

7.5 Waiver of Default. No waiver of any default by any party to this Agreement shall be implied from any omission by any other party to take any action with respect to such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenant contained in this Agreement shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this Agreement. The consent or approval by any party to or of any act

or request by any other party requiring consent or approval shall not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar acts or requests. The rights and remedies given to any party to this Agreement shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such party might otherwise have by virtue of a default under this Agreement, and the exercise of one such right or remedy by any such party shall not impair such party's standing to exercise any other right or remedy.

7.6 Injunctive Relief. In the event of any breach, violation or threatened breach or violation of any easements or rights created hereunder, each party shall, in addition to any and all other remedies available, be entitled to enforce the provisions of this Agreement by injunctive relief or otherwise.

7.7 Performing Work. Any party undertaking any construction, reconstruction, repair, maintenance and removal pursuant to the provisions of this Agreement shall (a) diligently pursue the same to completion, (b) perform the same in a good and workmanlike manner and in compliance with all applicable governmental codes, rules and regulations, (c) pay all costs thereof (subject to any right to reimbursement for all or a portion thereof pursuant to this Agreement), and (d) cause any mechanic's liens resulting therefrom to be released of record promptly after receiving notice of same from the holder thereof or any other party hereto.

7.8 Notices. Any notice, request or demand given or required to be given hereunder shall, unless otherwise expressly provided herein, be in writing signed by the party giving the same and shall be deemed to have been given when delivered personally or on the third (3rd) business day after the same shall have been deposited in the United States mail, postage prepaid, addressed to the party to which it is to be given at the address for each party set forth above. Either party may at any time change its address for notification purposes by mailing as aforesaid, a notice stating the change and setting forth the new address.

7.9 Transfer of Ownership. The owner of any portion of the Property shall be liable for those breaches of any covenant hereunder which occur during such party's ownership of such portion of the Property. Whenever a transfer of ownership of any portion of the Property shall be filed for record in the Office of the Recorder of Montgomery County, Ohio, liability of the transferor for breach thereafter of any covenant encumbering such portion automatically terminates; provided, however, that such transferor shall remain liable for breaches of such covenants occurring during such transferor's ownership of record of such portion.

7.10 Non-Merger. The easements, rights, obligations and interests granted, declared, established and created by this Agreement shall run with the land. If there should at any time be common ownership of the Graeter's Parcel and the Parking Lot or of the dominant and servient properties under any such easement, right, obligation or interest, then it is the intention of the parties hereto that the easements and covenants herein shall not merge with the fee estate unless a document specifically expressing the intent to extinguish such easements and covenants by merger, executed by all of the record owners of the fee simple title to the applicable dominant and servient properties and by the holders of record of all mortgages of record on such properties is filed for record in the Office of the Recorder of Montgomery County, Ohio.

7.11 Captions. The captions of the sections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

7.12 Governing Law; Severability. The Property being located in the State of Ohio, the provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. If any provision hereof is determined to be void and unenforceable by any court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

7.13 No Partnership. Neither anything in this Agreement contained nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

7.14 Modifications. Except as herein otherwise provided, the provisions of this Agreement may be amended, supplemented or terminated, in whole or in part, only with the consent of all of the record owners of the fee simple title to the applicable dominant and servient properties and by the holders of record of all the mortgages encumbering all or any part of such property, by agreement in writing, executed and acknowledged by all of said owners and mortgagees.

7.15 Reservation of Rights. Except as herein otherwise expressly provided to the contrary, the parties to this Agreement reserve and retain the right to use their portion of the Property in any manner and for any and all purposes which do not interfere in any material manner with the enjoyment of the rights granted to others hereunder.



The parties have caused this Agreement to be executed effective the day first set forth above.

BUILDING OWNER:

Signed and Acknowledged  
in the presence of:

HAMMERHEAD-CENTERVILLE LLC,  
an Ohio limited liability company

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

By: Hammerhead Investments LLC,  
an Ohio limited liability company  
and its sole member

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

By:\_\_\_\_\_  
Printed Name:\_\_\_\_\_  
Its:\_\_\_\_\_

LOT OWNER:

Signed and Acknowledged  
in the presence of:

CITY OF CENTERVILLE, OHIO,  
an Ohio municipal corporation

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

By:\_\_\_\_\_  
Printed Name:\_\_\_\_\_  
Its:\_\_\_\_\_

\_\_\_\_\_  
Printed Name:\_\_\_\_\_

STATE OF OHIO            )  
                                  ) §:  
COUNTY OF FRANKLIN    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ of Hammerhead Investments LLC, an Ohio limited liability company and sole member of Hammerhead-Centerville LLC, an Ohio limited liability company, on behalf of the limited liability companies.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF OHIO )  
 ) §:  
COUNTY OF MONTGOMERY )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ of City of Centerville, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.

[SEAL]

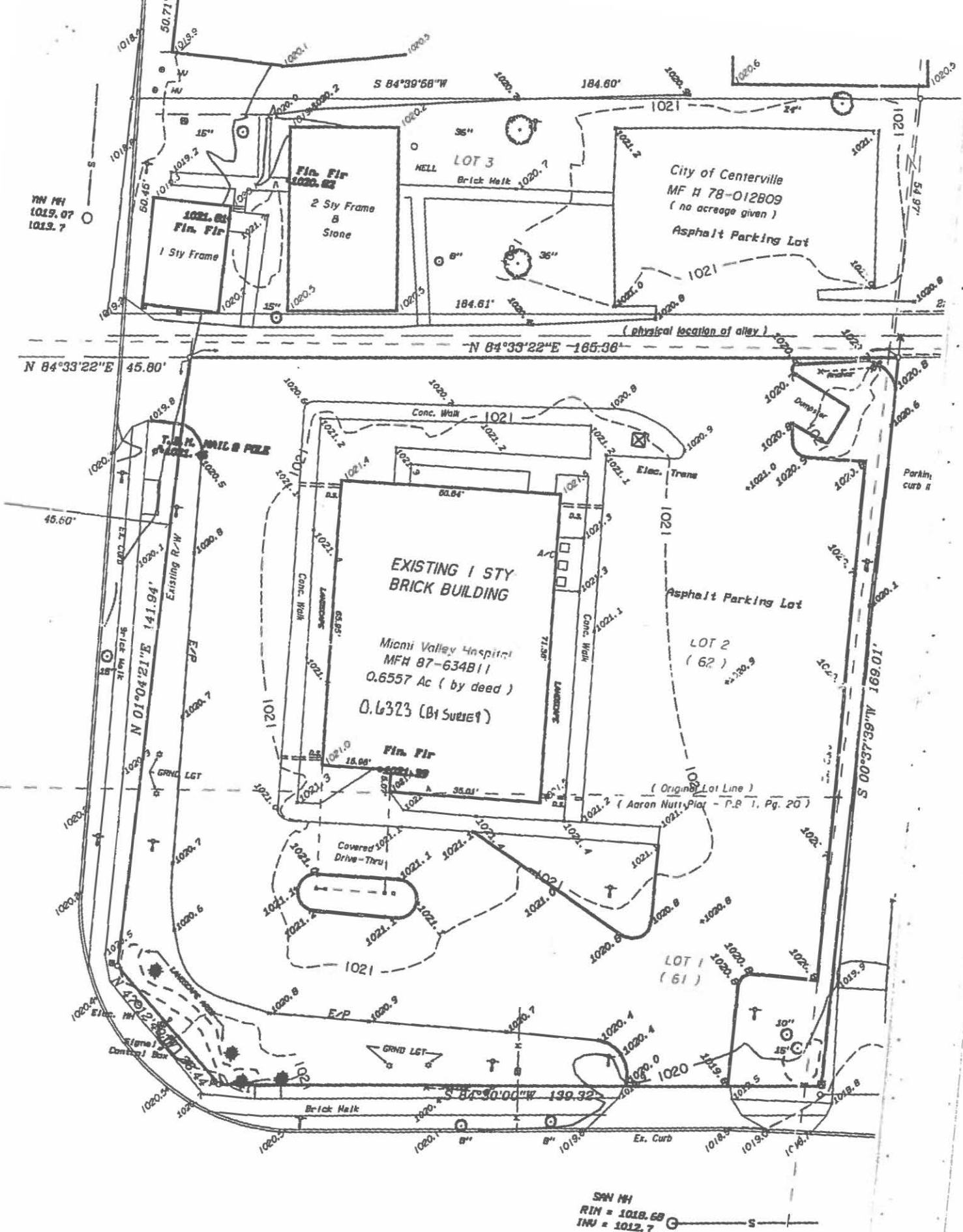
\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

This instrument prepared by: Charles H. McCreary, Esquire, Bricker & Eckler, LLP, 100 South Third Street, Columbus, OH 43215

EXHIBIT A

Graeter's Parcel



EAST FRANKLIN STREET ( 66' )

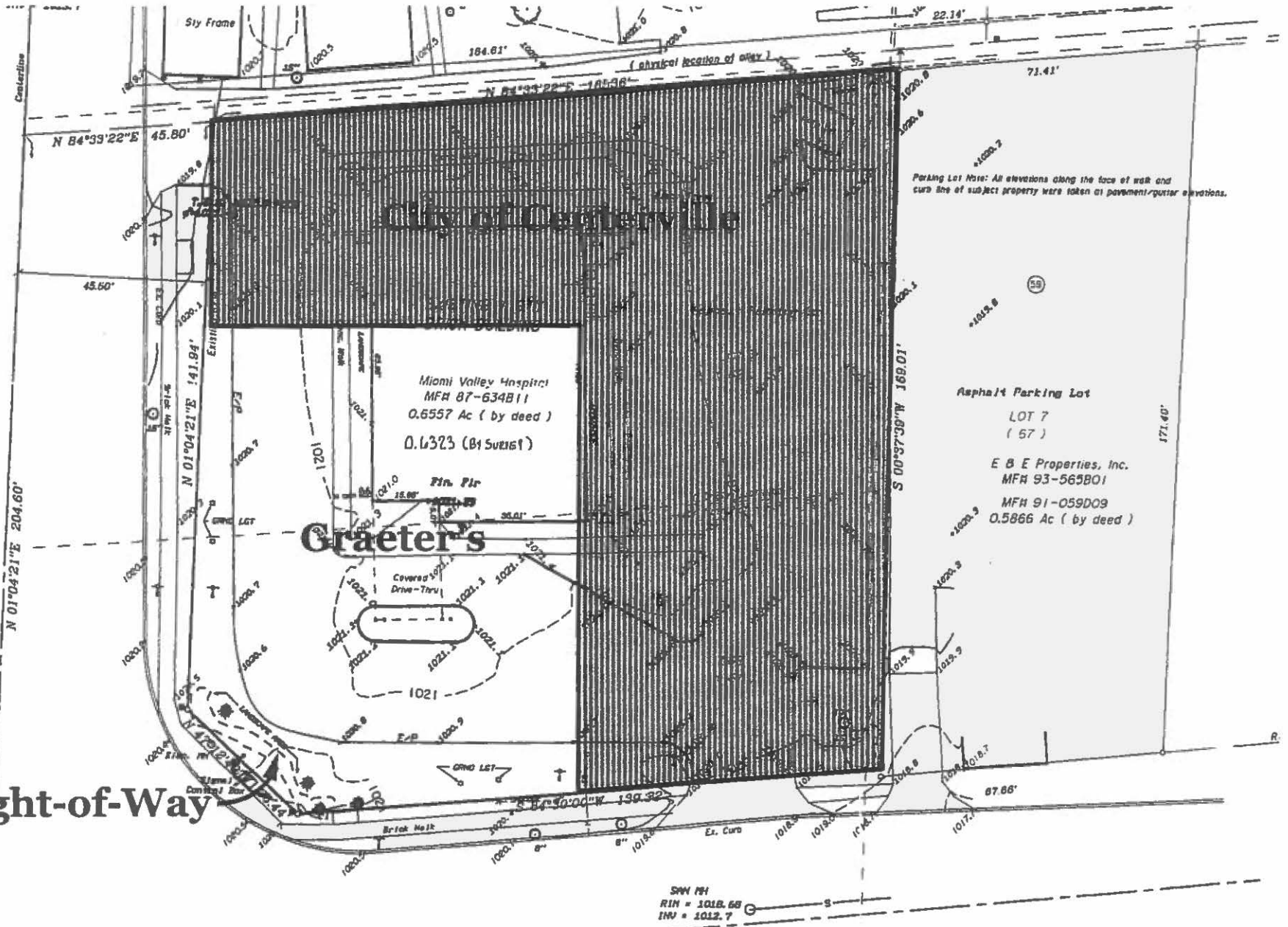
**EXHIBIT B**

**Parking Lot**

MAIN STREET ( S.R. 48 )  
( R/W Varies )

Right-of-Way

EAST FRANKLIN STREET ( 66' )



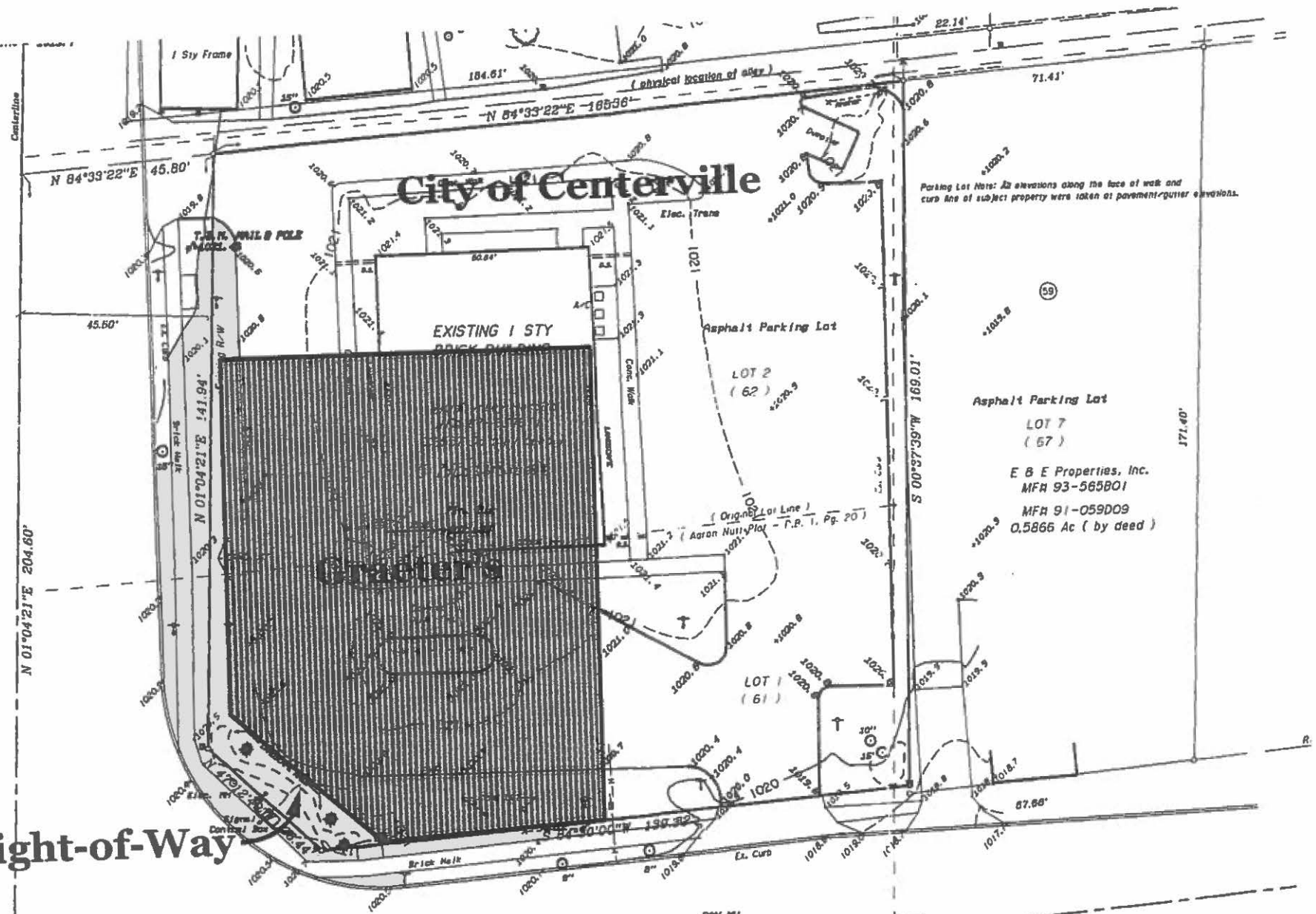
**EXHIBIT C**

**Site Plan**

MAIN STREET ( S.R. 48 )  
( R/W Varies )

Right-of-Way

EAST FRANKLIN STREET ( 66' )



S.M. 1/4  
R/W = 1018.68  
I/W = 1012.7



## EXHIBIT G

### LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "**Agreement**") dated as of \_\_\_\_\_, 2003 is made by and between HAMMERHEAD-CENTERVILLE LLC, an Ohio limited liability company with a mailing address of 2555 Bethel Road, Columbus, Ohio 43220 ("**Licensee**"), and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation with a mailing address of 100 West Spring Valley Road, Dayton, Ohio 45458 ("**Licensor**").

#### WITNESSETH:

WHEREAS, Licensee is the owner of the fee simple title to real property located at the northeast corner of Main and Franklin Streets in Centerville, Ohio and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Graeter's Parcel**"); and

WHEREAS, Licensee intends to develop on the Graeter's Parcel certain building improvements ("**Graeter's Building**"), and, in order to satisfy Licensor's requirements and at Licensor's request, Licensee intends to construct the facade of the Graeter's Building immediately next to the property line of the Graeter's Parcel along the right-of-way adjacent to and/or part of Franklin Street and Main Street (collectively, "**Right of Way**"); and

WHEREAS, because of the location of the Graeter's Building, certain accoutrements of the Graeter's Building will necessarily encroach into the sidewalk portion of the Right-of-Way; and

WHEREAS, Licensor and Licensee deem it mutually beneficial to create certain licenses and define certain rights of Licensor and Licensee, their respective tenants and all of their respective employees, agents, mortgagees, invitees, guests, licensees, successors and assigns with respect to the Graeter's Parcel, the Graeter's Building and the Right-of-Way;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Licensor does hereby create, grant and convey to Licensee the following licenses and, by the grant and acceptance of the same, do hereby make the following agreements on, and subject said licenses to, the following terms, conditions, covenants, reservations, restrictions and provisions:

#### ARTICLE I

##### ACCESS LICENSE

Section 1.1. Grant of Access License. Licensor hereby grants, bargains, and conveys to, and for the benefit of, Licensee, its successors, assigns, agents, employees, visitors, licensees, lessees, mortgagees, and invitees, a nonexclusive revocable (subject to the terms of Section 1.3)

license for pedestrian ingress and egress to and from the Graeter's Building (the "Access License"), over and across the sidewalk portion of the Right-of-Way.

Section 1.2 Licensee to Licensor. Licensee agrees not to create, or permit its respective employees, agents, mortgagees, invitees, guests or licensees to create any unsafe condition in or upon the Right-of-Way.

Section 1.3 Modification or Termination. Licensor may not modify or terminate the Access License without just cause, which may include but not limited to, health and safety reasons. If Licensor desires to modify or terminate the Access License for just cause, Licensor must give Licensee thirty (30) day advance written notice, delivered to the above stated mailing address, with the justification that Licensor reasonably believes warrants modification or termination of the Access License. Licensor must rescind the modification or termination if Licensee cures, prior to the end of the thirty (30) day period, the condition justifying modification or termination of the Access License. Licensee may request an extension of time from Licensor on the modification or termination of the Access License if Licensee has made a good faith effort to cure said condition and requires additional time to cure. Licensor shall not unreasonably withhold such extension. In the event that the Access License is ultimately modified or terminated for just cause, Licensor shall cooperate with Licensee to provide Licensee with adequate alternative access to the extent reasonably practicable.

## ARTICLE II

### BENCH LICENSE

Section 2.1 Grant of Bench License. Licensor hereby grants, bargains, and conveys to, and for the benefit of, Licensee, its successors, assigns, agents, employees, visitors, licensees, lessees, mortgagees, and invitees, a nonexclusive revocable (subject to the terms of Section 2.3) license for benches (the "Bench License") to be located on the sidewalk portion of the Right-of-Way.

Section 2.2 Licensee to Licensor. Licensee agrees not to create, or permit its respective employees, agents, mortgagees, invitees, guests or licensees to create any unsafe condition in or upon the Right-of-Way. Licensee agrees to give Licensor the right to approve the type of bench that may be used, so long as Licensor's approval is not unreasonably withheld.

Section 2.3 Modification or Termination. Licensor may not modify or terminate the Bench License without just cause, which may include but not limited to, health and safety reasons. If Licensor desires to modify or terminate the Bench License for just cause, Licensor must give Licensee thirty (30) day advance written notice, delivered to the above stated mailing address, with the justification that Licensor reasonably believes warrants modification or termination of the Bench License. Licensor must rescind the modification or termination if Licensee cures, prior to the end of the thirty (30) day period, the condition justifying modification or termination of the Bench License. Licensee may request an extension of time from Licensor on the modification or termination of the Bench License if Licensee has made a good faith effort to cure said condition and requires additional time to cure. Licensor shall not unreasonably withhold

such extension. In the event that the Bench License is ultimately modified or terminated for just cause, Licensor shall cooperate with Licensee to provide Licensee with adequate alternative bench locations to the extent reasonably practicable.

### ARTICLE III

#### DOOR LICENSE

Section 3.1 Grant of Door License. Licensor hereby grants, bargains, and conveys to, and for the benefit of, Licensee, its successors, assigns, agents, employees, visitors, licensees, lessees, mortgagees, and invitees, a nonexclusive revocable (subject to the terms of Section 3.3) license for its doors (the "**Door License**") to open over and across the sidewalk portion of the Right-of-Way.

Section 3.2 Licensee to Licensor. Licensee agrees not to create, or permit its respective employees, agents, mortgagees, invitees, guests or licensees to create any unsafe condition in or upon the Right-of-Way.

Section 3.3 Modification or Termination. Licensor may not modify or terminate the Door License without just cause, which may include but not limited to, health and safety reasons. If Licensor desires to modify or terminate the Door License for just cause, Licensor must give Licensee thirty (30) day advance written notice, delivered to the above stated mailing address, with the justification that Licensor reasonably believes warrants modification or termination of the Door License. Licensor must rescind the modification or termination if Licensee cures, prior to the end of the thirty (30) day period, the condition justifying modification or termination of the Door License. Licensee may request an extension of time from Licensor on the modification or termination of the Door License if Licensee has made a good faith effort to cure said condition and requires additional time to cure. Licensor shall not unreasonably withhold such extension. In the event that the Door License is ultimately modified or terminated for just cause, Licensor shall cooperate with Licensee to provide Licensee with adequate alternative door locations and access to the extent reasonably practicable.

### ARTICLE IV

#### SIGN AND FIXTURE LICENSE

Section 4.1. Grant of Sign and Fixture License. Licensor hereby grants, bargains, and conveys to, and for the benefit of, Licensee, its successors, assigns, agents, employees, visitors, licensees, lessees, mortgagees, and invitees, a nonexclusive revocable (subject to the terms of Section 4.3) license for a sign and certain eaves and other fixtures attached to the Graeter's Building (the "**Sign and Fixture License**"), extending above, over and across the Right-of-Way.

Section 4.2 Licensee to Licensor. Licensee agrees not to create, or permit its respective employees, agents, mortgagees, invitees, guests or licensees to create any unsafe condition in or upon the Right-of-Way.

Section 4.3 Modification or Termination. Licensor may not modify or terminate the Sign and Fixture License without just cause, which may include but not limited to, health and safety reasons. If Licensor desires to modify or terminate the Sign and Fixture License for just cause, Licensor must give Licensee thirty (30) day advance written notice, delivered to the above stated mailing address, with the justification that Licensor reasonably believes warrants modification or termination of the Sign and Fixture License. Licensor must rescind the modification or termination if Licensee cures, prior to the end of the thirty (30) day period, the condition justifying modification or termination of the Sign and Fixture License. Licensee may request an extension of time from Licensor on the modification or termination of the Sign and Fixture License if Licensee has made a good faith effort to cure said condition and requires additional time to cure. Licensor shall not unreasonably withhold such extension. In the event that the Sign and Fixture License is ultimately modified or terminated for just cause, Licensor shall cooperate with Licensee to provide Licensee with reasonably comparable replacement signage and/or other fixtures to the extent reasonably practicable.

## ARTICLE V

### MISCELLANEOUS

Section 5.1 Injunctive Relief. In the event of any breach, violation, or threatened breach or violation of any license or rights granted or created under this Agreement, the Licensee shall, in addition to any and all other remedies available to it, be entitled to enforce the provisions of this Agreement by injunctive relief or otherwise.

Section 5.2 Governing Law. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

Section 5.3 Severability. If any provision of this Agreement is determined to be void and unenforceable by any court, that determination shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.

Section 5.4 Counterparts. This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[Remainder of the Page Left Intentionally Blank]

IN WITNESS WHEREOF, Seller and Purchaser have each caused this Agreement to be made effective on the date first written above.

Signed and Acknowledged  
in the presence of:

HAMMERHEAD-CENTERVILLE LLC,  
an Ohio limited liability company

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: Hammerhead Investments LLC,  
an Ohio limited liability company  
and its sole member

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

CITY OF CENTERVILLE, OHIO

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

STATE OF OHIO            )  
  )  
COUNTY OF FRANKLIN    )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ of Hammerhead Investments LLC, an Ohio limited liability company and sole member of Hammerhead-Centerville LLC, an Ohio limited liability company, on behalf of the limited liability companies.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF OHIO                    )  
  )  
COUNTY OF MONTGOMERY        )

The foregoing instrument was acknowledged before me this \_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_, the \_\_\_\_\_ of City of Centerville, Ohio, an Ohio municipal corporation, on behalf of the municipal corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

This instrument was prepared by: Charles H. McCreary, Esq., Bricker & Eckler LLP,  
100 South Third Street, Columbus, Ohio 43215

**EXHIBIT A**  
**GRAETER'S PARCEL**