

RESOLUTION NO. 57-03
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul M. Shesham ON THE 17th DAY OF November, 2003.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A LEASE AGREEMENT WITH THE BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY.

WHEREAS, the City and the Board of County Commissioners of Montgomery County have successfully negotiated a lease agreement whereby the Board of County Commissioners of Montgomery County will lease the building commonly known as 108 West Spring Valley Road, Centerville, Ohio for automobile title and registration services; and

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

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is authorized and directed to enter into a lease agreement with the Board of County Commissioners of Montgomery County to lease the building commonly known as 108 West Spring Valley Road, Centerville, Ohio for automobile title and registration services, copy of which is attached hereto as Exhibit "A" and incorporated herein.

PASSED THIS 17th day of November, 2003.

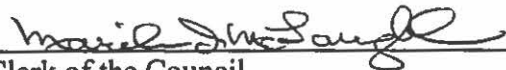
Sally D. Beak
Mayor of the City of
Centerville, Ohio

ATTEST:

Maile McLaughlin
Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 57-03, passed by the Council of the City of Centerville, Ohio on the 17th day of November, 2003.


Clerk of the Council

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

LEASE AGREEMENT

THIS LEASE made on the ___ day of _____, 2003, by and between the City of Centerville, Ohio, hereinafter referred to as "Lessor" and the Board of County Commissioners of Montgomery County, Ohio, 451 West Third Street, Dayton, Ohio 45422, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, the Lessor is the owner of the premises located at 108 West Spring Valley Road, Centerville, Ohio, 45458; and

WHEREAS, the Lessee and Lessor have the authority to enter into this agreement pursuant to the provisions in Section 307.15 of the O.R.C.; and

WHEREAS, the leased space will be occupied by the Montgomery County Clerk of Courts, Auto Title Division; and

WHEREAS, it is the desire of the parties hereto to enter into this Lease Agreement upon the terms and conditions hereinafter contained.

NOW THEREFORE, for and in consideration of the mutual covenants and promises set forth herein, the parties hereby agree as follows:

Lessor, in consideration of the rents and covenants hereinafter set forth, does hereby demise, let and Lease to the Lessee and the Lessee does hereby take and Lease from the Lessor, on the terms and conditions hereinafter set forth, the following described real property referred to herein as the "Premises", to have and to hold the same, with all appurtenances, unto the Lessee for the term hereinafter specified for use by the Montgomery County Clerk of Courts, Auto Title Division.

1. PREMISES

The Lessor does hereby rent and lease unto the Lessee the following described premises: Approximately 1,559.7 square feet of modern office space located at 108 West Spring Valley Road, Centerville, Ohio, 45458.

2. TERM

The initial term of this lease shall be for a period of five years commencing on December 1, 2003 and ending November 30, 2008 with an option to renew two additional three-year terms and subject to any other adjustment specifically mentioned herein, unless this lease shall be sooner terminated as hereinafter provided.

3. RENT

The Lessee agrees to pay the Lessor rent for the leased premises during the initial five-year term (December 1, 2003 and ending November 30, 2008) a rate of \$0.65 per square foot, for a total rate for the five-year term of \$5,069.00. The annual rate of \$1,013.80, will be due and payable during the month of March each year in one (1) lump sum. The original lease price of \$8.70 per square foot, increasing 3% each year, has been discounted to \$0.65 per square foot for the initial five-year term in recognition of the service the Auto Title Office will provide to the Centerville area residents.

Rent for each renewal term, if exercised, will be negotiated at time of renewal.

4. OPTION TO RENEW

Lessor hereby grants Lessee the option to "automatically" renew this lease for 1,559.7 square feet of modern office space for two (2) consecutive three-year terms as stated herein, with all terms and conditions of this lease remaining in full force and effect, with the exception of rent which is to be negotiated as outlined above. The Lessee, in writing, may exercise said option by notifying the Lessor (30) days prior to the expiration of the lease.

5. USE AND CARE OF PREMISES

- A. Lessee, at its expense, shall comply with all laws, ordinances, regulations and orders of all governmental authorities having jurisdiction over the leased premises relating to the Lessee's use and occupancy of the leased premises.
- B. Lessee shall use the premises and conduct its business (Clerk of Courts, Montgomery County) therein in a safe, careful, reputable and lawful manner, 5 days a week, and shall keep and maintain the premises in as good a condition as was when Lessee first took possession thereof and shall make all necessary repairs to the premises other than those which the Lessor is obligated to make as provided elsewhere herein, so as to return the leased premises to the Lessor in as good a condition as was when first leased by the Lessee.

- C. Lessee shall not commit nor allow to be committed in or about the premises or in the building, any act of waste, including any act which might deface, damage or destroy the building or any part thereof situate on the leased premises; use or permit to be used on the premises any hazardous substance, equipment or other thing which might cause injury to person or property or increase the danger of fire or other casualty in, on or about the premises, permit any objectionable or offensive noise or odors to be emitted from the premises; nor will the Lessee allow the premises to be used for any purpose or in any manner which would, in the Lessor's opinion, invalidate any policy of insurance now or hereafter carried on the building, or increase the rate of premiums payable on any such insurance policy. Should the Lessee fail to comply with these covenants, the Lessor may, at its option, require the Lessee to stop engaging in such activity or to reimburse Lessor as additional rent any increase in premiums charged during the term of this lease on the insurance carried by Lessor on the premises and attributable to the use being made of the premises by the Lessee.

6. SERVICES FURNISHED BY LESSOR

Lessor will furnish the following services: pest control; snow removal/salting; provide and maintain landscape service for all unpaved exterior areas (including window boxes); trash removal; air conditioning and heating for the entire building; toilet facilities; water, hot and cold, at those points of supply provided for general use of the Lessee; electricity and electric lighting service for all areas of the building interior and exterior including 110-volt lines for computer equipment; and repair and maintenance of the building to the extent specified in the paragraph herein titled "REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS." Lessor shall provide telephone service lines to a central location in the rear of the building with installation and monthly service charges from this location being the responsibility of Lessee. Lessor shall also be responsible for any related operating expense of the demised premises.

In the event that the Lessor shall fail to supply the Lessee with the aforementioned items, Lessor shall be in default hereunder and Lessee shall have the right to terminate this lease upon thirty (30) days advance written notice to the Lessor. Lessee agrees, however, to grant the Lessor fourteen (14) calendar days within which to cure the event or condition which the Lessee deems to be causing the default, if such is susceptible of being cured. Such fourteen (14)-day period shall begin upon the mailing of notice by Lessee to Lessor, by ordinary mail to the address for Lessor established pursuant to Paragraph 17, herein.

7. UTILITIES & SERVICES

Lessee is responsible for payment of gas, electric, water and sewer consumed by Lessee on the premises and as invoiced. Lessee is also responsible for the installation and monthly fees relevant to desired communication/telephone service and security service.

8. REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS

The Lessor shall keep and maintain in good order, condition and repair the roof, exterior and interior structural walls, foundation, basement, windows and doors, the electrical, plumbing, heating, ventilation and air-conditioning system serving the premises and all mechanical, electronics, and other parts of the building. Replacement of ceiling tile, all lighting starters and ballasts used in the premises is also the responsibility of the Lessor

The Lessee shall pay to the Lessor the Lessor's cost of repairing any damage to the building or building equipment caused by the negligence of the Lessee, its agents, employees, or clients to the extent Lessor is not reimbursed for such costs through insurance carried by the Lessor. Otherwise, the cost of all repairs required to be made by Lessor shall be borne by the Lessor.

Lessee may make or permit to be made alterations or improvements to the premises, but only if the Lessee obtains the prior written consent of the Lessor thereto. If the Lessor permits the Lessee to make any such alterations or improvements, the Lessee shall make the same in accordance with all applicable laws and building codes, in a good and workmanlike manner and in quality equal to or better than the original construction of the building. The Lessee shall promptly pay all costs attributable to such alterations and improvements and shall indemnify the Lessor against any liens or claims filed or asserted as a result thereof and against any costs or expenses which may be incurred as a result of building code violations attributable to such work. Lessee shall promptly repair any damage to the premise or the building caused by any such alterations or improvements. All maintenance considered "normal wear and tear" is the responsibility of the Lessor.

Any trade fixtures installed on the premises by Lessee at its own expense, including, but not limited to, movable partitions, shelving, mirrors, and the like, may be removed on the expiration date or earlier termination date of this lease, such removal being at the sole cost of Lessee.

9. DAMAGE BY FIRE OR OTHER CASUALTY

Should the leased premises be substantially destroyed or damaged by fire or other casualty, either party hereto may, at its option, terminate this lease by giving written notice thereof to the other party within thirty (30) days of such casualty, casualty being described as

damage to at least fifty percent (50%) of the building. In such event, the rent shall be apportioned to and shall cease as of the date of such casualty. In the event neither party exercises this option, then the premises shall be reconstructed and restored at the Lessor's expense to substantially the same condition as was prior to the casualty. During the period of reconstruction and restoration of the building by the Lessor, the Lessee shall not be responsible for the payment of rent.

10. LIABILITY

Each party hereby assumes responsibility for the acts and conduct of the parties' respective employees and agents in the performance of the services, duties and responsibilities set forth herein. Notwithstanding, neither party hereby waives any available immunities under the law. Lessee shall carry and maintain public liability insurance on the Premises throughout the Initial Term and any renewal terms thereafter, covering both Lessee as named insured and Lessor as additional insured for limits of not less than One Million and 00/100 (\$1,000,000.00) Dollars for personal injury or death arising out of any one occurrence and not less than One Million and 00/100 (\$1,000,000.00) Dollars damage to property arising out of any occurrence.

The parties hereto understand that Lessee is self-insured, and that Lessee's promises made to the Lessor herein, shall be satisfied from funds set aside by the Lessee in its self-insurance program.

11. TAXES

Lessor agrees to be responsible for the payment of any and all real estate taxes coming due upon the leased premises after the commencement date of this lease.

12. SUBLETTING OR ASSIGNMENT

Lessee shall not assign this Lease or sublet the whole or any part of the leased premises or permit any other persons, including concessionaires or licensees, to occupy the same without the prior written consent of Lessor.

13. TERMINATION

This Lease may be terminated after the first year of the five-year term by either party and upon the mutual written agreement of the parties hereto by giving one-hundred eighty (180) days written notice prior to the effective date of termination.

14. HOLDING OVER

Any holding over after the expiration of the termination of this Lease shall be construed as a month-to-month tenancy at the same rental rate as the rent preceding the month in which the expiration or termination occurred, and otherwise in accordance with the terms hereof, as applicable. Lessee shall also indemnify Lessor against all claims for damages against Lessor as a result of Lessee's possession of the Premises, including, without limitation, claims for damages by any Lessee to whom Lessor may have leased the Premises, or any portion thereof, for a term commencing after the expiration or termination of this Lease.

15. QUIET ENJOYMENT

Lessee, while paying the rents and keeping and performing the covenants of this lease on its part to be kept and performed, shall peaceably and quietly occupy the leased premises during said term and any extensions thereof without any hindrance or molestation by any person whomsoever.

16. ACCESS TO PREMISES

The Lessor shall retain duplicate keys to all of the doors of the leased premises and Lessor, its employees and agents shall have the right to enter any part of the leased premises at all reasonable times for the purpose of examining or inspecting the same, and for making repairs, alterations or improvements to the premises as the Lessor may deem necessary or desirable.

17. NOTICE AND PLACE OF PAYMENT

Notices required herein will be considered as given forty-eight (48) hours after being sent by certified or registered mail, postage prepaid, to the Property Manager, Lessor and Lessee at the address as listed below: or at such other address as may be designated by the Lessor or Lessee in writing. Rental payments shall be payable at the same address unless otherwise so designated in writing delivered to the Lessee by Lessor.

Lessor's Address:

City of Centerville
100 West Spring Valley Road
Centerville, OH 45458

Lessee:

Board of County Commissioners of Montgomery County, Ohio
Montgomery County Administration Building
451 West Third Street
Dayton, OH 45422-1326

18. POSSESSION

If Lessor is unable to give possession of the leased premises on the date set forth in the paragraph hereof titled "TERM" for any reason, the rent due from the Lessee to Lessor shall be pro-rated as to the date that possession is made available to the Lessee. If the Lessee's occupancy is delayed more than thirty (30) calendar days after the date mentioned in the paragraph hereof titled "TERM," the Lessee may elect to terminate this lease.

19. ATTORNNMENT

In the event the leased premises are sold due to any foreclosure sale, or sales, by virtue of judicial proceedings, or otherwise, this lease shall continue in full force and effect, and the Lessee agrees, upon request, to attorn to and acknowledge the foreclosure purchaser, or purchasers, at such sale of Lessor hereunder.

20. CONDEMNATION

In the event the whole or any part of the leased premises shall be condemned or taken in any manner for a public use, the Lessor, at its option, may terminate this lease, and the Lessor shall be entitled to any and all income and rent awards and any interest thereon or therein, whatsoever, which may be paid or made in connection with such public use, Lessee having no claim against the Lessor for any award or damage other than an abatement of the rent due from Lessee to Lessor after the official taking of the property through the process of condemnation. "Taking" is considered a term of art for purposes of this paragraph.

21. SEVERABILITY

If any term or provision herein or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

22. LESSEE'S DEFAULT

The Lessee shall be considered in default of this lease upon failure to perform any term, covenant, or condition of this lease.

23. NON-WAIVER

- A. Any rights, responsibilities, remedies, duties or obligations created by this lease shall be in addition to all other rights, responsibilities, remedies, duties and obligations provided for in this lease or by law and shall in no way act as a waiver or limitation of any rights, responsibilities, remedies, duties or obligations otherwise imposed or available either by law or by contract.
- B. No action or failure to act shall constitute a waiver of any right, responsibility, remedy, duty or obligation afforded under this lease or by law, nor shall any act or failure to act constitute approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

24. GOVERNING LAW

This Lease and any modifications, amendments, or other alterations shall be governed, construed and enforced under the laws of the State of Ohio.

25. HEADINGS

The use of numbered topical headings, articles, paragraphs, subparagraphs or titles in this lease are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of this Lease.

26. ENTIRE AGREEMENT

No terms, conditions, warranties, promises or understandings of any nature whatever, expressed or implied, exist between the parties hereto, except as set forth in this Lease and any exhibit attached hereto.

27. APPROVAL

This Lease is subject to the written approval of the Lessee by Resolution and to Certification by the Auditor of Montgomery County, Ohio and shall not be binding until such approval and certification.

28. AUTHORITY TO BIND PRINCIPAL

Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

IN WITNESS WHEREOF the Lessor and Lessee have hereunto set their hands in duplicate on the day and year first above written.

LEASE AGREEMENT - CITY OF CENTERVILLE (AUTO TITLE)

WITNESSES

THE BOARD OF COUNTY COMMISSIONERS
OF MONTGOMERY COUNTY, OHIO

By _____

By _____

By _____

WITNESS

OR

By _____

Deborah A. Feldman
Montgomery County Administrator

WITNESS

CITY OF CENTERVILLE, OHIO

By _____

Printed Name _____

Title: _____

APPROVED AS TO FORM:
MATHIAS H. HECK, JR., PROSECUTING ATTORNEY
MONTGOMERY COUNTY, OHIO

Walter F. Ruf, Assistant Prosecuting Attorney

DATE: _____

LEASE AGREEMENT -CITY OF CENTERVILLE, OHIO (AUTO TITLE)

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Before me a Notary Public, in and for said County and State, personally appeared the above named Board of County Commissioners of Montgomery County, Ohio, Charles J. Curran, Don L. Lucas and Vicki D. Pegg who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of each of them personally and as such officers.

In Testimony Whereof, I have hereunto set my hand this _____ day of _____, 2003.

Notary Public

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Before me, a Notary Public, in and for said County and State personally appeared Deborah A. Feldman, on behalf of the Board of County Commissioners of Montgomery County, Ohio, who acknowledged that she did sign the foregoing instrument and that the same was her free act and deed.

In Testimony Whereof, I have hereunto set my hand this _____ day of _____, 2003.

Notary Public

STATE OF OHIO, COUNTY MONTGOMERY, SS:

Before me, a Notary Public, in and for said County and State, personally appeared _____ who acknowledged that he/she did sign this instrument and that the same was his free act and deed and as such representative of the City of Centerville, Ohio.

In Testimony Whereof, I have hereunto set my hand this _____ day of _____, 2003

Notary Public