

RESOLUTION NO. 47-03  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Janus E. Singer ON THE  
15<sup>th</sup> DAY OF September, 2003.

A RESOLUTION RATIFYING THE ACTION TAKEN BY  
THE CITY MANAGER, ON BEHALF OF THE CITY OF  
CENTERVILLE, TO ENTER INTO A PARKING LOT  
LEASE AGREEMENT WITH CROSS POINT CHURCH

WHEREAS, It is the intent of the City of Centerville to create additional  
public parking for businesses located in the Architectural Preservation District, and

WHEREAS, A long term lease agreement has been executed between the  
City of Centerville and Cross Point Church for the improvement and leasing of their  
parking lot which is located directly north of the site occupied by Graeter's Ice Cream  
and City Barbecue.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY  
RESOLVES:

Section 1. That the action taken by the City Manager to execute an  
agreement between the City of Centerville and Cross Point Church for a long term lease  
for the use of their parking lot, be and is hereby ratified, a copy of which is attached  
hereto and incorporated herein, marked as Exhibit "A".

Section 2. That this Resolution shall become effective immediately upon  
passage.

PASSED this 15<sup>th</sup> day of September, 2003.

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

ATTEST:

Marie J. Sample  
Clerk of Council, City of Centerville, Ohio

**CERTIFICATE**

The undersigned, Clerk of the Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Resolution Number 47-03, passed by the Council of the City of Centerville, Ohio, on the 15<sup>th</sup> day of September, 2003.

Maui Huesang  
Clerk of Council

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

Department of Law  
Robert N. Farquhar  
Municipal Attorney

**LAND LEASE**

This Land Lease ("Lease") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2003 by and between the Cross Point Church, an Ohio corporation 38 N. Main Street, Centerville, Ohio 45459 hereinafter sometimes referred to as the Lessor and the City of Centerville, 100 West Spring Valley Road, Centerville, Ohio 45458, an Ohio municipal corporation, hereinafter sometimes referred to as Lessee.

**WITNESSETH:**

**PREMISES LEASED**

Lessor, in consideration of the rent hereby reserved and of the terms and conditions of this Lease to be observed and performed by the Lessee, hereby leases, grants and lets unto Lessee the real property described on Exhibit "A" attached hereto and made a part hereof, said property being hereinafter referred to as the "premises." The premises shall be subject to all easements, restrictions, legal highways, zoning restrictions, and to any state of facts that an accurate survey and/or a personal inspection would reveal. Further, Lessee agrees that there shall be no vehicular access to the southwest corner of the premises from the adjoining alley; however, Lessor agrees that Lessee may construct, at Lessee's sole cost and expense, an unobstructed, well landscaped, illuminated pedestrian access to the premises from the property adjoining the premises on the southwest corner. Excluded from the premises are up to ten (10) parking spots, to be designated by the Lessor. Lessor, at its expense, shall erect signs restricting parking for said spaces.

Lessor reserves the right for the use of the premises during church services and church sponsored events. Lessor shall give Lessee at least thirty (30) days written advance notice of its schedule of the dates and times of church services and church sponsored events. Lessee shall take all reasonable steps, including without limitation the use of barricades, signs and personnel, necessary to ensure that Lessor's right to the sole use of the premises during church services and church sponsored events is preserved. Provided, however, that Lessor agrees to indemnify and hold Lessee harmless for any damage or injury actually suffered by any person using the premises for any church service or any church sponsored event to the extent the same is caused by Lessor.

Lessee may, at its expense, place waste containers on the premises. The appearance and locations of such containers shall be approved in advance by Lessor, which consent shall not be unreasonably withheld.

### **TERM**

To have and to hold the premises together with all rights, easements, privileges and appurtenances thereunto belonging or appertaining unto the Lessee for and during the term of ten (10) years commencing on the September 1, 2003 and to be fully completed and ended at midnight on the August 31, 2013. Lessor reserves the right to terminate this Lease without cause on the fifth anniversary of the execution of this lease. In such event Lessor shall pay to Lessee the sum of FIVE THOUSAND DOLLARS (\$5,000.00) to reimburse it for unamortized portion of the cost of Lessee's improvements. Provided, however, if the proposed termination is because of the failure of the Lessee to perform under the terms of this Lease, Lessor shall give the Lessee a written notice specifying the alleged failure and Lessee shall thereafter have thirty (30) days to commence the correction of said alleged failure and shall diligently pursue said correction to

completion and this shall be the only notice requirement for Lessor. If the alleged failure is cured, there shall be no termination.

### **RENT**

Lessee shall pay or cause to be paid to the Lessor as fixed rent for the premises the sum of \$6,000.00 per year payable in advance with the first payment being due and payable on or before the commencement date hereof and payments in like amounts (subject to the balance of this paragraph) being due and payable on each annual anniversary date occurring during the Term. All payments of rent shall be delivered to Lessor on or before the due date at the address of Lessor set forth in the paragraph of this Lease entitled Notices, without necessity of notice or demand and with no set-offs, allowances or deductions.

Commencing the first anniversary of the commencement date of this Lease, and on each anniversary of such date, the rents shall be increased by three percent (3%) of the amount payable for the prior year.

### **REAL ESTATE TAXES, ASSESSMENTS**

The parties acknowledge that a portion of the premises are presently exempt from real estate taxation. If, for any reason, the premises becomes subject to real estate taxation Lessee shall reimburse Lessor for all real estate taxes payable by Lessor within thirty (30) days of Lessee's receipt of Lessor's invoice and shall be sent to Lessor at the address set forth in the Notices section of this Lease.

### **IMPROVEMENTS BY LESSEE**

As soon as is reasonably possible following the commencement date of this Lease, Lessee shall resurface the premises with not less than 1 ¾" of asphalt overlay. Lessee may make other improvements to the premises as may be permitted under applicable governmental

regulations including, but not limited to, striping, sealing and resurfacing the premises, all at the expense of Lessee. Lessor shall approve, in advance, plans for all improvements to be made or installed by Lessee. All improvements shall be made in a workmanlike manner and in accordance with all applicable law.

The parties agree that if the Lessor finds it necessary to excavate the premises in order to perform work on underground lines, the Lessor shall have the obligation to restore same to the condition they were in prior to such work, at Lessor's sole cost and expense.

### **LIABILITY INSURANCE**

Lessee will, at its expense, at all times during the Term carry and maintain in effect insurance for the benefit of Lessee and Lessor, as their respective interests may appear, covering claims for bodily injury and/or property damage arising out of the use or occupancy of the premises, including any improvements thereon, in amounts not less than \$3,000,000.00 for injury or death to any one person and \$1,000,000.00 for injury or death from any single occurrence and \$100,000.00 for property damage. All such insurance coverage shall be provided through one or more reputable insurance companies licensed to do business in the State of Ohio and approved in advance by the Lessor, and every insurance policy shall provide that it may not be amended, modified or cancelled without twenty (20) days' written notice to Lessor. Each such insurance policy, or a memorandum copy or a certificate thereof, shall be deposited with the Lessor at the time this Lease is signed by Lessor and Lessee. Lessee shall also deliver to Lessor each insurance policy, or a memorandum or certificate evidencing each renewal of the coverage that is in place on the commencement date of this lease.

### **OBSERVANCE OF LAWS, ORDINANCES AND PROHIBITIONS**

During the term of this Lease, Lessee shall observe promptly and at its own expense comply with and perform all laws, ordinances, rules and regulations now or hereafter made by any governmental authority having jurisdiction over the premises. Lessee may not use or permit the premises to be used for the storage of any vehicles owned or leased by Lessee or any third party, nor shall sales or solicitations by or on behalf of Lessee or any third party be conducted on the premises.

### **MAINTENANCE**

Lessee shall at all times during the Term keep the premises, including all improvements made thereon by the Lessee, in a first class state of order and repair and in a clean and sanitary condition. Lessee shall, at its sole cost and expense, remove snow from the premises. Lessor shall have no obligations with regard to the maintenance of the premises or of any improvements now or hereafter existing thereon; provided, however, any clean up of the premises occasioned by its use by Lessor for church services and church sponsored events shall be Lessor's sole responsibility.

### **NO WASTE, UNLAWFUL USE**

Lessee shall use and occupy the premises in a careful and proper manner and shall not make or suffer any waste or unlawful use of the premises or any use of the premises which is so improper or offensive as to constitute a nuisance to any person or entity.

### **NO SUBLEASE, ASSIGNMENT**

Lessee may not sublet all or any portion of the premises and may not assign all or any portion of this Lease without the prior written express consent of Lessor. In the event such consent is given it shall not be deemed to release Lessee from any obligations under this Lease.

This provision shall not in any way restrict Lessee's right to seek payment from Washington Township for use of the leased premises or to effect an arrangement with Graeter's Ice Cream or City Barbecue for use by their employees; provided, however, that if the agreement(s) with Graeter's Ice Cream and/or City Barbecue result in Lessee receiving rent proportionally greater than that being paid by Lessee hereunder, any overage shall be split evenly between Lessor and Lessee.

### **LIENS**

Lessee shall not cause or suffer the creation of any tax lien, judgment lien or any other type of lien whatsoever against the premises (other than liens for real estate taxes and assessments, if any). Should any such lien be filed, Lessee shall indemnify and hold Lessor harmless against the same and shall use all means to remove said liens as soon as possible including so called "bonding off" the lien.

### **SURRENDER OF LEASE**

At the expiration of this Lease or at any earlier termination which may be provided for herein, Lessee shall quietly and peaceably quit and surrender the premises (leaving all improvements which have been affixed thereto) in as good condition as they were on the commencement date hereof, or if constructed or installed during the Term, in as good condition as they were in immediately following the installation thereof, whichever is appropriate, reasonable wear and tear excepted. No tenancy of any duration shall be created by a holding over beyond the end of the Term.

### **QUIET ENJOYMENT**

Lessor covenants that it has the full right, power and authority to lease the estate in the premises and that, if Lessee pays the rent as herein provided and keeps and performs all of its



other obligations hereunder, the Lessee shall quietly have, hold and enjoy the estate leased for the Term set forth above without hindrance or molestation by the Lessor or by any other person or entity lawfully claiming by, through or under the Lessor. This covenant shall not be deemed to be a personal covenant by Lessor except as to the Lessor's interest in the premises, and if Lessor's interest in the property is terminated or transferred the Lessor shall be released from this covenant and it shall become effective upon Lessor's successor in interest.

**INSPECTION**

Lessor and its agents and representatives shall have the right to enter upon the premises at any reasonable times during the Term of this Lease for the purpose of examining the premises, observing and inspecting the operation, state of repair and condition of the same, and for all other purposes appropriate under the term of this Lease.

**NOTICES**

Notices, demands and communications of any sort under this Lease shall be deemed to have been served, given or made if mailed to the Lessor or Lessee by registered or certified mail, postage prepaid, at the respective addresses set forth below:

Lessor : Cross Point Church  
38 N. Main Street  
Centerville, Ohio 45459  
Attn: Elder of Facilities

Lessee: City of Centerville  
100 West Spring Valley Road  
Centerville, Ohio 45458  
Attn: \_\_\_\_\_

or to such other address as either party may give to the other party to this Lease through such written notice.

### **IMPROVEMENTS AS PROPERTY OF LESSOR**

At the expiration of this Lease or at any earlier termination as provided herein, all improvements which have been made to the premises by Lessee, shall be deemed to constitute the sole property of Lessor so as to terminate any ownership interest Lessee may have in such improvements.

### **TITLES FOR CONVENIENCE**

The titles of various paragraphs in this Lease have been inserted only for purposes of convenience and no title, caption or heading shall be considered to have substantive meaning in the interpretation or construction of any provisions of this Lease.

### **NO WAIVER**

Acceptance of rent by Lessor shall not be deemed to be a waiver of any breach by Lessee of any provision of this Lease. Lessor's waiver of any breach by Lessee or the failure of Lessor to enforce any right it may hold under this Lease shall not be deemed to constitute a waiver of any subsequent breach of the same or any other term or condition of this Lease or to constitute a waiver of Lessor's power to exercise such a right or to set a precedent that the failure of Lessee to perform a term or condition of this Lease (which failure constituted the breach waived by Lessor) will not constitute a breach of the requirements of this Lease Agreement.

### **COSTS OF PERFORMANCE**

Every obligation or requirement to be performed by either party under this Lease shall be paid or performed at the sole expense of that party unless expressly stated to the contrary in this Lease.

**MEMORANDUM OF LEASE**

The parties shall execute and acknowledge a written memorandum of this Lease at the time the original Lease is executed in order that said memorandum, rather than the original Lease itself, may be filed for record with the Recorder of Montgomery County, Ohio.

**LESSOR NOT RESPONSIBLE FOR DAMAGE, INJURY**

Lessor shall not be responsible for any latent or patent defect in the premises or for any change of condition in the premises or for any injury or damage to any person(s) or goods or things resulting from the premises; and Lessee hereby assumes all risk and responsibility with reference to such matters. The provisions of this paragraph do not in any way affect or modify Lessor's obligation to indemnify Lessee set forth in the paragraph hereof entitled "Leased Premises".

**AMENDMENT, MODIFICATION**

None of the obligations, terms or conditions of this Lease shall be altered, modified or cancelled except by a written amendment to this Lease or by a new lease signed and acknowledged by both Lessee and Lessor.

**COPIES AS ORIGINALS**

The parties have executed this Lease in duplicate, any one of which shall be deemed to be an original.

**BREACH OF LEASE**

If Lessee fails to pay where and when due any installment of the rent or any other amount provided for herein, or if there is a failure by Lessee to perform any other requirement contained

in a term or condition of this Lease, such failure shall constitute a breach of this Lease and shall give rise to the remedies described in the following paragraphs.

**REMEDIES FOR BREACH**

The following remedies shall be cumulative at the option of Lessor, and the mention herein of any particular remedy or right shall not preclude Lessor from any other remedy or right available at law or in equity.

1. Lessor may file suit against Lessee to enforce this Lease and thereby to collect any and all sums of money due from Lessee, leaving the Lessee in possession and without ending the Term, or otherwise terminating this Lease.
2. Lessor may re-enter the premises and repossess the same so as to dispossess and remove the Lessee and its property from the premises either by force or otherwise, without necessity of notice or of legal process but with reasonable care to be exercised in the removal, transportation and storage of any property of Lessee. (In the alternative, this re-entry and repossession may be effected through an action in forcible entry and detainer and under the Ohio statutes and on the basis of the notice required by those statutes.) Any such re-entry and repossession of the premises under this paragraph (2) shall have the effect of terminating Lessee's right to occupy the premises and thus terminating the Lease between Lessor and Lessee but shall not terminate Lessee's liability for arrears of rent or other amounts due hereunder, or other claims of Lessee.

If this Lease or a memorandum thereof has been filed for record in the office of the Recorder of Montgomery County, Ohio, the termination of this Lease

may be documented by filing for record with such Recorder an affidavit by Lessor attesting to the re-entry and termination of the Lease by Lessor (in the event such reentry was effected under the terms of this Lease and without a legal action in forcible entry and detainer) or by the filing for record of a judgment by a court having jurisdiction of a legal action in forcible entry and detainer, which judgment granted possession of the premises to Lessor. By the execution of this Lease, the Lessee shall be deemed to have appointed Lessor as the attorney-in-fact of Lessee to record either of such documents so as to terminate this Lease of record, and this power of attorney held by Lessor shall be deemed to be coupled with an interest.

3. The parties agree that this Lease and the performance thereof constitutes a unique understanding and that a breach by Lessee will cause irreparable damage to Lessor, the extent of which is impossible to ascertain accurately; and the parties further agree that legal remedies are therefor inadequate.

Accordingly, Lessor shall be entitled, in the event of any breach of this Lease by Lessee to preliminary and permanent equitable orders to prevent any threatened, imminent or pending failure of Lessee to make timely payment of any amount due hereunder or failure to perform any other term or condition of this Lease, and may also obtain preliminary and permanent equitable orders compelling specific performance of any obligation, term or condition of this Lease. Further, Lessor shall be entitled to obtain, and Lessee will not oppose the issuance of, temporary ex-parte restraining orders, without bond, to continue in effect only until a hearing

on a preliminary injunction can be held, at which hearing the issue shall be whether or not a breach has occurred or is threatened, imminent or pending.

**NO ACCORD AND SATISFACTION**

No payment by Lessee or receipt by Lessor of a lesser amount than the monthly rent herein stipulated or other amount due hereunder shall be deemed to be other than on account of the earliest payment due, nor shall any endorsement or statement on any check (or on any letter accompanying any check or payment of rent) be deemed an accord and satisfaction; and Lessor may accept such check or payment without prejudice to Lessor's right to recover the balance of such rent or other amount or to pursue any other remedy provided in this Lease.

**GOVERNING LAW**

This Lease shall be governed by, construed under, and enforced in accordance with the laws of the State of Ohio.

**NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

The parties hereto state that they have not created and do not intend to create by this Lease any agency, joint venture, or partnership between them, it being understood that the provisions of this Lease with regard to payments by the Lessee and acceptance thereof by Lessor are as rent and consideration for the execution of this Lease.

**SEVERABILITY**

If any provision of this Lease shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of the Lease shall continue in full force and effect at the option of Lessor.

**COVENANTS RUNNING WITH THE LAND**

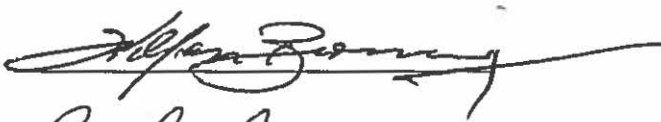
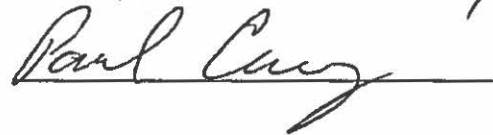
The undertakings, terms and conditions of this Lease shall be deemed to touch and concern the premises and shall be construed to be covenants running with the land.

**SUCCESSORS AND ASSIGNS**

The undertakings, terms and conditions in this Lease shall be binding upon and shall inure to the benefit of the successors of the respective parties and the assigns of Lessor. Whenever reference is made in this Lease to either of the parties, it shall be held to include and apply also to such successors and assigns.

IN WITNESS WHEREOF, the Lessor and Lessee have executed this Lease on the day and year first above written.

Signed and acknowledged in  
the presence of:


LESSOR:

CROSS POINT CHURCH

BY   
Larry Strong, Trustee

LESSEE:

CITY OF CENTERVILLE

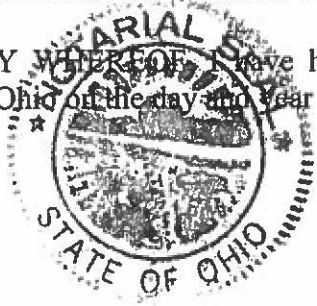
  
\_\_\_\_\_

By \_\_\_\_\_  
Its City Manager

**STATE OF OHIO  
COUNTY OF MONTGOMERY, SS:**

BE IT REMEMBERED that on this 27 day of Aug, 2003, before me a notary public in and for said state, personally came Cross Point Church by Larry Strong its Trustee who acknowledged that they did sign the foregoing Lease on behalf of said Cross Point Church and through authority granted by its Board of Elders and that the same is the voluntary act and deed of said Cross Point Church and of them personally and as such officers.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Dayton, Ohio on the day and year last aforesaid.



Sue Shurell 9-7-03  
Notary Public

**STATE OF OHIO  
COUNTY OF MONTGOMERY, SS:**

BE IT REMEMBERED that on this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me a notary public in and for said state, personally came the City of Centerville, by Gregory B. Horn, its City Manager, who acknowledged that he did sign the foregoing Lease on behalf of said municipal corporation and by authority of its City Charter and City Council and that the same is the free act and deed of said City and of him personally and as such City Manger.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Dayton, Ohio on the day and year last aforesaid.

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

This Instrument Prepared By:

Robert N. Farquhar  
Attorney at Law  
1700 One Dayton Centre  
1 South Main Street  
Dayton, Ohio 45402  
(937) 223-1201



Exhibit A

