

RESOLUTION NO. 61-21
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serr ON
THE 14th DAY OF June, 2021.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A RIGHT-OF-WAY LICENSE AGREEMENT WITH 199 N MAIN STREET LLC AND NEACE ENTERPRISES LLC FOR A NON-EXCLUSIVE LICENSE TO USE A PORTION OF THE PUBLIC RIGHT-OF-WAY LOCATED ALONG MAIN STREET FOR THE PURPOSE OF INGRESS, EGRESS, PARKING, LIGHTING, LANDSCAPING, AND ERECTING A GROUND IDENTIFICATION SIGN.

WHEREAS, 199 N Main Street LLC (“Property Owner”) owns property located at 199 N. Main St. in the City of Centerville (the “Property”); and

WHEREAS, Neace Enterprises LLC (“Business Owner”) will be operating a frozen yogurt business at the Property;

WHEREAS, the Property Owner and Business Owner desire to obtain a non-exclusive license, as described herein, to allow ingress, egress, parking, lighting, landscaping and to erect a ground identification sign and all related activities on the Premises (described below) upon the terms and conditions set forth therein; and

WHEREAS, the City agrees to provide a non-exclusive license to use a portion of the public right-of-way located along Main Street, in the City of Centerville, Ohio, for the purposes of ingress, egress, parking, lighting, landscaping and to erect a ground identification sign; and

WHEREAS, Section 1020.03 of the Centerville Municipal Code allows the City Manager to prepare and enforce rules and regulations for access to the public right-of-way.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. The City of Centerville hereby agrees to grant a non-exclusive license to the Property Owner and Business Owner as set forth in the Right of Way License Agreement (“Agreement”), over the right-of-way located along Main Street, in the City of Centerville, Ohio, for the purposes of ingress, egress, parking, lighting, landscaping and erecting a ground identification sign,

said land being more particularly described in Exhibit "A" attached hereto and made a part hereof.

Section 2. The City Manager is hereby authorized to execute the Agreement attached as Exhibit "A" and take all necessary actions to effectuate this grant of license in the right-of-way.

Section 3. This Resolution shall become effective at the earliest date allowed by law.

PASSED this 14th day of June, 2021.



Mayor of the City of Centerville, Ohio

ATTEST:



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 61-21, passed by the Council of the City of Centerville, Ohio, on the 14th day of June, 2021.



Clerk of Council

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

Department of Law
Scott A. Liberman
Municipal Attorney

RIGHT OF WAY LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2021, by and between the City of Centerville, Ohio, an Ohio municipal corporation, 100 W. Spring Valley Road, Centerville, Ohio 45458, hereinafter referred to as "LICENSOR" and 199 N Main Street LLC, an Ohio limited liability company , located at 199 N. Main St., Centerville OH 45459, (Property Owner), and Neace Enterprises LLC, an Ohio limited liability company, located at 199 N. Main St., Centerville OH 45459 (Business Owner), both collectively hereinafter referred to a "LICENSEE".

WITNESSETH:

WHEREAS, Property Owner owns the property at 199 N. Main St., Centerville, OH 45459 and intends to use it for the Business Owner's business; and

WHEREAS, Licensor desires to grant a non-exclusive license to use a portion of the public right-of-way located along Main Street, in the City of Centerville, Ohio to the Licensee, for the purpose of ingress, egress, erecting parking, lighting, landscaping and ground signage; and

WHEREAS, Licensee desires to obtain said non-exclusive license, as described herein, to utilize for ingress, egress, parking, lighting, landscaping, and to erect a ground identification sign and all related activities on the Premises (described below) upon the terms and conditions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. This Agreement is created in furtherance of the authority set forth in Sections 1020.03, *et.seq.*, of the Centerville Municipal Code regarding Revocable Street Privileges.
2. The Licensor hereby licenses and authorizes the Licensee, its tenants and their respective agents, employees and invitees the right to enter upon and use certain City of Centerville right-of-way at 199 N. Main St.,

("Licensee's Property"), as more particularly described as part of Exhibit "A" attached hereto and incorporated by reference herein and by the depiction in Exhibit "B" attached hereto and incorporated herein (the "License Area") for the sole purposes of ingress, egress, parking, lighting, landscaping, and the erecting and maintaining a ground identification sign and for no other purposes.

3. Licensee specifically agrees that it shall defend, indemnify and hold harmless the Licensor and its officials, officers and employees from any and all damages, injuries or losses suffered by any person arising as a result of the erection or maintenance of a ground identification sign in the License Area, including the Licensor's attorneys' fees and costs.
4. This Agreement shall be for an indefinite period of time; provided however, that either party hereto shall have the right to revoke and terminate this Agreement and the license granted herein for any reason or no reason by providing thirty (30) days written notice to the other party of its intention to do so. Upon termination, the License Area shall be returned to its original condition, including the removal of any ingress, egress, parking, lighting, landscaping, and ground identification sign and its appurtenances.
5. Licensor further grants to Licensee the right to maintain the License Area at the sole cost of the Licensee. Upon the expiration of this Agreement, Licensee shall no longer utilize the License Area for a ground identification sign or any other purpose. Licensor reserves the right to inspect said property at any and all reasonable times.
6. Prior to expiration of the Agreement, Licensor agrees not to construct any permanent public improvements, barricades or other obstructions within the License Area nor take any action which will prevent the use of the License Area by Licensee for the purposes detailed in this Agreement, without the written approval of the Licensee, unless said actions are part of a legal permissible eminent domain action, such as, but not limited to, future public roadway construction. Such action may require the relocation or removal of the ground identification sign or removal of parking spaces, lighting or landscaping at the Licensor's sole discretion. The expense related to relocation or removal shall be the sole responsibility of the Licensee.
7. LICENSEE ACKNOWLEDGES THAT THE PROPERTY WHICH IS THE SUBJECT OF THE LICENSE GRANTED HEREIN IS HELD BY THE CITY AS PUBLIC RIGHT OF WAY FOR PUBLIC TRAVEL PURPOSES AND AS SUCH MAY BE USED FOR THAT PURPOSE

AT ANY TIME. LICENSEE ACKNOWLEDGES AND ASSUMES THE FINANCIAL RISK INCIDENT TO ITS USE FOR INGRESS, EGRESS, PARKING, LIGHTING, LANDSCAPING OR A GROUND IDENTIFICATION SIGN IN SAID RIGHT OF WAY UNDER THESE CIRCUMSTANCES AND NOT CONTRARY TO ITS CURRENT USE.

8. This Agreement is a license in real estate and the rights created by it are personal to those named herein and their successors and assigns. This Agreement does not pass any interest in the property described above, other than as specifically set forth in this Agreement.
9. Licensee shall agree to pay the Licensor's attorney's fees in the amount of \$250 for drafting of this Agreement and its associated Resolution.

EXECUTED by the parties hereto on the day and year first above written.

LICENSOR:

CITY OF CENTERVILLE, OHIO

By: Wayne S. Davis
Its: City Manager

Approved as to form:

Scott A. Liberman, Municipal Attorney

LICENSEE:

199 N MAIN STREET LLC, an Ohio
limited liability company (Property Owner)

By: _____
Its: _____

NEACE ENTERPRISES LLC, an Ohio
limited liability company (Property User)

By: _____
Its: _____

STATE OF OHIO)
)
COUNTY OF MONTGOMERY) SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by Wayne S. Davis, City Manager.

Notary Public

STATE OF OHIO)
)
COUNTY OF MONTGOMERY) SS:

BE IT REMEMBERED, that on this _____ day of _____, 2021, before me, the subscriber, a Notary Public in and for said County and State, personally came _____, the _____ of 199 N MAIN STREET LLC, an Ohio limited liability company, which executed the foregoing instrument, who acknowledged that he/she did sign said instrument as such agent on behalf of the limited liability company and by authority of the limited liability company; that said instrument was signed as his/her free act and deed individually, and the free act and deed of said limited liability company.

Notary Public

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General Warranty Deed *

Ox, Inc., an Ohio corporation of Montgomery County, OH for valuable consideration paid, grant(s) with general warranty covenants, to **199 N Main Street LLC** an Ohio limited liability company, whose tax-mailing address is 1019 Rahn Rd., Dayton, OH 45459, the following **REAL PROPERTY:**

Situated in the County of Montgomery, in the State of Ohio and in the City of Centerville:

LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND MADE A PART HEREOF.

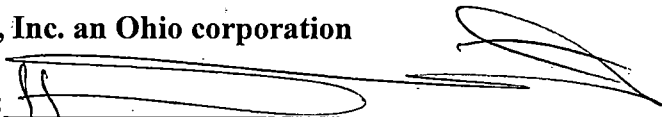
Parcel No. O68-00102-0141

SUBJECT TO ALL RESTRICTIONS, EASEMENTS, CONDITIONS, AND CONVENANTS OF RECORD; AND ALL LEGAL HIGHWAYS AND REAL ESTATE TAXES AND ASSESSMENTS NOT YET DUE AND PAYABLE; AND ALL COAL, OIL, GAS, AND OTHER MINERAL RIGHTS AND INTEREST PREVIOUSLY TRANSFERRED OR RESERVED OF RECORD.

Prior Instrument Reference: Instrument No. 2010-000058 Of the Deed Records of Montgomery County, Ohio.

The undersigned has hereunto set his and its hand(s) this 5th day of October, 2020.

Ox, Inc. an Ohio corporation

By: 
Husham Shtayyeh, Sole Director and President

State of Ohio County of Montgomery ss:

This is an acknowledgment clause; no oath or affirmation was administered to the signer.
BE IT REMEMBERED, That on this 5th day of October, 2020, before me, the subscriber, a Notary Public in and for said state, personally came, **Husham Shtayyeh, Sole Director and President of Ox, Inc. an Ohio corporation**, the Grantor(s) in the foregoing deed, and acknowledge the signing thereof to be his and its voluntary act and deed for an on behalf of OX, Inc.:

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

JT

EXHIBIT "A"
LEGAL DESCRIPTION

Situate in the City of Centerville, County of Montgomery, State of Ohio and bounded and described as follows:

Located in Section 25, Town 2, Range 6 MRS, City of Centerville, County of Montgomery, State of Ohio and being a tract of land described as follows:

Beginning at a point in the south line of land conveyed to Irene E. Cultice by deed recorded in Book 2028, Page 669 in the Deed Records of Montgomery County, Ohio, said point of beginning being the northwest corner of a perpetual easement for highway purposes conveyed to the State of Ohio by deed recorded in Book 2009, Page 354 in the Deed Records of Montgomery County, Ohio, said northwest corner being 65.00 feet westwardly from and measured at right angles to the centerline on North Main Street (St. Rt. 48); thence 65.00 feet westwardly from and parallel to said centerline and with the west line of said easement, South 2° 04' 10" East for 57.97 feet; thence continuing with the west line of said perpetual easement, South 18° 46' 10" East for 104.40 feet to a point 35.00 feet westwardly from and measured at right angles to the centerline of said North Main Street; thence continuing with the west line of said easement and being 35.00 feet westwardly from and parallel to said centerline, South 2° 04' 10" East for 39.75 feet; thence leaving said line, South 83° 34' 30" West for 150.00 feet; thence North 2° 04' 10" West for 200.00 feet to a point in the south line of said Cultice land; thence with the south line of said Cultice land, North 83° 34' 30" East for 119.91 feet to the point of beginning, containing 0.612 acres more or less, subject to all easements, restrictions and legal highways of record.

Parcel No. O68-00102-0141

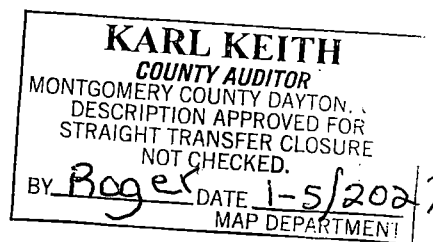


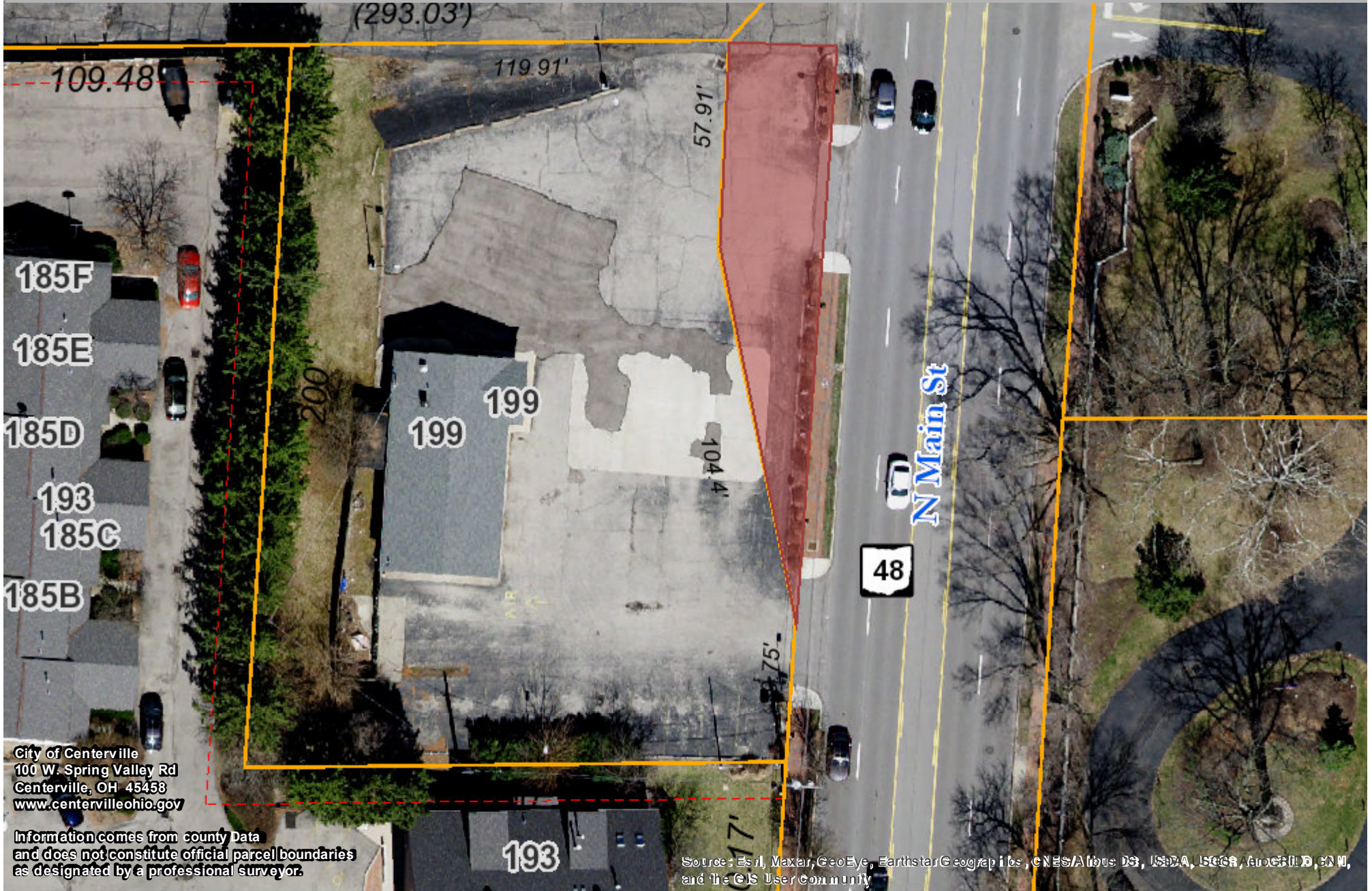


Exhibit B: License Agreement

City of Centerville



Date Saved: 6/1/2021



City of Centerville
100 W. Spring Valley Rd
Centerville, OH 45458
www.centervilleohio.gov

Information comes from county Data
and does not constitute official parcel boundaries
as designated by a professional surveyor.

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community