

**RESOLUTION NO. 64-22**  
**CITY OF CENTERVILLE, OHIO**

SPONSORED BY COUNCILMEMBER Duke Lunsford ON THE 15<sup>th</sup>  
DAY OF August, 2022.

**RESOLUTION RATIFYING THE ACTIONS OF THE CITY  
MANAGER IN EXECUTING A PURCHASE CONTRACT,  
CROSS EASEMENT AGREEMENT AND RIGHT OF FIRST  
REFUSAL WITH KONRAD KUCZAK FOR THE PURCHASE  
OF PROPERTY LOCATED ON MAIN STREET (.2214 OF AN  
ACRE) AND RATIFYING THE ACTIONS OF THE CITY  
MANAGER IN TAKING ALL STEPS NECESSARY TO  
EXECUTE DOCUMENTS TO EFFECT THE PURCHASE OF  
SAID REAL PROPERTY.**

WHEREAS, Council has determined that it would be in the best interest of its citizens to purchase property of .2214 of an acre located in the City of Centerville from Konrad Kuczak, for the purpose of future development or municipal services on Main Street, Centerville, OH (the "Property"); and

WHEREAS, the City of Centerville has negotiated for the purchase of the Property upon terms acceptable to the City; and

WHEREAS, the City Manager, in prior consultation with the City Council at open meeting work sessions called pursuant to Section 121.22 of the Ohio Revised Code, discussed the purchase of the Property, and was instructed by Council to execute a contract for the purchase of the Property for a total amount of up to \$70,000; and

WHEREAS, pursuant to the terms of the Purchase Agreement, the City agreed to provide a Cross Easement Agreement over the Property and the seller agreed to provide a Right of First Refusal to the City for additional property adjacent to the Property; and

WHEREAS, Council has the power to enter into such real property purchase agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution;

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1: That the previous action of the City Manager in executing a purchase contract with Konrad Kuczak for the purchase of property located on Main Street for a total price of Seventy Thousand and no/100 Dollars (\$70,000.00) is hereby ratified. Said Purchase

Agreement is marked as Exhibit "A" and incorporated herein.

Section 2: That the previous actions of the City Manager in exercising all necessary documents to facilitate a closing for said property be hereby ratified.


Section 3: That the previous action of the City Manager in executing a Cross Easement Agreement and a Right of First Refusal to Purchase with Konrad Kuczak for the Property is also hereby ratified. Said Cross Easement Agreement is marked as Exhibit "B" and the Right of First Refusal to Purchase is marked as Exhibit "C" and incorporated herein.

Section 4: That this resolutions shall go into effect at the earliest time allowed by law.

**PASSED THIS** 15<sup>th</sup> day of August, 2022.

  
Mayor of the City of Centerville, Ohio

ATTEST:

  
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. 64-22, passed by the Council of the City of Centerville, Ohio on the 15<sup>th</sup> day of August, 2022.



\_\_\_\_\_  
Clerk of the Council

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

**CONTRACT FOR PURCHASE  
AND SALE OF REAL ESTATE**

City of Centerville, an Ohio Municipal Corporation, (hereinafter called "Buyer"), hereby offers, subject to the terms and conditions herein contained, to purchase from **KONRAD KUCZAK, married** (hereinafter called "Seller"), certain real estate located in the State of Ohio, County of Montgomery, and City of Centerville, the west portion of the property located near the corner of Main Street and Martha Avenue, as depicted in Exhibit "A" and more particularly described as follows:

LEGAL DESCRIPTION AFTER SURVEY (hereinafter called the "Premises")

Said Legal Description shall provide as follows:

A. The east line of the property to be conveyed in fee simple will be a line running six (6) feet parallel to the west foundation/footer of the garage and extending to the present south and north property lines.

B. The north access easement will begin at a point in the new east property line and run to the alley on a line located adjacent to the north foundation/footer of the garage, to a point on the alley right of way, thence to the current north property line and back to the new east property line.

C. The south access easement will begin at a point in the new east property line and run to the alley on a line located adjacent to the south foundation/footer of the garage to a point on the alley right of way, thence to the current south property line and back to the new east property line.

1. **Purchase Price.** The purchase price to be paid for the Premises shall be Seventy Thousand and no/100 Dollars (\$70,000.00), (the "Purchase Price"). The Purchase Price shall be paid as follows:

- (a) The sum of Five Hundred and no/100 Dollars (\$500.00) (the "Deposit"), in immediately available funds shall be deposited with First American Title Insurance Co. ("Title Company") within five (5) business days following execution and delivery of this Agreement by the last of Seller and Buyer. The Title Company shall hold the Deposit in Escrow. At Closing, the Deposit shall be paid to the Seller and, to the extent so paid to Seller, credited against the Purchase Price.
- (b) At Closing, Buyer shall pay the balance of the Purchase Price after credit for the Deposit and the Closing Extension Payments, if any, if and to the extent paid to Seller in immediately available funds.

2. **Survey.** Buyer shall be responsible for obtaining, at Buyer's sole cost and expense, any surveys of the Property, including, without limitation, any ALTA/ACSM survey which Buyer desires to obtain. Seller shall cooperate in allowing access to the Property for purposes of obtaining a survey.

3. **Seller's Title.**

(a). Within sixty (60) days after the Effective Date of this Agreement, Buyer shall procure a preliminary title report and commitment for an owner's title insurance policy issued by a title insurance company licensed to do business in the State of Ohio in the amount of the Purchase Price covering title to the Property. If the Commitment shows that title to all or part of the Property is unmarketable, as determined with reference to the Ohio State Bar Association Standards of Title Examination, or is subject to any defect, lien or encumbrance that would materially hinder Buyer's development of the Property for buyer's proposed use as a commercial or residential development (any such defect, lien or encumbrance, a "Title Defect"), Buyer shall notify Seller of its objections not later than thirty (30) days after the date of this Agreement (the "Title Notice") or the same shall be deemed to have been waived by Buyer. To the extent that the Property is subject to any consensual monetary liens (other than liens for real estate taxes and assessments not yet due and payable), and if Buyer objects to such monetary liens in the Title Notice, Seller shall take all actions necessary to satisfy and eliminate the liens at or before Closing. To the extent Buyer's objections involve any other Title Defects, Seller may, but shall have no obligation to, remedy or remove the Title Defects within twenty (20) days after receipt of Buyer's objections made in accordance with this Section. If Seller elects not to remedy or remove the Title Defects or is unable to do so within such twenty (20) day period, Buyer's sole remedy shall be to elect either to (i) waive the Title Defects and accept such title to the Property as Seller is able to convey, without adjustment to the Purchase Price, in which case such Title Defects shall be Permitted Encumbrances, or (ii) terminate this Agreement. Buyer shall so elect by delivering written notice to Seller on or before the ten (10) days after the end of such cure period. If Buyer fails to so deliver such written notice, Buyer shall be deemed to have elected the foregoing option (i). If Buyer terminates this Agreement because of a Title Defect, except as otherwise expressly provided hereby, Seller and Buyer shall be released from all further obligations under this Agreement and the Deposit and any Closing Extension Payments shall be returned to Buyer.

- (b) Buyer shall have the right to object to any new matters that are disclosed on any update to the Commitment prior to Closing that were not disclosed on the Commitment so long as such matters materially hinder Buyer's proposed use of the Property by providing written notice of such objection to Seller within three (3) business days after Buyer's receipt of such updated Commitment, but not later than the date of Closing. Upon receipt of such notice, (i) Seller shall have the same cure rights as set forth in section (a) above, (ii) Buyer shall have the same rights as set forth in section (a) above in the event a cure is not so effected; provided that, Buyer shall deliver notice of termination pursuant to this section on or before the date three (3) business days after the end of the cure period, and (iii) the closing Date shall be extended by an additional thirty (30) day period. If buyer fails to deliver such written notice within such additional cure period, Buyer shall be deemed to have elected option (i) of this section. If Buyer elects to terminate this Agreement for such Title Defect, except as otherwise expressly provided herein, Seller and Buyer shall be released from all further obligations under this Agreement, and the Deposit and all Closing Extension Payments shall be returned to Buyer.
- (c) The cost of the Commitment and all costs of any title insurance policy issued pursuant to the Commitment shall be paid by Buyer.

4. **Taxes and Assessments.** At closing, Seller shall pay all delinquent taxes, special taxes, penalties and interest then a lien on the Premises and currently due, both current and reassessed. In the event the Premises has been taxed or is being taxed under a CAUV exemption, Buyer, as a municipal corporation shall be responsible for the recoupment of same. Seller shall credit on the purchase price all unpaid real estate taxes and assessments for the years prior to the closing and a portion of such taxes and assessments for the year of closing prorated through the date of closing. The tax proration shall be made in accordance with the Montgomery County "short proration" method, in which Seller's share is based upon the number of days from the date of the immediately preceding semi-annual installment to the date of closing. Any special assessments which are payable in a single annual installment shall be prorated on the long proration method. All proration shall be based upon the most recent available tax rates, assessments and valuations. Seller and Buyer shall adjust and re-prorate the tax proration determined above upon the basis of the final and unappealable real estate tax bills for such years. Such adjustment shall be made no later than 10 days after demand by the party to whom a credit is due. Since the Buyer is a political subdivision of the State of Ohio, there will be no conveyance fee. Buyer shall pay all recording fees. All utilities, if any, shall be prorated to Buyer, as of the date of closing.

5. **Deed and Other Documents.** Seller agrees at closing to deliver a recordable general warranty deed, with release of dower, if applicable, conveying and

warranting good and marketable title in fee simple to the Premises free and clear of all liens, encumbrances, restrictions, conditions, easements and encroachments, except as otherwise herein noted. Unless provided herein to the contrary, all documents required by this Contract shall be in the customary form with the customary terms and provisions for the jurisdiction in which the Premises are located; provided, however, that all such documents shall be submitted for approval of Buyer's counsel at least 10 days before the date of closing, which approval shall not be unreasonably withheld. Seller shall execute and deliver to Buyer, at closing, the Title Company's standard form of affidavit with respect to off-record title matters.

6. **Closing.** Closing shall take place on or after thirty (30) days after the end of the Inspection Period, or at a time satisfactory to the Buyer and after the waiver or satisfaction of the conditions set forth in Section 6 below, or at such other time as the parties may mutually agree. Notwithstanding any of the other conditions contained in this Contract, Buyer may, at its option, elect to proceed with the purchase of the Premises whether or not any of said conditions remain unsatisfied. This transaction shall be closed through an escrow with the Title Company in accordance with the general provisions of any usual form of escrow agreement then furnished and in use by the Title Company, with such special provisions as may be required to conform with this Contract. Seller shall deliver possession of the Premises at Closing.

7. **Conditions to Closing.** Notwithstanding anything contained herein, Buyer's obligation to purchase the Premises is subject to the following terms and conditions:

- (a) That at Closing, if Buyer so chooses at Buyer's expense, Buyer to receive a report satisfactory to Buyer as to the environmental condition of the land and improvements constituting the Property, issued by an engineering firm or other party qualified to issue such report that is acceptable to Buyer. Buyer shall not unreasonably withhold any indication of satisfaction or acceptability of said report.
- (b) That at Closing, Buyer will be furnished with or be able to obtain a policy of title insurance issued by an issuer acceptable to Buyer, which acceptance shall not be unreasonably withheld, and insuring applicable title to the Property subject only to reasonable exceptions approved by Buyer.
- (c) That utilities and access are available to the boundary line of the Property or within a reasonable and accessible distance from the Property.
- (d) Buyer shall have notified Seller and the Title Company of approval of any restrictions, conditions or easements of record encumbering the Premises as disclosed by the title insurance commitment.

- (e) Buyer securing a survey prepared by a licensed surveyor showing topography, the location of all easements and public rights of way, any encroachments and not disclosing any state of facts which would render the Premises unusable for proposed uses thereof.
- (f) Buyer being able to determine that the Premises are free from the presence of any toxic or hazardous substance or other pollutant of any nature as defined or regulated by applicable federal, state or local laws.
- (g) Buyer being able to determine that no part of the Premises is located within or in the vicinity of a wetlands area as regulated by federal, state or local laws, rules, ordinances or regulations.
- (h) Buyer being satisfied that the property is free and clear of any liens or encumbrances including, but not limited to, any oral or written leases or tenant rights to the Premises.
- (i) Buyer obtaining a lot split.
- (j) Seller providing a cross access easement agreement satisfactory to Buyer allowing access across the east portion of the Premises that currently has the garage from the alley to the east providing access to the alley as depicted in Exhibit "A". Buyer or its assignee agrees to maintain the easements and will agree to pave the current driveway and apron when Buyer or its assignee deems it necessary to be paved.
- (k) Closing is contingent upon the ability of Buyer to obtain Centerville Planning Commission, City Council and Montgomery County approvals for the lot split, zoning or any other required approvals.
- (l) Approval of this Contract by the Centerville City Council following Seller's acceptance of this offer.
- (m) The Seller providing the Buyer with a right of first refusal on the east portion of the Premises commonly known as the garage. A Right of First Refusal Agreement satisfactory to Buyer shall be provided at Closing.
- (n) The representations and warranties of Seller contained in Section 8 of this Contract shall be true on the date of closing in all material respects as though those representations and warranties were made on that date.



8. **Seller's Representations, Warranties and Covenants.** Seller represents, warrants and covenants to Buyer as to the following matters, and shall be deemed to remake all of the following representations, warranties and covenants as of the date of the closing

- (a) The execution and delivery of this Contract by Seller, the execution and delivery of every other document and instrument delivered pursuant to this Contract by or on behalf of Seller, and the consummation of the transactions contemplated by this Contract have been duly authorized and validly executed and delivered by Seller, and will not (i) constitute or result in the breach of or default under any oral or written contract to which Seller is a party or which affects the Premises; (ii) constitute or result in a violation of any order, decree or injunction with respect to which Seller and or the Premises is bound; (iii) cause or entitle any party to have a right to accelerate or declare a default under any oral or written contract which affects the Premises; and/or (iv) to the best of Seller's knowledge, violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller or the Premises may be subject;
- (b) To the best of Seller's knowledge, the Premises is in material compliance with all applicable federal, state and local statutes, laws, ordinances, orders, requirements, rules and regulations (including, but not limited to, building, zoning and environmental laws).
- (c) No notice of violation of any applicable federal, state or local statute, law, ordinance, order, requirement rule or regulation, or of any covenants, condition, restriction or easement affecting the Premises, or with respect to the maintenance, use or occupancy of the Premises, has been given by any governmental authority having jurisdiction over the Premises or by any other person entitled to enforce the same.
- (d) To the best of Seller's knowledge, all covenants, conditions, restrictions, easements and similar matters affecting the Premises have been complied with.
- (e) To the best of Seller's knowledge, no toxic, explosive or otherwise dangerous materials or hazardous substances have been disposed of on, concealed within, buried beneath, or released on or from the Premises, nor have any toxic, explosive or hazardous materials ever been removed from the Premises and stored off-site of the Premises. Seller agrees to indemnify, save harmless, and defend Buyer from and against any and all liabilities, claims, penalties,

forfeitures, suits, and the costs and expenses incidental to the same (including costs of defense, settlement and reasonable attorneys' fees), that it may incur, become responsible for, or pay out as a result of any damage or injury to the environment, to persons or to Premises caused by any act, occurrence, or omission on the part of Seller or its agents or employees during Seller's period of ownership of the Premises, or on the part of the prior owners of the Premises.

- (f) To the best of Seller's knowledge, there are no encroachments onto the Premises of any improvement on any adjoining property, and there are no encroachments onto any adjoining property of any improvements from the Premises.
- (g) To the best of Seller's knowledge, adequate supplies of all public utilities, including, but not limited to, water, sanitary sewer, gas, electricity, telephone, storm sewer and drainage facilities and other utilities required by law or by the normal use and operation of the Premises (i) are installed to the property lines of the Premises, (ii) are connected pursuant to valid permits, (iii) are adequate to service the Premises, (iv) are adequate to permit full compliance with all requirements of law and normal usage of the Premises by the occupants and their licensees and invitees, and (v) either enter the Premises through adjoining public streets, or if they pass through adjoining private land, do so in accordance with valid public easements or private easements that inure to the benefit of Seller and its successors in title to the Premises. Seller states that the Property is not served by natural gas, sanitary sewer, nor telephone.
- (h) There is no pending or, to the best of Seller's knowledge, threatened litigation, arbitration, administrative action or examination, claim, or demand whatsoever relating to the Premises. No attachments, execution proceedings, liens, assignments or insolvency proceedings are pending or, to the best of Seller's knowledge, threatened against Seller or the Premises or contemplated by Seller. Seller is not contemplating the institution of insolvency proceedings.
- (i) Seller has no knowledge of any pending or contemplated eminent domain, condemnation, or other governmental or quasi-governmental taking of any part or all of the Premises.
- (j) To the best of Seller's knowledge, there are no public improvements that have been ordered to be made and/or that have not been previously assessed, and there are no special, general or

other assessments pending, threatened against, or affecting the Premises.

- (k) Seller has paid or will pay in full all bills and invoices for labor and material of any kind arising from the ownership, operation, management, repair, maintenance or leasing of the Premises, and there are no actual or potential mechanic's liens or other claims outstanding or available to any party in connection with the ownership, operation, management, repair, maintenance or leasing of the Premises.
- (l) Between the date of this Contract and the date of closing, no part of the Premises will be sold, encumbered or transferred in favor of or to any party whatsoever. There are no purchase contracts, options or any other contracts of any kind, oral or written, by which any person or entity other than Seller will have acquired or will have any basis to assert any right, title or interest in, or right to possession, use, enjoyment or proceeds of, any part or all of the Premises.
- (m) No party has any claim against the Premises or against any successor in title to the Premises related to the repair, construction, improvement, operation, use, rental or enjoyment of the Premises, and neither Seller nor its agents or employees have received any notices of any claim requesting or demanding such performance or payment relative to the foregoing.
- (n) Seller confirms that there are no oral or written leases or other tenant rights to the Premises.
- (o) The foregoing representations, warranties and covenants shall survive the closing for a period of one (1) year and shall not be terminated by operation of the doctrine of merger.

9. **Inspection Period.** Seller agrees that for a period of sixty (60) days from the date of the full execution of the Agreement, Buyer shall have the right to study the feasibility of Buyer acquiring the Property (the "Inspection Period"). During the Inspection Period, Buyer may elect to perform or may have performed, at Buyer's sole cost and expense, all Studies and investigations of the Property as Buyer deems desirable, including but not limited to a title examination of the property, surveys and soil tests of the Property, and investigations of the engineering, topographic and structural aspects of

the Property. In conducting such activities, Buyer agrees not to disrupt Seller's ongoing activities on the Property. Buyer agrees to restore the Property to its condition prior to Buyer's entry thereon. In the event that Buyer, for any reason whatsoever, is dissatisfied in its sole discretion with the results of any of the Studies or investigations performed during the Inspection Period, then Buyer may terminate the Agreement by giving written notice to the Seller within thirty (30) business days after the expiration of the Inspection Period. Upon termination, the Agreement shall thereafter be null and void and of no further force and effect.

10. **Condemnation.** The risk of any permanent or temporary taking of any part or all of the Premises by condemnation or eminent domain (hereinafter called the "Taking") shall be borne by the parties until completion of the closing. If, prior to closing, Seller or Buyer become aware of any actual or proposed Taking, the parties shall immediately give each other written notice thereof and shall keep each party informed of and provided an opportunity to participate in any and all negotiations concerning such Taking and/or the potential settlement of claims relating thereto. In the event of any such actual or proposed Taking, Buyer shall have the right to terminate this Contract by giving written notice to that effect to Seller at any time on or prior to the closing date. In the alternative, if Buyer proceeds with the closing despite such actual or proposed Taking, (a) the purchase price for the Premises shall be reduced by the amount of any and all proceeds actually received by Seller at or prior to the closing in connection with said Taking, (b) Buyer shall succeed to all rights of Seller to any and all such proceeds payable after the closing and (c) Seller shall execute and deliver such documents as Buyer may reasonably require to evidence the assignment of all such rights to Buyer.

11. **Casualty.** In the event of substantial loss or damage to the Premises prior to the closing by fire or other casualty (not resulting from the negligence of Buyer), Buyer at its option may, at any time after receipt of notice or knowledge of that event, cancel this Contract, in which event the Earnest Money (as hereinafter defined) shall be immediately refunded, this Contract shall terminate and neither party shall have any further rights or obligations under this Contract other than those rights and or obligations which are expressly stated to survive expiration or termination of this Contract. In the event that Buyer shall not elect to terminate, or if the loss or damage is not substantial, then this Contract shall remain in full force and effect and Buyer shall proceed to close and take the Premises as damaged, in which event Buyer shall be entitled to receive the insurance proceeds plus the amount of any deductible, co-insurance or self-insurance carried by Seller, so that Buyer shall receive, in effect, the full replacement cost of the loss or damage, as the cost is determined in the settlement with the insurer. Seller and Buyer shall each be entitled to participate in the settlement. As used in this paragraph, the term "substantial loss or damage" means any loss or damage resulting to the Premises which the parties reasonably estimate will cost \$10,000.00 or more to repair or restore.

12. **Earnest Money/Deposit.** Buyer shall deliver, within five days after Seller's acceptance hereof, to the Title Company, the sum of Five Hundred and no/100 Dollars (\$500.00) (herein referred to as "Earnest Money"), which Earnest Money shall be later applied against the purchase price. Buyer shall have the right to specific

performance of this Contract. In the event Buyer defaults hereunder and such default is not cured within 30 days after written notice, the Earnest Money shall be retained by Seller without prejudice to any rights of Seller to damages or specific performance. If the Contract is terminated for any reason other than Buyer's default, the Earnest Money shall be returned to Buyer.

13. **Brokerage Commissions.** Buyer and Seller agree that each shall bear their own expense of a real estate broker or agent, if any, in the event that contact or a contract has been made.

14. **Notices.** Any notices required or permitted under this Contract may be delivered personally or may be sent by certified or registered mail, return receipt requested, or prepaid courier service addressed to the addressee at the address, as hereinafter set forth, or at such other address as a party may hereafter furnish in writing to the other parties to this Contract. If notices are sent by mail, the date such notices are postmarked shall be deemed the date upon which such notice was given. If a matter is sent by prepaid courier service, the delivery date thereof shall be deemed the date upon which such notice was given.

15. **Nonforeign Affidavit.** Seller represents and warrants to Buyer that it is not a foreign person (as defined in Section 1445(f)(3) of the Internal Revenue Code of 1954, as amended) and agrees to execute and deliver to Buyer at closing an Affidavit stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person as so defined.

16. **Assignment.** Seller may assign all of their rights and obligations hereunder only with Buyer's consent. Buyer may assign all of its rights and obligations hereunder to a nominee of its choice without Seller's consent, provided that Buyer shall remain liable for performance hereunder.

17. **Miscellaneous.** This document including all attachments fully set forth all Contracts and understandings of the parties to this Contract with respect to the subject matter hereof. This Contract shall not be amended, except in a writing signed by both parties. All warranties, representations and covenants herein contained shall survive the closing. Whenever used herein, the singular shall include the plural, the plural the singular and any gender shall include all genders. Captions to the provisions of this Contract are intended and used solely for purposes of identification and do not limit or enlarge upon the written provisions of this Contract. Seller shall bear risk of loss until the date of closing. Unless otherwise provided herein, Buyer shall be entitled to possession of the Premises as of the date of closing. Time is of the essence.

18. **Acceptance.** This offer shall remain open for acceptance by Seller until 4:30 p.m. on December 24, 2021, and shall be accepted by delivering an executed copy of this Contract to Buyer.

19. **Descriptive Headings.** The descriptive headings used herein are for convenience only and are not intended to necessarily refer to the matter in sections which precede or follow them, and have no effect whatsoever in determining the rights or obligations of the parties.

20. **Counterparts.** This Agreement may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally signed signatures (including scanned signatures attached to an email) shall be acceptable to evidence complete agreement.

Buyer has caused this Contract to be executed this 10th day of December, 2021.

**CITY OF CENTERVILLE**

Wayne Davis  
By: Wayne S. Davis  
Title: City Manager

Approved as to Form:

Scott A. Liberman  
Scott A. Liberman  
Municipal Attorney

**ACCEPTANCE**

The undersigned represents that he/she has authority as the \_\_\_\_\_ ~~of~~ the owner of the property and hereby accepts this Contract and agrees to be bound by its terms and conditions this 22nd day of December, 2021.

Konrad Kuczak  
By: Konrad Kuczak

**EARNEST MONEY**


Title Company, as escrow agent, hereby acknowledges the receipt of \$500.00, Earnest Money, subject to the terms and conditions of this Contract, this \_\_\_\_ day of \_\_\_\_\_, 2021.

**TITLE COMPANY:**

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

**CERTIFICATE OF FUNDS AVAILABILITY  
BY MUNICIPALITY FISCAL OFFICER**

I, Tyler Roark, Finance Director of the City of Centerville, hereby certify that the funds for payment of the contractual obligations set forth in the Purchase Agreement have been lawfully appropriated for such purpose and are in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrance to the extent necessary to meet the obligations of this contract maturing in the first or current fiscal year thereof.

  
\_\_\_\_\_  
Tyler Roark  
Finance Director

### CROSS-EASEMENT AGREEMENT

This Cross-Easement Agreement ("Agreement") is made this 29<sup>th</sup> day of July, 2022, between KONRAD KUCZAK ("First Owner"), whose address is 6923 Vienna Woods Trail, Dayton, Ohio 45459, and City of Centerville ("Second Owner"), whose address is 100 W. Spring Vally Road, Centerville, Ohio 45458, under the following circumstances:

A. First Owner is the owner of certain real property consisting of approximately 0.0733 acres located on South Main Street, Centerville, Ohio 45458, in Montgomery County, Ohio, which is described on **Exhibit A** attached to this Agreement ("Tract #1").

B. Second Owner is the owner of certain real property consisting of approximately 0.2214 acres located adjacent to Tract #1, on South Main Street, Centerville, Ohio 45458, in Montgomery County, Ohio, as described on **Exhibit B** attached to this Agreement ("Tract #2").

C. First Owner and Second Owner desire to establish permanent easements for the location and maintenance of certain driveways, and utility facilities on Tract #1 and Tract #2.

NOW, THEREFORE, FIRST OWNER and SECOND OWNER, in consideration of the mutual agreements contained in this Agreement, agree as follows:

1. Grant of Easements by First Owner. First Owner grants to Second Owner the following easements:

(a) perpetual, non-exclusive easements for purposes of ingress and egress, and for all ordinary driveway purposes, on, over and across the portion(s) of the Tract #1 described on **Exhibit C** attached to this Agreement and identified as ESMT. 1 and ESMT. 2 on the Site Plan attached to this Agreement as **Exhibit D** (the "Tract 1 Ingress and Egress Easement Areas");

2. Grant of Easement by Second Owner. Second Owner grants to First Owner the following easement:

(a) a perpetual, non-exclusive easement to construct, maintain, operate tap into, repair, replace and/or remove a waterline through, an area consisting of a ten (10) foot wide strip of land



running parallel to and along the northern boundary, of the Tract #2 described on Exhibit B attached to this Agreement, and identified on the Site Plan attached to this Agreement as Exhibit D (the "Tract 2 Waterline Easement Area");

3. Use of Ingress and Egress Easement Areas. The Tract 1 Ingress and Egress Easement Areas are herein referred to as the "Ingress and Egress Easement Areas." The easements granted across the Ingress and Egress Easement Areas shall be for the joint benefit of, and useable for the purposes contemplated by those easements, by First Owner and Second Owner and their respective employees, officers, customers, tenants, agents, licensees and invitees, and the public, as well as the successors and assigns of First Owner and Second Owner and all persons claiming by or through them during the periods of time that they own or have the right to use and occupy the Tract #1 or the Tract #2 (the "Benefited Parties").

4. Use of Waterline Easement Area. The Tract 2 Waterline Easement Area is herein referred to as the Waterline Easement Area. The easement granted across the Waterline Easement Area shall be for the joint benefit of, and useable for the purpose contemplated by the Easement, by First Owner and Second Owner and their respective employees, officers, customers, tenants, agents, licensees and invitees, as well as the successors and assigns of First Owner and Second Owner and all persons claiming by or through them during the periods of time that they own or have the right to use and occupy the Tract #1 or the Tract #2 (the "Benefited Parties").

5. Exercise of Rights Under this Agreement. In exercising their rights under this Agreement, First Owner and Second Owner shall use reasonable efforts at all times to refrain from disturbing, interrupting or otherwise interfering with the operation of each other's business. All improvements contemplated by the various easements created by this Agreement shall be constructed when needed by the party that is the beneficiary of the easement. All such work shall be performed in a good and workmanlike manner and in compliance with all applicable laws.

6. Maintenance of Easement Areas. After installation of any contemplated ingress and egress driveway improvements, Second Owner agrees to maintain in a reasonably clean and orderly condition and to promptly repair and replace as necessary the driveway improvements in the Ingress and Egress Easement Areas. The maintenance and repair obligations with respect to the driveway improvements shall include, but not be limited to, snow and ice removal, sweeping, patching and paving. Further, the parties herein agree that, Second Owner, or its assignee will pave the current driveway and apron upon Tract One when it deems it necessary to be pave any of the Ingress and Egress Easement Areas.

With respect to any waterline facilities now or hereafter located in the Tract 2 Waterline Easement Area, responsibility for maintaining, repairing and replacing waterline easement facilities shall be born by the party served by the easement in question.

Notwithstanding the foregoing, if First Owner or Second Owner or their employees, contractors or other persons for whom they are responsible shall cause any damage to the

improvements within any of the easement areas established in this Agreement, other than by ordinary wear and tear, the party responsible for the damage shall pay for any repairs or replacements necessary to restore or replace the damaged property.

7. Future Uses and Development. The intention of the parties is that this Agreement shall permit the integrated use of the properties without unduly hindering future uses to which the properties may be put. Each party reserves the right to use its property for any and all uses and purposes consistent with the grants of easement contained in this Agreement. Each party further reserves the right to grant easements to public utility companies not inconsistent with the provisions of this Agreement within the Tract 1 Ingress and Egress Easement Areas and/or the Tract 2 Waterline Easement Area.

8. Title. First Owner and Second Owner each covenant with the other that they are the owners of their respective properties and have the full power to convey the rights created by this Agreement. Each party warrants and will defend the same against the claims of all persons, subject, however, to (a) all legal highways, (b) other easements, conditions, covenants and restrictions of record, (c) real estate taxes and assessments not yet due and payable, and (d) zoning, building and other applicable laws, codes and regulations.

9. Indemnity. First Owner agrees to indemnify, defend and hold harmless Second Owner from and against any damages, losses, costs and expenses, including reasonable attorneys' fees, arising from any claims related to First Owner's use or maintenance of the easement areas established in this Agreement. The indemnity contained in this Section 9 shall apply unless such damage was sustained as a result of any negligent or wrongful act of the indemnified party or its agents, employees, invitees, contractors, tenants or subtenants.

10. Notices. All notices and communications required or permitted to be given or made to any party shall be deemed to be served three (3) days after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed to such party at their respective addresses set forth above. Each party shall give a copy of any such notice or communication to each mortgagee of record of the other Owner that has made a written request for such copies. The addresses for notices and communications may be changed from time to time by giving notice in the manner provided in this Section.

11. Binding Effect. This Agreement shall run with the land and be binding upon and inure to the benefit of the respective heirs, personal representatives, successors and assigns of Second Owner and First Owner, including, but not limited to, all future owners of the Tract #2 and the Tract #1 or any portion of those Tracts. Notwithstanding the foregoing, upon the sale of the Tract #2 or the Tract #1 in whole or in part, the transferee shall become responsible for the obligations accruing under this Agreement during the period of the transferee's ownership, and the former Owner or Owners shall be released from further liability, but without releasing the former Owner or Owners from liability for defaults or obligations that accrued prior to the date of transfer.

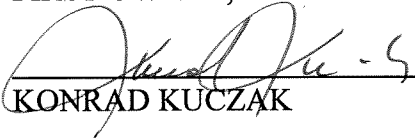
12. Severability. If any provision of this Agreement or the application of that provision to any persons or circumstances shall, to any extent, be invalid or unenforceable under applicable law, the remainder of this Agreement, or the application of such provision to other persons or circumstances, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. Counterparts. This Agreement may be signed in separate counterparts which may be combined to form a complete Agreement.

Patricia J. Kuczak, wife of the Grantor, Konrad Kuczak, releases all right of dower in this property.

SIGNED this 29<sup>th</sup> day of July, 2022.  
and 1<sup>st</sup> day of August, 2022

FIRST OWNER, GRANTOR

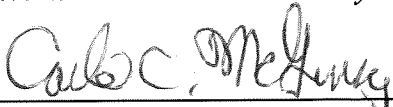
  
KONRAD KUCZAK

  
PATRICIA J. KUCZAK

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

**BE IT REMEMBERED**, That on the 29<sup>th</sup> day of July, 2022 before me, the subscriber, a Notary Public, in and for said County personally came, **KONRAD KUCZAK, and PATRICIA J. KUCZAK, husband and wife**, the grantor(s) in the foregoing instrument and acknowledged the signing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned.

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

  
Notary Public

CARLO C. MCGINNIS, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date.  
Section 147.03 O. R. C.

SECOND OWNER, GRANTOR:  
City of Centerville, Ohio

Name: Wayne S. Davis

Print: Wayne S. Davis

Title: City Manager

APPROVED AS TO FORM:

Scott A. Liberman

Scott A. Liberman, Municipal Atty.

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

**BE IT REMEMBERED**, That on the 1 day of August, 2022 before me, the subscriber, a Notary Public, in and for said County personally came, **Wayne S. Davis**, City Manager of the City of Centerville, Ohio, the grantor(s) in the foregoing instrument and acknowledged the signing thereof to be his voluntary act and deed, for and on behalf of said entity.

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

Donna M. Fiori  
Notary Public

This Instrument Prepared By:  
Carlo C. McGinnis  
Attorney at Law  
55 Park Avenue  
Dayton, Ohio 45419  
937-979-1314

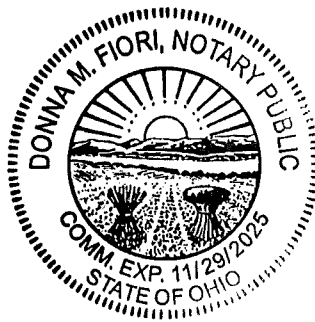


Exhibit "A" for Cross-Easement Agreement between  
Konrad Kuczak and City of Centerville.

**TRACT ONE  
0.0733 ACRES  
SECTION 30, TOWN 3, RANGE 5 M.Rs.  
CITY OF CENTERVILLE  
MONTGOMERY COUNTY, OHIO**

Situate in Section 30, Town 3, Range 5 M.Rs., City of Centerville, County of Montgomery, State of Ohio and being part of a 0.295 acre tract conveyed to Konrad Kuczak in IR Deed 19-044075, more particularly described as follows: (all references to deed books, official records, microfiche numbers, instrument numbers, survey records and/or plats refer to the Montgomery County Recorder's Office, Montgomery County, Ohio)

Beginning at a 5/8" iron pin found at the southwest corner of the Lucas Park Subdivision as recorded in Plat Book "U", Page 25 also being the intersection of the west line of a 16 foot wide alley and the north right-of-way line of Martha Avenue (50' R/W), thence along the west line of said alley, North 12°40'00" East a distance of 150.00 feet to a 5/8" iron pin with "NBP" cap found at the northeast corner of a 0.205 acre tract conveyed to Alicia R. Thompson in IR Deed 21-022338, said point being the **TRUE PLACE OF BEGINNING.**

Thence along the north line of said 0.205 acre tract, **North 83°45'00" West**, passing a 5/8" iron pin in concrete found at 1.56 feet, a total distance of **56.12 feet** to a 5/8" iron pin set;

Thence along a new division line, **North 12°09'19" East** a distance of **59.89 feet** to a 5/8" iron pin set on the south line of a 0.6924 acre tract conveyed to William David and Robin Lee Austin in Deed MF 99-595D07;

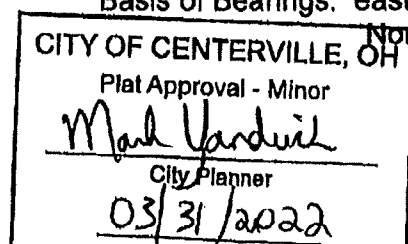
Thence along the south line of said 0.6924 acre tract, **South 77°43'30" East** a distance of **56.30 feet** to a 5/8" iron pin in concrete found at the southeast corner of said 0.6924 acre tract and on the west line of said alley;

Thence along the west line of said alley, **South 12°40'00" West** a distance of **54.00 feet** to the **TRUE PLACE OF BEGINNING.**

Containing **0.0733** acres, more or less.

Subject to all legal highways, easements, and restrictions of record.

Basis of Bearings: east right-of-way line of South Main Street –  
North 12°26'47" East – Survey Volume 2018, Page 0357



**PAGE TWO**

A (5/8" iron pin set) refers to a 30" long rebar with a plastic identification cap stamped "Haley-Dusa S-7143".

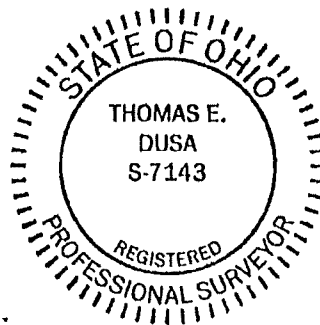
This description is based upon a field survey conducted under the supervision of Thomas E. Dusa, Registered Surveyor, Ohio License Number S-7143, on March 1, 2022 as filed in Montgomery County Engineer's Office Record of Land Surveys, Survey Record Volume 2022, Page 0131.

**Haley-Dusa Engineering & Surveying Group, LLC**



**Thomas E. Dusa  
Registered Surveyor  
Ohio License Number S-7143**

**March 29, 2022  
Job # S4921**



**MONTGOMERY COUNTY ENGINEER  
APPROVED FOR POINT OF BEGINNING,  
ACREAGE AND CLOSURE ONLY  
DATE 3/31/2022 FILE NO. 2022-0131**

BY Wayne B. Tal

Exhibit "B" for Cross-Easement Agreement between  
Konrad Kuczak and City of Centerville.

**TRACT TWO  
0.2214 ACRES  
SECTION 30, TOWN 3, RANGE 5 M.Rs.  
CITY OF CENTERVILLE  
MONTGOMERY COUNTY, OHIO**

Situate in Section 30, Town 3, Range 5 M.Rs., City of Centerville, County of Montgomery, State of Ohio and being part of a 0.295 acre tract conveyed to Konrad Kuczak in IR Deed 19-044075, more particularly described as follows: (all references to deed books, official records, microfiche numbers, instrument numbers, survey records and/or plats refer to the Montgomery County Recorder's Office, Montgomery County, Ohio)

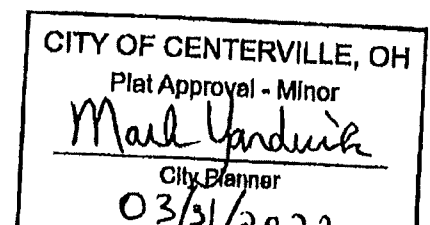
Beginning at a 5/8" iron pin found at the southwest corner of the Lucas Park Subdivision as recorded in Plat Book "U", Page 25 also being the intersection of the west line of a 16 foot wide alley and the north right-of-way line of Martha Avenue (50' R/W), thence along the west line of said alley, North 12°40'00" East a distance of 150.00 feet to a 5/8" iron pin with "NBP" cap found at the northeast corner of a 0.205 acre tract conveyed to Alicia R. Thompson in IR Deed 21-022338;

Thence along the north line of said 0.205 acre tract, North 83°45'00" West, passing a 5/8" iron pin in concrete found at 1.56 feet, a total distance of 56.12 feet to a 5/8" iron pin set at the **TRUE PLACE OF BEGINNING**.

Thence continuing along the north line of said 0.205 acre tract and the north line of a 0.205 acre tract conveyed to Heather L. Foust in IR Deed 21-012730 and the north line of a 0.280 acre tract conveyed to the City of Centerville in IR Deed 21-072186, **North 83°45'00" West**, passing a 5/8" iron pin with "NBP" cap found at the northwest corner of said Thompson tract at 8.88 feet and passing a 5/8" iron pin in concrete found at 9.52 feet and passing a 1" iron pipe found at the northwest corner of said Foust tract at 63.88 feet, a total distance of **143.96** feet to a 5/8" iron pin set at the northwest corner of said 0.280 acre tract and on the east right-of-way line of South Main Street (60' R/W), witness a 1" iron pipe found, North 71°26'16" East at 0.73 feet;

Thence along the east right-of-way line of South Main Street, **North 12°26'47" East** a distance of **75.00** feet to a 5/8" iron pin with "NBP" cap found at the southwest corner of a 0.6924 acre tract conveyed to William David and Robin Lee Austin in Deed MF 99-595D07;

Thence along the south line of said 0.6924 acre tract, **South 77°43'30" East**, passing a 5/8" iron pin in concrete found at 0.98 feet, a total distance of **142.82** feet to a 5/8" iron pin set;



**PAGE TWO**

Thence along a new division line, **South 12°09'19" West** a distance of **59.89** feet to the **TRUE PLACE OF BEGINNING**.

Containing **0.2214** acres, more or less.

Subject to all legal highways, easements, and restrictions of record.

Basis of Bearings: east right-of-way line of South Main Street –  
North 12°26'47" East – Survey Volume 2018, Page 0357

A (5/8" iron pin set) refers to a 30" long rebar with a plastic identification cap stamped "Haley-Dusa S-7143".

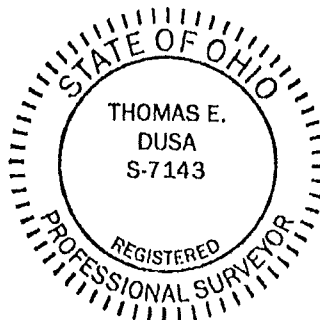
This description is based upon a field survey conducted under the supervision of Thomas E. Dusa, Registered Surveyor, Ohio License Number S-7143, on March 1, 2022 as filed in Montgomery County Engineer's Office Record of Land Surveys, Survey Record Volume 2022, Page 0131.

**Haley-Dusa Engineering & Surveying Group, LLC**



**Thomas E. Dusa**  
**Registered Surveyor**  
**Ohio License Number S-7143**

**March 29, 2022**  
**Job # S4921**



MONTGOMERY COUNTY ENGINEER  
APPROVED FOR POINT OF BEGINNING,  
ACREAGE AND CLOSURE ONLY  
DATE 3/31/2022 FILE NO. 2022-0131

BY Wayne Btw



Exhibit "C" for Cross-Easement Agreement between  
Konrad Kuczak and City of Centerville.

**INGRESS/EGRESS EASEMENTS  
SECTION 30, TOWN 3, RANGE 5 M.Rs.  
CITY OF CENTERVILLE  
MONTGOMERY COUNTY, OHIO**

Situate in Section 30, Town 3, Range 5 M.Rs., City of Centerville, County of Montgomery, State of Ohio and being two easements for ingress and egress over a 0.0733 acre tract conveyed to \_\_\_\_\_ in IR Deed \_\_\_\_\_, more particularly described as follows: (all references to deed books, official records, microfiche numbers, instrument numbers, survey records and/or plats refer to the Montgomery County Recorder's Office, Montgomery County, Ohio)

Easement 1

Beginning at the northeast corner of said 0.0733 acre tract and on the west line of a 16 foot wide alley;

Thence along the west line of said alley, **South 12°40'00" West** a distance of 15.01 feet;

Thence **North 77°35'44" West** a distance of 56.17 feet to the west line of said 0.0733 acre tract;

Thence along the west line of said 0.0733 acre tract, **North 12°09'19" East** a distance of 14.88 feet to the northwest corner of said 0.0733 acre tract;

Thence along the north line of said 0.0733 acre tract, **South 77°43'30" East** a distance of 56.30 feet to the place of beginning.

Containing 840 square feet, more or less.

Subject to all legal highways, easements, and restrictions of record.

Easement 2

Beginning at the southeast corner of said 0.0733 acre tract on the west line of a 16 foot wide alley;

Thence along the south line of said 0.0733 acre tract, **North 83°45'00" West** a distance of 56.12 feet to the southwest corner of said 0.0733 acre tract;

Thence along the west line of said 0.0733 acre tract, **North 12°09'19" East** a distance of 14.45 feet;

**PAGE TWO**

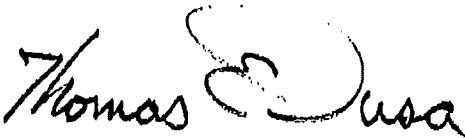
Thence **South 78°12'04" East** a distance of **55.90** feet to the west line of said alley;

Thence along the west line of said alley, **South 12°40'00" West** a distance of **9.02** feet to the place of beginning.

Containing **655** square feet, more or less.

Subject to all legal highways, easements, and restrictions of record.

**Haley-Dusa Engineering & Surveying Group, LLC**



**Thomas E. Dusa**  
**Registered Surveyor**  
**Ohio License Number S-7143**

**March 29, 2022**  
**Job # S4921**

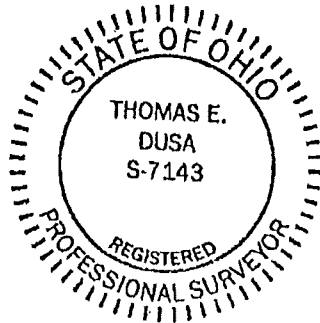
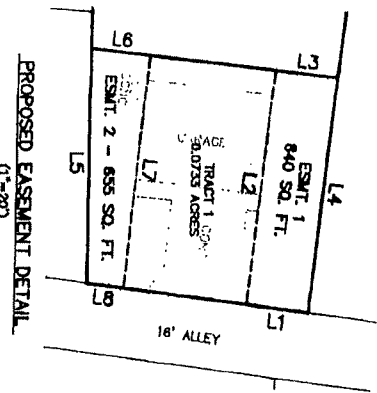
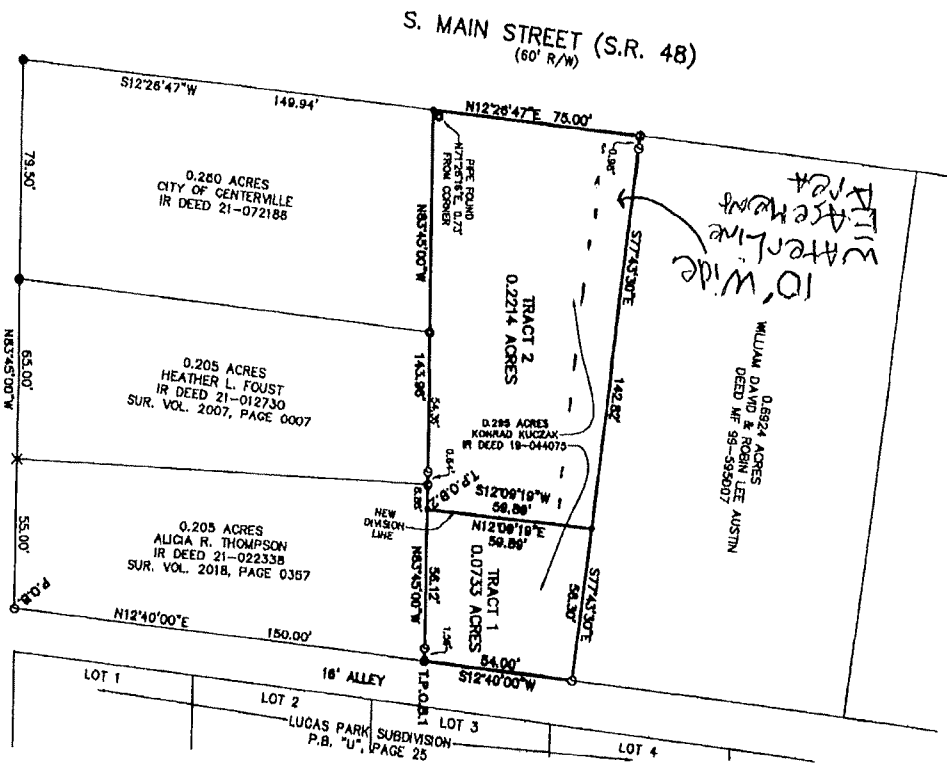
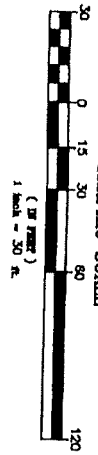


Exhibit "D" for Cross-Easement Agreement between  
Konrad Kuczak and City of Centerville.

**PLAT OF SURVEY**  
SECTION 30, TOWN 3, RANGE 5 M.R.S.  
CITY OF CENTERVILLE  
MONTGOMERY COUNTY, OHIO  
**0.2947 ACRES TOTAL**



LINE	BEARING	LENGTH
L1	S72°40'00\"/>	



**BASIS OF BEARINGS:**  
• EAST RIGHT-OF-WAY LINE OF SOUTH MAIN STREET - N12°28'47\"/>

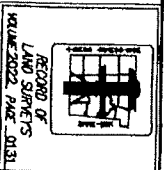
**SURVEY REFERENCES:**  
• ALL DEEDS PLATS AND SURVEY RECORDS SHOWN ON THE FACE OF THIS SURVEY.

**GENERAL NOTES:**  
• ALL MONUMENTS WERE FOUND OR SET IN GOOD CONDITION.  
• OCCUPATION, IN GENERAL, FITS THE SURVEY.

SYMBOL LEGEND	
○	FOUND 5/8\"/>

**CERTIFICATION:**  
I, THE UNDERSIGNED, BEING A LICENSED SURVEYOR IN ACCORDANCE WITH THE PROVISIONS OF CHAPTER 473-37 OF THE OHIO REVISIONED STATUTES, HAVE PERSONALLY AND INDEPENDENTLY EXAMINED THE ABOVE PLAT AND FIND THAT THE SAME CONFORMS TO THE STANDARDS FOR BOUNDARY SURVEYS AS PRESENTED IN THE OHIO REVISIONED STATUTES AND THAT THE INFORMATION IS TRUE AND CORRECT AS SHOWN HEREON.

Thomas E. Dusa  
Registered Surveyor  
Ohio License Number S-7143  
Field Survey Date: 03-01-2022



**Haley-Dusa**  
Engineering & Surveying Group, LLC  
270 Regency Ridge Drive, Suite 203  
Dayton, Ohio 45424  
Phone: (937) 439-4300 Fax: (937) 439-2005  
Email: info@haleydusa.com  
Website: www.haleydusa.com

Scale: 1"=30'  
Date: 03-29-2022  
Job No. S4921  
Checked: TED

### RIGHT OF FIRST REFUSAL TO PURCHASE

THIS AGREEMENT ("Agreement") is made as of July 29, 2022, between Konrad Kuczak, married ("Seller") whose address is 6923 Vienna Woods Trail, Dayton, Ohio 45459 and City of Centerville, an Ohio Municipality, ("Purchaser"), whose address is 100 W. Spring Valley Road, Centerville, Ohio 45458, under the following circumstances:

A. Seller is the owner of certain real property (the "Property") situated on South Main Street, Centerville, Ohio 45458, Montgomery County, Ohio, as more particularly described in **Exhibit A** attached to this Agreement.

B. Seller desires to grant Purchaser the right of the first refusal to purchase the Property, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration paid, receipt of which is acknowledged, the parties agree as follows:

#### 1. RIGHT OF FIRST REFUSAL.

A. If at any time, Seller shall receive any bona fide offer (an "Offer") from any third party to purchase the Property or any part of the Property and if Seller desires to accept the Offer, Seller shall notify Purchaser in writing of the Offer ("Seller's Notice"). Seller's Notice shall contain a copy of the Offer and all other applicable terms and conditions [including, if applicable, a Lead-Based Paint Disclosure Statement and any supplemental reports or information required by law]. Purchaser shall then have the right to purchase the Property, or the part that is the subject to the Offer (the whole or that part of the Property being referred to as the "Offer Property"), at the price and on the other terms and conditions set forth in Seller's Notice. Purchaser's right under this Agreement is referred to as the "Right of First Refusal."

B. Purchaser shall exercise the Right of First Refusal, if at all, by providing Seller written notice ("Notice of Exercise") within 30 days after receipt by Purchaser of Seller's Notice. [This period of time shall represent the agreed time for Purchaser to conduct any assessment or inspection of the Offer Property to determine the presence of lead-based paint and/or lead-based paint hazards, and an opportunity to seek authority for the purchase.] If Purchaser does not timely provide Seller with the Notice of Exercise, Seller may sell the Offer Property to a third

party on the terms set forth in Seller's Notice, and the Right of First Refusal shall not apply to any subsequent owner of the Offer Property, provided that:

(i) the Right of First Refusal shall remain in effect with respect to the balance of the Property, if any, not conveyed pursuant to the Offer;

(ii) once an Offer of which Seller has given Purchaser Seller's Notice is accepted by Seller, Seller shall not agree to a reduction of the purchase price, more favorable terms to the third party purchaser, or any change in the consideration to be given in exchange for the Offer Property, without first giving Purchaser a new Seller's Notice of the reduction, more favorable terms or change, and upon receipt of the new Seller's Notice, the Right of First Refusal shall apply to the Offer Property at the new price, or on the new or changed terms set forth in the new Seller's Notice; and

(iii) if any Offer is not accepted or if the Offer Property is not conveyed in accordance with the Offer within 180 days after the date of Seller's Notice with respect to that Offer, then the Right of First Refusal shall again be applicable prior to any sale of that Offer Property.

## 2. CLOSING.

If Purchaser timely exercises the Right of First Refusal, the closing of the purchase shall be held in Dayton, Ohio, within 60 days after receipt by Seller of the Notice of Exercise. Real estate taxes and assessments which become a lien on the Offer Property in the year of the closing shall be prorated between the Purchaser and Seller as of the closing date. Real estate taxes and assessments for years prior to the year of the closing shall be paid by Seller or credited against the purchase price for the Offer Property, in accordance with the Montgomery County "Short-Proration" method.

## 3. INSURANCE.

From the date of the Notice of Exercise until the closing, Seller shall maintain fire and extended coverage insurance, including vandalism and malicious mischief endorsements, on all buildings and other improvements located on the Offer Property in an amount not less than the full replacement value. If those buildings or improvements suffer any loss or damage prior to the closing, Purchaser may, at its option, either (i) proceed with the closing of the purchase of the Offer Property, in which event Seller shall assign to Purchaser all of Seller's right, title and interest in the proceeds of the insurance payable with respect to the loss and damage, or (ii) rescind its agreement to purchase the Offer Property, in which case Purchaser shall be relieved of its obligation to purchase the Offer Property arising by reason of Purchaser's exercise of the Right of First Refusal, and the parties shall proceed as though no Notice of Exercise was given.

4. DEED.

At the closing of any purchase pursuant to Purchaser's exercise of the Right of First Refusal, Seller shall convey to Purchaser, by transferable and recordable general warranty deed (with release of dower, if necessary), marketable fee simple title to the Offer Property, free and clear of all liens and encumbrances whatsoever, except (i) real estate taxes and assessments not yet due and payable, (ii) easements, covenants, conditions, restrictions and reservations of record as of the date of this Agreement, (iii) zoning and building laws, codes, ordinances and regulations. As long as this Agreement is in effect, Seller will not create any easements, covenants, conditions, restrictions or reservations or other encumbrances (except mortgages) affecting the Property without Purchaser's written consent, which consent shall not be unreasonably withheld.

5. COVENANTS RUNNING WITH THE LAND; SUCCESSORS.

The covenants and agreements contained in this Agreement shall be deemed to be covenants running with the land and shall inure to the benefit of and be binding upon Seller and Purchaser and their respective heirs, personal representatives, successors and assigns.

6. NOTICES.

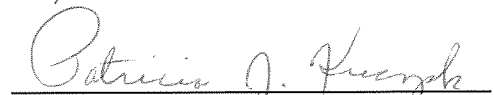
Any notice required or permitted to be given to a party under this Agreement shall be in writing dated and shall be given by mailing the notice by registered or certified mail, postage paid, return receipt requested, or by depositing the notice with a nationally recognized overnight delivery service, addressed to Purchaser at 100 W. Spring Valley Road, Centerville, Ohio 45458, Attention City Manager, and to Seller at 6923 Vienna Woods Trail, Dayton, Ohio 45459, or to such other address as either party may specify by written notice to the other in the foregoing manner.

Patricia J. Kuczak, wife of the Grantor, Konrad Kuczak, releases all right of dower in this property.

SIGNED this 29<sup>th</sup> day of July, 2022.

SELLER

  
\_\_\_\_\_  
KONRAD KUCZAK

  
\_\_\_\_\_  
PATRICIA J. KUCZAK

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

**BE IT REMEMBERED**, That on the 19th day of July, 2022 before me, the subscriber, a Notary Public, in and for said County personally came, **KONRAD KUCZAK, and PATRICIA J. KUCZAK, husband and wife**, the grantor(s) in the foregoing deed and acknowledged the signing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned.

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

Carlo C. McGinnis  
Notary Public  
CARLO C. MCGINNIS, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date.  
Section 147.03 O. R. C.

PURCHASER  
City of Centerville, Ohio

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

Print: Wayne S. Davis

Title: City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
Scott A. Liberman, Municipal Atty.

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

**BE IT REMEMBERED**, That on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 before me, the subscriber, a Notary Public, in and for said County personally came, **Wayne S. Davis**, City Manager of the City of Centerville, Ohio, the grantor(s) in the foregoing instrument and acknowledged the signing thereof to be his voluntary act and deed, for and on behalf of said entity.

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

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

This Instrument Prepared By:  
Carlo C. McGinnis  
Attorney at Law  
55 Park Avenue, Dayton, Ohio 45419  
937-979-1314

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

**BE IT REMEMBERED**, That on the \_\_\_\_\_ day of \_\_\_\_\_, 2022 before me, the subscriber, a Notary Public, in and for said County personally came, **KONRAD KUCZAK, and PATRICIA J. KUCZAK, husband and wife**, the grantor(s) in the foregoing deed and acknowledged the signing thereof to be their voluntary act and deed, for the uses and purposes therein mentioned.

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

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

PURCHASER

City of Centerville, Ohio

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

Print: Wayne S. Davis

Title: City Manager

APPROVED AS TO FORM: \_\_\_\_\_

Scott A. Liberman  
Scott A. Liberman, Municipal Atty.

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

**BE IT REMEMBERED**, That on the 1 day of August, 2022 before me, the subscriber, a Notary Public, in and for said County personally came, **Wayne S. Davis**, City Manager of the City of Centerville, Ohio, the grantor(s) in the foregoing instrument and acknowledged the signing thereof to be his voluntary act and deed, for and on behalf of said entity.

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

This Instrument Prepared By:  
Carlo C. McGinnis  
Attorney at Law  
55 Park Avenue, Dayton, Ohio 45419  
937-979-1314





**TRACT ONE  
0.0733 ACRES  
SECTION 30, TOWN 3, RANGE 5 M.Rs.  
CITY OF CENTERVILLE  
MONTGOMERY COUNTY, OHIO**

Situate in Section 30, Town 3, Range 5 M.Rs., City of Centerville, County of Montgomery, State of Ohio and being part of a 0.295 acre tract conveyed to Konrad Kuczak in IR Deed 19-044075, more particularly described as follows: (all references to deed books, official records, microfiche numbers, instrument numbers, survey records and/or plats refer to the Montgomery County Recorder's Office, Montgomery County, Ohio)

Beginning at a 5/8" iron pin found at the southwest corner of the Lucas Park Subdivision as recorded in Plat Book "U", Page 25 also being the intersection of the west line of a 16 foot wide alley and the north right-of-way line of Martha Avenue (50' R/W), thence along the west line of said alley, North 12°40'00" East a distance of 150.00 feet to a 5/8" iron pin with "NBP" cap found at the northeast corner of a 0.205 acre tract conveyed to Alicia R. Thompson in IR Deed 21-022338, said point being the **TRUE PLACE OF BEGINNING.**

Thence along the north line of said 0.205 acre tract, **North 83°45'00" West**, passing a 5/8" iron pin in concrete found at 1.56 feet, a total distance of **56.12** feet to a 5/8" iron pin set;

Thence along a new division line, **North 12°09'19" East** a distance of **59.89** feet to a 5/8" iron pin set on the south line of a 0.6924 acre tract conveyed to William David and Robin Lee Austin in Deed MF 99-595D07;

Thence along the south line of said 0.6924 acre tract, **South 77°43'30" East** a distance of **56.30** feet to a 5/8" iron pin in concrete found at the southeast corner of said 0.6924 acre tract and on the west line of said alley;

Thence along the west line of said alley, **South 12°40'00" West** a distance of **54.00** feet to the **TRUE PLACE OF BEGINNING.**

Containing **0.0733** acres, more or less.

Subject to all legal highways, easements, and restrictions of record.

Basis of Bearings: east right-of-way line of South Main Street –

North 12°26'47" East – Survey Volume 2018, Page 0357

CITY OF CENTERVILLE, OH
Plat Approval - Minor
<i>Mark Vanduit</i>
City Planner
<i>03/31/2022</i>
Date

**PAGE TWO**

A (5/8" iron pin set) refers to a 30" long rebar with a plastic identification cap stamped "Haley-Dusa S-7143".

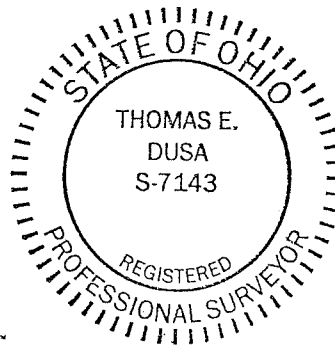
This description is based upon a field survey conducted under the supervision of Thomas E. Dusa, Registered Surveyor, Ohio License Number S-7143, on March 1, 2022 as filed in Montgomery County Engineer's Office Record of Land Surveys, Survey Record Volume 2022, Page 0131.

**Haley-Dusa Engineering & Surveying Group, LLC**



Thomas E. Dusa  
Registered Surveyor  
Ohio License Number S-7143

March 29, 2022  
Job # S4921



MONTGOMERY COUNTY ENGINEER  
APPROVED FOR POINT OF BEGINNING,  
ACREAGE AND CLOSURE ONLY  
DATE 3/31/2022 FILE NO. 2022-0131

BY Wayne B. Tol