

**RESOLUTION NO. 64-24**  
**CITY OF CENTERVILLE, OHIO**

SPONSORED BY COUNCILMEMBER Mark Engert ON THE  
17<sup>th</sup> DAY OF June, 2024.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO A RIGHT OF ENTRY AGREEMENT WITH WESTERLY RENTALS LLC FOR THE PROPERTY AT 21 W. FRANKLIN STREET.

WHEREAS, Westerly Rentals LLC owns a property located at 21 W. Franklin St., Centerville, Ohio and further described in Exhibit "A", attached hereto (the "Property"); and

WHEREAS, the City is performing a driveway closure/public greenspace project, which improvements will be within City owned property and a section of the Property (the "Project") which requires temporary access to and upon the Property; and

WHEREAS, Westerly Rentals LLC is willing to grant such entry to the Property to assist the City in completing the Project.


NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized to execute the Right of Entry Agreement with Westerly Rentals LLC. A Copy of the Agreement is attached and marked Exhibit "A" and incorporated herein.

Section 2. That the city Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement

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

PASSED this 17<sup>th</sup> day of June, 2024.

  
\_\_\_\_\_  
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 64-24, passed by the Council of the City of Centerville, Ohio, on the 17<sup>th</sup> day of June, 2024.



Clerk of Council

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

Department of Law  
Scott A. Liberman  
Municipal Attorney

**RIGHT OF ENTRY AGREEMENT**

This Right of Entry Agreement (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2024, between WESTERLY RENTALS LLC, an Ohio limited liability company, Grantors, whose address is 21 West Franklin Street, Centerville, Ohio 45459, and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), whose address is 100 W. Spring Valley Road, Centerville, Ohio 45458, under the following circumstances:

A. Grantor owns the property at 21 West Franklin Street in Centerville, Ohio and further described in Exhibit "A", attached hereto (hereinafter referred to as the "Property").

B. The City is performing a project to make improvements to public access, parking, and parks that is located on the Property, which improvements will be on the Property (hereinafter referred to as the "Project").

C. The City will be under contract with a contractor to perform survey work necessary to begin the Project.

D. It is necessary for the contractor to access the Property in order to perform survey work directly related with the Project, in the area more particularly depicted in Exhibit "B".

E. Grantor shall grant to the City a right of entry onto the Property for the purpose of access for survey work directly related with the Project and other activities, as set forth below.

NOW, THEREFORE, Grantor and the City agree as follows:

1. Consideration. Grantor acknowledges and agrees that the City will make no payments to Grantor pursuant to this Agreement. Grantor acknowledges and agrees that the grant of the right of the entry by Grantor to the City which will allow the City to perform survey work directly related with the Project is complete and sufficient consideration for the covenants and agreements of Grantor in this Agreement, subject to other terms set forth herein.

2. Right of Entry. Grantor hereby grants to the City and its contractor the right to enter onto the Property for all purposes related generally to surveying directly related with the Project.

3. Survey Work Requirements. During survey work directly related with the Project, the following terms and conditions shall apply:

(a) Unless otherwise mutually agreed, surveying directly related with the Project will only occur between the hours of 7:00 AM and 7:00 PM, Monday through Saturday.

(b) Any damage to the Property caused by surveying work directly related to the Project will be restored to a condition that reasonably meets or exceeds the condition of the Property at the beginning of the Project.

(c) The City will provide Grantor notice of survey work directly related with the project Project start date at least 24 hours before work commences.

4. Compliance with Laws. The City will adhere and will require by contract that all contactors and subcontractors on the Property adhere to all applicable federal, state and local laws and regulations at all times during the construction.

5. Term. The term of this Agreement shall commence upon execution of this Agreement and will expire on the date of completion of the Project as determined by the City.

6. Miscellaneous

(a) Governing Law. This Agreement shall be governed and enforced in accordance with the law of the State of Ohio.

(b) Execution of Instruments. The parties to this Agreement shall execute (and, if necessary, acknowledge) and deliver any and all documents and papers and take all such further action as may be necessary or desirable to carry out and effectuate the full purpose and intent of this Agreement.

(c) Severability. In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

(d) Exhibits. All exhibits, schedules and any other documents attached to this Agreement are incorporated into this Agreement by this reference and shall be deemed a part of this Agreement as set forth in full in this Agreement. References to “this Agreement” and words of similar import refer to this Agreement (including all Exhibits and schedules to this Agreement) as an entirety.

(e) Waiver. The terms, covenants, representations, warranties and conditions of this Agreement may be waived only by a written instrument executed by the party waiving compliance. The failure of any party at any time to require performance of any of the provisions of this Agreement shall, in no manner, affect the right at a later date to enforce such provisions. No waiver by any party of any condition, or breach of any provision, term, covenant, representation or warranty contained in this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

(f) Nontransferability of Agreement. The rights, obligations, benefits and burdens of this Agreement may not be transferred, assigned or conveyed in any manner by any party without the prior, written consent of all other parties to this Agreement.

(g) Benefit. Subject to the restrictions contained in this Agreement with respect to transfer, assignment and conveyance, this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement, and the heirs, legal representatives, successors and assigns of the parties to this Agreement.

(h) Entire Agreement. This Agreement (including the exhibits attached to this Agreement), and the other documents referred to in this Agreement or delivered pursuant to this Agreement contain the entire understanding of the parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous written and oral agreements and understandings between the parties with respect to the subject matter of this Agreement.

(i) Amendment. This Agreement may be amended at any time by the joint act of the parties to this Agreement; provided, however, that no amendment shall be valid unless the amendment is in writing and signed by all parties to this Agreement.

(j) Headings. The headings used in this Agreement are for convenience only and this Agreement shall be interpreted as if such headings were omitted.

(k) Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute one agreement. No new counterparts shall be valid unless the counterpart has been approved in writing and signed by all parties to this Agreement.

7. Signatures. This Agreement is effective as of the Effective Date which reflects the date last signed by the parties. This Agreement may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally scanned signatures are acceptable to evidence complete agreement.

**THE CITY:**

**CITY OF CENTERVILLE, OHIO,**  
an Ohio municipal corporation

**GRANTOR:**

**WESTERLY RENTALS LLC,**  
an Ohio limited liability company

\_\_\_\_\_  
By: Wayne S. Davis  
Its: City Manager

\_\_\_\_\_  
By: Peter Haynal  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Scott A. Liberman  
Municipal Attorney

EXHIBIT A

Property Deed

File# 2017-00026329

GENERAL WARRANTY DEED

008 00103 0040

KNOW ALL MEN BY THESE PRESENTS, that ANATHALLO LLC, an Ohio limited liability company, for valuable consideration paid, grant(s) with general warranty covenants to WESTERLY RENTALS LLC, an Ohio limited liability company, whose tax mailing address is \_\_\_\_\_, the real property described on Exhibit "A" attached hereto.

Prior Deed Reference: File #2016-00069791

This conveyance is subject to all legal highways and easements, all restrictions, conditions and covenants of record, all zoning restrictions, and all taxes and assessments not yet payable.

Executed this 25th day of April 2017.

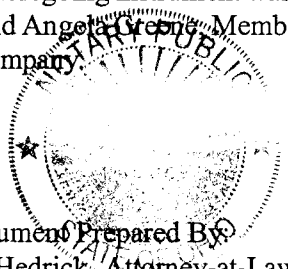
Anathallo LLC, an Ohio limited liability company

*Jeremy Greene*  
\_\_\_\_\_  
Jeremy Greene, Member

*Angela Greene*  
\_\_\_\_\_  
Angela Greene, Member

STATE OF OHIO }  
COUNTY OF MONTGOMERY } SS:  
}

The foregoing instrument was acknowledged before me this 25th day of April 2017, by Jeremy Greene and Angela Greene, Members of Anathallo LLC, an Ohio limited liability company, on behalf of said Company.



JAMES E. HEDRICK, Notary Public  
for and in the State of Ohio  
My Commission Expires May 17, 2017

*James E. Hedrick*  
\_\_\_\_\_  
Notary Public

This Instrument Prepared By:  
James E. Hedrick, Attorney-at-Law  
HEDRICK & JORDAN CO., LPA

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**EXHIBIT "A"**

Situate in the City of Centerville, County of Montgomery, State of Ohio and being a strip of ground 40 feet in width taken by parallel lines off the east side of Lot Numbered 21 in the Benjamin Robbins Plat of Centerville, except so much thereof as was conveyed to C.D. Slagle by deed dated July 11, 1913 and recorded in Volume 352, Page 161 of the Deed Records of Montgomery County, Ohio, being a 100 foot strip off the north part thereof.

Parcel No. O68 00103 0040

2017-0554  
RETURN TO:  
FIDELITY LAWYERS TITLE AGENCY LLC  
10 W. SECOND ST. #2400  
DAYTON, OH 45402

**KARL KEITH**  
**COUNTY AUDITOR**  
MONTGOMERY COUNTY DAYTON, OHIO  
DESCRIPTION APPROVED FOR  
STRAIGHT TRANSFER CLOSURE  
NOT CHECKED.  
BY Y/MAK DATE 5-3-17  
MAP DEPARTMENT

(2017-0554.PFD/2017-0554/12)

EXHIBIT B

Work Area

