

RESOLUTION NO. 106-24
CITY OF CENTERVILLE, OHIO

7th SPONSORED BY COUNCILMEMBER Mark Engert ON THE
DAY OF October, 2024.

A RESOLUTION RATIFYING THE ACTIONS OF THE CITY MANAGER IN ENTERING INTO AN UPTOWN PARKING DISTRICT AGREEMENT WITH 110 FRANKLIN STREET ASSOCIATES, LTD. FOR THE UPTOWN PARKING DISTRICT.

WHEREAS, the City of Centerville is developing a public parking district to assist all businesses and residents located in the area of Main and Franklin Streets in the City known as Uptown; and

WHEREAS, the City desires to create a public parking district to be built and established in several phases (the “Project”); and

WHEREAS, the Project requires the cooperation of property owners in agreeing to be a party to the Project and the Parking District; and

WHEREAS, 110 Franklin Street Associates, LTD, as owner of the property located at 110 West Franklin Street in the Uptown has agreed to be part of the Parking District; and

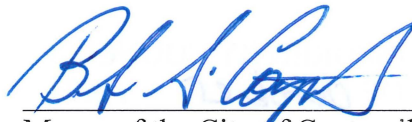
WHEREAS, the City and the property owner negotiated a Parking District Agreement similar to the other ones in the Uptown Parking District and went ahead and had their agreement executed and recorded due to the need to start that project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CENTERVILLE, MONTGOMERY COUNTY, OHIO, AS FOLLOWS:

Section 1. The City hereby agrees to enter into the Parking District Agreement with 110 Franklin Street Associates, LTD for the Uptown Parking District project; and the actions of the City Manager in executing the Parking District Agreement is hereby ratified. A copy of the executed and recorded agreement is attached hereto as Exhibit “A” and incorporated herein on behalf of the City of Centerville.

Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 7th day of October, 2024.



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. 106-24, passed by the Council of the City of Centerville, Ohio on the 7th day of October, 2024.



Clerk of the Council

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

LABEL NBR: 1 Type: DEE
Kind: EASEMENT
Recorded: 08/30/2024 at 03:08:33 PM
Fee Amt: \$146.00 Page 1 of 16
Montgomery County, OH
Stacey Benson-Taylor Recorder
File: 2024 - 00046043

16

PARKING DISTRICT AGREEMENT

This PARKING DISTRICT AGREEMENT ("**Agreement**") is effective as of August 29, 2024, ("**Effective Date**"), and is between the **CITY OF CENTERVILLE**, an Ohio municipal corporation, 100 West Spring Valley Road, Centerville, Ohio 45458 (hereinafter the "**City**") and **110 FRANKLIN STREET ASSOCIATES, LTD.**, an Ohio limited liability company (hereinafter "**Property Owner**"). City and the Property Owner are sometimes referred to individually as a "party," and collectively as the "parties." The parties agree as follows:

PREAMBLE

The City is committed to enhancing the Uptown area in alignment with strategies of the 2019 Uptown Action Plan. The purpose of this Agreement is to establish a shared Uptown Parking District to provide additional public parking, reduce traffic congestion, improve pedestrian walkability, and general improvements for the mutual benefit of the City and the Property Owner. The Property Owner acknowledges a Parking Easement is required and in exchange the City will construct and maintain the shared public parking areas in the proposed district.

RECITALS

A. The Property Owner is the owner of the real property located at **110 WEST FRANKLIN STREET, CENTERVILLE, OHIO 45459** and more particularly described on the attached Exhibit A ("Legal Description") and depicted on the map attached as Exhibit B ("Parcel Map"); and

B. The City is developing a public parking district to assist all of the businesses located and/or to be located in the area of Main and Franklin Streets in the City, including the Property Owner's (hereinafter the "Uptown Parking District"), described on the attached Exhibit C; and

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C. The City and Property Owner desires to establish the herein Parking District Agreement reflecting terms and conditions upon which visitors and employees to the Uptown Parking District may utilize the Parking Area for parking and access to the businesses as well as the circumstances under which the general public may also utilize the Parking Area

Kevin's Box

for parking and special events; and

D. The City will require easements for public parking, ingress/egress, and utilities over the property owned by the Property Owners, with the locations of such utility easements shall be subject to the consent of Property Owner.

ARTICLE 1 DEFINED TERMS

The following capitalized terms in this Agreement have the meanings set forth below.

1.1 Employees mean persons who work in the businesses in the Uptown Parking District.

1.2 Special Event means scheduled events or other gatherings on the Parking Area, which are authorized at the sole discretion of the City.

1.3 Parking Area means the portions of the property on which parking spaces including drive aisles, landscape areas, and the entry driveway are located as depicted on the Site Plan.

1.4 Regular Business Hours means the period between 7:00 AM and 11:00 PM, Monday through Sunday.

1.5 Visitors mean customers, guests, invitees, officials and other persons visiting the businesses in the Uptown Parking District.

ARTICLE 2 PARKING AREA

2.1 Grant of Easements. Subject to the terms and conditions of this Agreement, the Property Owner hereby grants to the City, for the benefit of the Uptown Parking District, and the public a perpetual nonexclusive parking, utilities, and ingress/egress easement ("**Parking Easement**"). The location of utility easements shall be subject to the prior consent of Property Owner and shall not interfere with Property Owner's development of the property. Said Parking Easement shall be for the use of business property owners, Employees, and Visitors. The boundaries of said easement align with the boundaries of the Parking Area in Exhibit D ("Site Plan") and as depicted by Exhibit E ("Legal Description of the Parking Area") attached hereto and incorporated herein.

2.2 Use of Parking Area

2.2.1 Types of Vehicles. Use of the parking spaces under this Agreement is limited to the parking of automobiles, motorcycles, and small trucks, such as pickup trucks, and may not be used for staging or storage or for the parking of larger or heavier commercial vehicles, such as buses and delivery trucks. Provided however, Property Owner and any tenant of the property shall have the right to use the parking spaces for deliveries to any business on the property.

2.2.1 Limitation on City Liability. Use of the Parking Area, and the exercise of the easement rights under this Agreement is at the sole risk of the Employees and Visitors of the businesses and in no event will the City have any liability for any damages caused to any Employee or Visitor or the vehicles or personal property of any Employee or Visitor, except for liability arising out of City's negligence, gross negligence or willful misconduct. City and Property Owner hereby waive any and all rights that each may have against the other to recover from the other, its employees or agents, for any loss occurring to property of each by reason of any act or omission of the other, its employees or agents, Provided however, that this waiver is limited to those losses for which each is compensated by its insurers.

2.2.2 Parking Area to Remain Open. The City and the Property Owner acknowledge and agree that except with respect to required maintenance, the City will keep the Parking Area open for public parking during Regular Business Hours.

2.2.3 Special Events. Subject to the limitation set forth in Section 2.2.2 above, use of the Parking Area for Special Events is solely at the discretion of the City. The City will provide notice to the Property Owner of each intended Special Event use of the Parking Area during Regular Business Hours at least seven (7) days prior to such use.

2.2.4 Clean Up After Special Events. After each Special Event, the City will cause the Parking Area to be cleaned, including the removal of any debris that would interfere with the use of the Parking Area by Employees and Visitors.

ARTICLE 3

CONSTRUCTION, MAINTENANCE, AND ADMINISTRATION

3.1 Maintenance of Parking Area.

3.1.1 Regular Maintenance. The City is responsible for all regular maintenance of the Parking Area. For purposes of this section, regular maintenance of the Parking Area means all regular maintenance required to keep the Parking Area in good condition and repair, including minor repairs such as paving repairs as may be reasonably required from time to time for the continued use of the Parking Areas, and the maintenance of any landscaped areas, repair or replacement of parking signage and lighting fixtures.

3.1.2 Long-Term Maintenance. The parties acknowledge and agree that proper long-term maintenance of the surface of the Parking Area requires that it be seal coated and

striped approximately every five (5) years from the Effective Date, and that the surface be completely overlaid every 20 years. The City will cause such long-term maintenance to be performed as periodically needed.

3.1.3 Snow Plowing. The City is responsible for plowing snow from the Parking Area and access drives as necessary for the reasonable use of the Parking Area, as determined by the City.

3.2 Notice of Damage; Third Party Claims. The parties agree to provide prompt notice with respect to any unusual damage to the Parking Area including information regarding who may have caused such damage. Each party also agrees to use commercially reasonable efforts to pursue any available claims for damage with respect to third parties, including third parties that may have a contractual obligation to either City or Property Owner to pay the costs of repairing such damage. In the event of any such unusual damage, the City agrees to perform any required repairs subject to reimbursement by the Property Owner, less any third-party reimbursement received.

3.3 Utilities. The City shall pay all utilities associated with the Parking Area, including lighting, electric, and water.

3.4 Refuse. The City will be responsible for the maintenance/repair of the common dumpster enclosures located in the Parking Area. The Property Owner shall be responsible for removal of the rubbish from the common dumpster enclosures located in the Parking Area. Dumpsters use shall be limited to refuse generated from normal operations of business tenants and Property Owners, and shall not include:

- a. Construction debris
- b. Toxic and/or hazardous materials
- c. Medical waste
- d. Excess waste related to tenant move-in or move-out

3.5 Right of Entry. The Property Owner hereby grants to the City and its agents, employees and contractors the right to enter onto the Property for the purpose of construction and performing maintenance in the Parking Area.

ARTICLE 4 INSURANCE

4.1 Insurance.

4.1.1 City Insurance. The City shall maintain commercial general liability insurance against claims for injuries to persons or damages to property which may arise due to the City's negligence with respect to its use and maintenance of the Property. Such coverage shall have a limit of One Million Dollars (\$1,000,000) per Occurrence and shall cover, or be endorsed to cover, the Property Owner as an Additional Insured.

4.1.2 Property Owner Insurance. The Property Owner shall maintain for the duration of the Agreement commercial general liability insurance for claims, damages, and liability arising from the use or maintenance of the Parking Area, except claims, damages, or liability, if any, due to the fault or negligence of the City, its officials, employees, agents or contractors. Such coverage shall have a limit of not less than One Million Dollars (\$1,000,000) per Occurrence and shall cover, or be endorsed to cover, the City, its officials, employees, and volunteers as an Additional Insureds. The coverage shall be primary and non-contributing as respects the City, its officials, employees, and volunteers.

ARTICLE 5 AMENDMENTS AND TERMINATION

5.1 Amendments. No modification or amendment shall be effective unless in written recordable form signed by both parties hereto, their heirs, successors or assigns. This Agreement supersedes any prior written agreement or oral understanding between the parties.

5.2 Termination. The Agreement and all of the provisions, covenants, conditions, restrictions, and obligations may be terminated with the written approval of the parties.

ARTICLE 6 MISCELLANEOUS

6.1 Covenants Running with the Land: Prohibition of Fragmentation of Ownership of Easements. The easements and all of the provisions, agreements, covenants, conditions, restrictions and obligations contained in this Agreement are perpetual and shall run with the land and be binding upon City and the Property Owners, and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, and all other persons acquiring any portion of either property, or any interest therein whether by operation of law or any manner whatsoever.

6.2 Notices. All notices or other communications required or permitted under this Agreement must be in writing and must be delivered either by hand (including by courier or reputable overnight delivery service), or deposited in the United States Mail, registered or certified mail, postage prepaid, and addressed as follows:

City:	City of Centerville Attn: City Manager 100 W. Spring Valley Rd. Centerville, OH 45458
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Property Owner: 110 FRANKLIN STREET
ASSOCIATES, LTD.
3445 Newmark Drive
Miamisburg, Ohio 45342

6.3 Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained in this Agreement attach to and run with the property and will, except as otherwise set forth herein, benefit or be binding upon the successors and assigns.

6.4 Effect On Third Parties. The rights, privileges, or immunities conferred under this Agreement are for the benefit of the owners of the Parcels and not for any third party.

6.5 Waiver. No waiver of any provision of this Agreement or any breach of this Agreement will be effective unless such waiver is in writing and signed by the waiving party and any such waiver will not be deemed a waiver of any other provision of this Agreement or any other or subsequent breach of this Agreement.

6.6 Severability. In the event any term, covenant, condition, or provision of this Agreement is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding will in no way affect the validity of enforceability of any other term, covenant, condition, or provision of this Agreement.

6.7 Captions. Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provisions hereof.

6.8 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Agreement.

6.9 Counterparts. This Agreement may be executed in more than one counterpart, each of which will be deemed an original, and all of which together will constitute one and the same instrument.

6.10 Tax Exemption. The Property Owners agree to cooperate with the City's efforts to apply for an exemption to real property taxes for the area covered by the easement.

6.11 No Joint Venture. Nothing in this Agreement shall be construed to make the parties partners or joint venturers or to render any party liable for the debts or obligations of the other, except as expressly provided in this Agreement.

6.12 Exhibits. All exhibits referred to in this Agreement are attached to this Agreement and incorporated by reference.

6.13 Future Business Expansion. The City is generally supportive of building renovations and expansions that conform to the City's Ordinances, including, but not limited to, the Unified Development Ordinance and Design Review Guidelines. The parties

acknowledge the Parking Area and Parking Easement may be amended, subject to Section 5.1 of this Agreement at the discretion and determination of the City, to accommodate expansion of the existing structure, so long as the proposed expansion does not negatively impact the connectivity, access, and/or greatly reduce capacity of the Parking Area or related Utilities.

[Signatures on the following page.]

THE UNDERSIGNED AUTHORIZED REPRESENTATIVES OF THE PARTIES have executed this Agreement as of the Effective Date set forth above.


CITY:

CITY OF CENTERVILLE


By: Wayne S. Davis
Its: City Manager

PROPERTY OWNER:

110 FRANKLIN STREET ASSOCIATES,
LTD., an Ohio Limited Liability Company

By: 
Name: Christopher J. Conley
Title: Managing Agent

Approved as to Form:


Scott A. Liberman
Municipal Attorney


STATE OF OHIO)
COUNTY OF MONTGOMERY) SS:

BE IT REMEMBERED, that on this 29th day of August, 2024, before me, the subscriber, a Notary Public in and for said County and State, personally came Wayne S. Davis, who acknowledged that he did sign said instrument as the City Manager on behalf of the City of Centerville and that said instrument was signed as his free act and deed individually, and the free act and deed of said municipality.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.



HOLLY BRICKER
Notary Public - State of Ohio
Commission Expires Oct 28, 2024


Notary Public

STATE OF OHIO)
COUNTY OF Montgomery) SS:

BE IT REMEMBERED, that on this 14TH day of AUGUST, 2024, before me, the subscriber, a Notary Public in and for said County and State, personally came Christopher J. Contey who acknowledged that he/she did sign said instrument as the managing agent on behalf of said company and that said instrument was signed as his/her free act and deed individually, and the free act and deed of said company.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal on the day and year first above written.



DANIELLE L KUEHNLE
Notary Public
State of Ohio
My Comm. Expires
October 9, 2027

Danielle L. Kuehnle
Notary Public

Prepared by:
Scott A. Liberman, ESQ
Buckley King, LPA
110 N Main St.
Suite 1200
Dayton, OH 45402

Exhibit A
Legal Description

Property Address: 110 W. Franklin Street, Centerville, OH 45458

Situate in the City of Centerville, County of Montgomery, State of Ohio, being located in Section 30, Town 3, Range 5 MRS, more particularly described as follows:

Beginning at the northeast corner of Lot No. 176 of the Boyles Addition to Centerville as recorded in Plat Book "AA". Page 47 and on the west line of Country Village, Section 1, as recorded in Plat Book 82, Page 78, more particularly described as follows;

Thence along the north line of said Boyles Addition, South 83°-47'-16" West distance of 195.07 feet #5 rebar set,

Thence along an east line of said Boyles Addition, North 00°-37'-00" West, a distance of 227.35 feet to a #5 rebar set, said rebar being the TRUE PLACE OF BEGINNING,

Thence North 00°-37'-00" West, passing a #5 rebar set at 173.95 feet, a total distance of 207.00 feet to the centerline of Franklin Street (State Route 725);

Thence along said centerline, North 83°-50'-56" East, a distance of 136.97 feet,

Thence South 07°-21'-00" East, passing a #5 rebar set at 33.15 feet, a total distance of 206.94 feet to a #5 rebar set;

Thence South 83°-47'-16" West a distance of 136.02 feet to the TRUE PLACE OF BEGINNING.

Containing 0.645 acres, more or less.

KARL KEITH COUNTY AUDITOR MONTGOMERY COUNTY DAYTON, OHIO DESCRIPTION APPROVED FOR STRAIGHT TRANSFER CLOSURE. NOT CHECKED.	
BY <u>JK</u>	DATE <u>7/29/24</u>

MB
CHICAGO TITLE COMPANY, LLC
1 S. MAIN ST., SUITE 250
DAYTON, OH 45402

38220629

Exhibit C

Uptown Parking District



Exhibit D

Site Plan: 110 W. Franklin Street



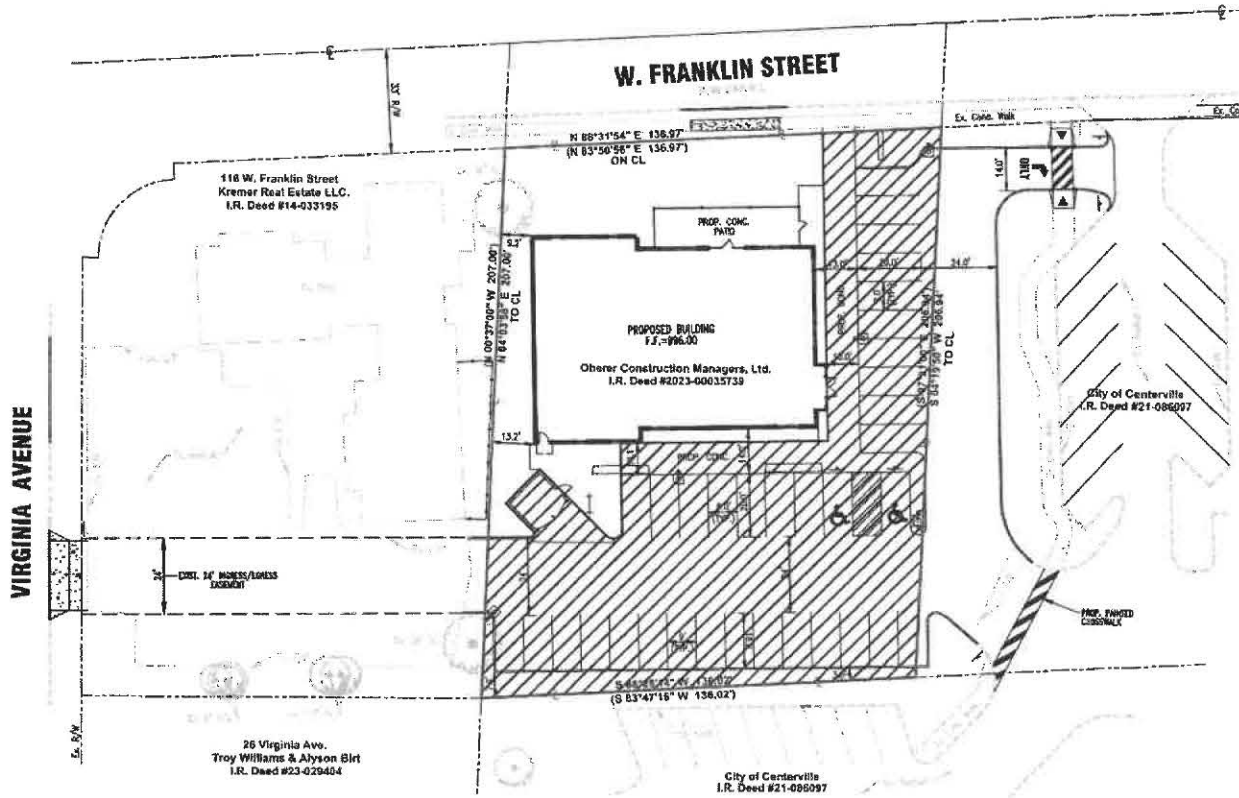
**BOUNDARIES OF
PARKING AREA**

**EXHIBIT D
SITE PLAN**



NOT TO SCALE

SITUATED IN:
SECTION 30, TOWN 3, RANGE 5 M.Rs., CITY OF CENTERVILLE





CIVIL ENGINEERING
SURVEYING
LAND PLANNING

63 Rhoads Center Dr
Centerville, Ohio 45458
www.ReinkeGroup.com
937.434.4810 phone
937.434.3978 fax

EXHIBIT "E"

Legal Description Access, Utility and Parking Easement Oberer Construction Managers, Ltd W. Franklin Street

July 26, 2024

Situate in the City of Centerville, County of Montgomery, State of Ohio, being located in Section 30, Town 3, Range 5 MRS, more particularly described as follows:

BEGINNING at the northeast corner of Lot No. 167 of the Boyles Addition to Centerville as recorded in Plat Book "AA", Page 47 of the Plat Records of Montgomery County, Ohio, said point also being the southeast corner of 0.276 acres (by deed) conveyed to Kremer Real Estate, LLC by deed recorded at File No. 2014-00033195 of the deed Records of Montgomery County, Ohio, also being the northwest corner of the 1.016 acre "Parcel 1" conveyed to the City of Centerville by deed recorded at File# 2021-00086097 of the deed records of Montgomery County, Ohio and the southwest corner of 0.645 acres (by deed) conveyed to Oberer Construction Managers Ltd., by deed recorded in File# 2023-00035739 of the Deed Records of Montgomery County, Ohio;

Thence in a northerly direction with the east line of said Kremer property and the west line of said Oberer property, North 00°37'00" West a distance of 51.07 feet;

Thence leaving said Oberer west property line and proceeding in a generally northerly direction through said Oberer property the following nine courses:

1. North 86°23'49" East a distance of 13.43 feet;
2. North 41°48'40" East a distance of 1.90 feet;
3. North 48°11'20" West a distance of 13.10 feet;
4. North 41°48'40" East a distance of 15.33 feet;
5. South 48°11'20" East a distance of 31.00 feet;
6. North 85°53'00" East a distance of 3.92 feet;
7. North 04°07'00" West a distance of 30.18 feet;
8. North 85°53'00" East a distance of 64.85 feet;
9. North 04°07'00" West a distance of 96.89 feet to the south right of way line of West Franklin Street (presently 33.00 feet from the centerline of said street);

Thence in an easterly direction with the said Franklin Street right of way line North 83°50'56" East a distance of 37.22 feet to the west line of the 0.284 acre Parcel 2 conveyed to the City of Centerville by said Centerville deed, and the east line of said Oberer land;

Thence in a southerly direction with the west line of last said Centerville land and the east line of said Oberer land, South 00°21'08" East (bearing from said Centerville deed, Oberer deed bearing for this course appears in error) a distance of 173.77 feet to the southwest corner of said Centerville land and the southeast corner of said Oberer land;

Thence in a westerly direction with the north line of said Centerville Parcel 1 and the south line of said Oberer land, South 83°47'16" West a distance of 136.02 feet the POINT OF BEGINNING containing 0.2982 acres, more or less, subject however to all legal highways, easements and restrictions of record.

Basis of Bearings: Grantor Deed of record

The Reinke Group Inc.

By: *George E. Reinke*, 312 7/26/2024

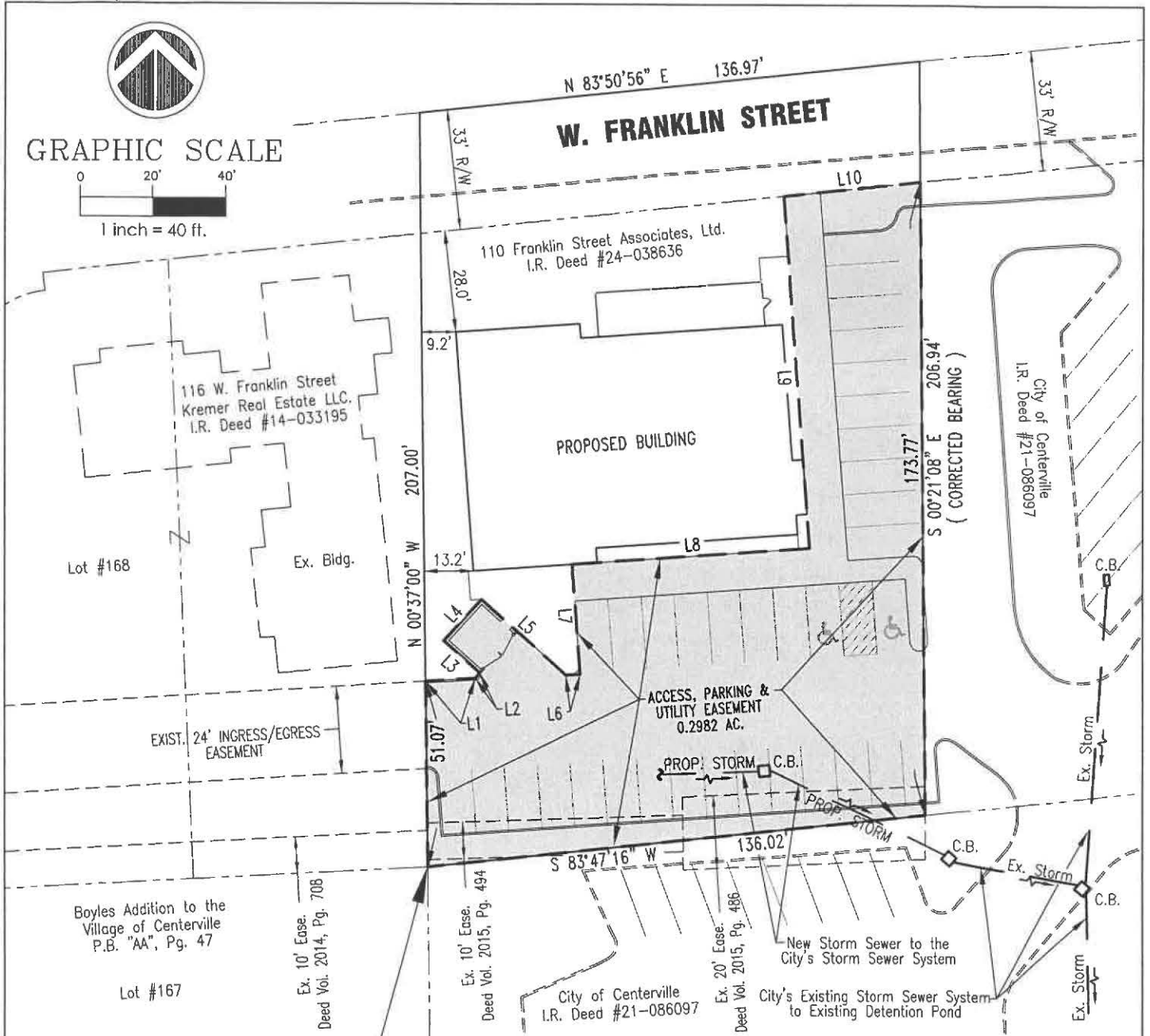
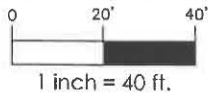
George E. Reinke

Ohio Reg. Surveyor 6207





GRAPHIC SCALE



POINT OF BEGINNING
ACCESS, UTILITY & PARKING
EASEMENT

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 86°23'49" E	13.43'
L2	N 41°48'40" E	1.90'
L3	N 48°11'20" W	13.10'
L4	N 41°48'40" E	15.33'
L5	S 48°11'20" E	31.00'
L6	N 85°53'00" E	3.92'
L7	N 04°07'00" W	30.18'
L8	N 85°53'00" E	64.85'
L9	N 04°07'00" W	96.89'
L10	N 83°50'56" E	37.22'

MAP TO ACCOMPANY LEGAL DESCRIPTION FOR AN ACCESS, UTILITY & PARKING EASEMENT

LOCATED IN:
SECTION 30, TOWN 2, RANGE 5 MRS
CITY OF CENTERVILLE
MONTGOMERY COUNTY, OHIO
EASEMENT AREA: 0.2982 AC.
AUGUST 14, 2024

REINKE
GROUP, INC.

ENGINEERS • LAND PLANNERS • SURVEYORS

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