

RESOLUTION NO. 112-24
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Jo Anne Rau ON THE
21st DAY OF October, 2024.

A RESOLUTION RATIFYING THE ACTIONS OF THE CITY MANAGER IN ENTERING INTO AN UPTOWN PARKING DISTRICT AGREEMENT WITH WESTERLY RENTALS LLC LOCATED AT 21 WEST FRANKLIN STREET IN 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, Westerly Rentals LLC, as owner of the property located at 21 West Franklin Street in the Uptown has agreed to be part of the Parking District; and

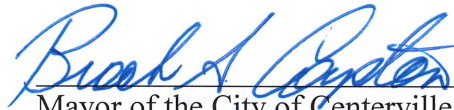
WHEREAS, the City and the property owner negotiated a Parking District Agreement similar to the other ones in the Uptown Parking District and went ahead and had their agreement executed and recorded due to the need to start that project.

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 Westerly Rentals LLC 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 agreement is attached hereto as Exhibit “A” and incorporated herein on behalf of the City of Centerville.

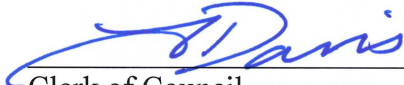
Section 2. This Resolution shall be in full force and effect at the earliest date allowed by law.

PASSED THIS 21st 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. 112-24, passed by the Council of the City of Centerville, Ohio on the 21st 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

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 **WESTERLY RENTALS LLC, an Ohio limited liability company, 21 WEST FRANKLIN STREET, CENTERVILLE, OHIO 45459** (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, improve greenspace, and general improvements for the mutual benefit of the City and the Property Owner. The Property Owner acknowledges a public park and public parking Easement is required and in exchange the City will construct and maintain the shared public park and public parking areas in the proposed district.

RECITALS

A. The Property Owner is the owner of the real property located at **21 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”) (the “Property”); 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

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 public park and public parking area for parking, access to the

businesses, and recreational opportunities as well as the circumstances under which the general public may also utilize the parking and park area for parking and special events; and

D. The City will require easements for public parking, public park, ingress/egress, and utilities over the property owned by the Property Owners.

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 and Park 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 Park Area means the portions of the Property on which active or passive public recreation areas exist together with any accessory buildings or uses complimentary to the said recreational purpose as depicted on the Site Plan.

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

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

ARTICLE 2 PARKING AND PARK 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, park, utilities, and ingress/egress easement ("**Parking and Park Easement**"). 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 and Park Area in Exhibit D ("Site Plan") and as depicted by Exhibit E ("Legal Description of the Parking and Park Area") attached hereto and incorporated herein.

2.2 Use of Parking and Park 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.

2.2.1 Limitation on City Liability. Use of the Parking and Park 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. Property Owner agrees to indemnify and hold the City harmless and free from damages of any kind or nature due to or arising from the use or maintenance of the Parking and Park Area, except damages, if any, due to the fault or negligence of the City, its officials, employees, agents or contractors for any and every reasonable expense incurred as a result of any such claim for damages.

2.2.2 Parking and Park Area to Remain Open. The Parties acknowledge and agree that except with respect to any Special Events or required maintenance, the City will keep the Parking and Park Area open for public parking and public use during Regular Business Hours.

2.2.3 Special Events. Use of the Parking and Park 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 and Park 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 and Park Area to be cleaned, including the removal of any debris that would interfere with the use of the Parking and Park Area by Employees and Visitors.

ARTICLE 3

CONSTRUCTION, MAINTENANCE, AND ADMINISTRATION

3.1 Maintenance of Parking and Park Area.

3.1.1 Regular Maintenance. The City is responsible for all regular maintenance of the Parking and Park Area. For purposes of this section, regular maintenance of the Parking and Park Area means all regular maintenance required to keep the Parking and Park Area in good condition and repair, including minor repairs and the maintenance of any landscaped areas, repair or replacement of parking signage, lighting fixtures, and park furnishings.

3.1.2 Long-Term Maintenance. The Parties acknowledge and agree that proper long-term maintenance of the parking surface of the Parking and Park 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 and Park Area and access drives as necessary for the reasonable use of the Parking and Park 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 and Park 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 and Park Area, including lighting, electric, and water.

3.4 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 and Park Area.

3.5 Drive Apron Removal. The Property Owner hereby authorizes the City and its agents, employees and contractors to demolish and remove any driveway apron and curb cuts designated for elimination by Exhibit C in conjunction with construction of the Parking and Park Area. The City agrees to demolish and remove any associated driveway at the time of construction.

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 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 and Park 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:	Westerly Rentals LLC 21 WEST FRANKLIN STREET CENTERVILLE, OH 45459
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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.]

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 Peter Haynal who acknowledged that he/she did sign said instrument as the owner 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.



Donna M. Fiori
Notary Public

Exhibit A

Legal Description of Building Parcel

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: <i>[Signature]</i>	DATE: <u>5-3-17</u>
MAP DEPARTMENT	

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

Exhibit B
Parcel Map

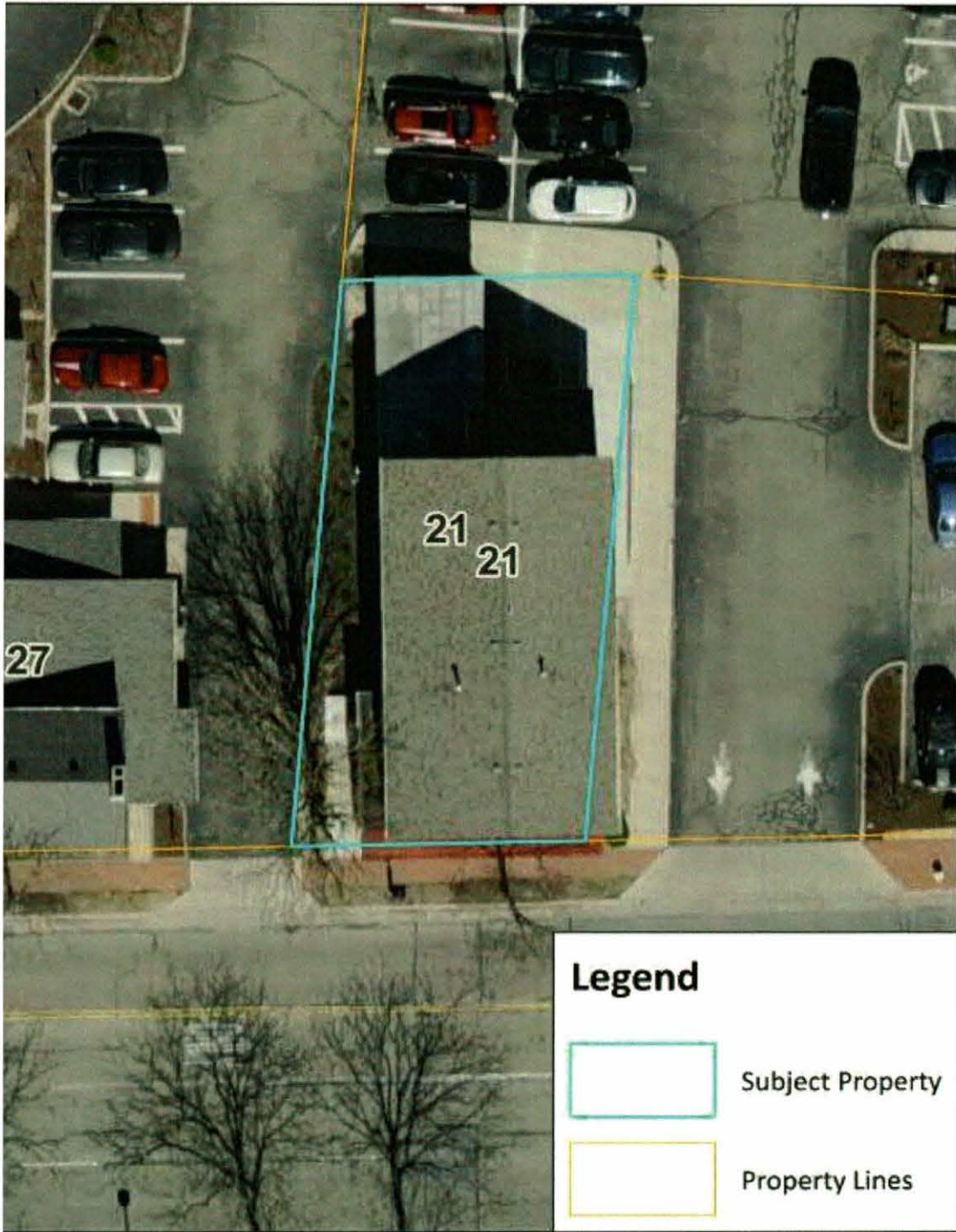


Exhibit C

Uptown Parking District



IMPLEMENTATION PLAN

Exhibit D

Site Plan: 21 W. Franklin Street

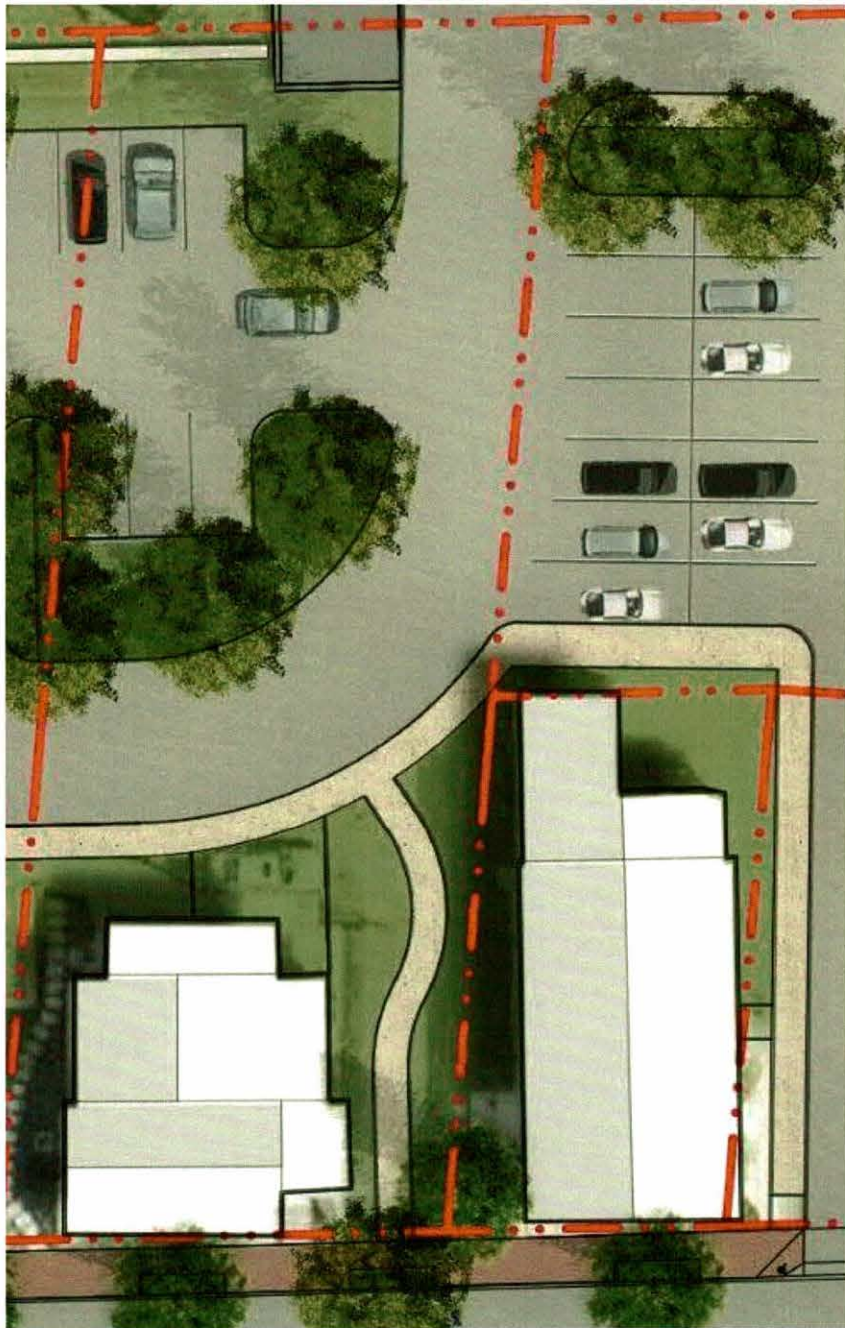
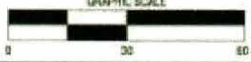
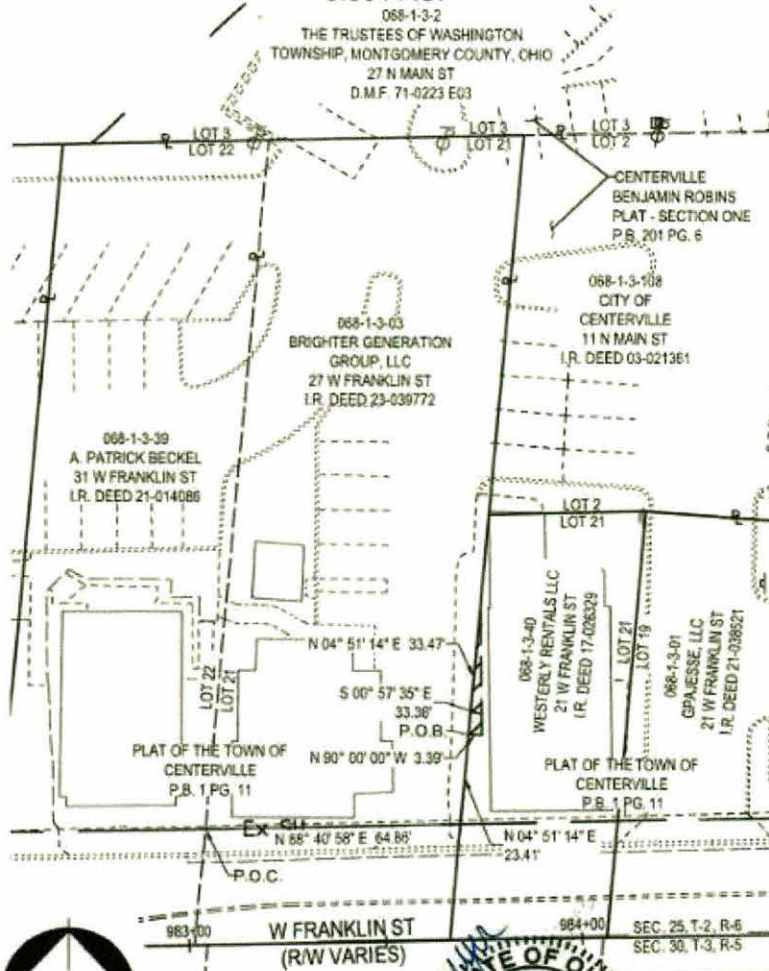



Exhibit E

Legal Description of the Parking and Park Area

ACCESS, UTILITY & PARKING EASEMENT
SITUATED IN:
SECTION 25, TOWN 2, RANGE 6 M.Rs.
VILLAGE OF CENTERVILLE
0.001 AC.



David Hulsmeyer
7/2/24
STATE OF OHIO
DAVID HULSMeyer
S-8548
REGISTERED
PROFESSIONAL SURVEYOR

PROJECT: UPTOWN IMPROVEMENT PLAN				JOB #: 0128170	
SUBJECT: 068-1-3-40 - PARKING LOT EASEMENT				DATE: 07/06/2024	
DSGN: KWW	DRWN: CMM	CHKD: DAH	SHEET NO.: 1/1	SCALE: 1"=30'	 LJBinc.com (866) 552-3536 info@LJBinc.com

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**Legal Description
Access, Utility & Parking Easement
Westerly Rentals, LLC**

Situate in Section 25, Town 2, Range 6 MRs, the City of Centerville, County of Montgomery, State of Ohio and being an easement over and through part lot 21 of the Plat of the Town of Centerville recorded in Plat Book 1 Page 11, a 0.102 acre tract of land conveyed to Westerly Rentals, LLC, as recorded in I.R. Deed 17-026329 (all references to recorded documents made herein are to those of the Montgomery County Recorder's Office in Dayton, OH), and being more particularly described as follows:

Commencing at the intersection of the common line dividing Lots 21 and 22 of said Town of Centerville Plat with the northerly right-of-way line for W. Franklin Road (R/W Varies);

Thence with the northerly right-of-way line for W. Franklin Road, North 88°40'58" East 64.86 feet to the east line of a parcel of land conveyed to Brighter Generation Group, LLC and described in I.R. Deed 23-039772 and in the grantor's west line;

Thence with said common line North 04°51'14" East 23.41 feet to the point of beginning of the easement herein described;

Thence continuing with said dividing line of Lot 21 North 04°51'14" East 33.47 feet to a point;

Thence through said Lot 21, the following two bearings and distances;

1. South 00°57'35" East 33.36 feet to a point;
2. North 90°00'00" West 3.39 feet to the Point of Beginning, containing 0.001 acres more or less.

North and bearing system is based on Ohio State Plane Coordinates, South Zone 3402, NAD83 (2011) GEOID 18 established by GPS using ODOT's VRS.

Prepared By:

LJB Inc.

By: 

David Hulsmeyer, Ohio PS No. 8548

7/9/24
Date

