

IN THE SUPREME COURT OF OHIO

SUGARCREEK TOWNSHIP,

Appellee,

v.

CITY OF CENTERVILLE,

Appellant.

: Supreme Court Case No. 11-0926  
:  
: On Appeal from the Greene County Court of  
: Appeals, Second Appellate District  
:  
: Court of Appeals No. 2010-CA-0052  
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:  
:

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MOTION OF APPELLEE SUGARCREEK TOWNSHIP TO DISMISS THE APPEAL AS  
IMPROVIDENTLY GRANTED DUE TO SUPERVENING DEVELOPMENTS

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BEAVERCREEK TOWNSHIP, AND  
LIBERTY TOWNSHIP

Pursuant to S.Ct. Prac. R. 12.1, appellee Sugarcreek Township respectfully moves this Court to dismiss this appeal as improvidently granted in the light of recent, supervening factual developments.

On July 27, 2012, the current owner and developer of the two parcels at issue in this appeal, Cornerstone Developers, Ltd., filed petitions in the Greene County Court of Common Pleas for the detachment of the two parcels from the City of Centerville. Revised Code 709.41 permits an owner of farm lands that have been annexed to a municipal corporation to file a petition to detach those lands from the municipal corporation (as long as more than five years have elapsed since annexation). The petitions are attached as Exhibits A and B, and they were filed as Greene County Case Nos. 2012 CV 0793 and 2012 CV 0794. According to the petitions, Cornerstone Developers acquired the parcels on June 29, 2010 and became the developer for the parcels. The petitions allege that the parcels at issue were annexed by the City of Centerville more than five years ago, that the parcels at issue have not been developed, and that the parcels are being taxed by the City of Centerville in amounts in excess of the benefits conferred by being annexed by the City of Centerville.

If the petitions are granted, this action will be moot. Granting the petitions would result in the parcels at issue being detached from the City of Centerville. At that point, there would be no live controversy between the parties to this case – the parties would return to their respective positions prior to the annexation, with the parcels at issue within the jurisdiction only of Sugarcreek Township. Centerville would have no ability at that point to tax the parcels at issue (or to implement tax increment financing or any other tax incentive program), and the issue in this case would be moot.

Even before the petitions are ruled on, however, this case no longer presents an appropriate vehicle for deciding the statutory interpretation question at issue. The petitions make clear that the new owner/developer and the City have been unable to reach agreement on the development of the parcels and the financing for any such development. By seeking to detach from the City, the owner/developer has made clear its preference to return to the sole jurisdiction of the Township (and presumably to work with the Township on the development of the parcels). All of this suggests that the fundamental premise of this case – that implementation of a tax increment financing plan by the City for the parcels at issue – no longer exists. The controversy has become academic as a practical matter, and may soon become moot as a legal matter.

For all of these reasons, appellee Sugarcreek Township respectfully requests that this Court dismiss this appeal as improvidently granted.

Respectfully submitted,

*Matthew Blickensderfer* by KMK 0084901

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PROOF OF SERVICE

I hereby certify that a copy of this Motion of Appellee Sugarcreek Township to Dismiss the Appeal as Improvidently Granted Due to Supervening Developments was served by ordinary U.S. mail, postage prepaid, on July 30, 2012 on the counsel listed below:

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 by *ICMIL 0084901*  
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**IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO  
CIVIL DIVISION**

CORNERSTONE DEVELOPERS, LTD.  
3475 Newmark Drive  
Miamisburg, Ohio 45342,

Plaintiff,

vs.

CITY OF CENTERVILLE  
DEPARTMENT OF LAW  
c/o Scott Liberman  
100 West Spring Valley Road  
Centerville, Ohio 45458

Defendant.

Case No. \_\_\_\_\_

**PETITION FOR DETACHMENT  
OF FARM LANDS**

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**PARTIES**

1. Plaintiff, Cornerstone Development, Ltd (“Cornerstone”) is an Ohio limited liability company.
2. Defendant, City of Centerville (the “City”, collectively with Cornerstone, the “Parties”), is a municipal corporation which has annexed the land which is the subject matter of this action.
3. This Court has jurisdiction over this matter pursuant to R.C. 709.41 and 709.42.



## BACKGROUND

4. Prior to 2006, Dille Laboratories Corp. ("Dille Labs"), owned approximately 156.12 acres of farm land located in Sugarcreek Township, Greene County, Ohio ("Sugarcreek"), and more fully described on "Exhibit A" (the "Property").

5. In April 2006, Dille Labs, Bear Creek Capital, LLC ("Bear Creek") and the City entered into a Pre-Annexation Agreement under which the Property was to be annexed into the City. Dille Labs, Bear Creek, and Bear Creek's proposed development entity, Sugar Creek Crossing, LLC, subsequently executed a Memorandum of Understanding, which modified the Pre-Annexation Agreement (with the Pre-Annexation Agreement, the "PAA"). (A copy of the PAA is attached as "Exhibit B").

6. By deed recorded on June 29, 2010, Dille Labs conveyed the Property to Cornerstone. Dille Labs has a membership interest in Cornerstone. As such, Cornerstone is a successor to and an intended beneficiary of the rights of both the Owner and the Developer under the PAA.

7. Under the PAA, the parties set forth a plan through which Dille Labs and Bear Creek were to apply for any annexation of Property by the City, and the City would enact legislation to create tax increment financing (the "TIF ordinance") through which development of the Property would be financed.

8. The PAA also contemplated that the City and Bear Creek would enter into a public infrastructure agreement (the "Infrastructure Agreement") pursuant to which the City and Bear Creek were to erect, construct and maintain public improvements within and outside of the Property, which were to be funded through the TIF ordinance.

9. The PAA also contemplated that Bear Creek and the City would execute a service payment agreement (the "Service Agreement") setting forth the duties and obligations for the tax increment financing to be created by the TIF ordinance.

10. The PAA also contemplated that as part of the TIF ordinance, the City would issue tax increment financing bonds to pay for the cost of public improvements to be constructed within and outside of the Property, and that the debt service on the bonds would be paid from the service payments required by the Service Agreement.

11. In accordance with the PAA, the Trust filed an annexation petition, and, effective October, 2006, the Property was annexed into the City. Since that time, the City has been levying taxes on the Property.

12. Prior to the completion of the annexation of the Property by the City, Sugarcreek enacted its own TIF ordinance, requiring portions of the tax revenue for the Property to be utilized for public improvements which it would designate.

13. Sugarcreek Township then filed a declaratory judgment action ("DJ Action") against the City, seeking a declaration that, among other things, a TIF by the City would be ineffective as to the taxes on the Property that benefit Sugarcreek Township. The Trust and its successors became parties to the DJ Action, and sided with the City.

14. The DJ Action is currently pending in the Ohio Supreme Court.

15. In light of the circumstances described above, Cornerstone has attempted to negotiate alternative financing arrangements with the City. The City, however, has set forth conditions that include: applying the TIF revenue from the Property to fund infrastructure improvements far beyond the scope of the improvements contemplated at the time of the PAA; materially reducing the allocation of TIF funds for internal improvements in comparison to the

level contemplated during the City's negotiations with Bear Creek; requiring that Cornerstone provide guarantees covering the costs of the expanded infrastructure; establishing limitations on the TIF rather than using the full TIF potential of the Property as contemplated by the PAA; refusing to compensate Cornerstone for the dedication of right-of-way (contrary to the City's outline of the Bear Creek terms); requesting the dedication of land without compensation prior to the completion of negotiations; and establishing zoning limitations beyond those contemplated by the PAA.

16. As a result of the foregoing events, the Parties never executed the Infrastructure Agreement or the Service Agreement, and the City never enacted the TIF ordinance or took the actions necessary to issue the bonds contemplated by the PAA and necessary to fund the development of the Property.

17. At this point, the Parties have been unable to come to any agreement. Moreover, at this point, the City has refused to make available financing that would make the development contemplated by the PAA economically feasible .

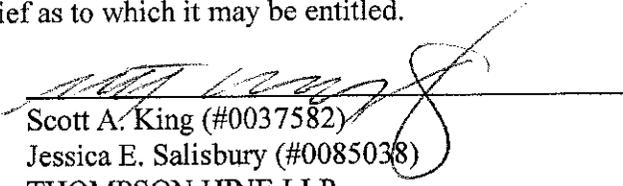
18. More than six years after annexation by the City, the Property remains unplatted, undeveloped farmland. Nonetheless, the Property is now being taxed and will continue to be taxed by the City in substantial excess of the benefits conferred by reason of the Property being within the City.

19. At this point, the Property may be detached from the City without materially affecting the best interest or good governance of the City.

**FIRST CLAIM FOR RELIEF**

20. Cornerstone incorporates the allegations of the preceding paragraphs, as if they were fully rewritten into this paragraph.
21. Prior to its annexation by the City, the Property was and continues to be farmland.
22. The Property was not within the original limits of the City.
23. The Property was annexed to the City more than 5 years ago.
24. As described above, because the Property is located within the City, it cannot be reasonably developed, and Cornerstone is being taxed on the Property in an amount substantially in excess of the benefits being conferred by the lands being within the municipal corporation of the City.
25. The Property could be detached from the City without materially affecting its best interest or good government.

WHEREFORE, Cornerstone Development, Ltd. requests that the Court issue an order detaching the Property from the City of Centerville, and returning it to Sugarcreek Township, for its court costs, and for such further or other relief as to which it may be entitled.

  
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## EXHIBIT A

### Tract 1

Description of Sugarcreek Town Center  
Dille Corporation Part of the North Parcel  
City of Centerville and Sugarcreek Township, Ohio  
Containing 86.432 ACRES

Situate in Section 9, Township 2, Range 6, Township of Sugarcreek and City of Centerville County of Greene, State of Ohio, and being part of a tract of land conveyed to Dille Laboratories Corporation as recorded in Deed Book 244, Page 419, part of another tract of land conveyed to Dille Laboratories Corporation as recorded in Deed Book 285, Page 620, and part of another tract of land conveyed to Dille Laboratories Corporation as recorded in Deed Book 318, Page 343 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Greene County Recorders Office, unless noted otherwise) and being more particularly described as follows:

Commencing for reference at an iron pin (found) in a monument box at the Northwest corner of said Section 9;

thence along the north line of said Section 9, in part along the south line of a tract of land conveyed to Sugarcreek Golf Course, Inc. as recorded in Official Record 696, Page 488, and in part along the south line of a tract of land conveyed to Ellen McDonald as recorded in Official Record 1460, Page 317, South eighty-eight degrees thirty-eight minutes forty-nine seconds East (S88°38'49"E) for one thousand one hundred seventy-eight and 90/100 feet (1178.90') to the TRUE POINT OF BEGINNING of the herein described tract of land;

thence continuing along the north line of said Section 9, and in part along the south line of said Ellen McDonald land, in part along the south of Brown's Run Subdivision as recorded in Plat Cabinet 34, Slide 366B, and in part along the south line of a tract of land conveyed to Katherine A. and Reginald B. O'Hara as recorded in Official Record 1397, Page 657, South eighty-eight degrees thirty-eight minutes forty-nine seconds East (88°38'49"E) for one thousand three hundred eighty-one and 51/100 feet (1381.51') to an iron pin set in the west limited access right-of-way line of Interstate Route 675 as established by Deed Book 513, Page 662 and Official Record 204, Page 524;

thence along said west limited access right-of-way line for the following ten (10) courses:

1. South four degrees fifty-seven minutes thirty seconds East (S04°57'30"E) for five hundred sixty-two and 15/100 feet (562.15') (witness an iron pine found North 48° East for 1.37 feet from said corner);
2. South one degree nine minutes three seconds East (S01°09'03"E) for three hundred eighty-nine and 71/100 feet (389.71') to an iron pin set;
3. South two degrees fifty-five minutes eleven seconds West (S02°55'11"W) for three hundred six and 40/100 feet (306.40') (witness an iron pine found North 32° East for 0.63 feet from said corner);
4. South forty-nine degrees forty-two minutes forty-five seconds West (S49°42'45"W) for fifty-seven and 23/100 feet (57.23') (witness an iron pin found North 20° East for 0.63 feet from said corner);
5. South thirty-three degrees forty-nine minutes twenty-seven seconds East (S33°49'27"E) for sixty-nine and 73/100 feet (69.73') (witness an iron pin found North 21° East for 0.47 feet from said corner);

EXHIBIT A  
(Continued)

File Number: 2293

Policy Number: OX 08246696

6. South two degrees fifty-five minutes eleven seconds West (S02°55'11"W) for ninety-five and 68/100 feet (95.68') (witness an iron found North 6° East for 0.58 feet from said corner);

7. South twenty-three degrees thirteen minutes one second West (S23°13'01"E) for one hundred ninety-three and 27/100 feet (193.27') to an iron pin set;

8. South four degrees twenty-seven minutes eighteen seconds West (S04°27'18"W) for one hundred ninety-two and 14/100 feet (192.14') to an iron pin set;

9. South twenty-one degrees eleven minutes fifty-four seconds West (S21°11'54"W) for three hundred seventy-nine and 62/100 feet (379.62') (witness an iron pin found North 84° West for 0.29 feet from said corner);

10. South twenty-seven degrees one minute fourteen seconds West (S27°01'14"W) for four hundred thirty-six and 90/100 feet (436.90') to a point in the north limited access right-of-way line of Feedwire Road as established by Deed Book 513, Page 654 (witness an iron pin found North 29° West for 0.32 feet from said corner);

thence along said south limited access right-of-way line for the following six (6) courses:

1. North eighty-eight degrees fifty minutes thirty-one seconds West (N88°50'31"W) for two hundred ninety-two and 23/100 feet (292.23') to an iron pin set;

2. South eighty degrees four minutes forty-seven seconds West (S80°04'47"W) for one hundred one and 98/100 feet (101.98') to an iron pin set;

3. North eighty-five degrees forty-four minutes fifty-two seconds West (N85°44'52"W) for one hundred and 12/100 feet (100.12') (witness an P.K. Nail found South 68° East for 0.54 feet from said corner);

4. South eighty-two degrees fifty-one minutes thirty-two seconds West (S82°51'32"W) for two hundred two and 24/100 feet (202.24') to an iron pin set;

5. South seventy-three degrees sixteen minutes seventeen seconds West (S73°16'17"W) for one hundred fifty-seven and 83/100 feet (157.83') to an iron pin set;

6. South one degree twenty-three minutes twenty-three seconds West (S01°23'23"W) for twenty-five and 00/100 feet (25.00') to a point on the south line of the Northwest Quarter of said Section 9;

thence along the south line of the Northwest Quarter of said Section 9, North eighty-nine degrees zero minutes twelve seconds West (N89°00'12"W) for three hundred sixty-five and 13/100 feet (365.13') to the southeast corner of a tract of land conveyed to Charles A. Dille, Trustee as recorded in Official Record 1187, Page 425;

thence along the east line of said Dille Trust land, North four degrees forty-six minutes fifty-eight seconds East (N04°46'58"E) (passing a Mag Nail set at twenty and 04/100 feet (20.04') and another iron pin set at two thousand six hundred seventy-eight and 92/100 feet (2678.92') for a total distance of two thousand six hundred ninety-three and 95/100 feet (2693.95') to the TRUE POINT OF BEGINNING, containing eighty-six and 432/1000 (86.432) acres, more or less total. The existing right-of-way for Brown Road contains 0.476 acres, more or less. The existing right-of-way for Feedwire Road contains 0.167 Acres, more or less 0.476 Acres in Sugar Creek Township and 85.956 Acres in the City of Centerville. This results in a net area of 85.789 acres, more or less,

subject however to all covenants, conditions, restrictions, reservations, and easements contained in any instrument of record pertaining to the above described tract of land.

This description was prepared from a field survey performed in March, 2005, with bearings based upon the Ohio State Plane Coordinate System (South Zone).

PARCEL ID L49000100010000300 and L32000100020000200

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

**PARCEL ID. L32000100020000200**  
**0.476 ACRES**

Situate in Section 9, Township 2, Range 6, Township of Sugarcreek, County of Greene, State of Ohio and being a part of the 86.432 acre tract of land conveyed to Cornerstone Developers, LTD as recorded in Official Record 3029, Page 556 and being more particularly described as follows:

Commencing for reference at an iron pin found in a monument box at the Northwest corner of said Section 9;

thence, South eighty-eight degrees, thirty-eight minutes, forty-nine seconds East (S88°38'49"E), one thousand one hundred seventy eight and 90/100 feet (1178.90'), along the north line of said Section 9 and centerline of Brown Road, to a mag. nail set at the principal place of beginning of the tract herein conveyed;

thence, continuing South eighty-eight degrees, thirty-eight minutes, forty-nine seconds East (S88°38'49"E), one thousand three hundred eighty one and 51/100 feet (1381.51'), along the north line of Section 9 and centerline of Brown Road, to an iron pin set in the West limited access right of way line of Interstate Route 675;

thence, South four-degrees, fifty-seven minutes, thirty seconds East (S04°57'30"E), fifteen and 9/100 feet (15.09'), along the West limited access right of way line of Interstate Route 675, to an iron pin set in the southeast corner of the right of way of Brown Road and being also the northerly Corporation Line of the City of Centerville;

thence, North eighty-eight degrees, thirty-eight minutes, forty-nine seconds West (N88°38'49"W), one thousand three hundred eighty four and 7/100 feet (1384.07'), along the south right of way line of Brown Road and northerly Corporation Line of the City of Centerville, to an iron pin found in the East line of a 70.525 acre tract of land conveyed to Cornerstone Developers, LTD as recorded in Official Record 3029, Page 556;

thence, North four degrees, forty-six minutes, fifty-nine seconds East (N04°46'59"E), fifteen and 3/100 feet (15.03'), along the East line of 70.525 acre tract and the West line of the 86.432 acre tract, to the principal place of beginning.

Containing zero and 476/1000 acres (0.476) more or less and being subject to all covenants, conditions, restrictions, and easements contained in any instrument of record pertaining to the above described tract of land.

The above description was prepared by Steven E. Bowersox, Ohio Professional Surveyor number 7059 based on actual field work performed under his direction. The bearings used above are based on NAD 83, GEOID 2003 Ohio South Zone, ODOT VRS CORS network.

Tract 2

Dille Corporation Parcel  
70.525 ACRES

Situate in Section 9, Township 2, Range 6, Township of Sugarcreek and City of Centerville, County of Greene, State of Ohio, and being a tract of land conveyed to Charles A. Dille, Trustee as recorded in Official Record 1187, Page 425 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Greene County Recorders Office, unless noted otherwise) and being more particularly bounded and described as follows:

Commencing for reference at an iron pin (found) in a monument box at the Northwest corner of said Section 9;

thence along the north line of said Section 9, said line being the south line of a tract of land conveyed to Sugarcreek Golf Course, Inc. as recorded in Official Record 696, Page 488, South eighty-eight degrees thirty-eight minutes forty-nine seconds East (S88°38'49"E) for one hundred thirty-one and 28/100 feet (131.28') to the TRUE POINT OF BEGINNING of the herein described tract of land;

thence continuing along the north line of said Section 9, and in part along the south of said Sugarcreek Golf Course land, and in part along the south line of a tract of land conveyed to Ellen McDonald as recorded in Official Record 1460, Page 317, South eighty-eight degrees thirty-eight minutes forty-nine seconds East (S88°38'49"E) for one thousand forty-seven and 62/100 feet (1047.62');

thence South four degrees forty-six minutes fifty-eight seconds West (S04°46'58"W) (passing an iron pin set at fifteen and 03/100 feet (15.03') and another iron pin set at two thousand six hundred seventy-three and 91/100 feet (2673.91') for a total distance of two thousand six hundred ninety-three and 95/100 feet (2693.95') to point on the south line of the Northwest Quarter of said Section 9;

thence along the south line of the Northwest Quarter of said Section 9, North eighty-nine degrees zero minutes twelve seconds West (N89°00'12"W) for one thousand one hundred seven and 71/100 feet (1107.71') to the southeast corner of a tract of land conveyed to Greene County Commissioners as recorded in Official Record 743, Page 436;

thence along said Greene County Commissioners land for the following four (4) courses:

1. North zero degrees fifty-nine minutes forty-eight seconds east (N00°59'48"E) for twenty-five and 00/100 feet (25.00') to an iron pin set;

2. North eighty-nine degrees zero minutes twelve seconds West (N89°00'12"W) for six and 68/100 feet (6.68') to an iron pin set at a point of curvature;

3. On a curve to the right with a radius of twenty-five and 00/100 feet (25.00') for an arc distance of forty and 92/100 feet (40.92'). [chord bearing North forty-two degrees six minutes thirty-eight seconds West (N42°06'38"W) for thirty-six and 50/100 feet (36.50'), delta angle of said curve being ninety-three degrees forty-seven minutes eight seconds (93°47'08")] to an iron pin set at a point of tangency;

4. North four degrees forty-six minutes fifty-six seconds East (N04°46'56"E) for two thousand six hundred five and 27/100 feet (2605.27') to an iron pin set;

thence in part along said Greene County Commissioners land and in part along the south line of another tract of land conveyed to Greene County Commissioners as recorded in Official Record 743, Page 434, North seventy-four degrees forty-seven minutes ten seconds East (N74°47'10"E) for one hundred one and 58/100 feet (101.58') to an iron pin set;

thence along the east of the Green County Commissioners land recorded in Official Record 743, Page 434, North one degree eighteen minutes thirty-six seconds East (N01°18'36"E) for fifteen and 00/100 feet (15.00') to the TRUE POINT OF BEGINNING, containing seventy and 525/1000 (70.525) acres, more or less 70.164 Acres in City of Centerville. The existing right-of-way of Brown Road contains 0.361 acres, more or less in Sugarcreek Township. The existing right-of-way for Feedwire Road contains 0.509 acres, more or less. The existing right-of-way recorded in Deed Book 436, Page 485 contains 0.004 acres, more or less. This results in a net area of 69.651 acres, more or less, subject to all covenants, conditions, restrictions, reservations, and easements contained in any instrument of record pertaining to the above described tract of land.

This description was prepared from a field survey performed in March, 2005, with bearings based upon the Ohio State Plane Coordinate System (South Zone).

PARCEL ID L49000100010000200 and L32000100020000100

LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

**PARCEL ID. L32000100020000100**  
**0.361 ACRES**

Situate in Section 9, Township 2, Range 6, Township of Sugarcreek, County of Greene, State of Ohio and being a part of the 70.525 acre tract of land conveyed to Cornerstone Developers, LTD as recorded in Official Record 3029, Page 556 and being more particularly described as follows:

Commencing for reference at an iron pin found in a monument box at the Northwest corner of said Section 9;

thence, South eighty-eight degrees, thirty-eight minutes, forty-nine seconds East (S88°38'49"E), one hundred thirty-one and 28/100 feet (131.28'), along the north line of said Section 9 and centerline of Brown Road, to a mag. nail set at the principal place of beginning of the tract herein conveyed;

thence, continuing South eighty-eight degrees, thirty-eight minutes, forty-nine seconds East (S88°38'49"E), one thousand forty seven and 62/100 feet (1047.62'), along the north line of Section 9 and centerline of Brown Road, to a mag. nail set in the northwest corner of an 86.432 acre tract of land conveyed to Cornerstone Developers, LTD as recorded in Official Record 3029, Page 556;

thence, South four-degrees, forty-six minutes, fifty-nine seconds West (S04°46'59"W), fifteen and 3/100 feet (15.03'), along the East line of the 70.525 acre tract and the West line of the 86.432 acre tract, to an iron pin found in the south right of way line of Brown Road and being also the northerly Corporation Line of the City of Centerville;

thence, North eighty-eight degrees, thirty-eight minutes, forty-nine seconds West (N88°38'49"W), one thousand forty six and 71/100 feet (1046.71'), along the south right of way line of Brown Road and northerly Corporation Line of the City of Centerville, to an iron pin found in the Southeast corner of a tract of land conveyed to the Greene County Commissioners as recorded in Official Record 743, Page 434;

thence, North one degree, eighteen minutes, thirty-six seconds East (N01°18'36"E), fifteen and 00/100 feet (15.00'), along the East line of the Greene County Commissioners tract, to the principal place of beginning.

Containing zero and 361/1000 acres (0.361) more or less and being subject to all covenants, conditions, restrictions, and easements contained in any instrument of record pertaining to the above described tract of land.

The above description was prepared by Steven E. Bowersox, Ohio Professional Surveyor number 7059 based on actual field work performed under his direction. The bearings used above are based on NAD 83, GEOID 2003 Ohio South Zone, ODOT VRS CORS network.

706491.1

EXHIBIT B

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 5<sup>th</sup> day of April, 2006 by, between and among the City of Centerville, an Ohio municipal corporation (the "City"), Dille Laboratories Corp., (the "Owner", or "Owners" should more than one property owner execute this Agreement as a party) and Bear Creek Capital, LLC, an Ohio limited liability company (the "Developer") under the following circumstances:

- A. Dille Laboratories Corp. currently holds fee simple title to approximately 157.6 acres of land located in Sugarcreek Township, Greene County, Ohio and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");
- B. Bear Creek Capital, LLC, or an affiliate, intends to purchase the Property from the Owner, pursuant to a contract of purchase, in order to develop a multi-use development project, including retail, office and residential components (the "Project");
- C. The City has reviewed a development plan for the Project, attached hereto as Exhibit "B" (the "Development Plan") and has determined that the Development Plan is in accord with the City's comprehensive land use plan;
- D. The Owner and Developer desire to annex the Property, as more particularly described on Exhibit "A" and as generally depicted on Exhibit "C", into the City in order to obtain the City's services and assistance in the development of the Property; and
- E. The Owner, Developer, and the City can mutually benefit by having the Property annexed into the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City, Owner, and Developer hereby agree as follows:

1. Annexation.

(a) The Developer agrees that it will obtain the signature of the Owner and will, at its own expense, prepare and file the necessary annexation petition or petitions with accompanying map or plat with the appropriate board of county commissioners. The Owner agrees that it will sign the annexation petition as prepared and will support and not withdraw its name or request withdrawal of the petition during the annexation process and/or any subsequent administrative or legal action involving pursuit of the annexation. The annexation petition shall be filed as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code. The Property sought to be annexed may be the subject of one or more annexation petitions and in a configuration as agreed by the Owner, Developer, and the City and may include other property not owned by Owner. If the Property is annexed in several parts using separate petitions, the terms

of this Agreement will apply to each separate petition. The Owner agrees that it will execute one or more annexation petitions, as appropriate, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law, and will not request the agent for petitioners to withdraw the annexation petition as long as this Agreement is in full force and effect. The petition will designate an agent for petitioners as agreed to by the City and Developer. The City agrees to pass a service resolution and/or any necessary supporting resolutions as required by Section 709.023(C) of the Ohio Revised Code within twenty (20) days of the date of the filing of the annexation petition with the appropriate board of county commissioners. A service resolution will set out those services that will be provided by the City upon annexation and will establish the approximate date when those services will be available.

(b) The Owner, Developer, and the City agree to cooperate and provide information necessary for the county commissioners to make their "review" of the annexation as required by Section 709.023 of the Ohio Revised Code. If, at the conclusion of the review process the county commissioners deny the annexation petition, the Owner agrees to file in the appropriate court a request for a writ of mandamus to compel the county commissioners to approve the annexation as set out in Section 709.023 of the Ohio Revised Code. The City agrees to seek standing to support any mandamus action filed by the Owner in its attempt to annex the Property into the City. The Owner, Developer, and the City agree to pursue the annexation and to exhaust all appeals.

(c) Should the annexation be approved, the Owner, Developer, and the City agree to process the annexation as provided by law subject to the terms of this Agreement.

(d) The Owner and Developer, at their expense, agree to file or arrange to be filed an annexation petition, map, and plat that comply with Section 709.023 of the Ohio Revised Code within twenty (20) days after the execution of this Agreement.

(e) If the purchase contract between Owner and Developer shall terminate and/or not be renewed pursuant to the terms thereof prior to the completion of the annexation of the Property, but the annexation process continues and some or all of the Property is ultimately annexed into the City, the Developer shall indemnify and hold the Owner harmless from any City income tax burdens (including any future City income taxes) resulting to it from the Property's inclusion in the City, for the period from the date of expiration or earlier termination of the purchase contract until the earlier to occur of the sale of the Property to another purchaser or August 3, 2010 (which is the first anniversary of the date of termination of the Charles Dille Trust).

## 2. Zoning.

(a) The Property sought to be annexed is currently shown on the zoning map of Sugarcreek Township as a planned unit development of mixed uses, including commercial, office, single and multi-family residential zoning and other possible mixed zoning uses. The City recognizes that the uses shown on the Development Plan attached

hereto and made a part hereof are generally in line with the spirit of the comprehensive plan for the City if extended to the annexation area and the uses shown on the Development Plan are appropriate uses to be considered for the Property. The parties understand that the zoning will take place utilizing the regular process for processing an application for zoning in the City and there is no guarantee that any particular zoning will be granted. The City agrees that once an annexation petition has been approved by the appropriate board of county commissioners, the City will accept a zoning application for the Property covered by the annexation petition and will begin the administrative processing of such application, including any necessary hearings and other preliminary matters. The City understands that the Developer is desirous of obtaining B-PD, Business Planned Development and also, in part, as R-PD, Residential Planned Development, as described in the Development Plan as the ultimate end uses of the Property in the City.

(b) The City recognizes that once the annexation is placed before City Council by the City Clerk, the City has one hundred twenty (120) days to accept or reject the annexation. The City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property in accordance with the Development Plan approved through the planning and zoning process to a zoning that is acceptable to the Owner and Developer. At any time during the one hundred twenty (120) day acceptance period for the annexation, at the request of the Owner and/or Developer, the City itself may delay its acceptance of the annexation until the zoning and other matters are settled to the satisfaction of the Owner, Developer, and the City. If, for some reason, the zoning cannot be accomplished and/or the zoning is referred to the voters or defeated for any reason or other conditions of this Agreement cannot be met acceptable to the Owner and Developer, the City agrees that it will not annex the Property. If, however, the zoning is approved in accordance with the Development Plan developed through the Planning Commission and approved by City Council, the Owner and Developer are obligated to complete the annexation process. If the annexation vote occurs approving the annexation to the City and at the time of the annexation acceptable zoning has not been adopted as approved through the Planning Commission, then the City agrees that if acceptable zoning does not pass within thirty (30) days of such vote approving the annexation, it will reconsider such vote and reject the annexation. The City agrees, to the extent possible, to process the ordinance necessary to approve the annexation and zoning contemporaneously with the goal of deciding both issues at the same meeting.

(c) The Development Plan shall show the needed access to the Property from public streets and roadways, as well as establish a plan to erect adequate signage to identify the commercial and residential portions of the Property as permitted by the City's development code. The Owner, Developer, and the City acknowledge that the access to the Property is determined and controlled by the City and the Ohio Department of Transportation. No exact access can be guaranteed by the City, but the City agrees to cooperate with Developer in the submission of any and all necessary permits for access to the Property or for the establishment of any utilities that may be necessary to be placed in the road right-of-ways. The parties also acknowledge and agree that certain of these road improvements are within "Public Improvements" which will be governed by Tax Increment Financing.

3. Water, Sewer, and Public Utilities. The Owner, Developer, and the City understand that water and sewer to the site will be provided by Greene County. The Developer has satisfied itself as to the adequacy, size, cost, timing and extension of such utilities to the development in question. The location and alignment of the water and sewer lines, as well as any other utilities to be provided to the site, must be approved by the City's engineer upon annexation and be based upon sound engineering principles. The City agrees that if there is a choice of locations, it will cooperate in the location and placement of the water and sewer lines and other utilities over which it may have control in a way that is most economically feasible and beneficial to the Developer. The City will cooperate with the Owner and Developer in obtaining any necessary utility easements and will extend to the Owner and Developer the right to place utilities in the public road right-of-ways, when such road right-of-ways are solely controlled by the City and that such grant will be without cost to the Owner or Developer for such access. The extent of the City's commitments with regard to utilities will be established and limited to those rights, privileges, and other items as set out in the City's service resolution.

4. Platting. Once the annexation to the City has been completed and the Development Plan approved as to zoning, a preliminary and final plat will be filed by the Owner/Developer. The City agrees to process the preliminary and/or final plat application as soon as practical under the City's Subdivision Rules and Regulations and will attempt to provide the engineering reviews and other items necessary for preliminary and/or preliminary and final combined plats in a reasonable and expeditious manner. It is understood that the platting will meet the City's Subdivision Rules and Regulations and the regular fees for such review will be applied.

5. Financing Improvements. The parties recognize that significant improvements may be needed to service the proposed development of the Property in the City, and, accordingly, the parties agree to undertake or participate in the following financing arrangements or mechanisms:

(a) Coincident with the City's approving the final plans for development of any portion of the Property that has been annexed to the City, the City shall as soon as practical take steps to present to the City Council legislation to create Tax Increment Financing (the "TIF Ordinance") to enable the City to collect up to the maximum amount of payments in lieu of taxes which may be generated from the new development without approval from a school district. The payments made in lieu of taxes will be applied by the City to recoup and apply to the costs associated with the construction of the necessary public improvements. Pursuant to the TIF Ordinance, the City and Developer shall enter into a public infrastructure agreement (the "Infrastructure Agreement"), pursuant to which the City and Developer agree to erect, construct and maintain Public Improvements on the Property or which, in the opinion of the City, benefit or serve the Property or which have been deemed reasonably necessary by the City and the Developer. The TIF Ordinance shall also specify the use of service payments as provided in ORC Section 5709.42.

(b) The Developer and the City shall enter into a service payment agreement reasonably acceptable to Developer and the City (the "Service Agreement") setting forth

the duties and obligations of a Tax Increment Financing District that does not involve the deprivation of any school district moneys.

(c) Upon request of the Developer, the City agrees that it will take such action as is necessary to issue Tax Increment Financing Bonds (the "Bonds") in order to pay the costs of the Public Improvements to be constructed on the Property and that the debt service on the Bonds will be paid solely from Service Payments (which means the Statutory Service Payments and any supplemental payments (the "Minimum Service Payments") as may be required by a Service Agreement. The Public Improvements to be covered by Tax Increment Financing shall include, but not be limited to, the installation of roads, utility lines, sidewalks, and other public infrastructure improvements deemed reasonably necessary by the Developer and the City.

6. Representations and Warranties of the City. The City hereby represents and warrants to Developer that:

(a) The City is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to its charter, and to perform its obligations hereunder;

(b) The City, acting by and through its agents, has taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and

(c) This Agreement is the valid and binding act of the City, enforceable against the City in accordance with its terms.

7. Representations and Warranties of the Owner/Developer. The Owner/Developer hereby represents and warrants to the City that:

(a) The Owner is the duly authorized owner of the Property to be included in the annexation petition;

(b) The Developer represents that it has an option or contract to purchase the Property and that the parties who have signed this Agreement have whatever authority is necessary to authorize their signatures;

(c) The Developer and Owner, acting by and through their agents, have taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same and the performance of the obligations of the City hereunder; and

(d) The Developer has satisfied itself that utilities which are outside the control of the City will be available in sufficient amounts, quantities, and timing so that the Developer can, in fact, complete the development as anticipated by this Agreement.

8. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.
9. Execution. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.
10. Severability. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as is legally possible, comes nearest to what the parties desired or would have desired according to the sense and purpose of this Agreement had this point been considered when concluding this Agreement.
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.
12. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.
13. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City, the Owner and the Developer, any lender providing financing to the Developer and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.
14. Time is of the Essence. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

15. Force Majeure. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

16. Approvals. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

17. Binding Effect. This Agreement and all of the provisions herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

18. Entire Agreement/Merger. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written.

19. Survival. The representations, warranties and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

20. Notice. All notices, requests, consents, approvals, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by telegram, cable, e-mail or facsimile telephone transmission, if given below, or later provided, addressed as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Owner: Dille Laboratories Corp.  
4095 Timberly Drive  
Dayton, OH 45442  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: John M. Cloud, Esq.  
Rogers & Greenberg LLP  
2160 Kettering Tower  
Dayton, OH 45423  
Telephone: (937) 223-8171  
Facsimile: (937) 223-1649

Developer: Bear Creek Capital, LLC  
9549 Montgomery Road, 3<sup>rd</sup> Floor  
Cincinnati, OH 45242  
Telephone: 513-233-7030  
Facsimile: (513) 793-5820  
Attention: Mr. Greg Scheper

with a copy to: Joseph L. Trauth, Jr., Esq.  
Keating, Muething & Klekamp, PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, OH 45202  
Telephone: (513) 579-6515  
Facsimile: (513) 579-6457

City: City of Centerville  
100 W. Spring Valley Rd.  
Centerville, OH 45458  
Attention: City Manager  
Telephone: (937) 433-7151  
Facsimile: (937) 435-8720

with a copy to: City of Centerville  
100 W. Spring Valley Rd.  
Centerville, OH 45458  
Attention: City Attorney  
Telephone: (937) 223-1201  
Facsimile: (937) 223-5100

[Signatures Appear on the Following Page]

The foregoing instrument was executed this \_\_\_ day of April, 2006.

DEVELOPER:

BEAR CREEK CAPITAL, LLC,  
an Ohio limited liability company

By:   
Name: Matthew C. Daniels  
Title: Member

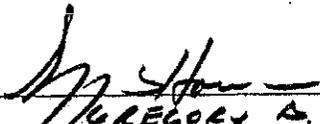
OWNER:

DILLE LABORATORIES CORP.

By:   
Name: ROGER PFISTER  
Title: PRESIDENT

CITY:

CITY OF CENTERVILLE, an Ohio municipal  
corporation

By:   
Name: GREGORY A. HORN  
Title: CITY MANAGER

STATE OF OHIO )  
 ) SS.  
COUNTY OF GREENE )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Roger Pfister, the duly authorized representative of Dille Laboratories Corp., who acknowledged that he signed the foregoing instrument on behalf of the corporation, and that the same is the free act and deed of him personally and as such corporation.

IN TESTIMONY, I set my hand and official seal this 31<sup>st</sup> March day of April, 2006.

Karen L. Lamb  
Notary Public (Seal)

Karen L. Lamb, Notary Public  
In and for the State of Ohio  
My Commission Expires June 3, 2007

STATE OF OHIO )  
 ) SS.  
COUNTY OF ~~GREENE~~ Montgomery )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Gregory B. Norn, the City Manager of the City of Centerville, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such City of Centerville, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such City of Centerville.

IN TESTIMONY, I set my hand and official seal this 5<sup>th</sup> day of April, 2006.

Debra A. James  
Notary Public (Seal)

DEBRA A. JAMES, Notary Public  
In and for the State of Ohio  
My Commission Expires April 13, 2007

STATE OF OHIO )  
 ) SS.  
COUNTY OF HAMILTON )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Matthew C. Daniels, the Member (authorized) of Bear Creek Capital, LLC, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such company, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such Company.

IN TESTIMONY, I set my hand and official seal this 3<sup>rd</sup> day of April, 2006.



HEATHER L. PIAZZA  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
January 23, 2007

Heather Piazza  
Notary Public (Seal)

County of Montgomery, State of Ohio, and being more particularly described as follows, to-wit: subject to the omissions therefrom which are hereinafter stated, viz:

# III  
on  
annex  
map

EXHIBIT A  
DILLE LAB

**FIRST TRACT:** Being the north half of the northwest quarter of Section 9, Township 2, Range 6 of the lands between the Miami Rivers, estimated to contain 80 acres, be it the same more or less, and being the same premises conveyed to Joseph Holmes by Amanda Holmes, et al., by deed dated March 3, 1893, and recorded in Volume 81, page 78, and recorded in Volume 99, at page 165, Deed Records of Greene County, Ohio.

**SECOND TRACT:** Being the south half of the northwest quarter of Section Nine (9), Township Two (2), Range Six (6), of lands between the Miami Rivers and estimated to contain 80 acres, be it the same more or less, and being the same premises devised to the said Joseph Holmes, deceased, by Samuel Holmes, deceased, by his last will and testament of Probate and record in the Will Records of Greene County, Ohio.

**THIRD TRACT:** Being part of the northeast quarter of Section 9, Township 2, Range 6 of lands between the Miami Rivers, and bounded and described as follows, to-wit: Beginning at the southwest corner of the northeast quarter of Section 9, Township 2, in Range 6, thence North along the west line of said northeast quarter, 19.47 chains to a stake, witness a white oak 20" diameter bearing south 61° east 24 links a sugar 18" diameter bearing north 28° 30' east 40 links; thence north 85° east 5.15 chains, witness a dogwood 7" diameter bears south 57° 30' east 24 links and a dogwood 5" diameter south 23° east 20 1/2 links; thence south 19.47 chains to the south boundary of said quarter, witness a hickory 12" diameter bearing north 35° west 24 links, a dogwood 4" diameter north 15° east 38 links; thence north 85° west 5.15 chains to the beginning; containing 10 acres, more or less, and being the same premises conveyed by James McCabe and wife by deed dated August 5, 1828, to Samuel Holmes and recorded in Volume "L", page 127, and being also the same premises devised by the said Samuel Holmes to Joseph Holmes by his last will and testament of probate and record in the Will Records of Greene County, Ohio.

**FOURTH TRACT:** Being all that certain part or parcel of land situate and lying between the Great Miami River and the Virginia Reservation, and being part of the Northeast quarter of said Section No. 9, Township No. 2, Range No. 6, beginning at a stone in the center of the Xenia Road, and Southeast corner of Samuel Holmes; thence North 85 East 93 poles and 3 links with the center of said road to a stone in the Southwest corner of George Brown's tract; thence North 77 poles and 17 links with the West boundary line of said George Brown's tract to a stone in the South boundary line of Adam Brown's land; thence South 85 West 93 poles and 3 links to the East boundary line of Samuel Holmes land; thence South with Samuel Holmes line 77 poles and 17 links to the place of beginning, containing 45 and 11/200 acres, more or less.

**FIFTH TRACT:** Being part of the Northeast quarter of said Section No. 9, Township No. 2, in Range No. 6, of the lands lying between the Great Miami River and Virginia Reservation. Beginning at a stone in the Northeast corner of James Barretts land at the Cross Roads; thence North in center of the Hellbrook Road and West boundary line of George Brown's land Seventy-seven poles and Seventeen links to a stone at the Southeast corner of Adam Brown's land; thence South 85 West 93 poles 15 links to a stone in the South boundary line of Adam Brown's land; thence South 77 poles and 17 links to the center of the Xenia Road; thence North 85 East 93 poles and 15 links with the center of said road to the place of beginning, containing 45 and 16/100 acres, be the same more or less.



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#111

IN WITNESS WHEREOF, the said ROBERT PATTERSON and ISABEL CARTER PATTERSON, his wife, who hereby releases her right and expectancy of dower in said premises, have hereunto set their hands as of the 6th day of OCTOBER, 1953.

Signed and acknowledged by said Robert Patterson in the presence of:

Robert Patterson  
Robert Patterson

Louis Ross Colantuono  
Walter E. McLaughlin

Signed and acknowledged by said Isabel Carter Patterson in the presence of:

Isabel Carter Patterson  
Isabel Carter Patterson

Walter E. McLaughlin  
Charles J. Hoover

STATE OF OHIO,                    SS:  
COUNTY OF MONTGOMERY,

On this 6th day of OCTOBER, 1953, before me, a Notary Public in and for Montgomery County, Ohio, personally came

- 3 -

ROBERT PATTERSON, the Grantor in the foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed.



WITNESS my official signature and seal on the day last above mentioned.

Lillian M. McLaughlin  
Notary Public, Montgomery County, Ohio.

LILLIAN M. McLAUGHLIN, Notary Public, Montgomery County, Ohio, expires June 28, 1954.

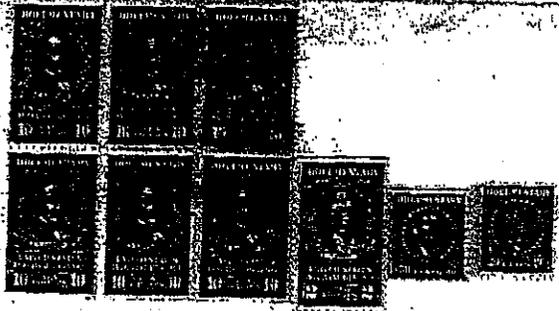
STATE OF ARIZONA,                    SS:  
COUNTY OF PIMA

On this 8th day of OCTOBER, 1953, before me, a Notary Public in and for Pima County, Arizona, personally came ISABEL CARTER PATTERSON, and acknowledged the signing thereof to be her voluntary act and deed.

WITNESS my official signature and seal on the day last



*Walter P. ...*  
Notary Public,  
Pima County, Arizona  
My Commission expires 1/8/34



Transferred Nov. 6, 1953  
Received Nov. 6, 1953 10:54 AM  
Recorded Nov. 10, 1953  
Recorder's fee \$2.00 *Walter P. ...*  
Recorder

67855

AFFIDAVIT

STATE OF OHIO )  
 ) SS.  
MONTGOMERY COUNTY:

Oscar E. Grismer, being first duly cautioned and sworn, deposes and says that by deed dated March 4, 1940, filed March 13, 1940, and recorded in Deed Book 169, page 372 of the Deed Records of Greene County, Ohio, he and his wife, Grace H. Grismer, were the grantors, and which said deed was executed and delivered by Nora Schooks, unmarried, and now deceased, for 132.81 acres of land situate in the Township of Sugar Creek, County of Greene and State of Ohio, and being a part of Military Survey No. 3510; that in said deed by reason of error of omission the date that the acknowledgment was taken by the Notary Public was omitted therefrom and this Affiant under oath says that the date that said acknowledgment was taken was on the same date and at the same time that said deed was executed and delivered, to-wit: March 4, 1940; that this Affidavit is given to correct said error of omission and further Affiant saith naught.

Oscar E. Grismer

Sworn to and subscribed before me by the said Oscar E. Grismer, this 6th day of November, A. D. 1953.

Carl Davis  
Notary Public in and for  
Montgomery County, Ohio  
CARL DAVIS, JR., Notary Public  
in and for Montgomery County, Ohio  
My Commission Expires April 7, 1955



OK  
HWS  
1

Recorded  
Recorder's fee

# Know all Men by these Presents

**Grant** Paul W. Brown and Gladys H. Brown, husband and wife

#35 on the annexation map

in consideration of One Dollar and other considerations

to them paid by Dille Laboratories Corporation,

the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to the said Dille Laboratories Corporation

its successors ~~and assigns forever~~

the following described real estate, to-wit:-Situate in Section 9, Town 2, Range 6 NRS, in Sugar Creek Township, Greene County, State of Ohio, bounded and more particularly described as follows:-

Beginning at an iron pin located S. 10° 23' 20" W. a distance of 1039.58 feet from the Northeast corner of an 80 (more or less) acre tract conveyed to the Dille Laboratories Corporation by deed as recorded in Volume 244, Page 419 of the Deed Records of Greene County, Ohio, said corner also being the Northwest corner of the Paul W. Brown and Gladys H. Brown 25.26 acre tract as recorded in Volume 188, Page 3 of the Deed Records of Greene County, Ohio, and also being the North line of said Section 9 and 4.50 feet South of the center line of the traveled roadway of Brown Road; thence from said point of beginning N. 88° 10' 10" E. a distance of 875.37 feet to an iron pin; thence S. 2° 04' 30" E. a distance of 159.97 feet to an iron pin; thence S. 61° 26' E. a distance of 300.86 feet to an iron pin on the North line of a 45.11 acres tract conveyed to the Dille Laboratories Corporation by deed as recorded in Volume 244, Page 419 of the Deed Records of Greene County, Ohio; thence with the North line of said tract S. 85° 40' 20" W. a distance of 1157.20 feet to an iron pin; thence N. 1° 23' 20" E. a distance of 363.26 feet to the place of beginning, containing 7.463 acres, more or less, subject however to all legal highways and easements of record.

Deed Reference: Volume 188, Page 3, Deed Records of Greene County, Ohio.



#35 on annexation map

and all the Estate, Title and Interest of the said Paul W. Brown and Gladys H. Brown

either in Law or in Equity of, in and to the said premises; Together with all the privileges and appurtenances to the same belonging, and all the rents, issues, and profits thereon. To have and to hold the same to the early proper use of the said

Dille Laboratories Corporation,

its successors ~~etc.~~ and assigns forever;

And the said Paul W. Brown and Gladys H. Brown

for themselves and their heirs, executors and administrators, do hereby Covenant with the said Dille Laboratories Corporation

its successors ~~etc.~~ and assigns,

that they are the true and lawful owners of the said premises and have full power to convey the same; and that the title so conveyed is Clear, Free and Unincumbered; And Further, That they do Warrant and will Defend the same against all claims of all persons

whomsoever; Excepting all taxes and assessments due and payable in December, 1957 and thereafter, which said taxes and assessments said Grantee assumes and agrees to pay as part of the consideration for this conveyance.

In Witness Whereof, The said Paul W. Brown and Gladys H. Brown, husband and wife,

...right and property of ...  
...their minds this  
...day of July in the year of our Lord  
...fifty-seven.

Signed and acknowledged in presence of:  
Charles Weaver Paul W. Brown  
William W. Hebrator Gladys H. Brown

State of OHIO, County of GREENE, Dist. ...  
It is Remembered, That on this 17th day of July, in the year of our Lord one thousand nine hundred fifty-seven, before me, the subscriber, a Notary Public in and for said county, personally came Paul W. Brown and Gladys H. Brown, husband and wife,

the grantors in the foregoing Deed, and acknowledged the signing thereof to be their voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my Notarial seal on the day and year last aforesaid.  
Elizabeth Weaver  
Notary Public



THIS INSTRUMENT PREPARED BY W. A. SWANEY, DAYTON, O.

Transferred July 22, 1957  
Received July 22, 1957 2:18 PM  
Recorded July 25, 1957  
Recorder's fee \$2.00  
Recorder

\*1320001000 20000000 (174 on map)

WARRANTY DEED, SHOWS FORM, WITH EXEMPT OF SHOWS—M.L. 22 The W. H. Anderson Co. Law Book Publishers, Cincinnati, O.

21(1) VOL 318 PAGE 348

Know All Men by These Presents:

That Paul W. Brown and Gladys H. Brown, (husband and wife), of Greene County, Ohio, in consideration of One Dollar (\$1.00) and other good and valuable consideration, to them in hand paid by Dille Laboratories Corporation, whose address is 393 W. First Street, Dayton, Ohio, do hereby Grant, Bargain, Sell and Convey to the said Dille Laboratories Corporation, its successors and assigns forever, the following described Real Estate,

#36 on the Annexation map

Situated in the State of Ohio, County of Greene, Township of Sugar Creek, and being a part of Section 9., Township 2., Range 6. Being more fully described as follows:- Beginning at an iron pin at the northwest corner of a 7.463 acres tract transferred to Dille Lab. by Paul W. & Gladys H. Brown; thence N 1° 23' E, 41.5 feet to an iron pin; thence N 86° 03' E, 1461.3 feet to an iron pin; thence N 0° 03' E, 304.1 feet to an iron pin; thence N 84° 46' E, 317 feet to an iron post in a creek and northwest corner to a 10.0 acres tract; thence S 0° 10' E, 715 feet along the west line of said 10.0 acres tract to an iron pin at the southwest corner of said 10.0 acres tract; thence S 86° 44' W, 693 feet to an iron pin, a corner to said 7.463 acres tract; thence N 61° 26' W, 300.86 feet along said 7.463 acres tract to an iron pin; thence N 2° 04' W, 159.97 feet along said 7.463 acres tract to an iron pin; thence S 88° 10' W, 875.37 feet along said 7.463 acres tract to the place of beginning, containing eleven and thirty-one hundredths (11.31) acres of land, be it the same more or less.

The above described tract being a part of a 85.26 acres tract transferred to Paul W. & Gladys H. Brown by Emma E. Brown and recorded in Volume 188, Page 3 of the Deed Records of Greene County, Ohio.



and all the Estate, Right, Title and Interest of the said grantors in and to said premises; To have and to hold the same, with all the privileges and appurtenances thereto belonging, to said grantees, its successors heirs and assigns forever. And the said Paul W. Brown and Gladys H. Brown

do hereby Covenant and Warranty that the title so conveyed is Clear, Free and Uncumbered, and that they will Defend the same against all lawful claims of all persons whatsoever, excepting taxes and assessments which come due and payable after the December, 1959 installment thereof.

(1) Includes reference to volume and page of each preceding recorded instrument through which grantor claims title. (M.L. 1 2122.)

In Witness Whereof, the said Paul W. Brown and Gladys H. Brown, have hereunto set their hands, this 1st day of APRIL in the year A. D. nineteen hundred and sixty.

Signed and acknowledged in presence of us: James W. Reese, Paul W. Brown, Gladys H. Brown

VOL. 318 PAGE 344  
 State of Ohio, Montgomery County, ss.  
 On this 1<sup>st</sup> day of April, 1960, before me, a Notary Public  
 in and for said County, personally came Paul W. Brown and Gladys E. Brown,

#36 on annexation map

the grantor in the foregoing deed, and  
 acknowledged the signing thereof to be their voluntary act and deed.  
 Witness my official signature and seal on the day last above mentioned.



*James W. Drake*  
 NOTARY PUBLIC

This instrument was prepared by James W. Drake, Attorney at Law  
JAMES W. DRAKE, Notary Public,  
 is and for THE STATE OF OHIO  
 My Commission Expires March 30, 1961

Transferred April 18, 1960  
 Received April 18, 1960 11:00 A.M.  
 Recorded April 21, 1960  
 Recorder's Fee \$2.00 *James P. Bentley*  
 Recorder

FORM NO. — CHAIN WARRANT DEED

NOTALOGUE WARRANT DEED OFFICE  
 10000 Lake Road, Columbus, Ohio 31902

2101  
**Know all Men by these Presents**

That Robert E. Murtaugh, married, the grantor,  
 of Greene County, Ohio,

in consideration of one dollar (\$1.00) and other valuable considerations

to him paid by Paul Strunk and Evelyn P. Strunk, husband  
 and wife, the grantees,  
 whose address is: 1286 Apple Street, Fairborn, Ohio,

the receipt whereof is hereby acknowledged, does hereby Grant, ~~convey~~  
**Sell and Convey** to the said Paul Strunk and Evelyn P. Strunk, jointly,

their heirs and assigns, and to the survivor of them, his or her separate heirs  
 and assigns, forever

~~with all the appurtenances thereto in anywise~~

the following described property:

Situate in the city of Fairborn, in the County of Greene and state of Ohio.  
 (2924)  
 Being Lot Numbered Two Thousand Nine Hundred Twenty-Four of the consecutive  
 numbers of lots on the recorded plat of Maple Heights, Section One, as recorded  
 in Volume 5, page 136 and 137, of the Plat Records of Greene County, Ohio.

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

Being the same premises conveyed by warranty deed from Edward James Fischer  
 and Emma G. Fischer, husband and wife, to Robert E. Murtaugh, the grantor herein,  
 dated January 8, 1958, and recorded in Volume 291, page 363, of the Deed Records  
 of Greene County, Ohio.



# 3 on map

357 483

VOL. 337 PAGE 400

GEORGIA  
State of Ohio, COBB County, GE.

On this 5th day of November A. D. 1963, before me, a Notary Public in and for said County, personally came Martin E. Peterson and Helen V. Peterson, husband and wife,

the grantor in the foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed. Witness my official signature and seal on the day last above mentioned.

*Paul E. ...*  
Notary Public

Notary Public, Cobb County, Georgia  
My Commission Expires Aug. 10, 1965

This instrument prepared by O. M. Southern Jr., Attorney  
3 E. Second St., Dayton, Ohio.

Transferred Nov. 14, 1963  
Received Nov. 14, 1963 10:25 A.M.  
Recorded Nov. 18, 1963  
Recorder's fee \$2.00 *Edward D. Beatty*  
Recorder

34835

WARRANTY DEED, short form, with release of deed - 22 THE W. H. ANDERSON Co., Law Book Publishers, Cincinnati, O.

Know All Men by These Presents

# 37 on annexation map

That PAUL W. BROWN AND GLADYS H. BROWN, Husband and Wife;  
of Greene County, Ohio,

in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration

to them in hand paid by DILLE LABORATORIES CORPORATION,  
whose address is 381 West First Street, Dayton 2, Ohio,

to the said Dille Laboratories Corporation, <sup>successor</sup> its ~~successor~~  
and assigns forever, the following described Real Estate,

Situated in the State of Ohio, County of Greene, Township of Sugar Creek and being a part of Section 9, Township 2, Range 6, being more fully described as follows:

Beginning at an iron pin in the east line of Dille Laboratories and, northwest corner to a 11.31 acres tract in the name of Dille Laboratory;

thence N 1° 09' E, 998.08 feet along an east line of Dille Laboratory to a spike in Brown Road and in the Section line;

thence N 86° 37' E, 1465 feet along the Section line to a point in the south line of A. W. Kimmel;

thence S 0° 22' W, 678.2 feet to an iron pin a corner to said 11.31 acres tract;

thence S 0° 03' W, 304.1 feet along said 11.31 acres tract to an iron pin;

thence S 88° 09' W 1481.3 feet to the place of beginning, containing thirty-three and thirty-eight hundredths (33.38) acres of land, be it the same more or less.

The above described tract being a part of a 109 acres tract transferred to Paul W. and Gladys H. Brown by Emma E. Brown and recorded in volume 188, Page 3, of the Deed Records of Greene County, Ohio.

Vol. 357 PAGE 484

and all the Estate, Right, Title and Interest of the said grantors in and to said premises; To have and to hold the same, with all the privileges and appurtenances thereunto belonging, to said grantors . . . its

successors ~~and assigns forever~~. And the said Paul W. Brown and Gladys H. Brown

do hereby Covenant and Warranty that the title so conveyed is Clear, Free and Uncumbered, and that they will Defend the same against all lawful claims of all persons whomsoever.

Excepting taxes and assessments which come due and payable after the June, 1963 installment thereof.



#37 on annexation map

In Witness Whereof, the said Paul W. Brown and Gladys H. Brown

have hereunto set their hand & seal, this 15th day of November, in the year A. D. nineteen hundred and Sixty-Three.

Signed and acknowledged in presence of us:

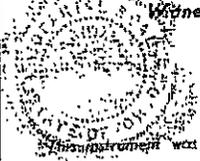
Handwritten signatures of witnesses: Eleanor Brown and James W. Drake.

Printed names of grantors: Paul W. Brown and Gladys H. Brown, with handwritten signatures over them.

State of Ohio, MONTGOMERY County, ss. On this 15th day of November, 1963, before me, a Notary Public in and for said County, personally came Paul W. Brown and Gladys H. Brown,

the grantors in the foregoing deed, and acknowledged the signing thereof to be their voluntary act and deed.

Witness my official signature and seal on the day last above mentioned.



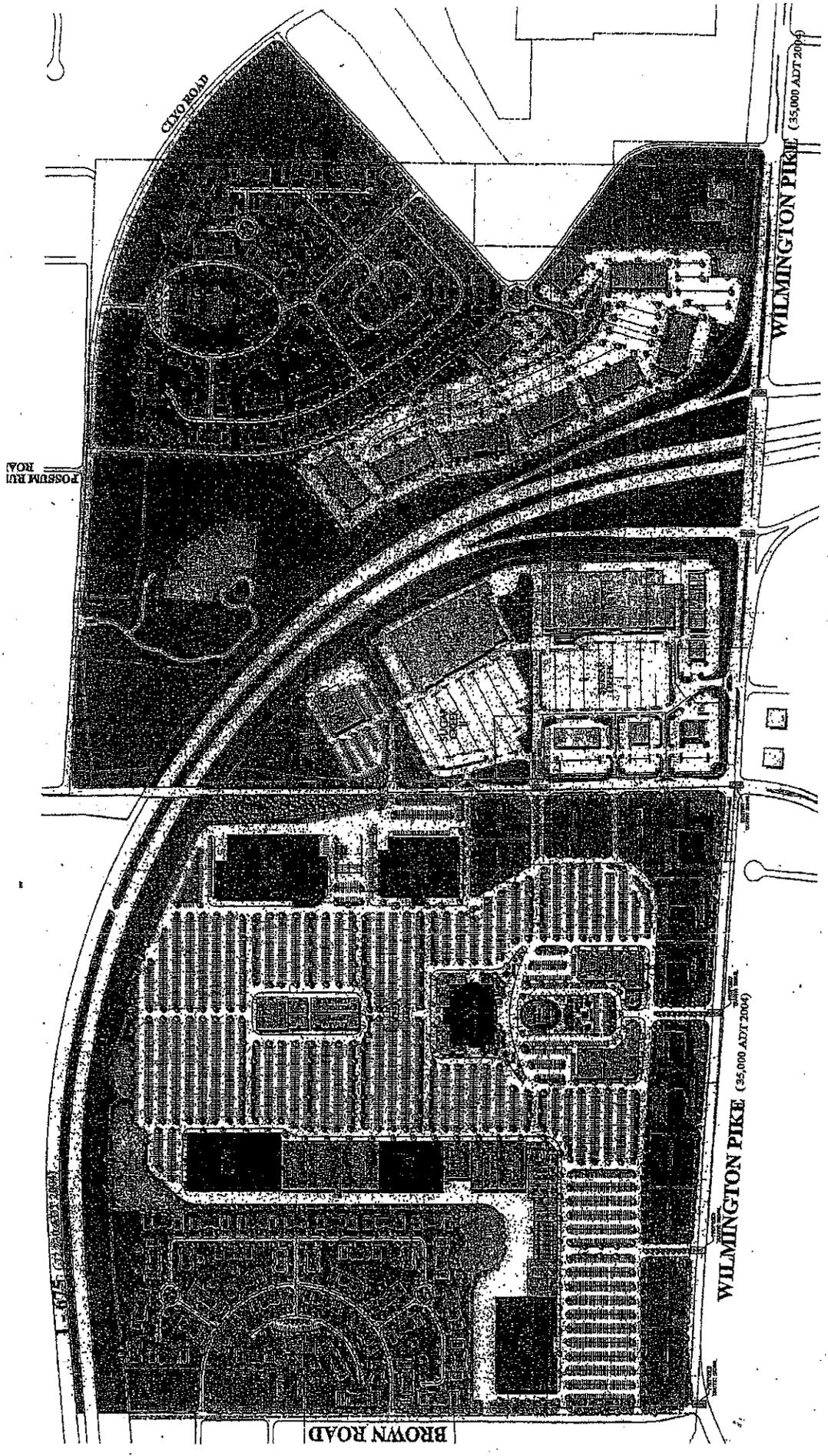
Handwritten signature of Notary Public James W. Drake.

Notary Public JAMES W. DRAKE, Notary Public in and for The State of Ohio, expires March 24, 1964

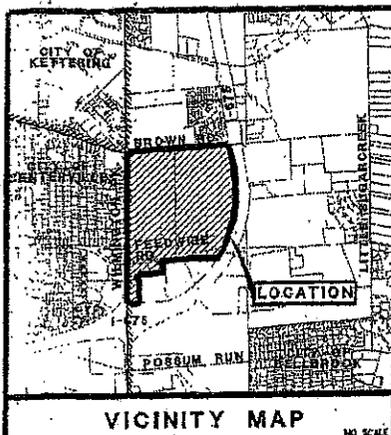
This instrument was prepared by James W. Drake, Attorney at Law

Transferred Nov. 14, 1963
Received Nov. 14, 1963 10:33 A.M.
Recorded Nov. 18, 1963
Recorder's fee \$2.00
Recorder

EXHIBIT B

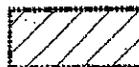


**MAP OF TERRITORY TO BE ANNEXED  
TO  
THE CITY OF CENTERVILLE  
173.135 ACRES  
SECTION 9 TOWN 2 RANGE 6 M.R.s.  
SUGARCREEK TOWNSHIP  
GREENE COUNTY, OHIO**



**LEGEND**

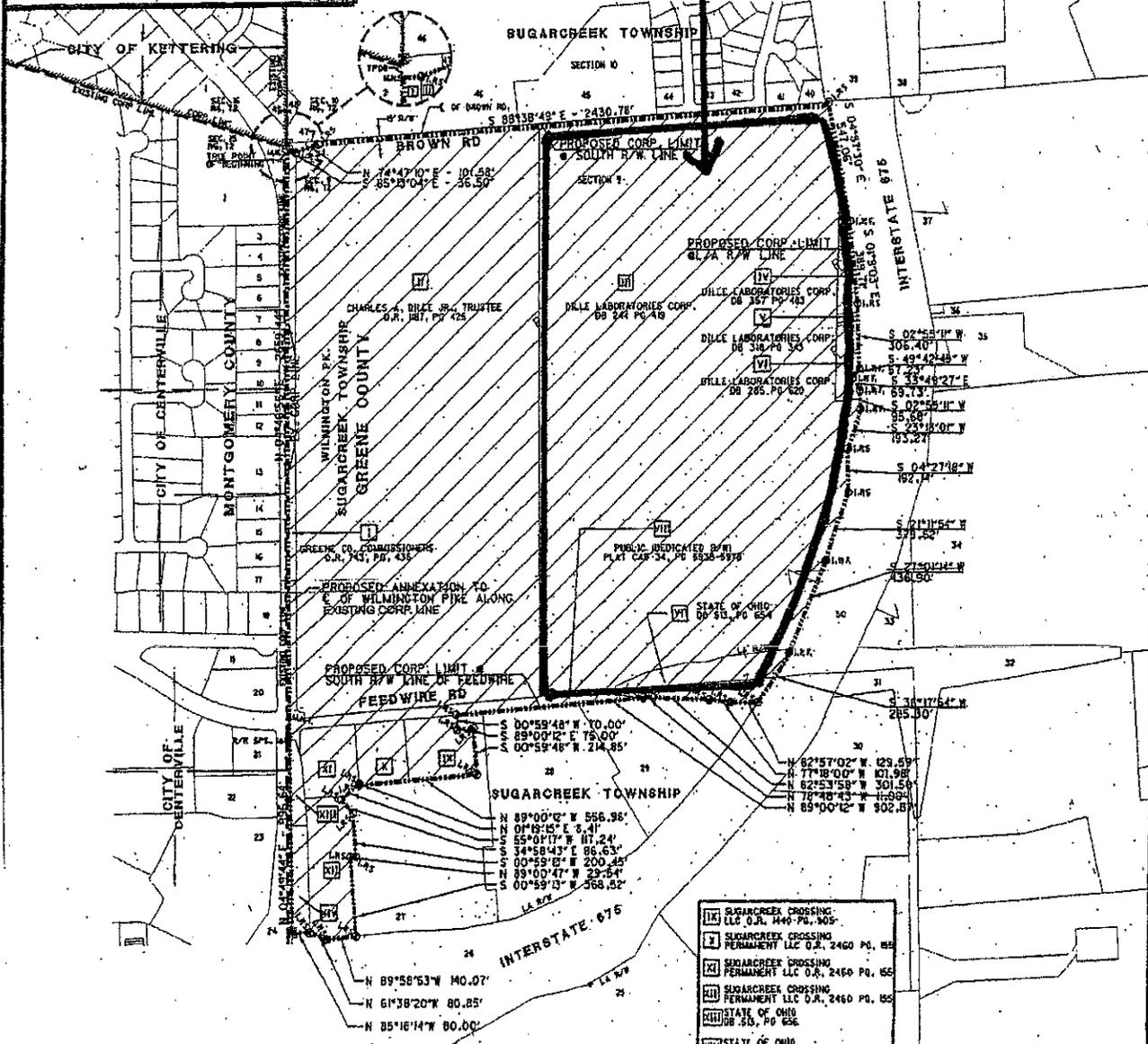
- # R/R SPK. 161
- \* MAIL MAIL MAIL 162
- ◆ MAIL MAIL 163
- D.I.R.S. IRON PIN 164
- I.R.F. IRON PIN 165
- ☐ IRON PIN IN MON. BOX 166



AREA TO ANNEXED

DILLE LABORATORIES, CORP.

EXHIBIT C



**CERTIFICATE OF SURVEYOR**

THIS MAP AND BOUNDARY ARE BASED UPON A FIELD-SURVEY PERFORMED BY MORISON SURVEYING INC. ON MAY 18, 2005, EXISTING DEEDS AND PLATS OF RECORD AND ADDITIONAL OFFICE CALCULATIONS BY LJB INC. IN MARCH, 2006. THIS MAP AND BOUNDARY SURVEY ARE PREPARED FOR ANNEXATION PURPOSES ONLY, AND ARE NOT TO BE USED FOR LAND CONVEYANCE.

LJB, INC.

BY *Harry G. Herbst III* 3/20/06  
HARRY G. HERBST III, REG. SURVEY #6596 DATE

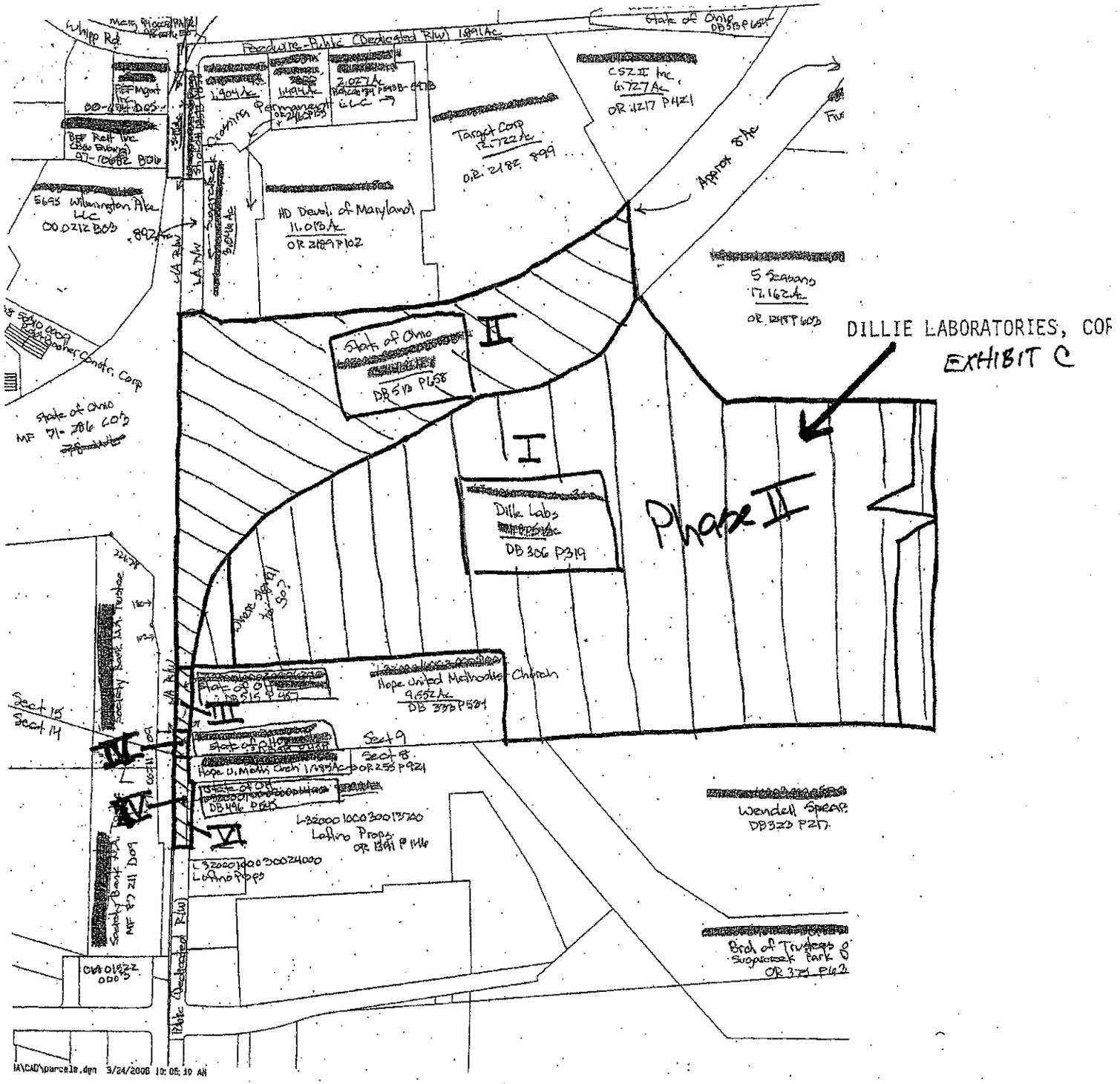


**NOTES**

1. THE ANNEXATION TERRITORY SHARES A CONTIGUOUS BOUNDARY WITH THE CITY OF CENTERVILLE FOR A DISTANCE OF 3656.28 FEET, WHICH IS 26.90% OF THE PERIMETER OF THE PROPOSED ANNEXATION TERRITORY;
2. THE ANNEXATION WILL NOT CREATE AN UNINCORPORATED AREA OF THE TOWNSHIP THAT IS COMPLETELY SURROUNDED BY INCORPORATED LAND.
3. BASIS OF BEARINGS: OHIO STATE PLAN COORDINATE SYSTEM, SOUTH ZONE, (NAD 83)
4. OCCUPATION GENERALLY AGREES WITH THE PERIMETER DESCRIBED HEREON.

IX	SUGARCREEK CROSSING PERMANENT LLC O.R. 1446 PG. 405
X	SUGARCREEK CROSSING PERMANENT LLC O.R. 2460 PG. 65
XI	SUGARCREEK CROSSING PERMANENT LLC O.R. 2460 PG. 65
XII	SUGARCREEK CROSSING PERMANENT LLC O.R. 2460 PG. 65
XIII	STATE OF OHIO DB 55, PG. 656
XIV	STATE OF OHIO DB 55, PG. 656





Bill - Phase II Approx Acreage  
 = 96 Ac

- I. 71.805
  - II 32.406 - .892 - 8 = 23.514
  - III .325
  - IV .123
  - V .349
  - VI .05
- 96.2 Ac

JG

Exhibit "B"

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding dated this 6<sup>th</sup> day of October, 2006, between The City of Centerville, an Ohio municipal corporation, Dille Laboratories Corp., and Bear Creek Capital, LLC, an Ohio limited liability company.

WHEREAS, the above parties entered into a Pre-Annexation Agreement dated April 5, 2006, for property located in Sugarcreek Township, Greene County, and the parties hereby agree to allow this Memorandum of Understanding to serve as an agreement to enter into an Amendment to the Pre-Annexation Agreement as follows:

1. The parties agree to add a second sentence to paragraph 2(a) to read as follows:

Pursuant to law, the property sought to be annexed is to retain the zoning regulations in effect prior to the annexation unless and until the property is re-zoned in the City.

2. Notwithstanding any thing in paragraph 2(b) of the Pre-annexation agreement to the contrary, the parties agree that the City need not rezone the property contemporaneous with the annexation but may complete the annexation of the property or it's separate parts separate and prior to the rezoning of the property in the city, recognizing the City will take all reasonable attempts to re-zone the property expeditiously, not to exceed 120 days from the date the City accepts the annexation or unless otherwise agreed to in writing by the parties.

3. The parties acknowledge that the City is developing a Unified Development Ordinance (hereinafter called "UDO"), which will create a series of overlay zones that have incentives for creation of quality developments, as well as flexibility with regards to the density of a development. The parties acknowledge that they will be able to take advantage of the UDO once it is adopted by the City in accordance to law. The parties recognize that the UDO is a working document and has not yet been finalized. The parties have reviewed a current draft of the building standards of the UDO and acknowledge that those standards are subject to final review and adoption by the City.

4. The parties agree to change the last sentence of paragraph 2(c) to state that "The parties acknowledge and agree that certain of these road improvements are public improvements which will be governed by special financing."

5. The parties agree to provide or review alternative financing options for the public road improvements in addition to TIF financing or in place of TIF financing, including consideration of special assessments. The agreement will add a paragraph (d) that states "That the City and developer may set up or utilize special assessment financing to guarantee service payments in accordance with utilization of the TIF or, as an alternative or supplement to the TIF or will provide traditional CRA financing."

6. The City will amend paragraph 19 of the agreement stating that the representations, warranties and covenants as contained in the agreement shall extend for a period of either twenty (20) years or to the extent of the financing, whichever is greater.

7. The parties agree that there shall be access to the property to be annexed as set forth in the letter dated September 15, 2006 between Bill Covell and Steve Kelly.

8. By signing this Memorandum, all parties agree to execute an Amendment to the Pre-Annexation Agreement incorporating the substance of the above changes.

DEVELOPER:

BEAR CREEK CAPITAL, LLC  
an Ohio limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OWNER:  
DILLE LABORATORIES CORP.

By: Roger Pfister  
Name: ROGER PFISTER  
Title: PRESIDENT

THE CITY OF CENTERVILLE,  
an Ohio municipal corporation

By: *[Signature]*  
Name: Deborah A. Hall  
Title: CITY MANAGER



**IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO  
CIVIL DIVISION**

CORNERSTONE DEVELOPERS, LTD.  
3475 Newmark Drive  
Miamisburg, Ohio 45342,

Plaintiff,

vs.

CITY OF CENTERVILLE  
DEPARTMENT OF LAW  
c/o Scott Liberman  
100 West Spring Valley Road  
Centerville, Ohio 45458

Defendant.

Case No. \_\_\_\_\_

**PETITION FOR DETACHMENT  
OF FARM LANDS**

---

**PARTIES**

1. Plaintiff, Cornerstone Development, Ltd ("Cornerstone") is an Ohio limited liability company.
2. Defendant, City of Centerville (the "City", collectively with Cornerstone, the "Parties"), is a municipal corporation which has annexed the land which is the subject matter of this action.
3. This Court has jurisdiction over this matter pursuant to R.C. 709.41 and 709.42.



## BACKGROUND

4. Prior to 2006, Charles A. Dille, Jr., as Trustee under a certain Amended and Restated Revocable Trust (the "Trust"), owned approximately 71.143 acres of farm land located in Sugarcreek Township, Greene County, Ohio ("Sugarcreek"), and more fully described on "Exhibit A" (the "Property").

5. In April 2006, the Trust, Bear Creek Capital, LLC ("Bear Creek") and the City entered into a Pre-Annexation Agreement under which the Property was to be annexed into the City. The Trust, Bear Creek, and Bear Creek's proposed development entity, Sugar Creek Crossing, LLC, subsequently executed a Memorandum of Understanding, which modified the Pre-Annexation Agreement (with the Pre-Annexation Agreement, the "PAA"). (A copy of the PAA is attached as "Exhibit B").

6. The Trust subsequently conveyed the Property to an affiliated entity, Dille Laboratories Corp. ("Dille Labs," together with the Trust, the "Owner"). By deed recorded on June 29, 2010, Dille Labs conveyed the Property to Cornerstone. Dille Labs and certain beneficiaries of the Trust have membership interests in Cornerstone. As such, Cornerstone is a successor to and an intended beneficiary of the rights of both the Owner and the Developer under the PAA.

7. Under the PAA, the parties set forth a plan through which the Trust and Bear Creek were to apply for any annexation of Property by the City, and the City would enact legislation to create tax increment financing (the "TIF ordinance") through which development of the Property would be financed.

8. The PAA also contemplated that the City and Bear Creek would enter into a public infrastructure agreement (the "Infrastructure Agreement") pursuant to which the City and

Bear Creek were to erect, construct and maintain public improvements within and outside of the Property, which were to be funded through the TIF ordinance.

9. The PAA also contemplated that Bear Creek and the City would execute a service payment agreement (the "Service Agreement") setting forth the duties and obligations for the tax increment financing to be created by the TIF ordinance.

10. The PAA also contemplated that as part of the TIF ordinance, the City would issue tax increment financing bonds to pay for the cost of public improvements to be constructed within and outside of the Property, and that the debt service on the bonds would be paid from the service payments required by the Service Agreement.

11. In accordance with the PAA, the Trust filed an annexation petition, and, effective October 2006, the Property was annexed into the City. Since that time, the City has been levying taxes on the Property.

12. Prior to the completion of the annexation of the Property by the City, Sugarcreek enacted its own TIF ordinance, requiring portions of the tax revenue for the Property to be utilized for public improvements which it would designate.

13. Sugarcreek Township then filed a declaratory judgment action ("DJ Action") against the City, seeking a declaration that, among other things, a TIF by the City would be ineffective as to the taxes on the Property that benefit Sugarcreek Township. The Trust and its successors became parties to the DJ Action, and sided with the City.

14. The DJ Action is currently pending in the Ohio Supreme Court.

15. In light of the circumstances described above, Cornerstone has attempted to negotiate alternative financing arrangements with the City. The City, however, has set forth conditions that include: applying the TIF revenue from the Property to fund infrastructure

improvements far beyond the scope of the improvements contemplated at the time of the PAA; materially reducing the allocation of TIF funds for internal improvements in comparison to the level contemplated during the City's negotiations with Bear Creek; requiring that Cornerstone provide guarantees covering the costs of the expanded infrastructure; establishing limitations on the TIF rather than using the full TIF potential of the Property as contemplated by the PAA; refusing to compensate Cornerstone for the dedication of right-of-way (contrary to the City's outline of the Bear Creek terms); requesting the dedication of land without compensation prior to the completion of negotiations; and establishing zoning limitations beyond those contemplated by the PAA.

16. As a result of the foregoing events, the Parties never executed the Infrastructure Agreement or the Service Agreement, and the City never enacted the TIF ordinance or took the actions necessary to issue the bonds contemplated by the PAA and necessary to fund the development of the Property.

17. At this point, the Parties have been unable to come to any agreement. Moreover, at this point, the City has refused to make available financing that would make the development contemplated by the PAA economically feasible .

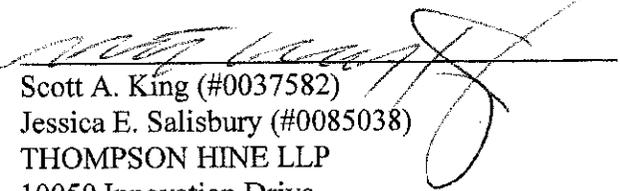
18. More than six years after annexation by the City, the Property remains unplatted, undeveloped farmland. Nonetheless, the Property is now being taxed and will continue to be taxed by the City in substantial excess of the benefits conferred by reason of the Property being within the City.

19. At this point, the Property may be detached from the City without materially affecting the best interest or good governance of the City.

**FIRST CLAIM FOR RELIEF**

20. Cornerstone incorporates the allegations of the preceding paragraphs, as if they were fully rewritten into this paragraph.
21. Prior to its annexation by the City, the Property was and continues to be farmland.
22. The Property was not within the original limits of the City.
23. The Property was annexed to the City more than 5 years ago.
24. As described above, because the Property is located within the City, it cannot be reasonably developed, and Cornerstone is being taxed on the Property in an amount substantially in excess of the benefits being conferred by the lands being within the municipal corporation of the City.
25. The Property could be detached from the City without materially affecting its best interest or good government.

WHEREFORE, Cornerstone Development, Ltd. requests that the Court issue an order detaching the Property from the City of Centerville, and returning it to Sugarcreek Township, for its court costs, and for such further or other relief as to which it may be entitled.

  
Scott A. King (#0037582)  
Jessica E. Salisbury (#0085038)  
THOMPSON HINE LLP  
10050 Innovation Drive  
Dayton, Ohio 45342  
Telephone: 937.443.6560  
Facsimile: 937.443.6635  
Scott.King@ThompsonHine.com  
Jessica.Salisbury@ThompsonHine.com

*Attorney for Plaintiff  
Cornerstone Developers, Ltd.*

## EXHIBIT A

Description of Sugarcreek Town Center  
Dille Corporation Part of the South Parcel  
City of Centerville and Sugarcreek Township, Ohio  
Containing 71.482 ACRES

Situate in Section 9, Township 2, Range 6, Township of Sugarcreek, and City of Centerville, County of Greene, State of Ohio, and being part of a tract of land conveyed to Dille Laboratories Corporation as recorded in Deed Book 308, Page 322 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Greene County Recorders Office, unless noted otherwise) and being more particularly bounded and described as follows:

Beginning at an iron pin set at the southeast corner of the southwest quarter of said Section 9, said point being in the north line of a tract of land conveyed to Wendell E. Spears as recorded in Official Record 323, Page 217;

thence along the south line of said Section 9 and in part along the north line of said Spears land and in part along the north line of a tract of land conveyed to The Board of Sugarcreek Township Trustees as recorded in Official record 375, Page 636, North eighty-nine degrees zero minutes twenty-three seconds West (N89°00'26"W) for one thousand seven hundred twenty-three and 47/100 feet (1723.47') to an iron pin set at the southeast corner of a tract of land conveyed to Christ Evangelical Brethren Church in Deed Book 333, Page 534;

thence along the lines of said Church land for the following two (2) courses:

1. North zero degrees fifty-nine minutes thirty-four seconds East (N00°59'34"E) for three hundred forty-seven and 83/100 feet (347.83') to an iron pin set;
2. North eighty-nine degrees zero minutes twenty-six seconds West (N89°00'26"W) for one thousand one hundred eighty and 53/100 feet (1180.53') to an iron pin set in the east limited access right-of-way line of Interstate Route 675 as established by Deed Book 513, Page 658;

thence along said limited access right-of-way for the following seven (7) courses:

1. North fifteen degrees nineteen minutes forty-one seconds East (N15°19'41"E) for three hundred fifty-seven and 44/100 feet (357.44') to an iron pin set;
2. North forty-four degrees thirty-six minutes forty-six seconds East (N44°36'46"E) for two hundred seventy-six and 56/100 feet (276.56') to an iron pin set;

3. North fifty-five degrees thirty-two minutes twenty-one seconds East (N55°32'21"E) for one hundred five and 95/100 feet (105.95') to an iron pin set;
4. North sixty-six degrees fifty minutes thirty-three seconds East (N66°50'33"E) for eight hundred fifty-one and 36/100 feet (851.36') to an iron pin set;
5. North eighty-two degrees fifty-six minutes forty-seven seconds East (N82°56'47"E) for two hundred sixty-four and 05/100 feet (264.05') to an iron pin set;
6. North sixty-four degrees fifty-nine minutes fifty-seven seconds East (N64°59'57"E) for two hundred sixty-five and 99/100 feet (265.99') to an iron pin set;
7. North thirty-five degrees fifty-nine minutes forty-six seconds East (N35° 59'46"E) for two hundred thirty and 70/100 feet (230.70') to an iron pin found at the southwest corner of Five Seasons as recorded in Plat Cabinet 30, Slide 517B;

thence along said Five Seasons for the following two (2) courses:

1. South thirty-six degrees twenty-one minutes twenty-seven seconds East (S36°21'27"E) for five hundred sixteen and 56/100 feet (516.56') to an iron pin set;
2. South eighty-six degrees zero minutes seventeen seconds East (S86°00'17"E) (passing an iron pin set at 851.42') for a total distance of eight hundred eighty-five and 82/100 feet (885.82') to point in the east line of the southwest quarter of said Section 9, Phillip M. & Sharon L. Herres as recorded in Deed Book 551, Page 903 and Official Record 500, Page 414;

thence along the east line of said southwest quarter and part along the west line of said Herres land, in part along the west line of Sugar Leaf Subdivision Section 2 as recorded on Plat Cabinet 33, Slide 773A, and in part along the west line of Sugar Leaf Section 1 as recorded in Plat Cabinet 33, Slide 619B, South four degrees nineteen minutes thirty-seven seconds West (S04°19'37"W) for one thousand one hundred ninety-one and 61/100 feet (1191.61') to the POINT OF BEGINNING, containing seventy-one and 482/1000 (71.482) acres, more or less total. The existing right-of-way for Possum Run Road contains 0.339 acres, more or less in Sugarcreek Township, resulting in a net area of 71.143 acres, more or less in City of Centerville, subject however to all covenants, conditions, restrictions, and easements contained in any instrument of record pertaining to the above described tract of land.

This description was prepared from a field survey performed in March, 2005, with bearings based upon the Ohio State Plane Coordinate System.

PARCEL ID L49000100010001200 and L32000100020000300

#### LESS AND EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

Situate in Section 9, Township 2, Range 6, Township of Sugarcreek, Greene County, Ohio and being that portion of the above-described property lying within the right of way of Possum Run Court.

PRE-ANNEXATION AGREEMENT

THIS PRE-ANNEXATION AGREEMENT (the "Agreement") is made and entered into this 5<sup>th</sup> day of April, 2006 by, between and among the City of Centerville, an Ohio municipal corporation (the "City"), Charles A. Dille, Jr., Trustee, under a certain Amended and Restated Revocable Living Trust, dated January 16, 1998, (the "Owner", or "Owners" should more than one property owner execute this Agreement as a party) and Bear Creek Capital, LLC, an Ohio limited liability company (the "Developer") under the following circumstances:

- A. Charles A. Dille, Jr., Trustee, under a certain Amended and Restated Revocable Living Trust, dated January 16, 1998, currently holds fee simple title to approximately 70.5 acres of land located in Sugarcreek Township, Greene County, Ohio and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");
- B. Bear Creek Capital, LLC, or an affiliate, intends to purchase the Property from the Owner, pursuant to a contract of purchase, in order to develop a multi-use development project, including retail, office and residential components (the "Project");
- C. The City has reviewed a development plan for the Project, attached hereto as Exhibit "B" (the "Development Plan") and has determined that the Development Plan is in accord with the City's comprehensive land use plan;
- D. The Owner and Developer desire to annex the Property, as more particularly described on Exhibit "A" and as generally depicted on Exhibit "C", into the City in order to obtain the City's services and assistance in the development of the Property; and
- E. The Owner, Developer, and the City can mutually benefit by having the Property annexed into the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the City, Owner, and Developer hereby agree as follows:

1. Annexation.

(a) The Developer agrees that it will obtain the signature of the Owner and will, at its own expense, prepare and file the necessary annexation petition or petitions with accompanying map or plat with the appropriate board of county commissioners. The Owner agrees that it will sign the annexation petition as prepared and will support and not withdraw its name or request withdrawal of the petition during the annexation process and/or any subsequent administrative or legal action involving pursuit of the annexation. The annexation petition shall be filed as an "Expedited Type 2" annexation as provided in Section 709.023 of the Ohio Revised Code. The Property sought to be annexed may be the subject of one or more annexation petitions and in a configuration as

agreed by the Owner, Developer, and the City and may include other property not owned by Owner. If the Property is annexed in several parts using separate petitions, the terms of this Agreement will apply to each separate petition. The Owner agrees that it will execute one or more annexation petitions, as appropriate, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law, and will not request the agent for petitioners to withdraw the annexation petition as long as this Agreement is in full force and effect. The petition will designate an agent for petitioners as agreed to by the City and Developer. The City agrees to pass a service resolution and/or any necessary supporting resolutions as required by Section 709.023(C) of the Ohio Revised Code within twenty (20) days of the date of the filing of the annexation petition with the appropriate board of county commissioners. A service resolution will set out those services that will be provided by the City upon annexation and will establish the approximate date when those services will be available.

(b) The Owner, Developer, and the City agree to cooperate and provide information necessary for the county commissioners to make their "review" of the annexation as required by Section 709.023 of the Ohio Revised Code. If, at the conclusion of the review process the county commissioners deny the annexation petition, the Owner agrees to file in the appropriate court a request for a writ of mandamus to compel the county commissioners to approve the annexation as set out in Section 709.023 of the Ohio Revised Code. The City agrees to seek standing to support any mandamus action filed by the Owner in its attempt to annex the Property into the City. The Owner, Developer, and the City agree to pursue the annexation and to exhaust all appeals.

(c) Should the annexation be approved, the Owner, Developer, and the City agree to process the annexation as provided by law subject to the terms of this Agreement.

(d) The Owner and Developer, at their expense, agree to file or arrange to be filed an annexation petition, map, and plat that comply with Section 709.023 of the Ohio Revised Code within twenty (20) days after the execution of this Agreement.

(e) If the purchase contract between Owner and Developer shall terminate and/or not be renewed pursuant to the terms thereof prior to the completion of the annexation of the Property, but the annexation process continues and some or all of the Property is ultimately annexed into the City, the Developer shall indemnify and hold the Owner harmless from any City income tax burdens (including any future City income taxes) resulting to it from the Property's inclusion in the City, for the period from the date of expiration or earlier termination of the purchase contract until the earlier to occur of the sale of the Property to another purchaser or August 3, 2010 (which is the first anniversary of the date of termination of the Charles Dille Trust).

2. Zoning.

(a) The Property sought to be annexed is currently shown on the zoning map of Sugarcreek Township as a planned unit development of mixed uses, including commercial, office, single and multi-family residential zoning and other possible mixed zoning uses. The City recognizes that the uses shown on the Development Plan attached hereto and made a part hereof are generally in line with the spirit of the comprehensive plan for the City if extended to the annexation area and the uses shown on the Development Plan are appropriate uses to be considered for the Property. The parties understand that the zoning will take place utilizing the regular process for processing an application for zoning in the City and there is no guarantee that any particular zoning will be granted. The City agrees that once an annexation petition has been approved by the appropriate board of county commissioners, the City will accept a zoning application for the Property covered by the annexation petition and will begin the administrative processing of such application, including any necessary hearings and other preliminary matters. The City understands that the Developer is desirous of obtaining B-PD, Business Planned Development and also, in part, as R-PD, Residential Planned Development, as described in the Development Plan as the ultimate end uses of the Property in the City.

(b) The City recognizes that once the annexation is placed before City Council by the City Clerk, the City has one hundred twenty (120) days to accept or reject the annexation. The City agrees that it will not accept the annexation of the Property unless and until it is prepared to contemporaneously rezone the Property in accordance with the Development Plan approved through the planning and zoning process to a zoning that is acceptable to the Owner and Developer. At any time during the one hundred twenty (120) day acceptance period for the annexation, at the request of the Owner and/or Developer, the City itself may delay its acceptance of the annexation until the zoning and other matters are settled to the satisfaction of the Owner, Developer, and the City. If, for some reason, the zoning cannot be accomplished and/or the zoning is referred to the voters or defeated for any reason or other conditions of this Agreement cannot be met acceptable to the Owner and Developer, the City agrees that it will not annex the Property. If, however, the zoning is approved in accordance with the Development Plan developed through the Planning Commission and approved by City Council, the Owner and Developer are obligated to complete the annexation process. If the annexation vote occurs approving the annexation to the City and at the time of the annexation acceptable zoning has not been adopted as approved through the Planning Commission, then the City agrees that if acceptable zoning does not pass within thirty (30) days of such vote approving the annexation, it will reconsider such vote and reject the annexation. The City agrees, to the extent possible, to process the ordinance necessary to approve the annexation and zoning contemporaneously with the goal of deciding both issues at the same meeting.

(c) The Development Plan shall show the needed access to the Property from public streets and roadways, as well as establish a plan to erect adequate signage to identify the commercial and residential portions of the Property as permitted by the City's development code. The Owner, Developer, and the City acknowledge that the access to the Property is determined and controlled by the City and the Ohio Department of

Transportation. No exact access can be guaranteed by the City, but the City agrees to cooperate with Developer in the submission of any and all necessary permits for access to the Property or for the establishment of any utilities that may be necessary to be placed in the road right-of-ways. The parties also acknowledge and agree that certain of these road improvements are within "Public Improvements" which will be governed by Tax Increment Financing.

3. Water, Sewer, and Public Utilities. The Owner, Developer, and the City understand that water and sewer to the site will be provided by Greene County. The Developer has satisfied itself as to the adequacy, size, cost, timing and extension of such utilities to the development in question. The location and alignment of the water and sewer lines, as well as any other utilities to be provided to the site, must be approved by the City's engineer upon annexation and be based upon sound engineering principles. The City agrees that if there is a choice of locations, it will cooperate in the location and placement of the water and sewer lines and other utilities over which it may have control in a way that is most economically feasible and beneficial to the Developer. The City will cooperate with the Owner and Developer in obtaining any necessary utility easements and will extend to the Owner and Developer the right to place utilities in the public road right-of-ways, when such road right-of-ways are solely controlled by the City and that such grant will be without cost to the Owner or Developer for such access. The extent of the City's commitments with regard to utilities will be established and limited to those rights, privileges, and other items as set out in the City's service resolution.

4. Platting. Once the annexation to the City has been completed and the Development Plan approved as to zoning, a preliminary and final plat will be filed by the Owner/Developer. The City agrees to process the preliminary and/or final plat application as soon as practical under the City's Subdivision Rules and Regulations and will attempt to provide the engineering reviews and other items necessary for preliminary and/or preliminary and final combined plats in a reasonable and expeditious manner. It is understood that the platting will meet the City's Subdivision Rules and Regulations and the regular fees for such review will be applied.

5. Financing Improvements. The parties recognize that significant improvements may be needed to service the proposed development of the Property in the City, and, accordingly, the parties agree to undertake or participate in the following financing arrangements or mechanisms:

(a) Coincident with the City's approving the final plans for development of any portion of the Property that has been annexed to the City, the City shall as soon as practical take steps to present to the City Council legislation to create Tax Increment Financing (the "TIF Ordinance") to enable the City to collect up to the maximum amount of payments in lieu of taxes which may be generated from the new development without approval from a school district. The payments made in lieu of taxes will be applied by the City to recoup and apply to the costs associated with the construction of the necessary public improvements. Pursuant to the TIF Ordinance, the City and Developer shall enter into a public infrastructure agreement (the "Infrastructure Agreement"), pursuant to which the City and Developer agree to erect, construct and maintain Public

Improvements on the Property or which, in the opinion of the City, benefit or serve the Property or which have been deemed reasonably necessary by the City and the Developer. The TIF Ordinance shall also specify the use of service payments as provided in ORC Section 5709.42.

(b) The Developer and the City shall enter into a service payment agreement reasonably acceptable to Developer and the City (the "Service Agreement") setting forth the duties and obligations of a Tax Increment Financing District that does not involve the deprivation of any school district moneys.

(c) Upon request of the Developer, the City agrees that it will take such action as is necessary to issue Tax Increment Financing Bonds (the "Bonds") in order to pay the costs of the Public Improvements to be constructed on the Property and that the debt service on the Bonds will be paid solely from Service Payments (which means the Statutory Service Payments and any supplemental payments (the "Minimum Service Payments") as may be required by a Service Agreement. The Public Improvements to be covered by Tax Increment Financing shall include, but not be limited to, the installation of roads, utility lines, sidewalks, and other public infrastructure improvements deemed reasonably necessary by the Developer and the City.

6. Representations and Warranties of the City. The City hereby represents and warrants to Developer that:

(a) The City is a duly established and validly existing municipal corporation within the State of Ohio, with all requisite power and authority to enter into this Agreement, pursuant to its charter, and to perform its obligations hereunder;

(b) The City, acting by and through its agents, has taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same; and

(c) This Agreement is the valid and binding act of the City, enforceable against the City in accordance with its terms.

7. Representations and Warranties of the Owner/Developer. The Owner/Developer hereby represents and warrants to the City that:

(a) The Owner is the duly authorized owner of the Property to be included in the annexation petition;

(b) The Developer represents that it has an option or contract to purchase the Property and that the parties who have signed this Agreement have whatever authority is necessary to authorize their signatures;

(c) The Developer and Owner, acting by and through their agents, have taken all such action which is necessary or appropriate to authorize the execution of this Agreement by the person executing the same and the performance of the obligations of the City hereunder; and

(d) The Developer has satisfied itself that utilities which are outside the control of the City will be available in sufficient amounts, quantities, and timing so that the Developer can, in fact, complete the development as anticipated by this Agreement.

8. Waiver. The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right hereunder, nor shall it deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

9. Execution. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the parties unless and until it has been signed on their behalf by a duly authorized representative. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement. As used herein, the term "Agreement" shall mean this Agreement and any Exhibits hereto. This Agreement may be executed in one or more counterparts by either party hereto and by all parties hereto in separate counterparts, each of which, when so executed and delivered to the other parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

10. Severability. If any provision of this Agreement should be or become fully or partly invalid or unenforceable for any reason whatsoever or violate any applicable law, this Agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as is legally possible, comes nearest to what the parties desired or would have desired according to the sense and purpose of this Agreement had this point been considered when concluding this Agreement.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

12. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the parties hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the parties to this Agreement.

13. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City, the Owner and the Developer, any lender providing financing to the Developer and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

14. Time is of the Essence. Time is of the essence for all matters in this Agreement and each party shall diligently pursue and complete its obligations hereunder.

15. Force Majeure. Neither party shall be in default in the performance of any obligation on such party's part to be performed under this Agreement, other than an obligation requiring payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, and conditions that could not have been reasonably foreseen by the claiming party.

16. Approvals. Unless otherwise stated herein, whenever a party to this Agreement is required to consent to, or approve an action by the other party or to approve any such action taken by another party, such approval or consent shall be given or withheld within the earliest time allowed by law and the process that is utilized in performing the function.

17. Binding Effect. This Agreement and all of the provisions herein shall run with the land and shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

18. Entire Agreement/Merger. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written.

19. Survival. The representations, warranties and covenants contained in this Agreement shall not terminate for a period of twenty (20) years.

20. Notice. All notices, requests, consents, approvals, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (a) delivered personally or (b) three (3) business days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (c) by telegram, cable, e-mail or facsimile telephone transmission, if given below, or later provided, addressed as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

Owner:

Roger Pfister  
Trustee, under a certain Amended and  
Restated Revocable Living Trust, dated  
January 16, 1998,  
5300 Wilmington Pike  
Dayton, OH 45440  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: John M. Cloud, Esq.  
Rogers & Greenberg LLP  
2160 Kettering Tower  
Dayton, OH 45423  
Telephone: (937) 223-8171  
Facsimile: (937) 223-1649

Developer: Bear Creek Capital, LLC  
9549 Montgomery Road, 3<sup>rd</sup> Floor  
Cincinnati, OH 45242  
Telephone: 513-233-7030  
Facsimile: (513) 793-5820  
Attention: Mr. Greg Scheper

with a copy to: Joseph L. Trauth, Jr., Esq.  
Keating, Muething & Klekamp, PLL  
One East Fourth Street  
Suite 1400  
Cincinnati, OH 45202  
Telephone: (513) 579-6515  
Facsimile: (513) 579-6457

City: City of Centerville  
100 W. Spring Valley Rd.  
Centerville, OH 45458  
Attention: City Manager  
Telephone: (937) 433-7151  
Facsimile: (937) 435-8720

with a copy to: City of Centerville  
100 W. Spring Valley Rd.  
Centerville, OH 45458  
Attention: City Attorney  
Telephone: (937) \_\_\_\_\_  
Facsimile: (937) \_\_\_\_\_

[Signatures Appear on the Following Page]

The foregoing instrument was executed this \_\_\_ day of April, 2006.

DEVELOPER:

BEAR CREEK CAPITAL, LLC,  
an Ohio limited liability company

By:   
Name: ~~Matthew~~ Matthew C. Daniels  
Title: Member

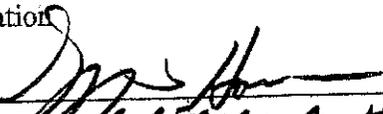
OWNER:

  
Roger Pfister

Trustee, under a certain Amended and  
Restated Revocable Living Trust, dated  
January 16, 1998,  
5300 Wilmington Pike  
Dayton, OH 45440

CITY:

CITY OF CENTERVILLE, an Ohio municipal  
corporation

By:   
Name: Gregory S. Horn  
Title: CITY MANAGER

STATE OF OHIO )  
 ) SS.  
COUNTY OF GREENE )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Roger Pfister Trustee, who acknowledged that he was authorized to and did sign the foregoing instrument, and that the same is the free act of such persons.

IN TESTIMONY, I set my hand and official seal this 31<sup>st</sup> <sup>March</sup> day of ~~April~~, 2006.

Karen L. Lamb  
Notary Public (Seal)

**Karen L. Lamb, Notary Public**  
In and for the State of Ohio  
My Commission Expires June 3, 2007

STATE OF OHIO )  
 ) SS.  
COUNTY OF ~~GREENE~~ <sup>Montgomery DAG</sup> )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Gregory B. Horn, the City Manager of the City of Centerville, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such City of Centerville, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such City of Centerville.

IN TESTIMONY, I set my hand and official seal this 5<sup>th</sup> day of April, 2006.

Debra A. James  
Notary Public (Seal)

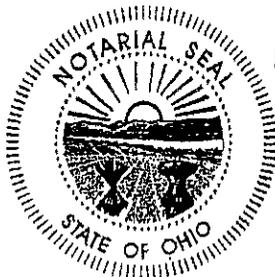
**DEBRA A. JAMES, Notary Public**  
In and for the State of Ohio  
My Commission Expires April 13, 2010

STATE OF OHIO )  
 ) SS.  
COUNTY OF HAMILTON )

BEFORE ME, a Notary Public in and for such County and State, personally appeared Matthew C. Daniels, the Member of Bear Creek Capital, LLC, who acknowledged that he was authorized to and did sign the foregoing instrument for and on behalf of such company, and that the same is the free act and deed of such officer and the free act and deed of him personally and as such Company.

IN TESTIMONY, I set my hand and official seal this 3<sup>rd</sup> day of April, 2006.

Heather Piazza  
Notary Public (Seal)



**HEATHER L. PIAZZA**  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
January 23, 2007

L32000(00020000100 (#1 on map))

008748

GENERAL WARRANTY DEED, Statutory Form No. 22-S

(Reprinted 2/87)



Registered in U.S. Patent and Trademark Office  
Patent publishing no. 4,810,001, class 43/10

# General Warranty Deed

#II on Annex map

1200

CHARLES A. DILLE, JR., unmarried, of Greene County, Ohio  
 for valuable consideration paid, grants) with general warranty covenants, to CHARLES A. DILLE (a/k/a Charles  
 A. Dille, Jr.), as Trustee under a certain Amended and Restated Revocable Living Trust Agree-  
 ment executed by said CHARLES A. DILLE, JR. both as Grantor and as the Trustee hereunder,  
 dated January 16, 1998, and whose tax mailing address is: 5900 Wilmington Pike  
 Dayton, Ohio 45440  
 the following REAL PROPERTY: Situated in the County of Greene in the State  
 of Ohio and in Sugarcreek Township

EXHIBIT A  
Dille Truste

And being a fee simple interest in that certain parcel of real estate which is  
 more particularly described on Exhibit "A" attached hereto and incorporated  
 herein by reference.

Subject to all restrictions, easements, covenants and conditions of record; to all  
 legal highways and zoning restrictions and ordinances; and to all taxes and  
 assessments not yet due and payable.

Full power and authority is granted to the above-named Trustee, and successor  
 Trustee(s) of said Trust, to protect, conserve, sell, lease, encumber or otherwise  
 to manage and dispose of said real estate or any part of it. No person dealing  
 with the above-named Trustee or any successor Trustee(s) of the Trust shall be  
 bound to see to the application of any purchase money or to inquire into the  
 validity, expedience or propriety of any such sale or other disposition.

PAID BY CHECK PG 2 PAR 1  
 BY: TULLY DRS 4-3-98  
 TULLY SURVEYING, NEW SURVEY PLATTING  
 LEGAL SERVICES WITH COMPUTERS  
 LEGAL SERVICES AS DESCRIBED  
 OPEN COUNTY EXEMPT TO MAP DEPT  
 ON CHECK

Prior Instrument Reference: Volume 420, Page 424 and of the Deed Records of  
 Volume 1089 Page 190 County, Ohio.

Grantor, and all rights of his or her Witness my hand(s) this 16th day  
 of January, 19 98

Signed and acknowledged in presence of:

*[Signature]*  
*[Signature]*  
 David A. Steer

*[Signature]*  
 CHARLES A. DILLE, JR.

State of Ohio County of Greene ss.  
 BE IT REMEMBERED, That on this 16th day of Jan., 19 98, before me,  
 the subscriber, a notary public CHARLES A. DILLE, JR. the Grantor(s) in the  
 foregoing deed, and acknowledged the signing thereof to be his voluntary act and deed,  
 IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal  
 on the day and year last aforesaid.

1998 APR -3 PM 3:32

LARRY S. MORRIS  
 GREENE CO. RECORDER  
 XENIA, OH.

John M. Cloud, Attorney at Law  
 2160 Kettering Tower - Dayton, Ohio

This instrument was prepared by

Name of Grantor(s) and marital status:  
 Description of land or interest therein, and encumbrances, reservations, and exceptions, taxes and assessments, if any.  
 Delete whichever does not apply.  
 Exception in accordance with Chapter 5301 Ohio Revised Code.

Auditor's and Recorder's Stamps

\*See Sections 5302.05 and 5302.06 Ohio Revised Code.

87 PG 4 25

TRANSFERRED  
 PERMISSIBLE  
 APR -3 PM 3:24  
 GREENE COUNTY  
 RECORDER'S OFFICE

VOL 1187PG 426

EXHIBIT "A"  
Legal Description



Situated in Section 9, Town 2, Range 6 M.R.S., in Sugar Creek Township, Greene County, Ohio, and being the west portion of the northwest quarter of said Section 9, and being more particularly described as follows:

Beginning at the northwest corner of said Section 9, said northwest corner being the intersection of the centerline of Wilmington Pike with the centerline of Brown Road, said northwest corner being also in the west line of Greene County; thence with the north line of said Section 9 and the centerline of said Brown Road, North eight-six degrees thirty minutes ( $86^{\circ} 30'$ ) east for eleven hundred seventy-eight and  $90/100$  (1178.90) feet; thence South no degrees one minute forty seconds ( $0^{\circ} 01' 40''$ ) East for twenty-six hundred ninety-four and  $42/100$  (2694.42) feet to a point in the south line of said quarter section, said south line being the centerline of Feed Wire Road; thence with the southline of said quarter section and the centerline of said Feed Wire Road, South eight-six degrees ten minutes twenty seconds ( $86^{\circ} 10' 20''$ ) West for eleven hundred seventy-nine and  $33/100$  (1179.33) feet to the southwest corner of said quarter section, the centerline of said Wilmington Pike, and the west line of said Greene County; thence with the west line of said quarter section, the centerline of said Wilmington Pike, and the west line of said Greene County, North no degrees one minute forty seconds ( $0^{\circ} 01' 40''$ ) West for twenty-seven hundred one and  $18/100$  (2701.18) feet to the point of beginning containing seventy-two and  $88/100$  (72.88) acres more or less, subject, however, to all legal highways and easements of record.

ALSO SUBJECT HOWEVER to the following:

Except the roadway conveyed to the Greene County Commission in Warranty Deed O.R. Volume 743, Page 436, consisting of 2.325 acres more or less, known as Parcel No. 53 WD, described as follows:

Beginning at the corner common to Sections 9, 10, 15 and 16, Town 2, Range 6 M.R.s. said corner being a northeast corner in the City of Centerville Corporation line and a southeast corner in the City of Kettering Corporation Line, said corner also being in the line common to Montgomery County and Greene County, said corner also being the southeast corner of land conveyed to Golfing Centers, Inc. by deed recorded in Deed Book 501, page 137 in the Deed Records of Greene County, Ohio and the northeast corner of grantor's land;

thence along the line common to Sections 9 and 10, the south line of Golfing Centers, Inc. land and the north line of grantor's land, North eighty-seven degrees fifty-nine minutes three seconds ( $87^{\circ} 59' 03''$ ) East for eighty and  $89/100$  (80.89) feet;

thence leaving the line common to Sections 9 and 10, the south line of Golfing Centers, Inc. land and the north line of grantor's land, South two degrees no minutes fifty-seven seconds ( $02^{\circ} 00' 57''$ ) East for thirty and  $00/100$  (30.00) feet;

thence South seventy-one degrees twenty-four minutes twenty-four seconds ( $71^{\circ} 24' 24''$ ) West for forty-nine and  $03/100$  (49.03) feet;

thence on a tangent bearing South one degree twenty-seven minutes twenty-three seconds ( $01^{\circ} 27' 23''$ ) West for two thousand six hundred four and  $90/100$  (2604.90) feet;

Thence on a curve to the left with a radius of twenty-five and  $00/100$  (25.00) feet for an arc distance of forty-one and  $04/100$  (41.04) feet [long chord bearing South forty-five degrees thirty-four minutes thirteen seconds ( $45^{\circ} 34' 13''$ ) East for thirty-six and  $58/100$  (36.58) feet, central angle of said curve being ninety-four degrees three minutes eleven seconds ( $94^{\circ} 03' 11''$ )] to a point in the north right-of-way line of Feedwire Road;

# II

thence along the north right of way line of Feedwire Road on a tangent bearing, North eighty-seven degrees twenty-four minutes eleven seconds ( $87^{\circ} 24' 11''$ ) East for six and  $42/100$  (6.42) feet;

thence leaving the north right-of-way line of Feedwire Road, South two degrees thirty-five minutes forty-nine seconds ( $02^{\circ} 35' 49''$ ) East for twenty-five and  $00/100$  (25.00) feet to a point in the south line of grantor's land and the north line of land conveyed to Dille Laboratories Corporation by deed recorded in Deed Book 306, page 310 of the Deed Records of Greene County, Ohio, said line also being the centerline of FeedWire Road;

thence along the south line of grantor's land, the north line of Dille Laboratories Corporation's land and the centerline of Feedwire Road, South eighty-seven degrees twenty-four minutes eleven seconds ( $87^{\circ} 24' 11''$ ) West for seventy one and  $62/100$  (71.62) feet to a railroad spike found at the southwest corner of grantor's land and the northwest corner of Dille Laboratories Corporation's land, said corner being in the line common to sections 9 and 15, the line common to Montgomery County and Greene County, the east corporation line of City of Centerville and the centerline of Wilmington Pike;

thence along the west line of grantor's land, the line common to sections 9 and 15, the line common to Montgomery County and Greene County, the east corporation line of the City of Centerville and the centerline of Wilmington Pike, North one degree twenty-seven minutes twenty-three seconds ( $01^{\circ} 27' 23''$ ) East for two thousand seven hundred one and  $24/100$  (2701.24) feet to the point of beginning subject however to all covenants, conditions, restrictions, reservations, and easements contained in any instrument of record pertaining to the above described tract of land.

It is understood that the above described tract of land contains two and  $325/1000$  (2.325) acres, more or less, inclusive of the present road which occupies one and  $919/1000$  acres, more or less.

The bearing system used is based on the Cheltenham Section One record plan system, recorded in Plat Book 137, Page 21 of the Plat Records of Montgomery County, Ohio.

and;

Except for the conveyance recorded on August 30, 1993, to the Greene County Commissioners by Warranty Deed recorded in O.R. Volume 743, page 434, consisting of 0.026 acres known as Parcel No. 53 WD-1, said parcel being described as follows:

Beginning for reference at a point in the Greene-Montgomery County line. Said point being the northwest corner of Section 9, Greene County the southwest corner of Section 10, Greene County, the northeast corner of Section 15, Montgomery County, and the southeast corner of Section 16, Montgomery County;

thence with the northerly line of said 72.88 acre tract, the north line of Section 9 and the south line of Section 10, N.  $87^{\circ} 59' 03''$  E. 80.89 feet to the point of beginning for the tract herein described;

thence along the same line N.  $87^{\circ} 59' 03''$  E. 50.39 feet;

thence S.  $02^{\circ} 00' 57''$  E. 15.00 feet to the existing right of way of Brown Road;

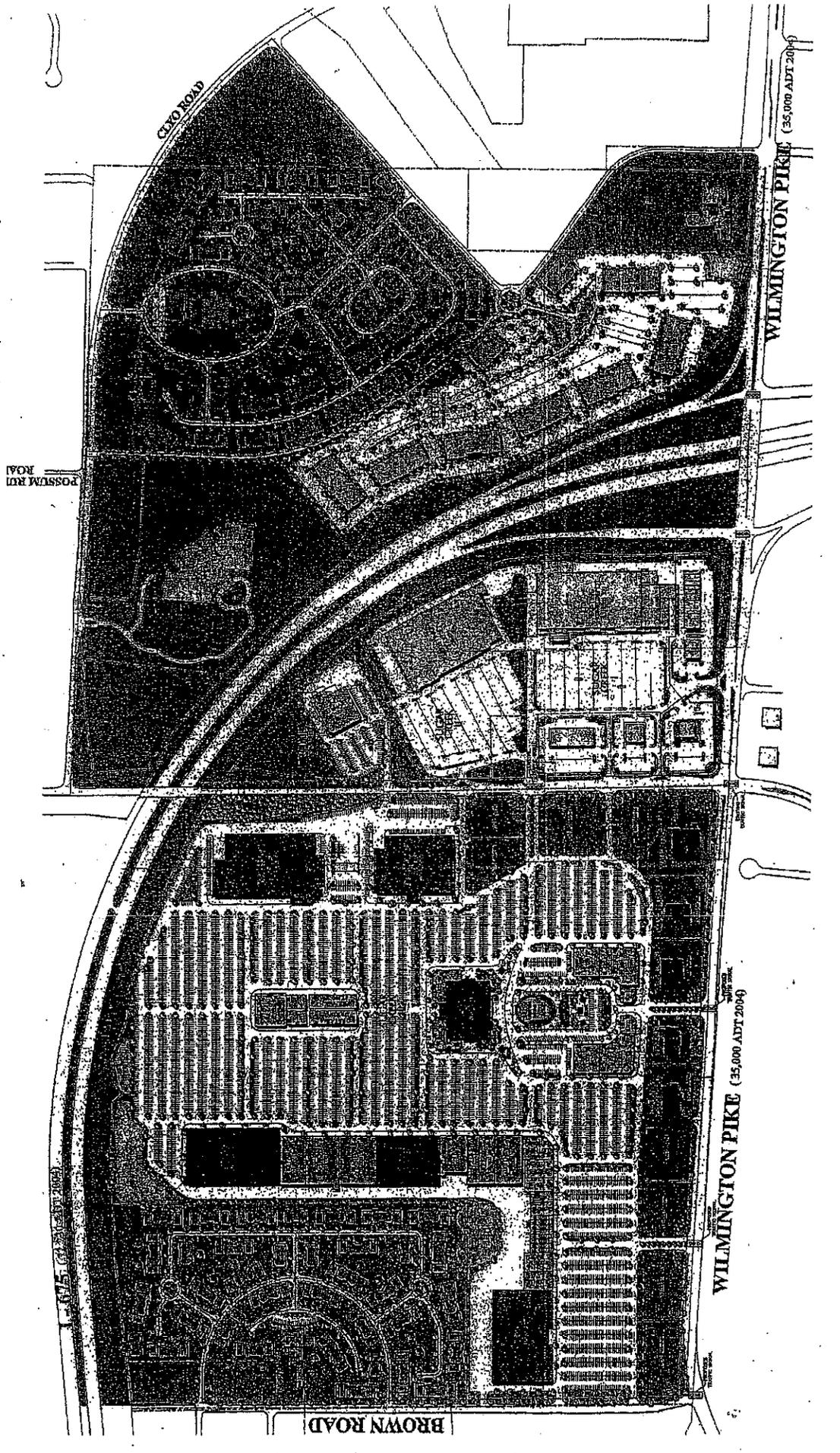
thence S.  $71^{\circ} 24' 24''$  W. 52.57 feet;

thence N.  $02^{\circ} 00' 57''$  W. 30.00 feet (passing the existing right of way of Brown Road at 15.00 feet) to the point of beginning. This description contains 0.026 acres of which the present road occupies 0.017 acres, leaving 0.009 acres in the new easement.

As a result of the two above exceptions, the former 72.88 acres is reduced to 70.529 acres, more or less.

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EXHIBIT B



# MAP OF TERRITORY TO BE ANNEXED TO THE CITY OF CENTERVILLE 173.135 ACRES

SECTION 9 TOWN 2 RANGE 6 M.R.s.  
SUGARCREEK TOWNSHIP  
GREENE COUNTY, OHIO



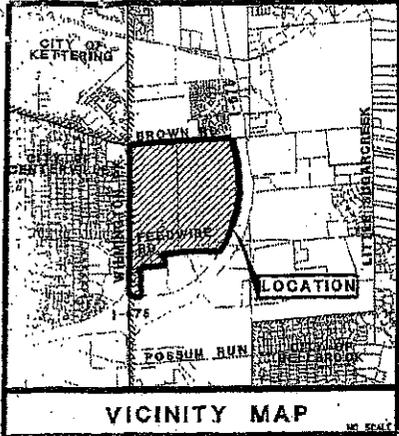
SCALE: 1"=400'  
0 100 200 300 400  
GRAPHIC SCALE

### LEGEND

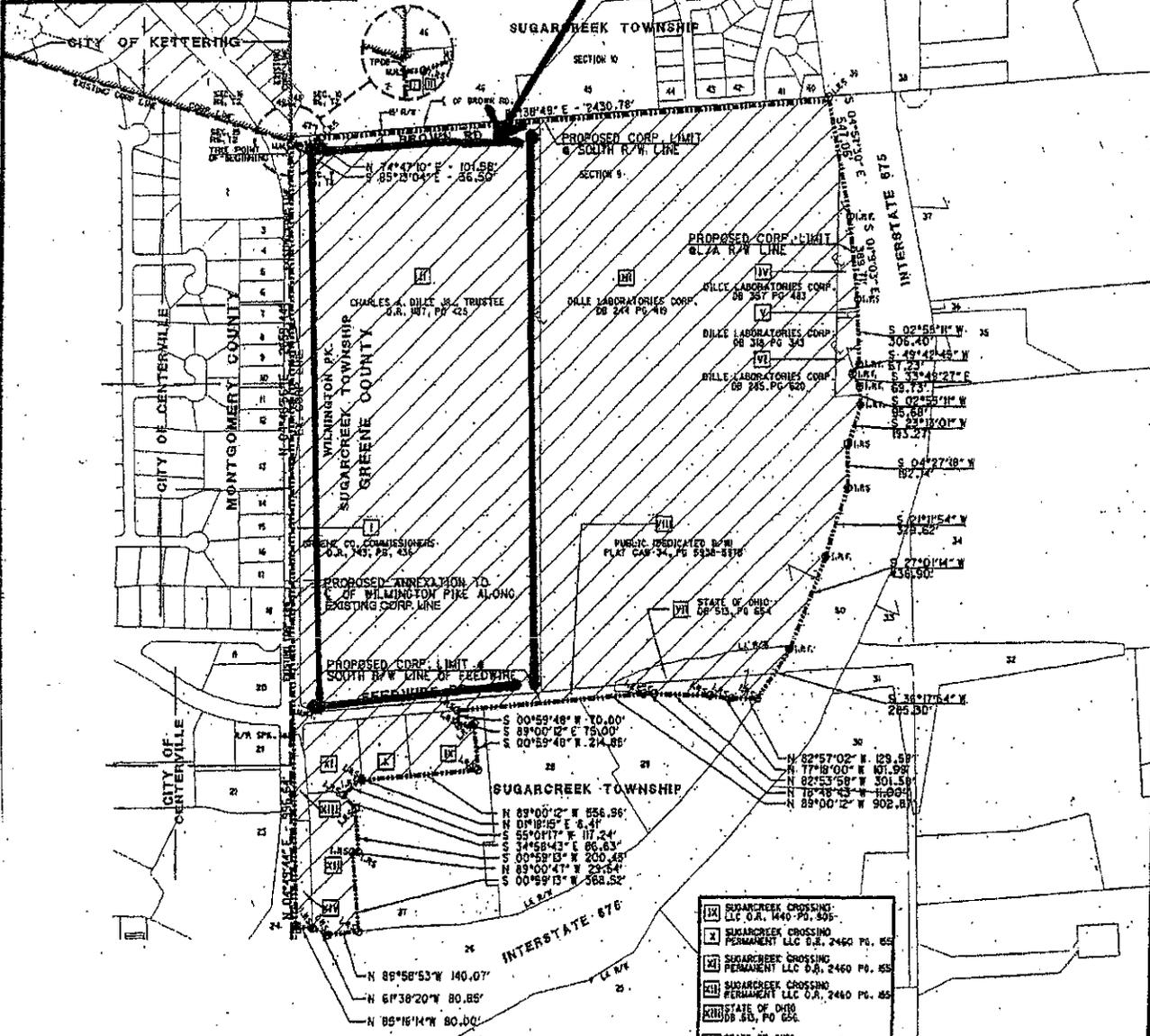
- R/R SPK. (b)
- M.N.S. MAO NAIL (b)
- MAN.F. NAIL (f)
- OL.R.S. IRON PIN (b)
- IL.R.F. IRON PIN (f)
- IRON PIN IN CON. BOX (f)



AREA TO ANNEXED



DILLE TRUSTEE  
EXHIBIT C



- I SUGARCREEK CROSSING, LLC O.A. 1440 PG. 505.
- II SUGARCREEK CROSSING PERMANENT LLC O.A. 2460 PG. 85.
- III SUGARCREEK CROSSING PERMANENT LLC O.A. 2460 PG. 85.
- IV SUGARCREEK CROSSING PERMANENT LLC O.A. 2460 PG. 85.
- V STATE OF OHIO O.D. 53, PG. 654.
- VI STATE OF OHIO O.D. 53, PG. 654.

### CERTIFICATE OF SURVEYOR

THIS MAP AND BOUNDARY ARE BASED UPON A FIELD SURVEY PERFORMED BY HORIZON SURVEYING INC. ON MAY 18, 2005, EXISTING DEEDS AND PLATS OF RECORD AND ADDITIONAL OFFICE CALCULATIONS BY LJB INC. IN MARCH, 2006. THIS MAP AND BOUNDARY SURVEY ARE PREPARED FOR ANNEXATION PURPOSES ONLY, AND ARE NOT TO BE USED FOR LAND CONVEYANCE.

LJB, INC.  
BY *Harry G. Herbst III* 3/20/06  
HARRY G. HERBST III, REG. SURVEY #4596 DATE



### NOTES

1. THE ANNEXATION TERRITORY SHARES A CONTIGUOUS BOUNDARY WITH THE CITY OF CENTERVILLE FOR A DISTANCE OF 3656.28 FEET, WHICH IS 28.90% OF THE PERIMETER OF THE PROPOSED ANNEXATION TERRITORY.
2. THE ANNEXATION WILL NOT CREATE AN UNINCORPORATED AREA OF THE TOWNSHIP THAT IS COMPLETELY SURROUNDED BY INCORPORATED LAND.
3. BASIS OF BEARINGS: OHIO STATE PLAN COORDINATE SYSTEM, SOUTH ZONE, (NAD 83).
4. OCCUPATION GENERALLY AGREES WITH THE PERIMETER DESCRIBED HEREON.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding dated this 6<sup>th</sup> day of October, 2006, between The City of Centerville, an Ohio municipal corporation, Charles A. Dille, Jr., Trustee, under a certain Amended and Restated Revocable Living Trust, dated January 16, 1998, Sugar Creek Crossing, LLC, an Ohio limited liability company, Sugar Creek Crossing Permanent, LLC, an Ohio limited liability company and Bear Creek Capital, LLC, an Ohio limited liability company.

WHEREAS, the above parties entered into a Pre-Annexation Agreement dated April 5, 2006, for property located in Sugarcreek Township, Greene County, and the parties hereby agree to allow this Memorandum of Understanding to serve as an agreement to enter into an Amendment to the Pre-Annexation Agreement as follows:

1. The parties agree to add a second sentence to paragraph 2(a) to read as follows:

Pursuant to law, the property sought to be annexed is to retain the zoning regulations in effect prior to the annexation unless and until the property is re-zoned in the City.

2. Notwithstanding any thing in paragraph 2(b) of the Pre-annexation agreement to the contrary, the parties agree that the City need not rezone the property contemporaneous with the annexation but may complete the annexation of the property or its separate parts separate and prior to the rezoning of the property in the city, recognizing the City will take all reasonable attempts to re-zone the property expeditiously, not to exceed 120 days from the date the City accepts the annexation or unless otherwise agreed to in writing by the parties.

3. The parties acknowledge that the City is developing a Unified Development Ordinance (hereinafter called "UDO"), which will create a series of overlay zones that have incentives for creation of quality developments, as well as flexibility with

regards to the density of a development. The parties acknowledge that they will be able to take advantage of the UDO once it is adopted by the City in accordance to law. The parties recognize that the UDO is a working document and has not yet been finalized. The parties have reviewed a current draft of the building standards of the UDO and acknowledge that those standards are subject to final review and adoption by the City.

4. The parties agree to change the last sentence of paragraph 2(c) to state that "The parties acknowledge and agree that certain of these road improvements are public improvements which will be governed by special financing."

5. The parties agree to provide or review alternative financing options for the public road improvements in addition to TIF financing or in place of TIF financing, including consideration of special assessments. The agreement will add a paragraph (d) that states "That the City and developer may set up or utilize special assessment financing to guarantee service payments in accordance with utilization of the TIF or, as an alternative or supplement to the TIF or will provide traditional CRA financing."

6. The City will amend paragraph 19 of the agreement stating that the representations, warranties and covenants as contained in the agreement shall extend for a period of either twenty (20) years or to the extent of the financing, whichever is greater.

7. The parties agree that there shall be access to the property to be annexed as set forth in the letter dated September 15, 2006 between Bill Covell and Steve Kelly.

8. By signing this Memorandum, all parties agree to execute an Amendment to the Pre-Annexation Agreement incorporating the substance of the above changes.

DEVELOPER:

BEAR CREEK CAPITAL, LLC  
an Ohio limited liability company

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

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

Title: \_\_\_\_\_

OWNERS:

Roger Pfister  
Roger Pfister, Trustee, under a certain  
Amended and Restated Revocable Living Trust,

Dated January 16, 1998  
5300 Wilmington Pike  
Dayton, OH 45440  
SUGAR CREEK CROSSING, LLC,  
an Ohio limited liability company

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

SUGAR CREEK CROSSING PERMANENT,  
LLC, an Ohio limited liability company

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

THE CITY OF CENTERVILLE,  
an Ohio municipal corporation

By: *Gregory S. Howe*  
Name: Gregory S. Howe  
Title: CITY MANAGER

regards to the density of a development. The parties acknowledge that they will be able to take advantage of the UDO once it is adopted by the City in accordance to law. The parties recognize that the UDO is a working document and has not yet been finalized. The parties have reviewed a current draft of the building standards of the UDO and acknowledge that those standards are subject to final review and adoption by the City.

4. The parties agree to change the last sentence of paragraph 2(c) to state that "The parties acknowledge and agree that certain of these road improvements are public improvements which will be governed by special financing."

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7. The parties agree that there shall be access to the property to be annexed as set forth in the letter dated September 15, 2006 between Bill Covell and Steve Kelly.

8. By signing this Memorandum, all parties agree to execute an Amendment to the Pre-Annexation Agreement incorporating the substance of the above changes.

DEVELOPER:

BEAR CREEK CAPITAL, LLC  
an Ohio limited liability company

By: 

Name: Matthew C. Daniels

Title: Managing Member

OWNERS:

Roger Pfister, Trustee, under a certain  
Amended and Restated Revocable Living Trust,

Dated January 16, 1998  
5300 Wilmington Pike  
Dayton, OH 45440  
SUGAR CREEK CROSSING, LLC,  
an Ohio limited liability company

  
By: Matthew C. Daniels  
Its: Managing Member

SUGAR CREEK CROSSING PERMANENT,  
LLC, an Ohio limited liability company

  
By: Matthew C. Daniels  
Its: Managing Member

THE CITY OF CENTERVILLE,  
an Ohio municipal corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_