

VILLAGE OF GEORGETOWN, OHIO

ORDINANCE NO. 1072

AN ORDINANCE AUTHORIZING THE LEASE OF REAL PROPERTY OWNED
BY THE VILLAGE OF GEORGETOWN IN ACCORDANCE WITH A PLAN OF
URBAN RENEWAL AND DECLARING AN EMERGENCY

WHEREAS, in January of 2001, a portion of the 200 block of South Main Street in the Village of Georgetown was destroyed by fire; and

WHEREAS, the Village of Georgetown has acquired the vacant land upon which fire-destroyed buildings once set; and

WHEREAS, the Council of the Village of Georgetown has long intended that the 200 block of South Main Street so acquired by the Village of Georgetown would be a project of urban renewal of the downtown area of the Village of Georgetown; and

WHEREAS, the Village of Georgetown is working with Select K/4, LLC to develop such land for the benefit of the Village of Georgetown and its residents,

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Georgetown, Brown County, Ohio, two-thirds or more of all members thereof concurring, that:

SECTION 1. The Village of Georgetown shall enter into a ground lease with Select K/4, LLC for the land described in the Exhibit "A" attached hereto, a copy of said ground lease being attached hereto as Exhibit "B".

SECTION 2. The ground lease herein authorized is expressly found and determined to in accordance with and for the purposes of a plan adopted by the legislative authority of the Village of Georgetown for urban renewal by reason of which the lease of said property can be made without competitive bidding pursuant to Ohio Revised Code §721.28.

SECTION 3. This Ordinance is hereby declared to be an emergency ordinance necessary for the health, safety and welfare of the inhabitants of the Village of Georgetown and more particularly in order that the plan of urban renewal referred to herein can be advanced without delay and this Ordinance shall be in full force and effect immediately upon its adoption.

PASSED: Dec. 11, 2008


Dale E. Cahall, Mayor

ATTEST:


Ginny Colwell, Fiscal Officer

GROUND LEASE

This lease ("Lease"), dated as of _____, 20____ ("Effective Date"), by and between THE VILLAGE OF GEORGETOWN ("Landlord") and SELECT K/4, LLC ("Tenant");

WITNESSETH:

WHEREAS, Landlord and Tenant wish to enter into this Lease on the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained in this Lease, Landlord and Tenant hereby agree as follows:

Tenant hereby leases the Premises (as hereinafter defined) from Landlord and Landlord hereby leases the Premises to Tenant upon, and subject to, the terms and conditions set forth in this Lease.

1. Basic Lease Provisions and Definitions.

The following terms, among others, are used as defined terms.

- (A) **Premises:** The premises shown hatched on Exhibit "A".
- (B) **Area** Approximately _____ acres..
- (C) **Lease _____ and _____ Rent Commencement Dates:** The Lease Commencement Date shall be the date Landlord executes this Lease (see Article 2).
- (D) **Lease Term:** Commencing on the Lease Commencement Date and ending at 12 noon on the Expiration Date (see Article 2).
- (E) **Expiration Date:** The last day of the calendar month in which occurs the 5th anniversary of the day immediately preceding the Rent Commencement Date (see Article 2).

(F)	<u>Base Rent Schedule -- :</u>	<u>On the first day of each Lease Year, in advance, Tenant shall pay Landlord Base Rent in the amount of \$1.00.</u>

- (G) **Permitted Use:** The Premises shall be used for any lawful purpose not prohibited on Exhibit "B"..
- (H) **Landlord's Notice Address:** The Village of Georgetown
- (I) **Tenant's Notice Address:** 4450 Eastgate Boulevard, Cincinnati, Ohio, Suite 1000, 45245
- (J) **Broker(s):** None

FOR INFORMATION ONLY

Tenant's Telephone No.: 513 332 9966

Tenant's Contact Person: John L. Dunn

The following riders and exhibit(s) are hereby incorporated into this Lease and made a part of this Lease for all purposes:

Riders: Rider "A" – General Lease Provisions (set forth in Articles 2 through 32).

Rider "B" – Specific Lease Provisions (beginning with Article 33).

Exhibit "A" – Site Plan

Exhibit "B" – Prohibited Uses

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IN WITNESS WHEREOF, the parties hereto have executed this Lease under their respective hands and seals as of the day and year first above written.

WITNESSES TO LANDLORD: LANDLORD:
The Village of Georgetown

By: _____
Name: _____
Title: _____
Date: _____

WITNESSES TO TENANT: TENANT:
Select K/4, LLC
By: _____
Name: _____
Title: _____
Date: _____
Fed Tax I.D. #: _____

RIDER A

THIS RIDER A IS ATTACHED TO AND HEREBY MADE A PART OF THE LEASE (SEE ALSO RIDER B).

2. Commencement; Expiration; Additional Definitions.

(A) Lease Year. The first Lease Year shall commence on the Rent Commencement Date and end on the last day of the calendar month in which occurs the first anniversary of the day immediately preceding the Rent Commencement Date. Each succeeding Lease Year shall consist of a successive twelve (12) month period.

3. Taxes.

During the pendency of this Lease, Tenant shall not be required to pay any Taxes except for taxes on its personal property. "

4. Repairs and Alterations; Permits; Liens.

(A) Landlord's Repairs. Except with regard to any buildings constructed by or for Tenant, Landlord shall maintain the Premises in good condition at all times. This shall include mowing the lawn, removing snow and ice when appropriate and keeping the Premises safe.

(B) Tenant's Repairs. Tenant shall maintain and make all repairs, replacements, and alterations of every kind with respect to any buildings it constructs on the Premises.

(D) Liens. Neither party shall allow any liens to attach to the Premises.

5. Eminent Domain. In the event of an action in eminent domain, Tenant shall be entitled to the value of its interests as if the Property was fully developed.

6. **Miscellaneous Provisions.**

(A) This Lease contains the entire agreement between the parties. No oral statements or representations or written matter not contained in this Lease shall have any force or effect. This Lease cannot be modified without a writing signed by the party to be charged. This provision shall survive the termination of the Lease. If any provision or the application thereof shall be declared by a court to be invalid, the remainder of this Lease shall not be affected.

(B) The provisions of this Lease shall be construed, in all respects, without reference to any rule or canon requiring or permitting the construction of documents against the drafting party. It is the intention and agreement of the parties that this Lease be conclusively deemed the joint product of both parties. The titles of Articles in this Lease shall have no effect and shall neither limit nor amplify the provisions of the Lease. Furthermore, this Lease may be executed with revision markings (so-called "blacklining") appearing in the execution copy (i.e., deleted text is overstricken and newly-inserted text is underscored or in boldface). This Lease shall be construed for all purposes as if all overstricken text were deleted and never included in this Lease and all bold or underscored text were not bold or underscored.

(C) Any reference to gender shall be gender neutral.

(D) Wherever in this Lease a party is required to do or perform any act, the party shall perform such act at its own expense, unless otherwise stated herein.

(E) **Non-Discrimination.** There shall be no discrimination against, or segregation of, any person or persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the transfer, use or enjoyment of the Premises, or any portion thereof, nor shall Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Premises, or any portion thereof.

(F) **Quiet Enjoyment.** Landlord covenants that, upon Tenant's payment of the Rent required hereunder and its performance of all of the terms and conditions of the Lease, Tenant's peaceful and quiet enjoyment of its leasehold interest shall not be disturbed by Landlord or anyone properly claiming a superior right by, through or under Landlord. Notwithstanding the foregoing, this provision is subject to all mortgages, encumbrances, easements and underlying leases to which this Lease may be or become subordinate.

7. **Unavoidable Delays.**

If either Landlord or Tenant is delayed in performing any obligation hereunder by any cause beyond the reasonable control of the party required to perform such obligation, the time period for performing such obligation shall be extended by a period of time equal to the period of the delay. For the purpose of this article:

(i) A cause shall be beyond the reasonable control of a party when such cause would affect any person similarly situated (such as, but not limited to, war, civil disorder, catastrophic weather, a power outage, labor strike or truckers' strike) but shall not be beyond the reasonable control of such party when reasonably foreseeable or peculiar to such party (such as, but not limited to, financial inability or ordering materials requiring a long lead time).

8. **Notices.**

All notices intended to impose liability on the other party or to exercise a right herein ("Notice") shall be in writing and sent to that party by certified mail, return receipt requested, or sent by a nationally recognized "overnight" courier (such as Federal Express or UPS). To be effective a copy of any notice of Landlord's default must also be sent by Tenant to the holders of any mortgages, ground leases or security interests affecting the fee of the Shopping Center (see Article 16(C)). Notices to Landlord and Tenant shall be sent to the addresses set forth in Article 1 or to such other address as may be designated by notice. Notices shall be effective the day after the notice was sent, or if by courier, the day delivered. If delivery is refused or not able to be made, the day delivery was first attempted shall be deemed the delivery date. The purported giving of notice or exercise by either party of any right, option or privilege by any means other than written notice given in strict compliance with this Article shall be null, void and of no force or effect, even if any such other means of communication succeeds in conveying actual notice.

(END OF RIDER A)

SEE RIDER B ATTACHED HERETO AND HEREBY MADE A PART OF THIS LEASE.

RIDER B

THIS RIDER B IS ATTACHED TO AND HEREBY MADE A PART OF THE LEASE
(SEE ALSO RIDER A).

9. Riders.

Notwithstanding anything provided herein, if there is any discrepancy between Rider "A" and Rider "B", Rider "B" shall prevail.

10. Tenant's Option to Purchase the Property.

At any time during the term of the Lease, Tenant shall have the right to purchase the Property at its fair market value ("FMV")(see process described below) by giving written notice to Landlord prior to the expiration of the Lease. .

Within 30 days of this notice, Tenant shall deliver to Landlord an appraisal stating the FMV of the Property in its then current condition. If Landlord elects, Landlord may seek its own appraisal of the Property. If Landlord's appraisal is within 5% of Tenant's appraisal, the purchase price of the Property shall be the average of the two appraisals. If the appraisals differ by more than 5%, the two appraisers shall select a third appraiser which shall determine the purchase price but shall not be more than the lower appraisal or greater than the higher appraisal. The cost of the third appraiser shall be split between the parties. In the event the third appraisal's number is more than 10% greater than Tenant's appraisal, Tenant shall be entitled to withdraw its notice of intent to purchase. If the appraisal process is not completed by the expiration date of the Lease, the Lease shall be extended, month to month, until the earlier of the date Tenant withdraws its notice of intent to purchase or the date of closing.

This page ends here.

EXHIBIT "A"

SITE PLAN

NOTE: THIS SITE PLAN SHOWS THE APPROXIMATE LOCATION OF THE PREMISES AND THE APPROXIMATE CONFIGURATION OF THE PREMISES AND ADJACENT AREAS. IT IS ONLY ILLUSTRATIVE OF THE SIZE AND RELATIONSHIP OF THE STORES AND COMMON AREA, ALL OF WHICH ARE SUBJECT TO CHANGE. THE INDICATION OF ANY NAMES OF TENANTS, CURB CUTS, TRAFFIC CONTROLS, OR PARKING SHALL NOT BE DEEMED A REPRESENTATION OR WARRANTY BY LANDLORD THAT ANY OF THE FOREGOING WILL CONTINUE TO EXIST. CERTAIN PARCELS OF THE PROPERTY DEPICTED BELOW MAY NOT BE OWNED OR CONTROLLED BY LANDLORD. ANY EXCLUSIVES GRANTED HEREIN WILL NOT APPLY TO PROPERTY NOT OWNED BY LANDLORD.

THE PREMISES SHALL BE THE STOREROOM IDENTIFIED BELOW:

EXHIBIT "B"

PROHIBITED USES

Without the prior written consent of Landlord which consent shall not be unreasonably withheld, Tenant shall not use the Premises or Lease the Premises for the following purposes

adult book store
animal raising
automobile body shop
brothel
car wash
carnival
cult meeting place
dry cleaner (except drop off)
extermination or similar service
factory use
firing range
funeral parlor
head shop
industrial use
junk yard
labor camp
manufacturing use
mobile home park
mobile home sales
mortuary
palm reader
pawn shop
psychic
sale, rental, repair, storage or service
of trucks and/or trailers and
recreational vehicles
stockyard
target range
taxidermist
trailer court
trailer sales
warehouse use

Exhibit "A"

Landlord: The Village of Georgetown
Tenant: Select K/4, LLC

Parcel 1:

Situated in the Village of Georgetown, Township of Pleasant, County of Brown and State of Ohio and being all of Lot 118R of the Replat of Part of Lots No. 117, 118, 119, 128, 129 & 130 of the Henry J. Newkirk's Addition to the Village of Georgetown. Replat found at Plat Cabinet 2, Slide 475, Brown County Recorder's Office.

Prior Deed Reference: O.R. Book 290, Page 2052, Records of Brown County, Ohio.

Parcel 2:

Situated in the Village of Georgetown, Township of Pleasant, County of Brown and State of Ohio and being all of Lot 129R of the Replat of Partlot 129 and Partlot 130 of Henry Newkirk's Addition to the Village of Georgetown. Replat found at Plat Cabinet 2, Slide 387, Brown County Recorder's Office.

Prior Deed Reference: O.R. Book 290, Page 2051, Records of Brown County, Ohio.

Parcel 3:

Situated in the Village of Georgetown, Township of Pleasant, County of Brown and State of Ohio and being all of Lot 130R of the Replat of Partlot 129 and Partlot 130 of Henry Newkirk's Addition to the Village of Georgetown. Replat found at Plat Cabinet 2, Slide 386, Brown County Recorder's Office.

Prior Deed Reference: O.R. Book 290, Page 2043, O.R. Book 290, Page 2045, O.R. Book 290, Page 2047 and O.R. Book 290, Page 2049, Records of Brown County, Ohio.