

# ORDINANCE C-61-01

**AN ORDINANCE TO AUTHORIZE THE CITY ADMINISTRATOR TO ENTER INTO A JOINT USE, LICENSE, OPERATIONS AND MAINTENANCE AGREEMENT WITH THE SOUTH-WESTERN CITY SCHOOLS FOR THE USE OF 0.65 ACRES AND TO APPROPRIATE \$20,000.00 FROM THE GENERAL FUND FOR SUCH USE**

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WHEREAS, the City of Grove City desires to establish a Sesquicentennial Park in honor of the 150<sup>th</sup> anniversary of the City; and

WHEREAS, the South-Western City School Board has made available 0.65 acres between Park Street and Civic Drive; and

WHEREAS, the South-Western City School Board has agreed to enter into a Joint Use, License, Operations and Maintenance Agreement for this site.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GROVE CITY, STATE OF OHIO, THAT:

SECTION 1. This Council hereby authorizes the City Administrator to enter into a Joint Use, License, Operations and Maintenance Agreement for 0.65 acres as described in Exhibit "A".

SECTION 2. There is hereby appropriated \$20,000.00 from the unappropriated monies of the General Fund for the Joint Use, License, Operations and Maintenance Agreement.

SECTION 3. This ordinance shall take effect at the earliest opportunity allowed by law.

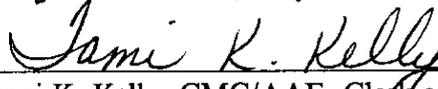
Passed: 9-17-01

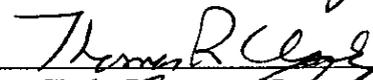
Effective: 10-17-01

Attest:

  
\_\_\_\_\_  
Steven M. Bennett, President of Council

  
\_\_\_\_\_  
Cheryl L. Grossman, Mayor

  
\_\_\_\_\_  
Tami K. Kelly, CMC/AAE, Clerk of Council

  
\_\_\_\_\_  
Thomas Clark, Director of Law

  
\_\_\_\_\_  
Robert E. Behlen, Director of Finance

I Certify that this ordinance is correct as to form.

I certify that there is money in the treasury, or is in the process of collection, to pay the within ordinance.

C-61-01  
EXHIBIT "A"

**Joint Use, License, Operations and Maintenance Agreement**

**Re: Park Street Intermediate School Site**

This joint use, license, operations and maintenance agreement (the "Agreement") is entered into by the **Board of Education of the South Western City School District (the "Board") and the City of Grove City, Ohio (the "City")** also ("Party" or collectively "Parties"), as of the \_\_\_\_\_ day of \_\_\_\_\_ 2001 (the "Effective Date").

Recitals

**WHEREAS**, the Board owns \_\_\_\_\_ acres located on the northwest corner of the Park Street Intermediate School site fronting on Park Street, being situated in the city of Grove City, Franklin County, Ohio ("Property") the legal description of which is attached as exhibit "A(1)".

**WHEREAS**, the Board is constructing an Intermediate School on this site (the "School") and a portion of this property as planned in exhibit "A(1)" is by virtue of this agreement to be used jointly by the City of Grove City and the South Western City School District as a public/park facility.

**WHEREAS**, the City has identified a need for additional facilities in Grove City, that will continue to connect the center of the town center of Grove City with the center of the historic area of Grove City, and the City and the Board recognize that the development of additional public/park facilities will benefit both the citizens of Grove City and the residents of the South Western City School District.

**WHEREAS**, the Board desires to grant a license to the City for access to a portion of the Property for the construction and use of a public/park type gathering area with appropriate and mutually approved amenities (collectively the "Site Improvements").

**WHEREAS**, the City intends to commence construction of the Site Improvements as soon as reasonably possible.

**WHEREAS**, the Board and the City acknowledge that use of this area will involve at times the parking facilities of the Park Street Intermediate School site.

**WHEREAS**, the City intends to appropriate sufficient funds for construction of Site Improvements and maintenance of the same.

**WHEREAS**, the City and the Board desire to establish the rights and responsibilities of the parties with respect to the use of the Site Improvements.

**WHEREAS**, the Board does not currently need the Property for educational purposes.

Now therefore in consideration of the mutual covenants contained here, the parties agree as follows:

SECTION I. License.

1.1. Grant of License. The Board hereby grants to the City a non-exclusive, temporary license (the "License") to enter upon and use those portions of the Property described more fully in Exhibit "A(1)", (the "Licensed Premises"), for the term hereinafter specified for the sole purposes of the construction and use of the Site Improvements. The City accepts the Licensed Premises in the "as is" condition.

1.2. Description of the Licensed Premises. The Licensed Premises shall consist of the real property located in Grove City, Franklin County, Ohio and generally consisting of \_\_\_\_\_ acres. The Licensed Premises are more particularly described in Exhibit "A(1)" attached hereto.

Section 2. Annual License Fee, Term and Possession.

2.1. Annual License Fee. The Annual License Fee due the Board from the City for the non-exclusive, temporary license described herein is One Dollar (\$1.00) per year due on the first day of every year of this Agreement. The City shall, upon the Effective Date, pay to the Board the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00) for the purpose of constructing a fence and landscaping on the Licensed Premises (the "Improvements"). The parties acknowledge and agree that the location of the Improvements and the type of landscaping and materials used for the construction of the fence shall be determined by the Board, in its reasonable discretion. Upon the termination of License, the Improvements shall not be removed and shall be the sole property of the Board.

2.2. Term. The term of this Agreement (the "Term") shall commence as of the date set forth above (the "Commencement Date") and shall terminate, subject to early termination as specifically provided in this Agreement, at midnight, twenty (20) years after the Commencement Date.

Additionally, the Board may immediately terminate this Agreement upon delivering written notice to the City if it determines; in its sole discretion, that the Licensed Premises are needed for educational purposes or for sale.

2.3. Renewal of Agreement. Upon the expiration of the term, this Agreement shall be automatically renewed from year to year unless either Party notifies the other in writing at least thirty (30) days prior to the expiration of the term or any renewal thereof. The renewal terms shall be subject to all of the provisions of this Agreement.

2.4. Expiration of License. Upon the expiration of the Term or upon any earlier termination of the Term under any of the provisions of this Agreement, the City's right to enter upon the Licensed Premises shall cease. At that time all of the permanent Site Improvements shall be returned to the Board in good condition and repair and in compliance with all applicable laws, ordinary wear and tear excepted.

### Section 3. Construction of the Site Improvements.

3.1. Site Improvements on the Licensed Premises. The City, at its sole expense, shall construct on the Licensed Premises the following:

- 3.1.1. (1) Landscaping. (Landscaping as jointly approved).
- 3.1.2. Other related site improvements.
- 3.1.3. The construction will be made with good quality new materials, in a workmanlike manner. These improvements shall be specified and be located as shown on the site plan attached as Exhibit "3.1.3.". Any additional or subsequent site improvements by the City must be first mutually agreed to by the Board and the City prior to the start of any additional or subsequent construction.

3.2. Cooperation by the Board: Easements. Subject to the Board's right to approve any improvement in 3.1, the Board, at the City's expense, shall fully cooperate with the City in connection with any application of the City for any zoning change or variance necessary for the construction of the Site Improvements, and with obtaining building and construction permits from the appropriate government jurisdictions; provided, however, that the Board may withhold its cooperation and object to any zoning change or variance that it determines, in its sole discretion, is not in the best interest of the School District.

The Board shall not grant any ingress and egress, utility or other easements or dedications over or within the Licensed Premises without the City's prior written consent except as necessary for the Board's improvements to the Property which approval shall not be unreasonably withheld, delayed or conditioned. The Board shall cooperate with the City, at the City's expense, in obtaining or granting any easements necessary for the construction and operation of the Site Improvements. The Board acknowledges that it will be necessary to grant easements for utility purposes across, over and/or under the

Licensed Premises, and the Board agrees to grant such easements upon the request of the City, if said easements are reasonable and comply with the law.

Section 4. Use.

4.1. Compliance with Laws. The City shall use, operate and manage the Licensed Premises and the Site Improvements in compliance with all applicable laws including without limitation, the Americans with Disabilities Act and all environmental laws, rules and regulations.

4.2. Public Benefit. The Site Improvements shall be operated for the benefit of the residents of the South Western City School District and the citizens of Grove City, Ohio.

4.3. Right to Operate. The City shall manage and operate the Site Improvements in a manner that is consistent with this Agreement and the policies and guidelines for the use of school facilities. A copy of the policies and guidelines for the use of school facilities is attached as Exhibit "4.3."

4.4. General Use. The Parties agree that the Board shall be entitled to exclusive use the Site Improvements during school hours. After school hours, the Board may use the Site Improvements as may be reasonably agreed upon between the Parties.

4.5. Exclusive Use. Both Parties shall have the right to exclusive use of the Site Improvements for related events sponsored by either Party. Any such exclusive usage shall be at such times as reasonably agreed upon by the Parties.

4.6. Annual Planning Meeting. A representative of the Board and a representative of the City shall meet on at least an annual basis to consider among other items improvements to the Site Improvements, use of the Site Improvements and the School Building, and other matters of common interest.

Section 5. Hazardous Materials.

5.1. Neither Party shall introduce any Hazardous Materials (as hereinafter defined) onto the Licensed Premises. The Parties hereby agree to hold harmless the other Party, any successors to the Party's interest in this Agreement, and the Party's directors, trustees, officers, employees and agents from and against any losses, claims, damages (including consequential damages), penalties, fines, liabilities (including strict liability), costs (including cleanup and recovery costs) and expenses (including expense of litigation and reasonable attorneys' fees and costs) incurred by the Party or any other indemnity which are assessed against the Party (or such indemnity), or the Licensed Premises by virtue of any claim or lien by any governmental or quasi-governmental unit, body or agency, or any third Party, for cleanup costs or other costs pursuant to Environmental Laws, as hereinafter defined, resulting from the

introduction of Hazardous Materials on to, under, or about the Licensed Premises.

5.2. It is agreed by and between the Board and the City that neither Party shall have, and the indemnification provisions of each of the same contained herein, shall not apply and neither shall be liable to the other for Hazardous Materials existing on the Licensed Premises prior to the date of this Agreement or for any acts or omissions or willful misconduct of any third Party which neither has any direct contractual relationship with for cleanup costs or other costs pursuant to Environmental Laws.

5.3. As used herein, "Environmental Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Resource, Conservation and Recovery Act, all as amended from time to time, and all state laws and Federal and State regulations pursuant to the foregoing or otherwise, whether now existing or hereinafter enacted. As used herein, "Hazardous Materials" shall mean any substance the presence of which poses a hazard to the health or safety of persons on or about the Licensed Premises which required removal or remediation under any Environmental Law, including without limitation, any substance which is toxic, explosive, flammable, radioactive, or otherwise hazardous or which is included in the meaning of "Hazardous Substance", "Hazardous Waste", "Toxic Substance", or "Pollutant", as defined in any Environmental Law; provided, however, that the Board and the City may introduce incidental quantities of Hazardous Materials which are customary and reasonably necessary for their business activities to be conducted on the Licensed Premises, provided that such introduction and use are in compliance with all Environmental Laws.

5.4. Commencing as of the date of this Agreement, the City and its representatives and agents shall have the right and shall be entitled to enter upon the Licensed Premises and shall have access thereto such that the City or its representatives and agents may conduct such (i) surveys, (ii) soil, environmental, engineering and other tests, examinations and inspections, and (iii) other investigations as the City deems necessary or appropriate. After conducting any such surveys, tests, examinations, inspections or investigations, the City shall repair any damage caused to the Licensed Premises by the City or its representatives and agents and shall restore the Licensed Premises to the condition in which it existed prior to the date of such tests, examinations or investigations. In addition, the City shall indemnify, defend and hold harmless the Board from and against any liability, loss, damage, claim, cost or expense, including attorneys' fees, which may result from any such entry upon the Licensed Premises or from any inspection, tests, examinations or investigations thereof, including any failure to restore the Licensed Premises in accordance with this Section.

5.5. The indemnities of the Board and the City set forth in this section shall survive the termination of this Agreement.

Section 6. Utilities.

The City shall pay when due all charges and assessments for water, electric, gas, telephone or any and all other utilities imposed upon or with respect to the City's use or occupation of the Licensed Premises, or any improvements located thereon. The City shall cause all such utilities to be separately metered and placed in the City's name.

Section 7. Repairs, Maintenance, Alterations, Improvements, and Fixtures.

7.1. Repair and Maintenance.

- 7.1.1. The City shall keep and maintain the Licensed Premises and the Site Improvements thereon in good order, condition, and repair, ordinary wear and tear excepted. Maintenance shall include but shall not be limited to repair of movable and fixed equipment, landscaping and mowing of the area (A). The type of maintenance and frequency of maintenance shall be determined by each Party with input from the other at the annual planning meeting or as deemed necessary by the Board.
- 7.1.2. The Board shall keep and maintain all areas immediately adjacent to the School and adjacent to the School parking lot in good order, condition and repair. The cost of all such repairs and maintenance shall be borne by the Board.
- 7.1.3. The Board and the City shall be jointly responsible for the repair and maintenance of the parking lot adjacent to the School (known as the bus loop). The cost of such repair and maintenance shall be 85% Board and 15% City unless otherwise agreed between the Parties. See Exhibit "A(3)". The Board shall be responsible for paying the costs associated with repair and maintenance of this area. The Board will then invoice the City 15% of such repair and maintenance cost. The City shall pay the invoice within thirty (30) days of receiving the invoice.

7.2. Alterations or Improvements. Subject to the Board's approval rights below, the City shall have the right, at its own cost and expense, to construct or install improvements, additions, alterations or modifications, or make other changes in or to the Licensed Premises and the Site Improvements so long as the same are consistent with the provisions of this Agreement and the City has obtained all required governmental approvals for the same. The City shall pay or cause to be paid all costs associated therewith so that the Licensed Premises shall be free from any and all liens of persons providing labor or materials thereto. The Board shall have the right to approve all such improvements, additions, alterations or modifications, said approval not to be unreasonably withheld.

7.3. Fixtures. Any fixtures installed permanently on the Licensed Premises by the City shall, upon the expiration of the Term or earlier termination of this Agreement, become the property of the Board.

## Section 8. Insurance.

8.1. During Construction. During the period of construction of the Site Improvements, the City shall obtain at its sole expense, or require that all contractors employed to do work in connection with the Site Improvements, carry all forms of insurance during the course of work that is generally carried and maintained in connection with the construction of the Site Improvements including, but not limited to, workers' compensation, builders' risk insurance and comprehensive liability insurance. The Board shall be listed as an additional insured.

8.2. Property Insurance. At all times during the Term, the City shall obtain, maintain and pay for insurance with respect to the improvements now or hereafter located on the Licensed Premises against loss or damage by fire or other casualty hereafter embraced by so called "extended coverage" and/or "all risk" insurance in an amount not less than replacement value thereof or such lesser amount as the Board and the City may determine. The Board shall be listed as an additional insured and loss payee.

8.3. Liability Insurance At all times during the Term, the City shall obtain, maintain, and pay for comprehensive broad form general liability insurance or commercial general liability insurance insuring against any and all claims for bodily injury, death, or property damage occurring on, in or about the Licensed Premises subject to a combined single limit of not less than \$1,000,000 for personal injury, death or property damage arising out of any one accident. The Board shall be listed as an additional insured. The City, with respect to any loss which is covered by insurance then being carried by it or required to be carried by it hereunder, hereby releases the Board of and from any and all claims with respect to such loss; and the City further agrees that its insurance company

shall have no right of subrogation against the Board. Further, the City agrees that Board shall not be liable for any damage tot he improvements constructed in the Licensed Premises and the City hereby released the Board from the same.

Section 9. Damage or Destruction of Improvements.

In the event the Site Improvements shall be damaged or destroyed during the Term by fire or other casualty or hazard, the City shall rebuild, repair or restore the Site Improvements to substantially the same condition as they existed prior to such fire or other casualty.

Section 10. Condemnation.

10.1. Total Condemnation. If at any time during the Term, any part of the Licensed Premises or the Site Improvements shall be taken or condemned or threatened to be taken or condemned by a competent authority for any public or quasi-public use or purpose, or if a substantial part thereof is taken or threatened to be taken and shall result in the Licensed Premises or the Site Improvements not being economically or beneficially suited, in either Party's reasonable discretion, for the City's intended use of the Licensed Premises, then this Agreement, at either Party's option exercised in writing within thirty (30) days after notice of the taking, shall terminate upon the earlier to occur of (i) 180 days after the City is noticed of the threat of the same by the Board or the taking authority, or (ii) 30 days prior to the actual taking. Within 15 days after the Board's receipt of the City's notice of termination, any improvements which have not been taken shall be transferred to the Board. The Board shall give the City prompt written notice of any written notice which the Board receives threatening any such taking.

10.2. Partial Condemnation. If only a part of the Licensed Premises shall be so taken or condemned, and the part not so taken is, in either Party's reasonable discretion, suitable for the City's economical and beneficial intended use of the Licensed Premises, this Agreement shall remain in full force and effect, otherwise, the provisions of Section 10.1 shall control.

10.3. Distribution of Condemnation Award. All proceeds or awards from the condemning authority payable with respect to the land constituting the Licensed Premises shall be payable to the Board and all proceeds or awards for the Site Improvements on the Licensed Premises shall be payable, to the City. Award to the City will not derogate from the Board's award.

Section 11. Liens.

If because of any act or omission of the City or anyone claiming by, through, or under the City, any mechanics' lien or other lien shall be filed against the Licensed Premises or any part of the Licensed Premises, the City shall, at its own expense, cause the same to be discharged of record within thirty (30) days after the date of filing thereof, and shall also indemnify the Board and hold it harmless from any and all claims, losses, damages, judgments, settlements, costs and expenses, including reasonable attorneys' fees, resulting therefrom or by reason thereof.

Section 12. Assignment; Sublicense; License.

12.1. Assignment. Provided the City is not then in default under this Agreement (or if City is then in default, such default is cured prior to the effective date of such assignment), the City, during the Term, may assign its rights and obligations under this Agreement but only with the prior written consent of the Board which consent may be withheld for any reason whatsoever. No assignment of this Agreement or any part thereof shall be binding upon the Board unless such assignee shall deliver to the Board an instrument (in recordable form, if requested) containing an agreement of assumption by assignee of all of the City's obligations under this Agreement. Upon an assignment pursuant to this Section, the City shall remain liable for any and all of its obligations under this Agreement, notwithstanding said assignment, unless otherwise agreed to in writing by the Board.

12.2. Sublicenses and Licenses. The City may from time to time, without the Board's consent, sublicense, let concessions, or otherwise provide a license, to use all or any part of the Licensed Premises, provided the City shall continue to remain fully liable for all of the terms and conditions to be complied with by the City under this Agreement. Any such sublicense, concession lease, or other license shall be subject to the terms of this Agreement.

Section 13. The Board's Title.

The Board warrants and represents that the Board is, and as of the commencement of the Term shall be, the owner in fee simple of the Licensed Premises and that the Board has good right and authority to execute this Agreement.

Section 15. Default and Remedies.

15.1. Default by the City. It shall be a default under and breach of this Agreement by the City if the City shall fail to perform or observe any term, condition, covenant or obligations required to be performed or observed by it under this Agreement for a period of 30 days after notice thereof from the Board; provided, however, that if the term, condition, covenant or obligation to be performed by the City is of such nature that the same cannot reasonably be performed within such 30 days period, such default shall be deemed to have been cured if the City commences such performance within said 30 day period and thereafter diligently undertakes to complete the same.

15.2. Remedies of the Board. Upon the occurrence of any event of default set forth in Section 15.1, the Board shall have the following rights and remedies, in addition to those allowed by law or at equity, any one or more of which may be exercised and enforced independently or concurrently at one time without waiving any of the Board's other rights and remedies, without further notice to or demand upon the City:

15.2.1. The Board may enter the Licensed Premises and cure any default of the City, in which event the City shall reimburse the Board for any reasonable costs and expenses which the Board may incur to cure such default, and the Board shall not be liable to the City for any loss or damage which the City may sustain by reason of the Board's action, unless caused by the Board's gross negligence.

15.2.2 The Board may terminate this Agreement as of the date of such default, in which event neither the City nor any person claiming under or through the City shall thereafter be entitled to use of the Licensed Premises.

15.3. Default by the Board and Remedies of the City. It shall be a default under and breach of this Agreement by the Board if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Agreement for a period of 30 days after written notice thereof from the City; provided, however, that (a) if the term, condition, covenant or obligation to be performed by the Board is of such nature that the same cannot reasonably be performed within such 30 day period, such default shall be deemed to have been cured if the Board commences such performance within said 30 day period and thereafter diligently undertakes to complete the same and (b) if the Board's default or breach prevents the City's legal or beneficial use of the Licensed Premises, the City may at any time from the date of such occurrence sue for injunctive or other equitable relief or for the recovery of any

loss or damage sustained by the City as a result of the Board's breach or default but only after exhausting its other remedies under Section 19 of this Agreement, if applicable.

15.4. Non-Waiver of Defaults. The failure or delay by either Party to exercise or enforce at any time any of the rights, remedies or other provisions of this Agreement shall not be construed to be a waiver thereof and shall not affect the validity of any part of this Agreement or the right of either Party thereafter to exercise or enforce each and every such right, remedy or other provision. No waiver of any default and breach of the Agreement shall be held to be a waiver of any other default and breach.

Section 16. Indemnification.

The City shall indemnify and hold the Board harmless from and against any loss, liability, damage, cost or expense (including, without limitation, legal or other costs and expenses in connection with any action, suit or proceeding brought by or against the Board or relating to enforcement of this indemnification) paid, incurred or suffered by the Board as a result of any act, omission or neglect of the City, or of its agents or employees, in connection with the use of the Licensed Premises or the conduct of any activity, work or endeavor, undertaken, permitted or suffered by the City on or about the Licensed Premises. The Board shall defend the City against any loss, liability, damage, cost or expenses (including, without limitation, legal or others costs and expenses in connection with any action, suit or proceeding brought by or against the City) paid, incurred or suffered by the City as a result of any act, omission or neglect of the Board, or of its agents or employees, in connection with the use of the Licensed Premises, or the conduct of any activity, work or endeavor undertaken, permitted or suffered by the Board on or about the License Premises.

Section 17. Real Estate Brokerage Commissions.

The Board and the City acknowledge, represent and warrant to the other that there is no real estate broker involved in the negotiation of this Agreement. Each Party shall indemnify the other Party against and hold it harmless from any liability for the breach of such representation and warranty on its part.

Section 18. Notice.

Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if it is written and delivered in person or mailed by registered or certified mail, postage prepaid, or by overnight courier or by telecopier or any other means for transmitting a written communication to the Party who is to receive such notice at the address specified below:

To the Board:           Quality Assurance Manager  
Board of Education of the  
South Western City School District  
2975 Kingston Avenue  
Grove City, OH 43123

and:                     Stephen J. Smith  
Schottenstein, Zox and Dunn  
41 South High Street, 26<sup>th</sup> Floor  
Columbus, OH 43215

To the City:           City Administrator  
The City of Grove City, Ohio  
City Hall  
4035 Broadway  
Grove City, OH 43123

and:                     City Attorney of Grove City, Ohio  
City Hall  
4035 Broadway  
Grove City, OH 43123

When mailed, the notice shall be deemed to have been given or delivered as of the third day after it was mailed. Otherwise, notice shall be deemed to have been given or delivered on receipt of the same. The address of a Party specified above may be changed by giving written notice thereof to the other Party.

Section 19. Dispute Resolution.

19.1. Procedure. If any dispute arises between the Parties as to (i) the exercise of either Party's rights or the performance of either Party's obligations under this Agreement, or (ii) the construction of this Agreement, or (iii) any other matter arising out of this Agreement, then the Parties will attempt in good faith to expeditiously resolve the dispute through the following procedures, in lieu of the filing of a lawsuit:

19.1.1. If a dispute arises under this Agreement which cannot be resolved by the personnel directly involved, either Party may invoke this dispute resolution procedure by giving written notice to the other designating an executive officer with appropriate authority to be its representative in negotiations relating to the dispute.

19.1.2. Upon receipt of this notice, the other Party shall, within five business days, designate an executive officer with similar authority to be its representative.

19.1.3. The designated executive officers shall, following whatever investigation each deems appropriate, promptly enter into discussions concerning the dispute.

19.1.4. If the dispute is not resolved as a result of such discussions, either Party may request the commencement of good faith negotiations with respect to a procedure for dealing with the dispute through means other than litigation.

19.1.5. If the dispute is not resolved through the process of negotiations the Parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. Thereafter, any remaining unresolved controversy or claim arising out of or relating to this Agreement, or the performance or breach thereof, may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted in Columbus, Ohio. Judgment upon the award rendered by the Arbitrator may be entered in the Franklin County Court of Common Pleas.

19.2. Exercise of Police Powers. It is expressly understood and agreed by the Parties that the exercise by the City of its police powers as a municipality does not constitute a dispute under this Agreement and, therefore, is not subject to the dispute resolution procedures of this Section.

## Section 20. General.

20.1. Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Ohio.

20.2. Complete Agreement; Amendments. This Agreement, including all exhibits, constitutes the entire agreement between the Parties, superseding all previous understandings and agreements between the Parties, if any, and no oral or implied representation or understanding shall vary their terms. This Agreement may be amended only by a written instrument executed by both Parties.

20.3. Successors and Assigns. This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the Parties themselves; except as otherwise provided in Section 20.4 and elsewhere in this Agreement.

20.4. Severability of Invalid Provisions. If any provision of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

20.5. Certain Words; Gender. As used in this Agreement, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular and the singular for the plural, where appropriate; and words of either gender shall include the other gender.

20.6. Execution and Effectiveness of this Agreement; Counterparts. This instrument shall be effective only after one or more copies of it have been executed and delivered by each party to the other; and prior to such execution and delivery by both Parties, the delivery of a proposed form of it to the City for the City's review and execution or to the Board for the Board's review and execution shall not be deemed or construed to constitute a reservation, right, option or agreement to make a lease by the other Party. After such execution and delivery by both Parties, this Agreement shall be effective as of the date first written above, regardless of the actual date of execution or delivery by either Party. This Agreement or any other amendments hereto may be executed in several counterparts, and all so executed shall constitute one agreement, binding on both Parties hereto, notwithstanding that both Parties are not signatories to the original or the same counterpart.

20.7. Survival. Except to the extent that the rights, obligations and liabilities of the Parties are to cease and terminate upon the expiration or earlier termination of this Agreement or such rights, obligations and liabilities are limited upon the expiration or earlier termination of this Agreement, as provided for in this Agreement, the same shall survive the expiration or earlier termination of this Agreement.

20.8. Applicability of the City's Ordinances, Rules and Regulations. The Parties expressly agree that the City is not waiving nor forfeiting its obligations and rights to regulate the Licensed Premises with the Board's ordinances, rules and regulations.

20.9. Units of Public Government. The Parties recognize that the Board and the City are both units of public government and any covenants, terms, agreements, premises or obligations contained in this Agreement which are not permitted for such units of public government are unenforceable, subject to the severability provision of Section 20.4 of this Agreement.

IN WITNESS WHEREOF, the Parties here to have executed this Agreement as of the day and year first above written.

WITNESS:

BOARD OF EDUCATION OF THE  
SOUTH WESTERN CITY SCHOOL  
DISTRICT

\_\_\_\_\_

PRINT NAME

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

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

\_\_\_\_\_

PRINT NAME

CITY OF GROVE CITY, OHIO

\_\_\_\_\_

PRINT NAME

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

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

\_\_\_\_\_

PRINT NAME

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

Before me, a notary public in and for said County personally appeared \_\_\_\_\_ who acknowledged before me that he or she, being fully authorized, executed the foregoing Agreement on behalf of the Board of Education of the South Western City School District.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

Before me, a notary public in and for said County personally appeared \_\_\_\_\_ who acknowledged before me that he or she, being fully authorized, executed the foregoing Agreement on behalf of the City of Grove City.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Notary Public

P. 61-01  
Exhibit "A"

PARK STREET

50'

S83°24'31"E

PK WALL 50.00'  
S83°24'31"E

CONC. WALL 19.26'

N06°20'07"E  
12.66'

80'

506°20'07"W 253.62'

THE BOARD OF EDUCATION  
GROVE CITY SCHOOL DISTRICT  
D.B. 488 PAGE 290

EX. 3 STORY

EX. 2 STORY

N63°24'31"W  
50.00'

506°20'07"W  
25.00'

EX. 1 STORY  
TO BE REMOVED

MAINT. OFFICE  
TO BE REMOVED

0.650 ACRES

EX. 1 STORY  
TO BE REMOVED

EX. 2 STORY  
TO BE REMOVED

EX. RES  
208.41'

207.67'

N37°26'43"E

N52°32'11"W

CIVIC DRIVE  
(FORMERLY SUGAR ALLEY)

PLAT OF GROVE CITY  
P.B. 4 PG. 55

21

20



August 15, 2001

**Legal Description  
The Board of Education  
Grove City School District  
0.650 Acres**

Situate in Military Survey Number 1383, City of Grove City, Franklin County, Ohio and being a portion of the lands conveyed to The Board of Education Grove City School District in D.B. 498 Page 290 and being more particularly described as follows;

Beginning at an existing iron pipe at the southeast corner of Lot 22 of the Plat of Grove City as recorded in P.B. 4 Page 55, said point also being in the north right of way line of Civic Drive (formerly Sugar Alley);

Thence along the east line of said Lot 22, N37°26'43"E, passing an existing iron pipe at 208.41 feet a total distance of 227.67 feet to an existing concrete nail;

Thence N06°20'07"E, a distance of 12.66 feet to an existing PK nail in the south right of way line of Park Street;

Thence with the south right of way of Park Street, S83°24'31"E, a distance of 50.00 feet to a set iron pin;

Thence along new division lines the following three (3) courses:

1. S06°20'07"W, a distance of 253.62 feet to a set iron pin;
2. N83°24'31"W, a distance of 50.00 feet to a set iron pin;
3. S06°20'07"W, a distance of 25.00 feet to an existing PK nail in the north right of way line of the aforesaid Civic Drive;

Thence along the north right of way line of Civic Drive, N52°32'11"W, a distance of 137.42 feet to the point of beginning.

Containing 0.650 acres of land.

Subject to all legal highways and easements of record.

Prior deed reference: D.B. 498 Page 290

Bearings are based on the centerline of Kingston Street as shown on a Plat of Survey by R.E. Hecker in April of 1936 and as recorded in Survey Book 1 Page 87.

The above description is the result of a field survey performed by Kleingers & Associates under the direction of Randy C. Wolfe, P.S. No. 8033, dated April 17, 2001 with a revision date of 8-14-01.



## Joint Use, License, Operations and Maintenance Agreement

Re: Park Street Intermediate School Site

This joint use, license, operations and maintenance agreement (the "Agreement") is entered into by the **Board of Education of the South Western City School District (the "Board")** and the **City of Grove City, Ohio (the "City")** also ("Party" or collectively "Parties"), as of the 8 day of October 2001 (the "Effective Date").

### Recitals

**WHEREAS**, the Board owns 0.65 acres located on the northwest corner of the Park Street Intermediate School site fronting on Park Street, being situated in the city of Grove City, Franklin County, Ohio ("Property") the legal description of which is attached as exhibit "A(1)".

**WHEREAS**, the Board is constructing an Intermediate School on this site (the "School") and a portion of this property as planned in exhibit "A(1)" is by virtue of this agreement to be used jointly by the City of Grove City and the South Western City School District as a public/park facility.

**WHEREAS**, the City has identified a need for additional facilities in Grove City, that will continue to connect the center of the town center of Grove City with the center of the historic area of Grove City, and the City and the Board recognize that the development of additional public/park facilities will benefit both the citizens of Grove City and the residents of the South Western City School District.

**WHEREAS**, the Board desires to grant a license to the City for access to a portion of the Property for the construction and use of a public/park type gathering area with appropriate and mutually approved amenities (collectively the "Site Improvements").

**WHEREAS**, the City intends to commence construction of the Site Improvements as soon as reasonably possible.

**WHEREAS**, the Board and the City acknowledge that use of this area will involve at times the parking facilities of the Park Street Intermediate School site.

**WHEREAS**, the City intends to appropriate sufficient funds for construction of Site Improvements and maintenance of the same.

**WHEREAS**, the City and the Board desire to establish the rights and responsibilities of the parties with respect to the use of the Site Improvements.

**WHEREAS**, the Board does not currently need the Property for educational purposes.

Now therefore in consideration of the mutual covenants contained here, the parties agree as follows:

**SECTION I. License.**

1.1. **Grant of License.** The Board hereby grants to the City a non-exclusive, temporary license (the "License") to enter upon and use those portions of the Property described more fully in Exhibit "A(1)", (the "Licensed Premises"), for the term hereinafter specified for the sole purposes of the construction and use of the Site Improvements. The City accepts the Licensed Premises in the "as is" condition.

1.2. **Description of the Licensed Premises.** The Licensed Premises shall consist of the real property located in Grove City, Franklin County, Ohio and generally consisting of \_\_\_\_\_ acres. The Licensed Premises are more particularly described in Exhibit "A(1)" attached hereto.

**Section 2. Annual License Fee, Term and Possession.**

2.1. **Annual License Fee.** The Annual License Fee due the Board from the City for the non-exclusive, temporary license described herein is One Dollar (\$1.00) per year due on the first day of every year of this Agreement. The City shall, upon the Effective Date, pay to the Board the sum of Twenty Thousand and 00/100 Dollars (\$20,000.00) for the purpose of constructing a fence and landscaping on the Licensed Premises (the "Improvements"). The parties acknowledge and agree that the location of the Improvements and the type of landscaping and materials used for the construction of the fence shall be determined by the Board, in its reasonable discretion. Upon the termination of License, the Improvements shall not be removed and shall be the sole property of the Board.

2.2. **Term.** The term of this Agreement (the "Term") shall commence as of the date set forth above (the "Commencement Date") and shall terminate, subject to early termination as specifically provided in this Agreement, at midnight, twenty (20) years after the Commencement Date.

Additionally, the Board may immediately terminate this Agreement upon delivering written notice to the City if it determines; in its sole discretion, that the Licensed Premises are needed for educational purposes or for sale.

2.3. Renewal of Agreement. Upon the expiration of the term, this Agreement shall be automatically renewed from year to year unless either Party notifies the other in writing at least thirty (30) days prior to the expiration of the term or any renewal thereof. The renewal terms shall be subject to all of the provisions of this Agreement.

2.4. Expiration of License. Upon the expiration of the Term or upon any earlier termination of the Term under any of the provisions of this Agreement, the City's right to enter upon the Licensed Premises shall cease. At that time all of the permanent Site Improvements shall be returned to the Board in good condition and repair and in compliance with all applicable laws, ordinary wear and tear excepted.

### Section 3. Construction of the Site Improvements.

3.1. Site Improvements on the Licensed Premises. The City, at its sole expense, shall construct on the Licensed Premises the following:

- 3.1.1. (1) Landscaping. (Landscaping as jointly approved).
- 3.1.2. Other related site improvements.
- 3.1.3. The construction will be made with good quality new materials, in a workmanlike manner. These improvements shall be specified and be located as shown on the site plan attached as Exhibit "3.1.3.". Any additional or subsequent site improvements by the City must be first mutually agreed to by the Board and the City prior to the start of any additional or subsequent construction.

3.2. Cooperation by the Board; Easements. Subject to the Board's right to approve any improvement in 3.1, the Board, at the City's expense, shall fully cooperate with the City in connection with any application of the City for any zoning change or variance necessary for the construction of the Site Improvements, and with obtaining building and construction permits from the appropriate government jurisdictions; provided, however, that the Board may withhold its cooperation and object to any zoning change or variance that it determines, in its sole discretion, is not in the best interest of the School District.

The Board shall not grant any ingress and egress, utility or other easements or dedications over or within the Licensed Premises without the City's prior written consent except as necessary for the Board's improvements to the Property which approval shall not be unreasonably withheld, delayed or conditioned. The Board shall cooperate with the City, at the City's expense, in obtaining or granting any easements necessary for the construction and operation of the Site Improvements. The Board acknowledges that it will be necessary to grant easements for utility purposes across, over and/or under the

Licensed Premises, and the Board agrees to grant such easements upon the request of the City, if said easements are reasonable and comply with the law.

#### Section 4. Use.

4.1. Compliance with Laws. The City shall use, operate and manage the Licensed Premises and the Site Improvements in compliance with all applicable laws including without limitation, the Americans with Disabilities Act and all environmental laws, rules and regulations.

4.2. Public Benefit. The Site Improvements shall be operated for the benefit of the residents of the South Western City School District and the citizens of Grove City, Ohio.

4.3. Right to Operate. The City shall manage and operate the Site Improvements in a manner that is consistent with this Agreement and the policies and guidelines for the use of school facilities. A copy of the policies and guidelines for the use of school facilities is attached as Exhibit "4.3."

4.4. General Use. The Parties agree that the Board shall be entitled to exclusive use the Site Improvements during school hours. After school hours, the Board may use the Site Improvements as may be reasonably agreed upon between the Parties.

4.5. Exclusive Use. Both Parties shall have the right to exclusive use of the Site Improvements for related events sponsored by either Party. Any such exclusive usage shall be at such times as reasonably agreed upon by the Parties.

4.6. Annual Planning Meeting. A representative of the Board and a representative of the City shall meet on at least an annual basis to consider among other items improvements to the Site Improvements, use of the Site Improvements and the School Building, and other matters of common interest.

#### Section 5. Hazardous Materials.

5.1. Neither Party shall introduce any Hazardous Materials (as hereinafter defined) onto the Licensed Premises. The Parties hereby agree to hold harmless the other Party, any successors to the Party's interest in this Agreement, and the Party's directors, trustees, officers, employees and agents from and against any losses, claims, damages (including consequential damages), penalties, fines, liabilities (including strict liability), costs (including cleanup and recovery costs) and expenses (including expense of litigation and reasonable attorneys' fees and costs) incurred by the Party or any other indemnity which are assessed against the Party (or such indemnity), or the Licensed Premises by virtue of any claim or lien by any governmental or quasi-governmental unit, body or agency, or any third Party, for cleanup costs or other costs pursuant to Environmental Laws, as hereinafter defined, resulting from the

introduction of Hazardous Materials on to, under, or about the Licensed Premises.

5.2. It is agreed by and between the Board and the City that neither Party shall have, and the indemnification provisions of each of the same contained herein, shall not apply and neither shall be liable to the other for Hazardous Materials existing on the Licensed Premises prior to the date of this Agreement or for any acts or omissions or willful misconduct of any third Party which neither has any direct contractual relationship with for cleanup costs or other costs pursuant to Environmental Laws.

5.3. As used herein, "Environmental Laws" shall mean the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Hazardous Materials Transportation Act, the Resource, Conservation and Recovery Act, all as amended from time to time, and all state laws and Federal and State regulations pursuant to the foregoing or otherwise, whether now existing or hereinafter enacted. As used herein, "Hazardous Materials" shall mean any substance the presence of which poses a hazard to the health or safety of persons on or about the Licensed Premises which required removal or remediation under any Environmental Law, including without limitation, any substance which is toxic, explosive, flammable, radioactive, or otherwise hazardous or which is included in the meaning of "Hazardous Substance", "Hazardous Waste", "Toxic Substance", or "Pollutant", as defined in any Environmental Law; provided, however, that the Board and the City may introduce incidental quantities of Hazardous Materials which are customary and reasonably necessary for their business activities to be conducted on the Licensed Premises, provided that such introduction and use are in compliance with all Environmental Laws.

5.4. Commencing as of the date of this Agreement, the City and its representatives and agents shall have the right and shall be entitled to enter upon the Licensed Premises and shall have access thereto such that the City or its representatives and agents may conduct such (i) surveys, (ii) soil, environmental, engineering and other tests, examinations and inspections, and (iii) other investigations as the City deems necessary or appropriate. After conducting any such surveys, tests, examinations, inspections or investigations, the City shall repair any damage caused to the Licensed Premises by the City or its representatives and agents and shall restore the Licensed Premises to the condition in which it existed prior to the date of such tests, examinations or investigations. In addition, the City shall indemnify, defend and hold harmless the Board from and against any liability, loss, damage, claim, cost or expense, including attorneys' fees, which may result from any such entry upon the Licensed Premises or from any inspection, tests, examinations or investigations thereof, including any failure to restore the Licensed Premises in accordance with this Section.

5.5. The indemnities of the Board and the City set forth in this section shall survive the termination of this Agreement.

Section 6. Utilities.

The City shall pay when due all charges and assessments for water, electric, gas, telephone or any and all other utilities imposed upon or with respect to the City's use or occupation of the Licensed Premises, or any improvements located thereon. The City shall cause all such utilities to be separately metered and placed in the City's name.

Section 7. Repairs, Maintenance, Alterations, Improvements, and Fixtures.

7.1. Repair and Maintenance.

- 7.1.1. The City shall keep and maintain the Licensed Premises and the Site Improvements thereon in good order, condition, and repair, ordinary wear and tear excepted. Maintenance shall include but shall not be limited to repair of movable and fixed equipment, landscaping and mowing of the area (A). The type of maintenance and frequency of maintenance shall be determined by each Party with input from the other at the annual planning meeting or as deemed necessary by the Board.
- 7.1.2. The Board shall keep and maintain all areas immediately adjacent to the School and adjacent to the School parking lot in good order, condition and repair. The cost of all such repairs and maintenance shall be borne by the Board.
- 7.1.3. The Board and the City shall be jointly responsible for the repair and maintenance of the parking lot adjacent to the School (known as the bus loop). The cost of such repair and maintenance shall be 85% Board and 15% City unless otherwise agreed between the Parties. See Exhibit "A(3)". The Board shall be responsible for paying the costs associated with repair and maintenance of this area. The Board will then invoice the City 15% of such repair and maintenance cost. The City shall pay the invoice within thirty (30) days of receiving the invoice.

7.2. Alterations or Improvements. Subject to the Board's approval rights below, the City shall have the right, at its own cost and expense, to construct or install improvements, additions, alterations or modifications, or make other changes in or to the Licensed Premises and the Site Improvements so long as the same are consistent with the provisions of this Agreement and the City has obtained all required governmental approvals for the same. The City shall pay or cause to be paid all costs associated therewith so that the Licensed Premises shall be free from any and all liens of persons providing labor or materials thereto. The Board shall have the right to approve all such improvements, additions, alterations or modifications, said approval not to be unreasonably withheld.

7.3. Fixtures. Any fixtures installed permanently on the Licensed Premises by the City shall, upon the expiration of the Term or earlier termination of this Agreement, become the property of the Board.

## Section 8. Insurance.

8.1. During Construction. During the period of construction of the Site Improvements, the City shall obtain at its sole expense, or require that all contractors employed to do work in connection with the Site Improvements, carry all forms of insurance during the course of work that is generally carried and maintained in connection with the construction of the Site Improvements including, but not limited to, workers' compensation, builders' risk insurance and comprehensive liability insurance. The Board shall be listed as an additional insured.

8.2. Property Insurance. At all times during the Term, the City shall obtain, maintain and pay for insurance with respect to the improvements now or hereafter located on the Licensed Premises against loss or damage by fire or other casualty hereafter embraced by so called "extended coverage" and/or "all risk" insurance in an amount not less than replacement value thereof or such lesser amount as the Board and the City may determine. The Board shall be listed as an additional insured and loss payee.

8.3. Liability Insurance At all times during the Term, the City shall obtain, maintain, and pay for comprehensive broad form general liability insurance or commercial general liability insurance insuring against any and all claims for bodily injury, death, or property damage occurring on, in or about the Licensed Premises subject to a combined single limit of not less than \$1,000,000 for personal injury, death or property damage arising out of any one accident. The Board shall be listed as an additional insured. The City, with respect to any loss which is covered by insurance then being carried by it or required to be carried by it hereunder, hereby releases the Board of and from any and all claims with respect to such loss; and the City further agrees that its insurance company

shall have no right of subrogation against the Board. Further, the City agrees that Board shall not be liable for any damage tot he improvements constructed in the Licensed Premises and the City hereby released the Board from the same.

Section 9. Damage or Destruction of Improvements.

In the event the Site Improvements shall be damaged or destroyed during the Term by fire or other casualty or hazard, the City shall rebuild, repair or restore the Site Improvements to substantially the same condition as they existed prior to such fire or other casualty.

Section 10. Condemnation.

10.1. Total Condemnation. If at any time during the Term, any part of the Licensed Premises or the Site Improvements shall be taken or condemned or threatened to be taken or condemned by a competent authority for any public or quasi-public use or purpose, or if a substantial part thereof is taken or threatened to be taken and shall result in the Licensed Premises or the Site Improvements not being economically or beneficially suited, in either Party's reasonable discretion, for the City's intended use of the Licensed Premises, then this Agreement, at either Party's option exercised in writing within thirty (30) days after notice of the taking, shall terminate upon the earlier to occur of (i) 180 days after the City is noticed of the threat of the same by the Board or the taking authority, or (ii) 30 days prior to the actual taking. Within 15 days after the Board's receipt of the City's notice of termination, any improvements which have not been taken shall be transferred to the Board. The Board shall give the City prompt written notice of any written notice which the Board receives threatening any such taking.

10.2. Partial Condemnation. If only a part of the Licensed Premises shall be so taken or condemned, and the part not so taken is, in either Party's reasonable discretion, suitable for the City's economical and beneficial intended use of the Licensed Premises, this Agreement shall remain in full force and effect, otherwise, the provisions of Section 10.1 shall control.

10.3. Distribution of Condemnation Award. All proceeds or awards from the condemning authority payable with respect to the land constituting the Licensed Premises shall be payable to the Board and all proceeds or awards for the Site Improvements on the Licensed Premises shall be payable, to the City. Award to the City will not derogate from the Board's award.

Section 11. Liens.

If because of any act or omission of the City or anyone claiming by, through, or under the City, any mechanics' lien or other lien shall be filed against the Licensed Premises or any part of the Licensed Premises, the City shall, at its own expense, cause the same to be discharged of record within thirty (30) days after the date of filing thereof, and shall also indemnify the Board and hold it harmless from any and all claims, losses, damages, judgments, settlements, costs and expenses, including reasonable attorneys' fees, resulting therefrom or by reason thereof.

Section 12. Assignment; Sublicense; License.

12.1. Assignment. Provided the City is not then in default under this Agreement (or if City is then in default, such default is cured prior to the effective date of such assignment), the City, during the Term, may assign its rights and obligations under this Agreement but only with the prior written consent of the Board which consent may be withheld for any reason whatsoever. No assignment of this Agreement or any part thereof shall be binding upon the Board unless such assignee shall deliver to the Board an instrument (in recordable form, if requested) containing an agreement of assumption by assignee of all of the City's obligations under this Agreement. Upon an assignment pursuant to this Section, the City shall remain liable for any and all of its obligations under this Agreement, notwithstanding said assignment, unless otherwise agreed to in writing by the Board.

12.2. Sublicenses and Licenses. The City may from time to time, without the Board's consent, sublicense, let concessions, or otherwise provide a license, to use all or any part of the Licensed Premises, provided the City shall continue to remain fully liable for all of the terms and conditions to be complied with by the City under this Agreement. Any such sublicense, concession lease, or other license shall be subject to the terms of this Agreement.

Section 13. The Board's Title.

The Board warrants and represents that the Board is, and as of the commencement of the Term shall be, the owner in fee simple of the Licensed Premises and that the Board has good right and authority to execute this Agreement.

Section 15. Default and Remedies.

15.1. Default by the City. It shall be a default under and breach of this Agreement by the City if the City shall fail to perform or observe any term, condition, covenant or obligations required to be performed or observed by it under this Agreement for a period of 30 days after notice thereof from the Board; provided, however, that if the term, condition, covenant or obligation to be performed by the City is of such nature that the same cannot reasonably be performed within such 30 days period, such default shall be deemed to have been cured if the City commences such performance within said 30 day period and thereafter diligently undertakes to complete the same.

15.2. Remedies of the Board. Upon the occurrence of any event of default set forth in Section 15.1, the Board shall have the following rights and remedies, in addition to those allowed by law or at equity, any one or more of which may be exercised and enforced independently or concurrently at one time without waiving any of the Board's other rights and remedies, without further notice to or demand upon the City:

15.2.1. The Board may enter the Licensed Premises and cure any default of the City, in which event the City shall reimburse the Board for any reasonable costs and expenses which the Board may incur to cure such default, and the Board shall not be liable to the City for any loss or damage which the City may sustain by reason of the Board's action, unless caused by the Board's gross negligence.

15.2.2 The Board may terminate this Agreement as of the date of such default, in which event neither the City nor any person claiming under or through the City shall thereafter be entitled to use of the Licensed Premises.

15.3. Default by the Board and Remedies of the City. It shall be a default under and breach of this Agreement by the Board if it shall fail to perform or observe any term, condition, covenant or obligation required to be performed or observed by it under this Agreement for a period of 30 days after written notice thereof from the City; provided, however, that (a) if the term, condition, covenant or obligation to be performed by the Board is of such nature that the same cannot reasonably be performed within such 30 day period, such default shall be deemed to have been cured if the Board commences such performance within said 30 day period and thereafter diligently undertakes to complete the same and (b) if the Board's default or breach prevents the City's legal or beneficial use of the Licensed Premises, the City may at any time from the date of such occurrence sue for injunctive or other equitable relief or for the recovery of any

loss or damage sustained by the City as a result of the Board's breach or default but only after exhausting its other remedies under Section 19 of this Agreement, if applicable.

15.4. Non-Waiver of Defaults. The failure or delay by either Party to exercise or enforce at any time any of the rights, remedies or other provisions of this Agreement shall not be construed to be a waiver thereof and shall not affect the validity of any part of this Agreement or the right of either Party thereafter to exercise or enforce each and every such right, remedy or other provision. No waiver of any default and breach of the Agreement shall be held to be a waiver of any other default and breach.

Section 16. Indemnification.

The City shall indemnify and hold the Board harmless from and against any loss, liability, damage, cost or expense (including, without limitation, legal or other costs and expenses in connection with any action, suit or proceeding brought by or against the Board or relating to enforcement of this indemnification) paid, incurred or suffered by the Board as a result of any act, omission or neglect of the City, or of its agents or employees, in connection with the use of the Licensed Premises or the conduct of any activity, work or endeavor, undertaken, permitted or suffered by the City on or about the Licensed Premises. The Board shall defend the City against any loss, liability, damage, cost or expenses (including, without limitation, legal or others costs and expenses in connection with any action, suit or proceeding brought by or against the City) paid, incurred or suffered by the City as a result of any act, omission or neglect of the Board, or of its agents or employees, in connection with the use of the Licensed Premises, or the conduct of any activity, work or endeavor undertaken, permitted or suffered by the Board on or about the License Premises.

Section 17. Real Estate Brokerage Commissions.

The Board and the City acknowledge, represent and warrant to the other that there is no real estate broker involved in the negotiation of this Agreement. Each Party shall indemnify the other Party against and hold it harmless from any liability for the breach of such representation and warranty on its part.

**Section 18. Notice.**

Any notice required or permitted to be given under this Agreement or by law shall be deemed to have been given if it is written and delivered in person or mailed by registered or certified mail, postage prepaid, or by overnight courier or by telecopier or any other means for transmitting a written communication to the Party who is to receive such notice at the address specified below:

To the Board:           Quality Assurance Manager  
                              Board of Education of the  
                              South Western City School District  
                              2975 Kingston Avenue  
                              Grove City, OH 43123

and:                     Stephen J. Smith  
                              Schottenstein, Zox and Dunn  
                              41 South High Street, 26<sup>th</sup> Floor  
                              Columbus, OH 43215

To the City:            City Administrator  
                              The City of Grove City, Ohio  
                              City Hall  
                              4035 Broadway  
                              Grove City, OH 43123

and:                     City Attorney of Grove City, Ohio  
                              City Hall  
                              4035 Broadway  
                              Grove City, OH 43123

When mailed, the notice shall be deemed to have been given or delivered as of the third day after it was mailed. Otherwise, notice shall be deemed to have been given or delivered on receipt of the same. The address of a Party specified above may be changed by giving written notice thereof to the other Party.

**Section 19. Dispute Resolution.**

**19.1. Procedure.** If any dispute arises between the Parties as to (i) the exercise of either Party's rights or the performance of either Party's obligations under this Agreement, or (ii) the construction of this Agreement, or (iii) any other matter arising out of this Agreement, then the Parties will attempt in good faith to expeditiously resolve the dispute through the following procedures, in lieu of the filing of a lawsuit:

19.1.1. If a dispute arises under this Agreement which cannot be resolved by the personnel directly involved, either Party may invoke this dispute resolution procedure by giving written notice to the other designating an executive officer with appropriate authority to be its representative in negotiations relating to the dispute.

19.1.2. Upon receipt of this notice, the other Party shall, within five business days, designate an executive officer with similar authority to be its representative.

19.1.3. The designated executive officers shall, following whatever investigation each deems appropriate, promptly enter into discussions concerning the dispute.

19.1.4. If the dispute is not resolved as a result of such discussions, either Party may request the commencement of good faith negotiations with respect to a procedure for dealing with the dispute through means other than litigation.

19.1.5. If the dispute is not resolved through the process of negotiations the Parties agree first to try in good faith to settle the dispute by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. Thereafter, any remaining unresolved controversy or claim arising out of or relating to this Agreement, or the performance or breach thereof, may be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, conducted in Columbus, Ohio. Judgment upon the award rendered by the Arbitrator may be entered in the Franklin County Court of Common Pleas.

19.2. Exercise of Police Powers. It is expressly understood and agreed by the Parties that the exercise by the City of its police powers as a municipality does not constitute a dispute under this Agreement and, therefore, is not subject to the dispute resolution procedures of this Section.

## Section 20. General.

20.1. Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Ohio.

20.2. Complete Agreement; Amendments. This Agreement, including all exhibits, constitutes the entire agreement between the Parties, superseding all previous understandings and agreements between the Parties, if any, and no oral or implied representation or understanding shall vary their terms. This Agreement may be amended only by a written instrument executed by both Parties.

20.3. Successors and Assigns. This Agreement and the respective rights and obligations of the Parties hereto shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto as well as the Parties themselves; except as otherwise provided in Section 20.4 and elsewhere in this Agreement.

20.4. Severability of Invalid Provisions. If any provision of this Agreement shall be held to be invalid, void or unenforceable, the remaining provisions hereof shall not be affected or impaired, and such remaining provisions shall remain in full force and effect.

20.5. Certain Words; Gender. As used in this Agreement, the word "person" shall mean and include, where appropriate, an individual, corporation, partnership or other entity; the plural shall be substituted for the singular and the singular for the plural, where appropriate; and words of either gender shall include the other gender.

20.6. Execution and Effectiveness of this Agreement; Counterparts. This instrument shall be effective only after one or more copies of it have been executed and delivered by each party to the other; and prior to such execution and delivery by both Parties, the delivery of a proposed form of it to the City for the City's review and execution or to the Board for the Board's review and execution shall not be deemed or construed to constitute a reservation, right, option or agreement to make a lease by the other Party. After such execution and delivery by both Parties, this Agreement shall be effective as of the date first written above, regardless of the actual date of execution or delivery by either Party. This Agreement or any other amendments hereto may be executed in several counterparts, and all so executed shall constitute one agreement, binding on both Parties hereto, notwithstanding that both Parties are not signatories to the original or the same counterpart.

20.7. Survival. Except to the extent that the rights, obligations and liabilities of the Parties are to cease and terminate upon the expiration or earlier termination of this Agreement or such rights, obligations and liabilities are limited upon the expiration or earlier termination of this Agreement, as provided for in this Agreement, the same shall survive the expiration or earlier termination of this Agreement.

20.8. Applicability of the City's Ordinances, Rules and Regulations. The Parties expressly agree that the City is not waiving nor forfeiting its obligations and rights to regulate the Licensed Premises with the Board's ordinances, rules and regulations.

20.9. Units of Public Government. The Parties recognize that the Board and the City are both units of public government and any covenants, terms, agreements, premises or obligations contained in this Agreement which are not permitted for such units of public government are unenforceable, subject to the severability provision of Section 20.4 of this Agreement.

IN WITNESS WHEREOF, the Parties here to have executed this Agreement as of the day and year first above written.

WITNESS:

BOARD OF EDUCATION OF THE SOUTH WESTERN CITY SCHOOL DISTRICT

Michael Bobby

Michael Bobby  
PRINT NAME

By: [Signature] 10/8/01  
Its: Treasurer

PRINT NAME

Todd Hurley

TODD HURLEY  
PRINT NAME

CITY OF GROVE CITY, OHIO

By: [Signature]  
Its: City Administrator

PRINT NAME

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

Before me, a notary public in and for said County personally appeared Hugh W. Garside, Jr. who acknowledged before me that he or she, being fully authorized, executed the foregoing Agreement on behalf of the Board of Education of the South Western City School District.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this 8th day of October, 2001.

Lorraine M. Nemchik  
Notary Public



LORRAINE M. NEMCHIK  
Notary Public, State of Ohio  
My Commission Expires 06-01-06

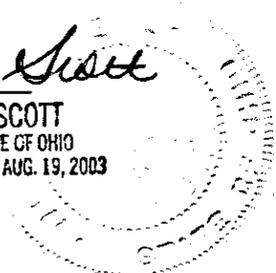
STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

Before me, a notary public in and for said County personally appeared Richard Stage who acknowledged before me that he or she, being fully authorized, executed the foregoing Agreement on behalf of the City of Grove City.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal  
this 15<sup>th</sup> day of October, 2001.

Deborah A. Scott  
Notary Public

**DEBORAH A. SCOTT**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUG. 19, 2003



C 61-01  
Exhibit A

PARK STREET

N06°20'07"E  
12.66'

PK NAIL 50.00'  
S83°24'31"E

S83°24'31"E

CONC. NAIL 19.26'

PLAT OF GROVE CITY  
P.B. 4 PG. 55

227.67'

EX RES  
208.41'

EX 1 STORY  
TO BE REMOVED

EX 1 STORY  
TO BE REMOVED

EX 2 STORY  
TO BE REMOVED

EX 3 STORY

EX 2 STORY

THE BOARD OF EDUCATION  
GROVE CITY SCHOOL DISTRICT  
O.B. 498 PAGE 290

253.62'  
S06°20'07"W

0.650 ACRES

N37°26'43"E

N52°32'11"W

CIVIC DRIVE  
(FORMERLY SUGAR ALLEY)

N83°24'31"W  
50.00'

25.00'  
S06°20'07"W

137.42'

50'

85'

20

21

22

Z

Z



**KLEINGERS**  
& ASSOCIATES  
ENGINEERS AND SURVEYORS

August 15, 2001

**Legal Description**  
**The Board of Education**  
**Grove City School District**  
**0.650 Acres**

Situate in Military Survey Number 1383, City of Grove City, Franklin County, Ohio and being a portion of the lands conveyed to The Board of Education Grove City School District in D.B. 498 Page 290 and being more particularly described as follows;

Beginning at an existing iron pipe at the southeast corner of Lot 22 of the Plat of Grove City as recorded in P.B. 4 Page 55, said point also being in the north right of way line of Civic Drive (formerly Sugar Alley);

Thence along the east line of said Lot 22, N37°26'43"E, passing an existing iron pipe at 208.41 feet a total distance of 227.67 feet to an existing concrete nail;

Thence N06°20'07"E, a distance of 12.66 feet to an existing PK nail in the south right of way line of Park Street;

Thence with the south right of way of Park Street, S83°24'31"E, a distance of 50.00 feet to a set iron pin;

Thence along new division lines the following three (3) courses:

1. S06°20'07"W, a distance of 253.62 feet to a set iron pin;
2. N83°24'31"W, a distance of 50.00 feet to a set iron pin;
3. S06°20'07"W, a distance of 25.00 feet to an existing PK nail in the north right of way line of the aforesaid Civic Drive;

Thence along the north right of way line of Civic Drive, N52°32'11"W, a distance of 137.42 feet to the point of beginning.

Containing 0.650 acres of land.

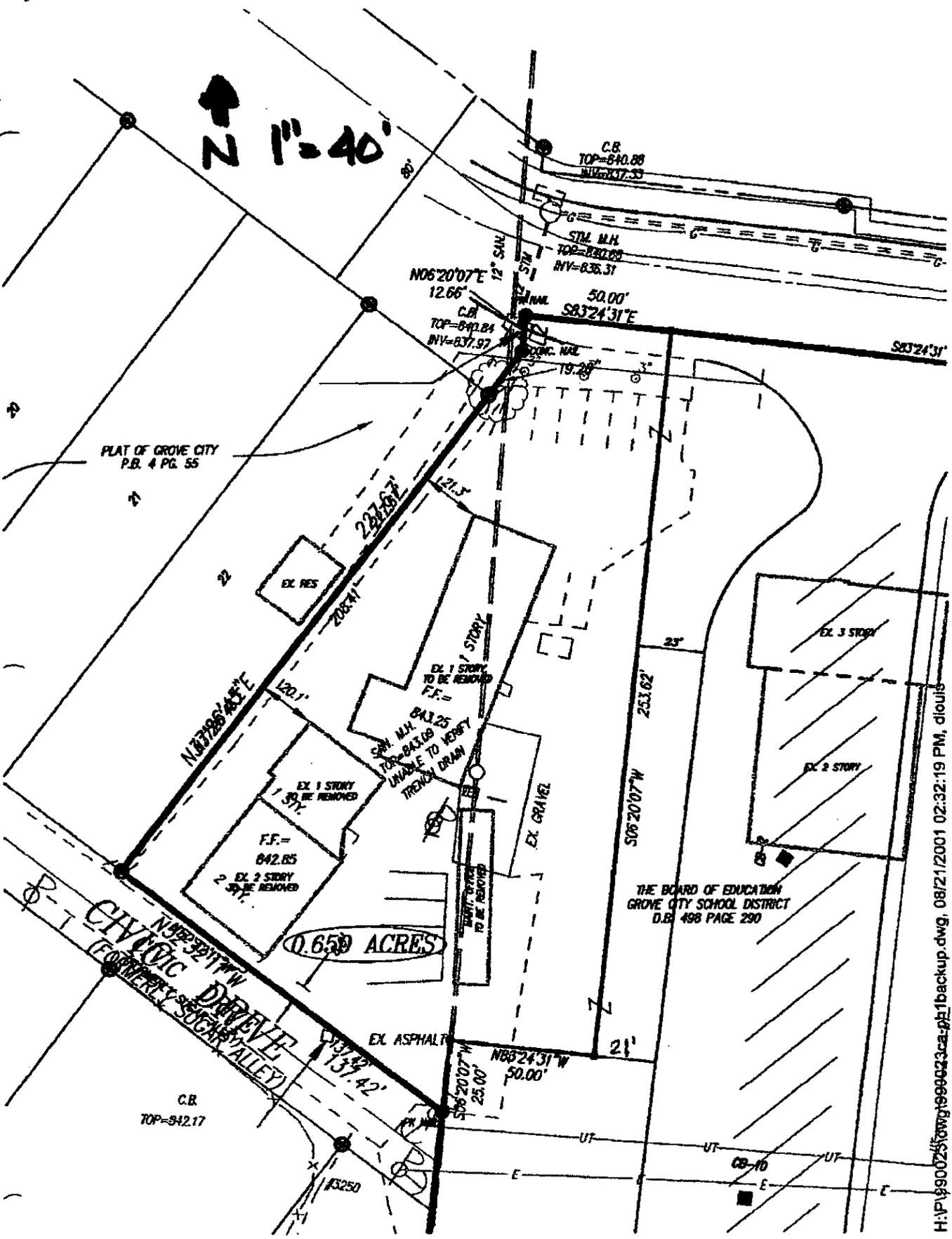
Subject to all legal highways and easements of record.

Prior deed reference: D.B. 498 Page 290

Bearings are based on the centerline of Kingston Street as shown on a Plat of Survey by R.E. Hecker in April of 1936 and as recorded in Survey Book 1 Page 87.

The above description is the result of a field survey performed by Kleingers & Associates under the direction of Randy C. Wolfe, P.S. No. 8033, dated April 17, 2001 with a revision date of 8-14-01.

N 1"=40'



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