

RECORD OF ORDINANCES

Dayton Legal Blank, Inc.

Form No. 30050

Ordinance No. 3609 Passed May 23, 2017

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A LEASE AGREEMENT WITH THE MONTGOMERYCOUNTY BOARD OF COMMISSIONERS FOR THE WEST CARROLLTON BRANCH OF MONTGOMERY COUNTY CLERK OF COURTS AUTO TITLE DIVISION AND DECLAIRING AN EMERGENCY.

WHEREAS, the City acquired the Carrollton Plaza Shopping Center on May 1st, 2017, and;

WHEREAS, the Montgomery County Board of Commissioners leases space in the Center for and on behalf of the Montgomery County Clerk of Courts Auto Title Division and is currently on a month to month lease basis; and

WHEREAS, in order to facilitate an orderly relocation to a new facility, the Department has asked for an extension of the lease terms for an additional eight months, beginning May 1, 2017 through December 31, 2017; and


WHEREAS, it is the desire of the majority of the members of the City Council to agree to said extension.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WEST CARROLLTON, OHIO, THAT:

Section 1: the City Manager is hereby authorized to sign a lease agreement with the Montgomery County Board of Commissioners for and on behalf of the Montgomery County Clerk of Courts Auto title Division West Carrollton, Ohio branch, retroactive to May 1, 2017 through December 31, 2017, attached hereto and made part of this resolution, and do all things necessary to complete the transaction.

Section 2: That this Ordinance is hereby declared to be an emergency measure due to the necessity to provide for adequate time for the facility to be relocated by the end of the year, thereby preserving the welfare of the community.

Passed: 5/23/17


Mayor

Attest: Carie Cottongin
Ass't Clerk of Council

LEASE AGREEMENT

THIS LEASE made on the ____ day of _____, 2017, by and between the City of West Carrollton ("**Landlord**") and the Board of County Commissioners of Montgomery County, Ohio, Montgomery County Administration Building, 451 West Third Street, Dayton, Ohio 45422-1326, on behalf of the Montgomery County Clerk of Courts Auto Title Division, hereinafter referred to as ("**Tenant**").

WITNESSETH:

WHEREAS, Landlord is the agent for the owner of the premises located at 1152 East Central Avenue, West Carrollton, Ohio 45449; and

WHEREAS, Tenant is authorized to lease real property; and

WHEREAS, the leased space will be occupied by the Montgomery County Clerk of Courts, Auto Title Division; and

WHEREAS, it is the desire of the parties hereto to enter into this Lease Agreement upon the terms and conditions hereinafter contained.

NOW THEREFORE, for and in consideration of the mutual covenants and promises set forth herein, the parties hereby agree as follows:

Landlord, in consideration of the rents and covenants hereinafter set forth, does hereby demise, let and Lease to the Tenant and the Tenant does hereby take and Lease from the Landlord, on the terms and conditions hereinafter set forth, the following described real property referred to herein as the "Premises", to have and to hold the same, with all appurtenances, unto the Tenant for the term hereinafter specified for use by the Montgomery County Clerk of Courts, Auto Title Division.

1. PREMISES

The Landlord does hereby rent and lease unto the Tenant the following described premises: Approximately 1,525 usable square feet of modern office space consisting of the first floor of the building located in the City of West Carrollton, County of Montgomery, and State of Ohio, and being commonly known as 1152 E. Central Avenue, West Carrollton, Ohio 45449.

2. TERM

The term of this lease shall commence on May 1, 2017 and shall end on December 31, 2017 unless this lease shall be sooner terminated as hereinafter provided.

3. **RENT**

The Tenant agrees to pay the Landlord rent for the leased premises during the term for utilizing 1,525 square feet of space at the rate of Eleven Dollars and 50/100 Dollars (\$11.50) per square foot of rented space, for a total rate for the term of Eleven Thousand Six Hundred Ninety One and 67/100 Dollars (\$11,691.67), payable in one lump sum.

Rent to be made payable to "City of West Carrollton, 300 East Central Avenue, West Carrollton, Ohio 45449.

4. **USE AND CARE OF PREMISES**

- A. Tenant, at its expense, shall comply with all laws, ordinances, regulations and orders of all governmental authorities having jurisdiction over the leased premises relating to the Tenant's use and occupancy of the leased premises.
- B. Tenant shall use the premises and conduct its business (Clerk of Courts, Montgomery County) therein in a safe, careful, reputable and lawful manner, Tuesdays through Saturday, 8:00 a.m.-5:30 p.m., and shall keep and maintain the premises in as good a condition as was when Tenant first took possession thereof and shall make all necessary repairs to the premises other than those which the Landlord is obligated to make as provided elsewhere herein, so as to return the leased premises to the Landlord in as good a condition as was when first leased by the Tenant.
- C. Tenant shall not commit nor allow to be committed in or about the premises or in the building, any act of waste, including any act which might deface, damage or destroy the building or any part thereof situate on the leased premises; use or permit to be used on the premises any hazardous substance, equipment or other thing which might cause injury to person or property or increase the danger of fire or other casualty in, on or about the premises, permit any objectionable or offensive noise or odors to be emitted from the premises; nor will the Tenant allow the premises to be used for any purpose or in any manner which would, in the Landlord's opinion, invalidate any policy of insurance now or hereafter carried on the building, or increase the rate of premiums payable on any such insurance policy. Should the Tenant fail to comply with these covenants, the Landlord may, at its option, require the Tenant to stop engaging in such activity or to reimburse Landlord as additional rent any increase in premiums charged during the term of this lease on the insurance carried by Landlord on the premises and attributable to the use being made of the premises by the Tenant.

5. **SERVICES FURNISHED BY LANDLORD**

Landlord will furnish the following services: window cleaning (twice a year); carpet cleaning (twice a year); pest control; snow removal/salting; dumpster service as necessary for

trash removal; air conditioning and heating for the entire building; toilet facilities; water, hot and cold, at those points of supply provided for general use of the Tenant; electricity and electric lighting service for all areas of the building including 110-volt lines for computer equipment; and repair and maintenance of the building to the extent specified in the paragraph herein titled "REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS." Landlord shall provide telephone service lines to a central location in the rear of the building with installation and monthly service charges from this location being the responsibility of Tenant. Landlord shall also be responsible for any related operating expense of the demised premises.

In the event that the Landlord shall fail to supply the Tenant with the aforementioned items, Landlord shall be in default hereunder and Tenant shall have the right to terminate this lease upon thirty (30) days advance written notice to the Landlord. Tenant agrees, however, to grant the Landlord fourteen (14) calendar days within which to cure the event or condition which the Tenant deems to be causing the default, if such is susceptible of being cured. Such fourteen (14)-day period shall begin upon the mailing of notice by Tenant to Landlord, by ordinary mail to the address for Landlord established pursuant to Paragraph 16, herein.

6. UTILITIES

Tenant is responsible for reimbursement to the Landlord for all utilities consumed by Tenant on the premises on a pro-rated basis, including, but not limited to, electric, gas, water, and sewer.

7. REPAIRS, MAINTENANCE, ALTERATIONS, IMPROVEMENTS

The Landlord shall maintain the premises in its current state and repair any health safety issues that arise under the term of this Lease.

The Tenant shall pay to the Landlord the Landlord's cost of repairing any damage to the building or building equipment caused by the negligence of the Tenant, its agents, employees, or clients to the extent Landlord is not reimbursed for such costs through insurance carried by the Landlord. Otherwise, the cost of all repairs required to be made by Landlord shall be borne by the Landlord.

Tenant may make or permit to be made alterations or improvements to the premises, but only if the Tenant obtains the prior written consent of the Landlord thereto. If the Landlord permits the Tenant to make any such alterations or improvements, the Tenant shall make the same in accordance with all applicable laws and building codes, in a good and workmanlike manner and in quality equal to or better than the original construction of the building. The Tenant shall promptly pay all costs attributable to such alterations and improvements and shall indemnify the Landlord against any liens or claims filed or asserted as a result thereof and against any costs or expenses which may be incurred as a result of building code violations attributable to such work. Tenant shall promptly repair any damage to the premise

or the building caused by any such alterations or improvements. All maintenance considered "normal wear and tear" is the responsibility of the Landlord.

Any trade fixtures installed on the premises by Tenant at its own expense, including, but not limited to, movable partitions, shelving, mirrors, and the like, may be removed on the expiration date or earlier termination date of this lease, such removal being at the sole cost of Tenant.

8. DAMAGE BY FIRE OR OTHER CASUALTY

Should the leased premises be substantially destroyed or damaged by fire or other casualty, either party hereto may, at its option, terminate this lease by giving written notice thereof to the other party within thirty (30) days of such casualty, casualty being described as damage to at least fifty percent (50%) of the building. In such event, the rent shall be apportioned to and shall cease as of the date of such casualty. In the event neither party exercises this option, then the premises shall be reconstructed and restored at the Landlord's expense to substantially the same condition as was prior to the casualty. During the period of reconstruction and restoration of the building by the Landlord, the Tenant shall not be responsible for the payment of rent.

9. INSURANCE

The Tenant will protect, indemnify and save harmless the Landlord from and against any and all losses, costs, damages and expenses occasioned by or arising out of any accident or other occurrence causing or inflicting injury or damage to any person or property happening or done in, or upon the leased premises, or due directly or indirectly to the tenancy of use or occupancy thereof, or any part thereof, by Tenant; provided, however, that such accident or other occurrence causing or inflicting injury or damage to any person or property be caused by the recklessness or intentional acts of the Tenant, its agents, employees or clients. The parties hereto understand that the Tenant is self-insured, and that the Tenant's promises made to the Landlord herein as relates to indemnification, shall be satisfied from funds set aside by the Tenant in its self-insurance program.

The Landlord will protect, indemnify and save harmless the Tenant from and against any and all losses, costs, damages and expenses occasioned by or arising out of any accident or other occurrence causing or inflicting injury or damage to any person or property happening or done in, or upon the leased premises; provided, however that such accident or other occurrence causing or inflicting injury or damage to any person or property be caused by recklessness or intentional acts of the Landlord, its agents, employees or clients.

10. TAXES

Landlord agrees to be responsible for the payment of any and all real estate taxes coming due upon the leased premises after the commencement date of this lease.

11. SUBLETTING OR ASSIGNMENT

The Tenant shall not assign this Lease or sublet any portion of the Premises without prior written consent of the Landlord, which will not be unreasonably withheld or delayed, it being understood that it shall be reasonable for Landlord, among other things, to withhold consent if Landlord is not satisfied with the financial responsibility, identity, reputation or business character of the proposed assignee or sub Tenant. Any change in the ownership of Tenant, if Tenant is a corporation or partnership, shall constitute an assignment for purposes of this Paragraph. Notwithstanding any consent by Landlord, Tenant and Guarantors if any, shall remain jointly and severally liable along with each approved assignee and sub Tenant, which shall automatically become liable (along with each approved assignee and sub Tenant which shall remain jointly for all obligations of Tenant hereunder with respect to that portion of the Premises so transferred), and Landlord shall be permitted to enforce the provisions of this Lease directly against Tenant or any assignee or sub Tenant without proceeding in any way against any other party. In the event of an assignment, contemporaneously with the granting of Landlord's consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder and such assignee shall be jointly and severally liable therefore along with Tenant. No usage of the Premises different from the usage provided for in Paragraph 1 above shall be permitted and all other terms and provisions of the Lease shall continue to apply after such assignment or sublease. Tenant shall not make or consent to any conditional, contingent or deferred assignment of some or all of Tenant's interest in this Lease without the prior written consent of Landlord, which Landlord may withhold in its sole and absolute discretion. Tenant shall not enter into, execute or deliver any financing or security agreement that can be given priority over the mortgage given by Landlord or its successors, and in the event Tenant does so execute or deliver such financing or security agreement, such action on the part of tenant shall be considered a breach of the terms and condition of this Lease and a default by Tenant entitling Landlord to such remedies as are provided for in this Lease. Landlord shall have the right to assign or transfer in whole or part, Landlord's rights and obligations hereunder and in the Project and the Premises. If either party attempts to make such a sublease or assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Lease.

12. TERMINATION

This Lease may be terminated by either party and upon the mutual written agreement of the parties hereto by giving thirty (30) days written notice prior to the effective date of termination.

13. HOLDING OVER

Any holding over after the expiration of the termination of this Lease shall be construed as a month-to-month tenancy at the same rate as the rent preceding the month in which the

expiration or termination occurred, and otherwise in accordance with the terms hereof, as applicable. Lessee shall also indemnify Lessor against all claims for damages against Lessor as a result of Lessee's possession of the Premises, including, without limitation, claims for damages by any Lessee to who Lessor may have leased the Premises, or any portion thereof, for a term commencing after the expiration or termination of this Lease.

14. QUIET ENJOYMENT

Tenant, while paying the rents and keeping and performing the covenants of this lease on its part to be kept and performed, shall peaceable and quietly occupy the leased premises during said term and any extensions thereof without any hindrance or molestation by any person whomsoever.

15. ACCESS TO PREMISES

The Landlord shall retain duplicate keys to all of the doors of the leased premises and Landlord, its employees and agents shall have the right to enter any part of the leased premises at all reasonable times for the purpose of examining or inspecting the same, and for making repairs, alterations or improvements to the premises as the Landlord may deem necessary or desirable.

16. NOTICE AND PLACE OF PAYMENT

Notices required herein will be considered as given forty-eight (48) hours after being sent by certified or registered mail, postage prepaid to the Property Manager, Landlord and Tenant at the address as listed below: or at such other address as may be designated by the Landlord or Tenant in writing. Rental payments shall be payable at the same address unless otherwise so designated in writing delivered to the Tenant by Landlord. Any notice to be forwarded to the Tenant or Landlord shall be forwarded by certified or registered mail, postage prepaid to the address as listed below:

<u>Property Manager:</u>	<u>Landlord Notice Address:</u>	<u>Tenant:</u>
<u>Rental Payment Address:</u>	300 East Central Avenue, West Carrollton, Ohio 45449	Montgomery County Clerk of Courts Auto Title Division

17. POSSESSION

If Landlord is unable to give possession of the leased premises on the date set forth in the paragraph hereof titled "TERM" for any reason, the rent due from the Tenant to Landlord shall be pro-rated as to the date that possession is made available to the Tenant. If the Tenant's occupancy is delayed more than thirty (30) calendar days after the date mentioned in the paragraph hereof titled "TERM," the Tenant may elect to terminate this lease.

18. ATTORNNMENT

In the event the leased premises are sold due to any foreclosure sale, or sales, by virtue of judicial proceedings, or otherwise, this lease shall continue in full force and effect, and the Tenant agrees, upon request, to attorn to and acknowledge the foreclosure purchaser, or purchasers, at such sale of Landlord hereunder.

19. CONDEMNATION

In the event the whole or any part of the leased premises shall be condemned or taken in any manner for a public use, the Landlord, at its option, may terminate this lease, and the Landlord shall be entitled to any and all income and rent awards and any interest thereon or therein, whatsoever, which may be paid or made in connection with such public use, Tenant having no claim against the Landlord for any award or damage other than an abatement of the rent due from Tenant to Landlord after the official taking of the property through the process of condemnation. "Taking" is considered a term of art for purposes of this paragraph.

20. SEVERABILITY

If any term or provision herein or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this lease or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this lease shall be valid and enforceable to the fullest extent permitted by law.

21. TENANT'S DEFAULT

The Tenant shall be considered in default of this lease upon the happening of any of the following:

- A. Failure to pay when due the rent or any other sum required by the terms of this lease;
- B. Failure to perform any term, covenant, or condition of this lease.

In the event of default of this lease by the Tenant, and upon fourteen (14) days advance written notice by Landlord to Tenant of said default, then the Landlord, in addition to other rights or remedies that Landlord may have, shall have the immediate right to reentry with or without prior notice, and remove all persons and property from the leased premises. Such property may be removed and stored in any other place for the account of and at the expense and risk of the Tenant. Should Landlord elect to reenter, as herein provided, or should it take possession pursuant to legal proceedings, or pursuant to any notice provided for by law, it may either terminate this lease or it may from time to time, without terminating this lease, relet the leased premises or any part thereof for such term, or terms, and at such rental, or

rentals, and upon such other terms and conditions as Landlord in its sole discretion may deem advisable, with the right to make alterations and repairs of the leased premises. Rentals received by the Landlord from such subletting shall be applied; first, to the payment of any indebtedness, other than rent, due hereunder from Tenant to Landlord; second, to the payment of rent due and unpaid hereunder; third, to the payment of any cost of such reletting; fourth, to the payment of the cost of any alteration and repair of the premises; and the residue, if any, shall be held by Landlord and applied in payment of future rent as the same may become due and payable hereunder. Should such rentals received from such reletting during any month be less than required to be paid by Tenant as defined above, then Tenant shall immediately pay such deficiency to Landlord, such deficiency shall be calculated and paid monthly. No such reentry or taking possession of the leased premises by Landlord shall be construed as an election on its part to terminate this lease unless a written notice of such intention be given to Tenant or unless the termination thereof be decreed by a court of competent jurisdiction. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect to terminate this lease for such previous breach or act of default, should Landlord at any time terminate this lease for any breach or act of default, in addition to any other remedy it may have, it may recover from Tenant all damages it may occur by reason of such breach or act of default, including the cost of recovering the leased premises, legal fees. Landlord agrees, however, to grant the Tenant fourteen (14) calendar days within which to cure the event or condition which the Landlord deems to be causing the default, if such is susceptible of being cured. Such fourteen (14)-day period shall begin upon the mailing of notice by Tenant to Landlord, by ordinary mail to the address for Landlord established pursuant to Paragraph 17, herein.

22. DISCLOSURE

The Landlord hereby covenants that it has complied with Montgomery County's disclosure policy adopted pursuant to Resolution No. 88-1279, which requires anyone contracting with the Montgomery County, Ohio to disclose to Tenant any business relationship or financial interest that said contractor has with an employee of Tenant or of any other board, agency, elected official or commission of Montgomery County, Ohio, such an employee's business, or any business relationship or financial interest that a Montgomery County, Ohio elected official, board, agency or commission employee has with the contractor or in the contractor's business.

23. NON-WAIVER

- A.** Any rights, responsibilities, remedies, duties or obligations created by this lease shall be in addition to all other rights, responsibilities, remedies, duties and obligations provided for in this lease or by law and shall in no way act as a waiver or limitation of any rights, responsibilities, remedies, duties or obligations otherwise imposed or available either by law or by contract.

- B. No action or failure to act shall constitute a waiver of any right, responsibility, remedy, duty or obligation afforded under this lease or by law, nor shall any act or failure to act constitute approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

24. GOVERNING LAW

This Lease and any modifications, amendments, or other alterations shall be governed, construed and enforced under the laws of the State of Ohio.

25. HEADINGS

The use of numbered topical headings, articles, paragraphs, subparagraphs or titles in this lease are inserted for the convenience of organization and reference and are not intended to affect the interpretation or construction of this Lease.

26. ENTIRE AGREEMENT

No terms, conditions, warranties, promises or understandings of any nature whatever, expressed or implied, exist between the parties hereto, except as set forth in this Lease and any exhibit attached hereto.

27. APPROVAL

This Lease is subject to the written approval of the City of West Carrollton via Resolution and the Tenant via Resolution and to Certification by the Auditor of Montgomery County, Ohio and shall not be binding until such approval and certification.

28. AUTHORITY TO BIND PRINCIPAL

Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations and responsibilities incurred by way of this Agreement.

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IN WITNESS WHEREOF the parties have hereunto set their hands on the ____ day of

_____, 2017.

WITNESS:

**BOARD OF COUNTY COMMISSIONERS OF
MONTGOMERY COUNTY, OHIO**

By _____
Judy Dodge

By _____
Dan Foley

By _____
Deborah A. Lieberman

OR

By _____
Joseph P. Tuss
Montgomery County Administrator

WITNESS:

CITY OF WEST CARROLLTON

By _____

APPROVED AS TO FORM:

MATHIAS H. HECK, JR.

Prosecuting Attorney for Montgomery County, Ohio

BY _____
Assistant Prosecuting Attorney

Date _____

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

I hereby certify that on this _____ day of _____, 2017, before me, a Notary Public in and for said state, appeared Judy Dodge, Dan Foley, and Deborah A. Lieberman of the Board of County Commissioners, Montgomery County, Ohio, the Owner in the foregoing instrument, who acknowledge the signing thereof to be their voluntary act and deed for the purposes therein mentioned.

Notary Public

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

I hereby certify that on this _____ day of _____, 2017, before me, a Notary Public in and for said state, appeared Joseph P. Tuss, in his capacity as Montgomery County Administrator on behalf of the Board of County Commissioners of Montgomery County, Ohio, the Owner in the foregoing instrument, who acknowledges the signing thereof to be her voluntary act and deed for the purposes therein mentioned.

Notary Public

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

I hereby certify that on this _____ day of _____, 2017, before me, a Notary Public in and for said state, appeared _____, or Representative of the City of West Carrollton who acknowledges the signing thereof to be hi/her voluntary act and deed, and that he/she is duly authorized to enter into said Lease Agreement for the purposes therein mentioned.

Notary Public