

AN ORDINANCE AUTHORIZING THE VILLAGE MANAGER TO ENTER INTO A REAL ESTATE CONTRACT TO SELL 7309, 7315, AND 7319 MONTGOMERY ROAD AND 6905 AND 6915 SILVERTON AVENUE, AND DECLARING AN EMERGENCY

WHEREAS, Article X, §13 of the Charter of the Village of Silverton (“Silverton”) provides that real property may be sold or traded "as provided by ordinance" and R.C. 715.01, and R.C. 715.21; and

WHEREAS, Pizzeria Properties, LLC (“Pizzeria”) wishes to purchase approximately 0.696 +/- acres of real property situated in Silverton, located at 7309, 7315, and 7319 Montgomery Road and 6905 and 6915 Silverton Avenue, generally described as parcels numbered 602-0008-0141-00, 602-0008-0142-00, 602-0008-0143-00, 602-0008-0144-00, and 602-0008-0145-00; and

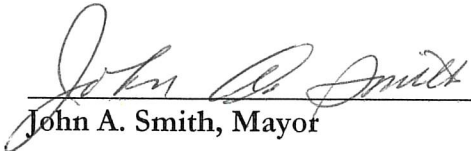
WHEREAS, Silverton is the owner of said parcels and wishes to sell said property to Pizzeria so it can construct a new pizzeria and restaurant to continue its long-standing tradition of being a high-quality family dining inside the corporate limits of the Village of Silverton under the terms of a Real Estate Conveyance Agreement ("Agreement"), including a payment from Silverton not to exceed \$127,000, and

WHEREAS, Silverton intends to retain 7301 and 7305 Montgomery Road as open space, but in the event Silverton elects to sell these retained parcels, Pizzeria wishes to have a right of first refusal to acquire the retained parcels under the terms and conditions in the Agreement.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Silverton, Ohio, that:


- SECTION I.** The Village Manager is hereby authorized to execute the Agreement in a form substantially similar to Exhibit A, an exclusive option agreement attached hereto and made a part hereof, to sell the properties located at 7309, 7315, and 7319 Montgomery Road and 6905 and 6915 Silverton Avenue.
- SECTION II.** The sale of this property will be beneficial to the Village as it will enable the redevelopment of the property owned by the Village of Silverton, return underperforming property to its highest and best use, and retain a critical corner of land at Montgomery and Plainfield for open space and community gathering.
- SECTION III.** This Ordinance is declared to be an emergency measure necessary to preserve the public peace, health, safety and welfare of the citizens of the Village of Silverton; the reason for the emergency being the immediate need for the Village to enter into a contract to sell the properties located at 7309, 7315, and 7319 Montgomery Road and 6905 and 6915 Silverton Avenue as soon as possible to Pizzeria, enabling it to commence due diligence, to secure financing, and to apply for a conditional use permit for outdoor seating prior to closing. Accordingly, this Ordinance shall take effect immediately and be in force from and after its passage and approval.

Passed this 16th day of August, 2018.




John A. Smith, Mayor

ATTEST:



Thomas M. Carroll, Village Manager

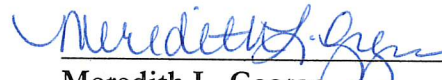
Approved as to form:



Bryan E. Pacheco, Village Solicitor

CERTIFICATION:

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 18-3593 has been duly made by posting true copies in two (2) places that are accessible by the public in said municipality, as determined by Council as follows: 1) Silverton Town Hall lobby area and Council Chambers foyer; and 2) Silverton's official website. Said posting was for a period of fifteen days commencing August 17, 2018.



Meredith L. George
Clerk of Council of Silverton, Ohio

Exhibit A

EXCLUSIVE OPTION AGREEMENT

THIS EXCLUSIVE OPTION AGREEMENT (this "Agreement") is made as of the 17th - day of August, 2018 (the "Effective Date") by and between Village of Silverton, an Ohio municipal corporation ("Seller"), and Pizzeria Properties, LLC Krimmer LTD ("Buyer").

ARTICLE I OPTION FOR PURCHASE AND SALE

1.1 Option for Purchase and Sale. Upon the terms and conditions set forth in this Agreement, Seller agrees to provide Buyer an exclusive option ("Exclusive Option") to buy all of Seller's right, title and interest in and to certain real estate commonly known as ~~7301, 7305, 7309, 7315, and 7319~~ Montgomery Road as well as 6905 and 6915 Silverton Avenue. These properties are also designated as Hamilton County Auditor's Parcel No. ~~602-0008-0139-00, 602-0008-0141-00, 602-0008-0142-00, 602-0008-0143-00, 602-0008-0144-00, and 602-0008-0145-00.~~ The Exclusive Option includes all buildings, improvements, fixtures and structures located thereon or attached thereto, together with any and all rights, privileges, easements, appurtenances, leases, licenses and rights of way pertaining to such real estate, including, without limitation, any right, title and interest of Seller in and to any and all adjacent streets, roads, public utilities, stormwater facilities and rights-of-way (the "Property").

1.2 Exclusivity. Seller agrees that for the duration of the Option Term that Seller shall not sell, convey, lease or otherwise provide any party other than the Buyer any interest in the Property without the express written permission of the Buyer, in Buyer's sole discretion. Buyer agrees to not sell, convey, transfer, assign, or otherwise extend Buyer's Exclusive Option to any third party without the express written permission of the Seller, not to be unreasonably withheld, conditioned, or delayed.

1.3 Option Term. In consideration of the Option Payment, Seller agrees that Buyer shall have the Exclusive Option from the Effective Date until ~~August 15th, 2019~~ (the "Initial Option Term"), unless extended or sooner terminated pursuant to the terms of this Agreement.

1.4 Exclusive Option Extension. In the event Buyer wishes to do so, Seller shall extend Buyer a second six-month option ("Exclusive Option Extension") commencing on or before August 16th, 2019 and ending ~~February 14, 2020~~ October 16, 2019 (the "Option Extension Term"). This Exclusive Option Extension shall be made at the sole discretion of the Buyer and all terms in this Agreement shall remain in full force and effect, provided however that Buyer shall deposit with Title Company an additional Ten Thousand United States dollars (\$10,000) (the "Additional Option Payment") on or before ~~August 15th, 2019~~ August 15th, 2019, which Additional Option Payment shall not be refunded or paid to Buyer, except in the event of a Seller default, but shall in all events be applicable to the Purchase Price at Closing, if any. "Option Term" shall mean the Initial Option Term plus the Option Extension Term, if applicable.

1.5 Exercise of Option. Buyer shall have the right, but not the obligation, to exercise the Exclusive Option granted herein by giving Seller written notice of its exercise of the Exclusive Option (the "Option Exercise Notice") any time prior to the expiration of the then current option term.

ARTICLE II

PURCHASE PRICE AND PAYMENT

2.1 Price. The total purchase price for the Property shall be one hundred and twenty seven thousand United States dollars (\$127,000) (the "Purchase Price").

2.2 Payment. The Purchase Price, subject to customary closing adjustments, shall be paid by Buyer to Seller by check or wire transfer on the Closing Date (as hereinafter defined).

2.3 Option Payment and Option. Buyer shall, upon execution of this Agreement, provide to Title Company a payment of Ten Thousand United States dollars (\$10,000) (the "Option Payment"). Said Option Payment shall be credited against the Purchase Price should Buyer close on the Property or shall be paid over to Buyer in the event of a Seller default or Seller's inability to deliver under Article V or Article VII or cure any material defect discovered during inspection under Article IV or deliver the Property in good order and condition as required by Article 6.2. If the Buyer decides not to purchase the property by executing Buyers Exclusive Option detailed in Section 1.3 or by Exclusive Option Extension detailed in Section 1.4, Title Company shall pay over to Seller and Seller shall retain the Option Payment as consideration for extending Buyer the Exclusive Option, and if applicable, the Additional Option Payment. Retaining this Option Payment and the Additional Option Payment, if applicable, shall fully satisfy Buyer's obligation to Seller in the event Buyer elects not to purchase the Property.

ARTICLE III CLOSING

3.1 Closing Date. Subject to the satisfaction of the conditions as set forth in ARTICLE IV and ARTICLE V hereof, and provided that the covenants, representations and warranties of Seller contained in this Agreement are true, complete and correct on the Closing Date (defined below), closing of the purchase and sale contemplated under this Agreement shall occur on a date and time that is acceptable to the parties, but not later than ten (10) calendar days after the expiration of the Inspection Period, referenced in Section 4.2 of this Agreement. The date provided for in this Section 3.1 is referred to throughout this Agreement as the "Closing Date", or "Closing".

3.2 Manner of Closing. The Closing shall occur in escrow on the Closing Date, with Mercantile Title Agency, Inc., an Ohio corporation ("Title Company"), serving as the closing agent.

3.3 Seller's Closing Obligations. On or before the Closing Date, Seller shall execute and deliver to the Title Company the following:

(a) A general warranty deed ("Deed") duly executed and acknowledged and in recordable and transferrable form, conveying good, marketable and insurable fee simple title to the Property, subject only to the following exceptions (hereinafter called "Permitted Exceptions"):

- (i) building and zoning laws, ordinances, and state and federal regulations;
 - (ii) easements, conditions and restrictions of record as approved by Buyer's counsel; and
 - (iii) real estate taxes and assessments not yet due and payable;
- (b) A Settlement Statement (as defined below);

(c) A standard seller's title insurance affidavit relating to the absence of bankruptcies, tax liens, judgments or other proceedings and unrecorded interests that affect or could affect the title to the Property;

(d) A reaffirmation affidavit as to the truth and accuracy of Seller's representations and warranties set forth in ARTICLE VII hereof;

(e) An assignment of leases, assigning to Buyer any leases that Buyer has elected to assume at Closing;

(f) A FIRPTA affidavit, executed by Seller, stating: (i) Seller's federal identification number, and (ii) that Seller is not a foreign person as defined in the Internal Revenue Code;

(g) Any documents required by the Title Company to allow the Title Company to furnish a title insurance policy without standard exceptions, and, at Buyer's election, title endorsements including, without limitation, access and comprehensive endorsements to an ALTA Owner's Policy Form B 2006, in the amount of the Purchase Price, insuring that Buyer is vested with marketable, transferrable and insurable fee simple title to the Property, subject only to Permitted Exceptions; and

(h) All such additional and further acts, things, deeds, instruments and documents as Title Company or counsel for Buyer may reasonably request to evidence and/or fully complete the transactions contemplated under this Agreement.

3.4 Buyer's Closing Obligations. On or before the Closing Date, Buyer shall execute (as applicable) and deliver to Title Company the following:

(a) Evidence of authority of Buyer to enter into and complete the transactions contemplated under this Agreement;

(b) The entire amount of the Purchase Price, increased or decreased by the net adjustments from or due Buyer, as shown on the Settlement Statement.

3.5 Prorations, Allocations and Adjustments. Prior to the Closing Date, the Title Company shall prepare and circulate to Buyer and Seller a settlement statement (as approved by both Buyer and Seller, the "Settlement Statement") showing the following charges, prorations and adjustments:

(i) all delinquent real estate taxes and assessments on the Property as of the Closing Date shall be paid by Seller;

(ii) real estate taxes and assessments which are a lien (but not yet due and payable) on the Property as of the Closing Date shall be prorated between Buyer and Seller as of the Closing Date based upon the most recently available tax bills;

(ii) any costs associated with Buyer's title insurance, such as title insurance premiums, shall be charged to Buyer (if such charges are to be paid at closing);

(iii) the Title Company's closing fee, not to exceed \$1,000.00 which shall be paid by Seller;

(iv) all transfer taxes and fees applicable to the transfer of title to the Property (including, but not limited to, all state, county and local municipality taxes), all recording or filing fees, charges or costs, and costs to prepare the Deed shall be paid by Seller;

(v) any unpaid utilities or other charges that may become a lien against the Property shall be prorated as of the Closing Date and applied as a credit to Buyer,

(vi) rents and other amount paid under the leases shall be prorated between Buyer and Seller as of the Closing Date; and

(vii) any other amounts and adjustments as agreed upon by the parties.

ARTICLE IV INSPECTIONS

4.1 Preliminary Documents. Seller shall, as quickly as practicable but in no event more than ten (10) calendar days after the Effective Date, provide Buyer with a copy or copies of all information in Seller's possession or readily available to Seller relating to the Property, but not heretofore delivered to Buyer, including, but not limited to, the following: copies of any leases, licenses, occupancy agreements, service contracts or any other contracts concerning the Property; any engineering, feasibility, zoning, flood plain, traffic or utility reports or studies; aerial photographs; any surveys (topographic, as-built, geological, ALTA/ACSM/NSPS and other surveys); soil tests; environmental reports (including, without limitation, any existing impact reports, "Phase I" or "Phase II" reports, or environmental site assessments concerning hazardous materials on the Property) or other materials relating to the presence or absence of hazardous materials or substances; copies of any permits, licenses, approvals or other entitlements obtained or applications therefor submitted relating to the development or use of the Property; governmental notices or other correspondence concerning the Property; copies of any notices or proceedings threatened or pending against the Property, copies of all current property tax bills; and copies of any certificates of title, commitments for title insurance, or title insurance policies covering the Property (collectively, the "Property Information").

4.2 Inspection Period. During the period commencing on the Effective Date and continuing through the Option Term (the "Inspection Period"), Buyer shall, at Buyer's cost, have the right to review the Property Information, and to conduct all inspections, investigations and verifications concerning the Property, including, without limitation, performing environmental studies, soil borings, zoning confirmation, tax and other governmental incentives, flood review, studies as to feasibility of the Property for Buyer's intended use of the Property for the development and construction of an administrative building for office, service and storage purposes, utility availability and adequacy, curb cuts and access review, cost and scope associated with construction of Buyer's renovations and other improvements, availability of financing satisfactory to Buyer, and any other matters Buyer deems appropriate to its decision whether or not to proceed with the purchase of the Property (collectively, "Inspections"). Any on-site inspections and testing shall be performed by companies selected by Buyer. Seller hereby gives Buyer and its agents, employees, contractors and representatives a continual right of access to the Property from and after the Effective Date for the purpose of conducting any inspections, testing, studies and investigations, and to conduct such inspections, testing, studies and investigations as Buyer deems necessary. All Inspections shall occur at reasonable times agreed upon by Seller and Buyer and shall be conducted so as not to unreasonably interfere with the Seller's business operations on the Property. Buyer will need to perform invasive testing at the Property relating to further environmental assessment of the Property (e.g., vapor intrusion testing), and Seller hereby consents to such testing provided that Buyer's environmental consultant has insurance coverage for property damage risks in the ordinary

course. Seller shall cooperate fully with Buyer in its performance of its due diligence review and Inspections.

4.3 Title and Survey. Buyer may obtain, at Buyer's sole option and cost, a standard form ALTA Owner's Title Insurance Policy (the "Title Commitment") covering the Property, and/or a survey of the Property (the "Survey"). Excepting any title documents heretofore delivered to Buyer, Seller shall deliver to Buyer copies of any prior surveys, title commitments and title insurance policies pertaining to the Property within ten (10) calendar days after the Effective Date.

Buyer shall have until the end of the Inspection Period to examine the Title Commitment and the Survey. If Buyer shall object, in writing, to any matter or condition in the Title Commitment or Survey, Seller shall have the right, but not the obligation, to commit to remove, satisfy or otherwise cure, to Buyer's satisfaction in its sole discretion, any such matter to which Buyer objects. Furthermore, at or prior to Closing, whether or not any such matter was objected to by Buyer, Seller shall have the absolute obligation to eliminate, release and discharge of record (i) any and all mortgages, deeds of trust, financing statements, mechanic's and materialmen's liens, involuntary encumbrances, including, without limitation, attachments, which by their nature may be discharged by the payment of a specific sum of money or bonding in lieu thereof, and other liens or monetary encumbrances (other than non-delinquent property taxes and assessments of record) (collectively, "Monetary Liens"), and (ii) any exceptions or encumbrances to title which are caused or created by, under or through Seller after the Effective Date without Buyer's prior written consent (collectively, "Unapproved Encumbrances"), and Seller shall deliver the Property free and clear of any such Monetary Liens and Unapproved Encumbrances (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose).

Within ten (10) calendar days after receipt of Buyer's notice of objection, Seller shall give written notice to Buyer informing Buyer of Seller's election with respect to such exceptions. If Seller fails to give written notice of election within such 10-day period, then Seller shall be deemed to have elected to cure, release or eliminate the matter(s) objected to. Seller shall have until Closing to cure or release said matter(s) in a manner satisfactory to Buyer in its sole discretion. In the event that Seller is unwilling or unable to cure or release such matters to which Buyer has objected on or prior to the date of Closing, then Buyer, at its sole election, may either (i) waive such objection(s) and proceed to Closing, or (ii) terminate this Agreement by delivering written notice to Seller ~~and receive a full refund of the Option Payment provided for in Article 2.3 of this Agreement.~~

4.4 Termination by Buyer. At any time prior to the expiration of the Inspection Period, Buyer may elect to terminate this Agreement in its sole discretion, for any reason or no reason at all, by sending written notice thereof to Seller. Upon delivery of such notice of termination, this Agreement shall terminate, and the parties hereto shall have no further rights, obligations or liabilities hereunder except to the extent that any right, obligation or liability set forth herein expressly survives termination of this Agreement. Upon the termination of this Agreement pursuant to this Section 4.4 or as provided elsewhere in this Agreement or upon the expiration of this Agreement by the terms of this Agreement, the parties shall enter into a release of this Agreement to be recorded in the records of the Recorder's Office of Hamilton County, Ohio.

ARTICLE V CONDITIONS PRECEDENT TO CLOSING

5.1 Conditions Precedent to Closing. Buyer's obligation to close under this Agreement is subject to the satisfaction of the conditions described below, in Buyer's sole discretion, on or before the Closing Date (the "Condition Date"):

(a) Marketability of Title. Delivery to Buyer of a title insurance commitment with endorsements and survey indicating that Seller can deliver fee simple title to the Property free of any title or survey objections, including, without limitation, all Monetary Liens and Unapproved Encumbrances, as referenced in ARTICLE IV hereof;

(b) Inspection of Property. Buyer shall have determined, from its Inspections of the Property, including, without limitation, feasibility, environmental, title and survey, that the Property is acceptable to Buyer in its sole and absolute discretion, within the time periods provided in Article IV hereof;

(c) Council Approval. Approval by the affirmative vote of the Council of the Village of Silverton for the purchase of the Property pursuant to this Agreement;

(d) Accuracy of Representations and Warranties. Each and every representation, warranty and covenant of Seller contained in this Agreement, including, without limitation, the representations, warranties and covenants contained in Article VII below, shall be true, complete and correct as of the date of Closing.

5.2 Waiver. Buyer may waive any of the foregoing conditions, by written notice, delivered to Seller on or before the Condition Date. If one or more of the conditions is not met by the Condition Date and Buyer does not waive such condition(s) then this Agreement shall be null and void; in which event, and neither Buyer nor Seller shall be liable for damages hereunder to the other.

ARTICLE VI CONDITION OF THE PROPERTY

6.1. Buyer agrees ~~Seller shall retain to not build a structure on~~ 7301 and 7305 Montgomery Road (Hamilton County Auditor's Parcel No. 602-0008-0139-00) ~~and retain it as an open space for the general public so as not~~ to block the view of 6906 Plainfield Road from Montgomery Road ~~looking towards the ArtsWave mural to the south~~. Seller agrees that Buyer may use this area for outdoor seating ~~should the Seller grant the Buyer a license to operate an extension of the restaurant only. It is agreed and understood by the parties that if a license to operate outdoor seating on some or all of 7305 Montgomery Road is granted, Buyer shall be permitted to provide tables with umbrellas and other approved table coverings as provided for by the Silverton Planning and Zoning Commission. Buyer shall not be permitted to install any permanent structure such as a wall or fixed covered roof higher than four feet above the sidewalk grade along Montgomery Road adjacent to 7305 Montgomery Road as of the date of this Agreement.~~

6.2. Other than the view shed agreement detailed in 6.1, from the date of this Agreement until the Closing, Seller will not, without the prior written consent of Buyer: (i) sell, transfer, convey, or encumber, or cause or permit to be sold, transferred, conveyed, or encumbered, the Property or any interest in the Property; (ii) grant, create or consent to any easement, restriction, lien, assessment, encumbrance, lease or occupancy agreement affecting the Property; or (iii) perform or permit any act or deed, which will diminish or affect Seller's rights in the Property or prevent it from fully performing its obligations under this Agreement. Prior to the Closing, and until physical possession of the Property has been delivered to Buyer, Seller will maintain the Property in good order and condition, will not permit any waste on the Property, and will not otherwise take or fail to take any action, which materially and adversely changes the condition of the Property. Seller agrees that at the Closing the Property shall be in the same condition as it is on the Effective Date, ordinary wear and tear excepted.

6.3. Should Buyer elect to purchase the Property, Seller shall remove all personal property on

the Property within thirty (30) days of notice of Closing.

ARTICLE VII REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

7.1 Representations, Warranties and Covenants of Seller. Seller warrants, represents and covenants as follows, each and every one of which shall be true on the Closing Date and shall survive the Closing Date unless specifically waived in writing by Buyer:

(a) Absence of Claims. Seller is not aware of any pending or threatened lawsuits, proceedings, or violations of law which relate in any way to the Property, and is not aware of any condition or circumstance that affects Seller's obligations or ability to perform under this Agreement.

(b) Condemnation. Seller is not aware of any pending or threatened condemnation proceedings by any federal, state or local government entity by which the Property or any portion thereof or interest therein is sought to be obtained.

(c) Status of Title. Seller is the owner in fee simple title of the Property, free and clear of any and all liens, deeds of trust, land trusts, mortgages, pledges, security interests, leases, encumbrances and easements, (except matters of public record and shown in the list of exceptions prepared by the Title Company and described in Exhibit A attached hereto).

(d) Authority. Seller is the sole owner of the fee simple interest in the Property and has all necessary lawful authority to enter into this Agreement and to sell and convey the Property to Buyer as provided in this Agreement and to carry out Seller's obligations hereunder and that the joinder of no person or entity other than Seller will be necessary to convey the Property fully and completely to Buyer on Closing.

(e) Compliance with Agreements. To the best of Seller's knowledge, and except for matters of public record, the consummation of the transaction herein contemplated and the compliance with the terms of this Agreement will not conflict with (with or without notice and/or the passage of time) or result in a breach of any of the terms or provisions of or constitute a default under (i) any indenture, mortgage, loan agreement or instrument to which Seller is a party or by which Seller or the Property is bound, (ii) any applicable governmental law or regulation, or (iii) any judgment, order or decree of any court having jurisdiction over Seller or the Property. Notwithstanding the foregoing, Seller expressly represents and Buyer agrees and acknowledges that Seller must obtain the consent and compromise of the lien creditors referenced in Exhibit A, to enable Seller to transfer title at Closing free and clear of liens. Seller's failure to do so will not result in a default of this Agreement by Seller but rather will render this Agreement null and void, if Seller is unable to transfer title free and clear of liens at Closing.

(f) Assessments for Improvements. Seller is not aware of any public or private improvements, including without limitation, water, sewer, stormwater, sidewalk, street, alley or curbing, affecting the Property which have been commenced and completed and for which an assessment or other fee may be levied.

(g) Economic Obligations. Seller is not aware of any economic obligations or liabilities relating to the Property including, but not limited to, tax increment financing or other public or private improvement assessments or special assessments, other than real estate tax

obligations, and an agreement by Seller to remit \$27,000 to the Greater Cincinnati Redevelopment Authority upon sale of the Property.

(h) Compliance with Law. To Seller's knowledge, Seller's ownership and use of the Property complies with all applicable federal, state, and local laws, including environmental laws.

(i) No Foreign Ownership. Neither Seller nor any person or entity having any interest in Seller is a "foreign person; and, on the Closing Date, Seller will provide Buyer with a "non-foreign affidavit" in form reasonably acceptable to Buyer's counsel, all within the meaning of the Foreign Investment in Real Property Tax act as codified in Section 1445 of the Internal Revenue Code of 1954, as amended.

(j) Rights of Tenants. At Closing, the Property shall be delivered to Buyer free and clear of all possessory and occupancy rights, and the Property is not subject to any rights of possession or other tenancies, except those set forth in Exhibit A attached hereto.

(k) Utilities. Water, sewer, electric, gas, telephone and all other utility lines are connected to the Property and of sufficient capacity to serve the Seller's current use of the Property.

(l) Access. The Property has direct access to the public roadway known as Montgomery Road.

(m) OFAC Requirements. To Seller's knowledge, Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) (the "Order") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("OFAC") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "Orders"); to Seller's knowledge, neither Seller nor any member, stockholder, partner or beneficial owner of Seller (i) is listed on the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "Lists"), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders, (iii) is owned or controlled by, nor acts for or on behalf of, any person or entity on the Lists or any other person or entity who has been determined by competent authority to be subject to the prohibitions contained in the Orders, or (iv) shall transfer or permit the transfer of any interest in Seller or any beneficial owner in Seller to any person or entity who is, or any of whose beneficial owners are, listed on the Lists. Seller hereby covenants and agrees that if Seller obtains knowledge that Seller or any of its partners or beneficial owners becomes listed on the Lists or is indicted, arraigned, or custodially detained on charges involving money laundering or predicate crimes to money laundering, Seller shall immediately notify Buyer in writing, and in such event, Buyer shall have the right to terminate this Agreement without penalty or liability to Buyer immediately upon delivery of written notice thereof to Seller, in which event the parties shall have no further obligation to one another under this Agreement except for the obligations that expressly survive termination of this Agreement.

(n) No Bankruptcy. Seller has not (A) made a general assignment for the benefit of creditors, (B) filed any voluntary petition in bankruptcy or suffered the filing of any involuntary petition by Seller's creditors, (C) suffered the appointment of a receiver to take possession of all,

or substantially all, of Seller's assets, (D) suffered the attachment or other judicial seizure of all, or substantially all, of Seller's assets, (E) admitted in writing its inability to pay its debts as they come due, or (F) except as disclosed above, made an offer of settlement, extension or composition to its creditors generally.

(o) No Plan Assets. To Seller's knowledge, no part of the Property is considered "plan assets" within the meaning of Department of Labor Regulation 29 C.F.R. Section 2510.3-101 or Section 401 of the Employee Retirement Income Security Act of 1974, as amended.

(p) Storage Tanks. To Seller's knowledge, there are no other above ground tanks or any below ground storage tanks on the Property.

All representations and covenants of Seller contained in this Agreement shall be true on the Closing Date and shall survive the Closing Date and the delivery of the Deed provided for herein as well as any investigation made by or on behalf of Buyer.

ARTICLE VIII
RIGHT OF FIRST REFUSAL FOR 7301 AND 7305 MONTGOMERY

8.1 Property Retained by Seller. Seller shall retain properties ("Retained Properties") generally referred to as 7301 and 7305 Montgomery Road, having been designated as Hamilton County Auditor's Parcel No 602-0008-0139-00. Seller shall use the retained property described above as open space and green space, open and free to the public. Seller and Buyer agree that some or all of the property known as 7305 Montgomery Road may be used by the Buyer for an outdoor seating area if licensed by Seller and approved by the Silverton Planning Commission.

8.2 Right of First Refusal. In the event that Seller elects to sell the Retained Properties to another party, Buyer shall have the right to purchase the Retained Properties for Ten Thousand Dollars (\$10,000). Seller shall provide Buyer with notice of its intent to sell the Retained Properties before it is listed for sale or a contract to sell the Retained Properties is entered into with a third party. Buyer shall have 30 days from the notice of Seller's intent to sell to notify Buyer of its intent to exercise the Right of First Refusal. Buyer shall have 30 days from notifying Seller of its intent to exercise its Right of First Refusal to close on the Retained Properties. If Buyer fails to act within the 30 days from notice to Seller of Buyer's intent to purchase the Retained Properties, then Buyer's right to purchase the Retained Properties shall expire/lapse.

8.3 Term of Right of First Refusal. Buyer shall have the Right of First Refusal on the Retained Properties until January 1, 2050, after which time Buyer's Right of First Refusal shall be terminated.

ARTICLE IX
MISCELLANEOUS

~~8.1~~ 9.1 Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered to the receiving party at the address below by: (i) personal delivery (including by means of professional messenger service); (ii) nationally recognized overnight courier; (iii) registered or certified mail, postage prepaid, return receipt requested; or (iv) facsimile transmission, electronic mail, or electronic transmission of a PDF document, and shall be deemed received upon the date of receipt (or refusal to accept delivery) thereof. Notice of change of address shall be given by written notice in the manner detailed in this Section.

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To Seller: Fritz Krimmer
6918 Plainfield Road
Cincinnati, Ohio 45208

To Buyer: Village of Silverton
Attn: Tom Carroll
6860 Plainfield Road
Silverton, Ohio 45236

With a copy to:

Richard B. Tranter
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

9.28.2 Memorandum of Option. Within five (5) business days of the Effective Date, the parties shall execute and deliver a memorandum of option in the form attached hereto as Exhibit B, and such memorandum shall be recorded in the official real estate records of Hamilton County, Ohio.

9.38.3 Successors and Assigns. The terms, conditions and covenants of this Agreement shall extend to, be binding upon and inure to the benefit of the successors, heirs and assigns of the parties hereto.

9.48.4 Specific Performance. If Seller defaults in the performance of its obligations under this Agreement, Buyer may avail itself of all remedies under this Agreement, at law or in equity including, but not limited to, specific performance.

8.59.5 Entire Agreement. This ~~Agreement instrument~~ contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought.

9.68.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.

~~9.7 No Third-Party Beneficiaries. Except as expressly provided herein, this Agreement is intended to confer rights and benefits only on the Parties and is not intended to confer any right or benefit upon any third parties or other persons. No person other than the Parties shall have any enforceable right under this Agreement. All rights of action for any breach of this Agreement are hereby reserved to the Parties.~~

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~~9.8. Governing Law. This Agreement shall be governed by Ohio law.~~

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*Remainder of page left blank.
Signature page follows.*

IN WITNESS WHEREOF, the parties hereto have executed this instrument to be effective as of the day and year first above written.

SELLER:

Village of Silverton,
an Ohio municipal corporation

By: _____
Name: Thomas M. Carroll
Its: Manager

BUYER:

Pizzeria Properties, LLC

By: _____
Its: _____ Krimmer LTD

Exhibit A

Exceptions to Title

(To be provided by Buyer at Buyer's Expense)

Exhibit B

Memorandum of Option

[Attached]

MEMORANDUM OF OPTION TO PURCHASE

Hamilton County, Ohio ~~7301, 7305~~, 7309, 7315, and 7319 Montgomery Road and 6905 and 6915 Silverton Avenue.

Hamilton County Auditor's Parcel No. ~~602-0008-0139-00~~, 602-0008-0141-00, 602-0008-0142-00, 602-0008-0143-00, 602-0008-0144-00, and 602-0008-0145-00.

This **MEMORANDUM OF OPTION TO PURCHASE** ("Memorandum") is made this ___ day of _____, 2018, by and between **VILLAGE OF SILVERTON**, an Ohio municipal corporation ("**Buyer**"), and **KRIMMER LTD** (collectively, "**Seller**") for recording purposes. Buyer and Seller execute this Memorandum to provide notice of the following:

1. **Names and Addresses of Parties.**

To Buyer: Fritz Krimmer
6918 Plainfield Road
Cincinnati, Ohio 45208

To Seller: Village of Silverton
Attn: Tom Carroll
6860 Plainfield Road
Silverton, Ohio 45236

With a copy to:

Richard B. Tranter
Dinsmore & Shohl LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

2. **Description of Property Affected.** The property subject to the option to purchase is legally described on the attached Exhibit A (the "**Property**").

3. **Prior Instrument References.** The deed conveying the Property to Seller was dated _____, and recorded in Deed Book _____, Page _____ of the records of the Hamilton County, Ohio Recorder's Office.

4. **Option to Purchase.** Seller has granted Buyer an option to purchase the Property consistent with the terms and conditions of an unrecorded agreement and reference is made to the full text of that instrument for a complete statement of all terms and conditions.

5. **Termination.** Buyer's option to purchase will terminate on the earlier of the following: (i) when title is transferred to Buyer, (ii) when a release is recorded in the records of Hamilton County, Ohio, or (iii) on the date set forth in the unrecorded agreement, in accordance with its terms.

[SIGNATURES ON FOLLOWING PAGES]

SIGNATURE PAGE FOR BUYER

BUYER has executed this Memorandum to be effective as of the ____ day of _____, 2018.

By _____
FRITZ KRIMMER

STATE OF _____)
)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2018 by **FRITZ KRIMMER** as his free act and deed.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Exhibit A

LEGAL DESCRIPTION