

RESOLUTION NO. 27-19
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serv ON THE
25th DAY OF April, 2019.

RESOLUTION AUTHORIZING AND DIRECTING THE CITY MANAGER TO TAKE ALL STEPS AND EXECUTE ALL DOCUMENTS NECESSARY IN ORDER TO AFFECT THE PURCHASE AND SALE AGREEMENT OF REAL ESTATE WITH CORNERSTONE DEVELOPERS LTD FOR PROPERTY LOCATED AT THE CORNERSTONE PROJECT COMMONLY KNOWN AS THE PARK CONSISTING OF 20.52 ACRES MORE OR LESS IN GREENE COUNTY, OHIO.

WHEREAS, Council has determined that it would be in the best interest of its citizens to purchase property located in the City of Centerville, Greene County, Ohio, amount to 20.52 acres, more or less, commonly known as the Park property from Cornerstone Developers, LTD, (“Cornerstone”) for the purpose of future development of a Park and other municipal services (the “Property”); and

WHEREAS, the City initiated negotiations with Cornerstone for the purchase of the Property; and

WHEREAS, Cornerstone has agreed to accept the City’s offer of compensation and terms for purchase of the Property; and

WHEREAS, the City of Centerville has negotiated the purchase of this Property from the Cornerstone upon terms acceptable to the City; and

WHEREAS, Council has the power to enter into such Real Property Purchase Agreement by virtue of its Charter and the provisions of Article VIII, Section 16 and Article XVIII, Section 3 of the Ohio Constitution.

NOW THEREFORE, BE IT RESOLVED:

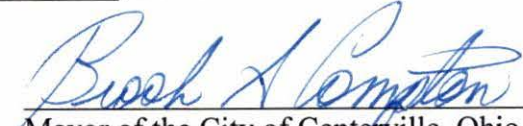
Section 1:

That the City Manager is hereby authorized to execute a contract with Cornerstone Developers, Ltd., for the purchase of the Property for \$1,472,108 on terms and conditions substantially similar to the Purchase and Sale Agreement. A copy of the Purchase and Sale Agreement of Real Estate is attached and marked Exhibit “A” and incorporated herein.

Section 2: That the City Manager is hereby authorized and directed to do any and everything necessary to carry out the terms of said Agreement.


Section 3: This Resolution shall take affect at the earliest date allowed by law.

PASSED THIS 25th day of April, 2019.



Mayor of the City of Centerville, Ohio

ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Resolution No. 27-19, passed by the Council of the City of Centerville, Ohio on the 25th day of April, 2019.



Clerk of the Council

Approved as to form, consistency
with the Charter and Constitutional Provisions.
Department of Law
Scott A. Liberman, Municipal Attorney
Municipal Attorney

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is made as of the ___ day of April, 2019 between **CORNERSTONE DEVELOPERS LTD.**, an Ohio limited liability company ("**Seller**") and **THE CITY OF CENTERVILLE, OHIO**, an Ohio municipal corporation ("**Buyer**").

1. **Sale of Property.** Seller agrees to sell and Buyer agrees to purchase, subject to the terms and conditions of this Agreement, certain property approximately 20.52 acres as shown on the Site Plan, attached hereto as Exhibit A, together with all improvements thereon (existing or to be constructed), all appurtenant rights of Seller including, without limitation, rights in any adjacent streets, roads, alleys and right-of-ways and such other rights as may be specified in this Agreement (collectively the "**Property**").

2. **Purchase Price.** The purchase price for the Property is One Million, Four Hundred Seventy-Two Thousand, One Hundred Eight and No/100 Dollars (\$1,472,108.00), subject to adjustment based on appraisal obtained by Buyer at Seller's cost and approved by Buyer (such approval not to be unreasonably withheld, conditioned or delayed) (the "**Purchase Price**"), consisting of (a) \$1,000,000.00 to be funded by a Clean Ohio Grant as hereinafter provided and (b) a donation by Seller to Buyer as to the value of the Property in excess of \$1,000,000.00, the parties acknowledging that this is intended as a "bargain sale" and the donated portion of the Purchase Price is intended to satisfy any "local match" obligation Buyer may have with respect to the Clean Ohio Grant. Subject to the adjustments and credits provided in this Agreement, the Purchase Price shall be paid at the Closing.

3. **Effective Date.** The "**Effective Date**" of this Agreement shall be the date when the last one of the Buyer and Seller executes this Agreement.

4. **Buyer's Contingencies.** Buyer's obligations under this Agreement are subject to the satisfaction of the following contingencies by the dates indicated:

A. **Inspections.** Buyer shall have until 5:00 p.m. eastern time on the day that is sixty days (60) days after the Clean Ohio Grant Date (the "**Inspection Period**") to perform studies and inspections to determine if the Property is suitable for its proposed acquisition and development as a public park (including, without limitation, environmental reports, soil tests, site plans, and architectural drawings). Seller shall be given advance notice of the times when inspectors will be present on the Property, and shall have the opportunity to have a representative present during the inspections. Upon request by Seller, Buyer shall provide a copy of all inspection reports to Seller. Buyer agrees (i) to restore the Property substantially to its original condition after completion of such tests, (ii) to accept responsibility for any damages or liabilities arising from injuries or property damage caused by activities of Buyer or its representatives in pursuing the activities permitted under this paragraph and (iii) that no liens shall be permitted to be attached to the Property as a result of any such activities. Seller also grants Buyer and or Buyer's representatives the right to enter on the Property on the same terms and conditions up to and including the Closing of this transaction. The obligations in this paragraph shall survive the expiration or termination of this Agreement (notwithstanding anything to the contrary in this Agreement). Except as otherwise specifically provided in this Agreement, Seller has made no representations or warranties to Buyer concerning the Property, and Buyer will be relying upon its own inspections in regard to the condition and state of repair of the Property and agrees to take the Property in its present condition, "as is," as of the date of the Closing.

B. **Title Commitment and Survey.** Within 30 days after the Clean Ohio Grant Date, Buyer shall, at Seller's expense, order a title commitment from Chicago Title Insurance Company (or a national title insurance company selected by Buyer) (the "**Title Company**") and obtain a copy of all documents that constitute exceptions to the title commitment. Buyer shall give Seller notice at least 15 days before the last day of the Inspection Period of any condition of title that is not satisfactory, in Buyer's sole discretion. Buyer also shall have until the end of the Inspection Period to notify Seller of any unsatisfactory survey matters. If such notice is given, Seller may elect to undertake (without obligation to

do so), at its expense, to resolve such matters to Buyer's satisfaction; provided, however, that Seller shall be obligated to release the Property from any mortgage liens (except for the TIF Declaration hereinafter described) and those releases may be provided at Closing. If Seller is unable or unwilling to resolve such matters within 15 days after Buyer's notice, then Buyer may, at Buyer's sole option, either (1) accept title subject to the objections raised by Buyer and such accepted objections (along with any matters to which Buyer did not object) become Permitted Exceptions ("**Permitted Exceptions**") without any adjustment in the Purchase Price, or (2) rescind this Agreement, whereupon the parties shall be released from all further obligations under this Agreement.

Seller, at its expense, shall prepare and obtain the necessary governmental approvals of a plat establishing the Property as a separate parcel of real estate (the "**Plat**"). Seller, at its expense, shall provide a current boundary survey of the Property prepared by a duly licensed land surveyor. In the event the survey (or any update prior to closing) shows any encroachments relating to the Property, or any easement, or other matters which would, in Buyer's opinion, interfere with Buyer's intended use of the Property, then such matter shall be treated in the same manner as a title defect under the procedure set forth above.

Without limiting Buyer's right to review all title matters and issue objections to matters that are not satisfactory to Buyer (in which case Buyer's election under (1) or (2) above will apply), Seller has advised Buyer that the Property will be conveyed subject to the following:

(1) The Property is part of a TIF initiated by the City of Centerville for the purpose of funding infrastructure improvements on or benefitting the Property and the surrounding development. The TIF requires payments in lieu of real estate taxes for the increased value added by the improvements to the Property. The obligation to make payments in lieu of taxes is secured by a Tax Increment Financing Declaration of Covenants and Mortgage in favor of the City of Centerville recorded in Volume 3520, Page 491, Greene County Official Records, as amended (the "**TIF Declaration**"). The TIF Declaration also secures an obligation to make minimum service payments on the bonds issued in connection with the TIF indebtedness (the "**Minimum Service Payment Guaranty**").

(2) The Property may be subject to an existing sewer line special assessment in favor of the Greene County Commissioners in the amount of approximately \$860.00 per acre per year (total of \$17,647.20 per year based upon the acreage of the Property).

(3) The Property is subject to the terms of the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Cornerstone of Centerville Owners Association, Inc. recorded in Volume 3520, page 408, Greene County Official Records, as amended by First Supplement thereto and Second Supplement thereto (the "**Master Declaration**"). The Master Declaration includes the obligation to share in certain common expenses charged to the various parcels in the Cornerstone of Centerville development, and is administered by the Cornerstone of Centerville Owners Association, Inc. (the "**Master Association**"). The park on the Property is intended to constitute the "Park" under the Master Declaration, the expenses of which will be Park Expenses under the terms thereof, and as such the Property will not be considered a Parcel that is subject to the payment of assessments under the Master Declaration, but rather will be supported by the Owners through the assessment of Park Expenses in accordance with the Master Declaration.

(4) Various owners and occupants of the premises at the Cornerstone development have "exclusive" rights in the form of restrictive covenants that will apply to the Property. See Exhibit B.

C. Appraisal. Seller shall provide Buyer a copy of the Appraisal at Seller's expense. By no later than the expiration of the Inspection Period, Buyer shall have approved the appraisal establishing the value of the Property in an amount satisfactory to Buyer and Seller.

D. Clean Ohio Grant. Buyer shall have a period of one hundred and twenty (120) days after the Effective Date (the "**Grant Contingency Period**") to receive approval of a Clean Ohio Grant

(the “**Clean Ohio Grant**”) to cover 75% of the eligible costs relating to the acquisition of the Property, such eligible costs estimated at \$1,472,108.00, which represents the appraised value of the Property. The maximum amount of the Clean Ohio Grant is \$1,000,000, and this Agreement is conditioned upon approval of a grant in the maximum amount. The approval date of the Clean Ohio Grant shall be the “**Clean Ohio Grant Date**” for purposes of this Agreement. Funding of the Clean Ohio Grant will be a condition to Closing as hereinafter provided. Seller agrees that the Clean Ohio Grant funds will be deposited in escrow as security for Seller’s obligation to fund park improvements on the Property as per separate agreements with Buyer regarding the Cornerstone development (the “**Park Improvements**”). Seller’s obligations are not limited by the amount of the escrow funds, and the escrow shall include a guarantee of completion of the Park Improvements by Seller.

E. Centerville Approvals. By no later than the expiration of the Grant Contingency Period, Seller shall have (1) entered into an amendment to its Development Agreement with the City of Centerville addressing the ownership and funding of the Property in the manner contemplated by this Agreement, and will include Seller’s establishment of a reserve for maintenance of the Park Improvements in the amount of \$250,000.00 (which may be taken from the escrow funds if the escrow funds are sufficient); and the park Property shall be within the property lines subject to the approval in the Final Development Plan., (2) obtained approval by the City of Centerville of the Final Development Plan that pertains to the Property and the proposed park thereon to permit the development contemplated by the Park Improvements, (3) entered into an amendment to the Memorandum of Understanding as to Phase IV between Seller and the City of Centerville dated February 8, 2018, to extend the timeline for when park construction must begin, and (4) obtain an amendment to the Final Development Plan for Phase III (items (1)-(4)), collectively, the “**Centerville Approvals**”).

F. Park Improvements. Seller is responsible for financing and construction of all Park Improvements subject to the right to apply escrow funds to such purpose. By no later than the expiration of the Grant Contingency Period, Buyer shall have approved the plans for the Park Improvements and the terms and conditions of a construction manager at risk agreement with Seller or an affiliate of Seller for the construction of the Park Improvements, which will include a provision that the City of Centerville may hire or contract with a third party inspector to monitor or provide oversight. The cost for such third party will be Seller’s expense. The construction manager at risk agreement shall be in a form and on terms similar to other construction manager at risk agreements entered into by Seller with the City of Centerville in connection with the Cornerstone of Centerville project, but with this additional requirement for a third party inspector.

G. Detention Area Easement. By no later than the expiration of the Grant Contingency Period, Buyer shall have approved proposed easements to be established on the detention areas located on the Property (the “**Detention Easements**”) under which the Master Association will be granted the right and obligation to maintain the detention areas and will assume or retain responsibility for all applicable costs of maintenance, including dredging. The Master Association shall establish a reserve fund and a plan for funding the reserve fund based on anticipated future needs in an amount acceptable to Buyer for the purposes of future maintenance (the “**Maintenance Reserve Fund**”).

H. Escrow Agreement. By no later than the date of Closing, Buyer shall have approved the terms and conditions of an escrow agreement (the “**Park Escrow Agreement**”) as described in Paragraph 4.D.

I. New Community Authority. Following the Clean Ohio Grant Date, Seller shall file a petition with the City of Centerville to establish a new community authority (“**NCA**”), such that the properties included in the petition will be assessed at the rate of \$750.00 per acre per year to be applied toward the cost of maintaining and operating the park on the Property. The properties to be included in the NCA are more fully described on the draft petition Seller has provided to Buyer and for purposes of payment exclude the Property. Following filing of the petition, Seller will work diligently with the City of Centerville to establish the NCA. The park on the Property will be identified as a community facility under the NCA, and the NCA will apply the assessment funds it receives to pay or reimburse Buyer for the cost of maintaining and operating the park. By no later than the date of Closing under this

Agreement, Buyer and the NCA shall have entered in to a lease, park maintenance agreement or other mutually satisfactory agreement to provide for the use of the NCA funds for the park.

J. Parking Easement. Buyer shall have approved the terms of a parking easement on a 60-space area adjoining the Property, subject to the rights of Cooper's Hawk to use the parking area for valet parking.

K. Failure of Contingencies. If any of the Buyer's contingencies as set forth herein is not satisfied by the applicable date, as determined by Buyer in its sole but reasonable discretion, Buyer shall have the right to terminate this Agreement upon written notice to Seller, in which event the parties shall be released from all further obligations hereunder. Buyer agrees to make good faith, reasonable efforts to satisfy the contingencies.

5. Seller's Contingencies. Seller's obligations under this Agreement are subject to the satisfaction of the following contingencies by the dates indicated:

A. Appraisal. By no later than the expiration of the Inspection Period, Seller shall have approved the appraisal establishing the value of the Property in an amount satisfactory to Buyer and Seller.

B. Clean Ohio Grant. Buyer shall have obtained the approval of the Clean Ohio Grant no later than the expiration of the Grant Contingency Period, and the amount of the grant shall not be less than \$1,000,000 (unless Seller in its discretion elects to proceed on the basis of a lower grant amount). If Seller elects to proceed on the basis of a lower grant amount, Seller shall cover any shortfall in funds.

C. Approval of Plans and Costs. By no later than the expiration of the Grant Contingency Period, Seller shall have obtained Buyer's approval of the plans and specifications for the Park Improvements, determined that the anticipated costs are within Seller's estimate, or are otherwise acceptable to Seller, and obtained the Centerville Approvals.

D. NCA Petition. By no later than ninety (90) days after the Clean Ohio Grant Date, Seller shall have obtained all signatures necessary to file the petition for the NCA.

E. Plat. By no later than the date of Closing, Seller shall have obtained all governmental approvals necessary for the recording of the Plat.

F. Other Agreements. By no later than the date of Closing, Seller shall have approved the construction manager risk agreement relating to the Park Improvements; the Park Escrow Agreement, including Seller's guaranty of completion and future maintenance; the Detention Easement; and any necessary amendments to existing park escrow agreements.

G. Failure of Contingencies. If any of the Seller's contingencies as set forth herein is not satisfied by the applicable date, as determined by Seller in its sole but reasonable discretion, Seller shall have the right to terminate this Agreement upon written notice to Buyer, in which event the parties shall be released from all further obligations hereunder. Seller agrees in to make good faith, reasonable efforts to satisfy the contingencies.

6. Closing. This Agreement shall be closed (the "**Closing**") in the following manner.

A. Closing Date. The "**Closing Date**" shall be a date selected by Buyer to be on or before 60 days after Buyer is able to receive the actual funding of the Clean Ohio Grant. The Closing will take place at a mutually agreed upon place, or may be completed by delivery of executed closing documents by mail or overnight delivery service.

B. Closing Documents. At or prior to the Closing, Seller and Buyer shall deliver to the Escrow Agent the following items, duly executed and acknowledged where required:

(1) **Limited Warranty Deed.** Seller shall execute and deliver a statutory limited warranty deed conveying the Property to Buyer, subject to the Permitted Exceptions and with any deed restrictions required by the Clean Ohio Grant and with a restriction limiting the use of the Property to public park purposes.

(2) **Foreign Person Tax Withholding.** Seller shall provide documentation or information required for compliance with Section 1445 of the Internal Revenue Code.

(3) **Plat.** Seller will file the Plat establishing the Property as a separate parcel of real estate.

(4) **Detention Easement.** Seller will sign and record the Detention Easement in the form agreed upon by the parties.

(5) **Park Escrow Agreement.** Seller and Buyer shall enter into the Park Escrow Agreement into which the Clean Ohio Grant park acquisition funds will be deposited at Closing. The Park Escrow Agreement will also include Seller's guarantee of completion.

(6) **Construction Manager At Risk Agreement.** Buyer shall enter into a construction manager at risk agreement with Seller or an affiliate of Seller for the construction of the Park Improvements.

(7) **NCA Agreement.** Buyer and the NCA shall enter into a lease, park maintenance agreement or similar arrangement that allows the funds generated by the NCA to be used for the maintenance of the park on the Property.

(8) **Additional Documents.** The parties shall provide such additional documents as might be reasonably required by the Buyer or the Title Company to consummate the sale of the Property and convey clear title to the Buyer, including, but not limited to, a settlement statement, conveyance fee statement, and a Seller's affidavit in favor of the Title Company.

C. **Costs.** Seller will pay the costs of Seller's counsel, preparation of the Plat, costs of the plans and specifications for the Park Improvements, preparation of the deed, transfer taxes for the conveyance, and one half of the escrow or closing fees. Buyer will pay the cost of Buyer's counsel, a costs of an owner's policy of title insurance and other title examination and commitment charges.

D. **Tax Proration.** All taxes and assessments payable for the year of Closing will be prorated to the Closing Date, based on the "long" proration method and the latest available tax rate and assessed valuation. Notwithstanding the foregoing, if at the time of Closing the Property is not yet established as a separate parcel of real estate with its own tax value, the proration shall be made on the percentage that the acreage of the Property bears to the acreage of the parent parcel of which it is a part (based on the land value only because there are no improvements on the Property); and the same method of proration shall be used until the Property is separately taxed as its own parcel. This obligation shall survive the Closing.

7. **Failure of Performance.** If Seller fails to perform as required under this Agreement, then Buyer may either (1) enforce specific performance of this Agreement and shall have the right to recover its reasonable attorney's fees in pursuing such action, or (2) terminate this Agreement, in which case the parties shall be released from all further liabilities hereunder. If Buyer fails to perform as required under this Agreement, then Seller, as its sole remedy, may terminate this Agreement, in which case the parties shall be released from all further obligations hereunder.

8. **Cure Period.** Notwithstanding the provisions of this Article or any other provision of this Agreement, neither party may exercise any remedy available as a result of the other party's default until it has given written notice to the defaulting party of the default, and unless the defaulting party has failed to cure the default within ten (10) days after receipt of that notice.

9. **Representations and Warranties of Seller.** Seller represents and warrants to Buyer the matters described below and shall promptly notify Buyer of any new information relevant to such matters through Closing.

A. **Authority.** The execution and delivery of this Agreement by Seller, the execution and delivery of every other document and instrument delivered pursuant to this Agreement by Seller, and the consummation of the transactions contemplated by this Agreement, have been duly authorized and validly executed and delivered by Seller, and will not (i) constitute or result in the breach of or default under any oral or written agreement to which Seller is a party or which affect the Property in any material way; (ii) constitute or result in a violation of any order, decree or injunction with respect to which Seller and/or the Property is bound; and/or (iii) violate any provision of any municipal, state or federal law, statutory or otherwise, to which Seller or the Property may be subject.

B. **Environmental.** To Seller's knowledge, no toxic, hazardous, explosive or otherwise dangerous materials, substances, pollutants or wastes, as those terms are used in the Clear Air Act, the Clear Water Act, Resource Conservation and Recovery Act of 1976, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Emergency Planning and Community Right-to-Know Act or in any other federal, state or local law environmental law (collectively "**Environmental Laws**"), petroleum products, polychlorinated biphenyls, or radioactive materials, have been or are stored, treated, disposed of, managed, generated, manufactured, produced, released, emitted or discharged on, in or under the Property, in violation of any Environmental Law.

C. **Litigation.** To Seller's knowledge, there is no pending or threatened litigation, arbitration, administrative action or examination, claim, or demand relating to the Property.

D. **Adverse Proceedings.** Except for conveyances and dedications of public rights-of-way and easements contemplated as part of the development of the Property, Seller has no knowledge of any pending or contemplated eminent domain, condemnation, or other governmental or quasi-governmental taking of any part or all of the Property.

E. **Assessments.** To Seller's knowledge, except as described in Paragraph 4, there are no public improvements that have been ordered to be made and/or that have not been previously assessed, and, to Seller's knowledge, there are no special, general or other assessments pending or affecting the Property, from any public authority.

F. **Mechanic's Liens.** Seller has paid or will pay in full all bills and invoices for labor and material of any kind arising from the ownership, operation, repair or maintenance of the Property, and there are no actual or potential claims for mechanic's liens, or other claims outstanding or available to any party in connection with the ownership, operation, repair or maintenance or leasing of the Property.

The representations of Seller set forth in this Paragraph 8 shall survive the Closing for a period of one (1) year.

10. **Miscellaneous.** It is further agreed as follows:

A. **Notices.** All notices will be in writing and served by postage prepaid certified mail, by next day delivery (such as Federal Express), or by facsimile transmission to the addresses shown below,

until notification of a change of such addresses. All such notices shall be deemed delivered on the date initiated.

For Buyer:

City of Centerville, Ohio
100 West Spring Valley Road
Centerville, Ohio 45458
Attention: City Manager

With a copy to:

Scott A Liberman, Esq.
Altick & Corwin Co., LPA
One South Main St., Suite 1590
Dayton, Ohio 45402

For Seller:

Cornerstone Developers, Ltd.
c/o The Oberer Companies
3445 Newmark Drive
Miamisburg, Ohio 45342
Attn: George R. Oberer, Jr.

With a copy to:

Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Dr., Suite 400
Dayton, Ohio 45342

B. Survival. All representations and warranties in this Agreement shall survive the Closing for a period of one (1) year. Any covenants for performance after Closing also shall survive the Closing.

C. No Waiver. Failure of either party to exercise any rights under this Agreement shall not constitute a waiver of any right, nor excuse the other party's full performance. No express waiver of any matter shall affect any other matter under this Agreement. Express waivers are only effective if in writing.

D. Brokerage. Seller and Buyer warrant and represent to each other that no brokers are involved in this transaction.

E. Binding Effect. This Agreement will inure to the benefit of and bind the respective successors and assigns of the parties. Buyer may not assign this Agreement (except to an affiliate) without Seller's consent.

F. Governing Law. This Agreement shall be governed and enforced in accordance with the law of the State of Ohio.

G. Construction of Terms. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision. Any ambiguities of this Agreement shall be construed fairly and equitably regardless of the participation of either party in drafting this Agreement. The reference in terms to gender and number shall be modified as may be appropriate.

H. Severability. In case any of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall remain in effect and the Agreement be performed in a fair and equitable manner as to any uncertainties arising from the unenforceable provisions.

I. Relationship of Parties. The parties are not partners or business associates in any form, as they are solely dealing at arm's length as a seller and buyer with respect to the Property.

J. Dates. If any date provided for in this Agreement falls on a Saturday, Sunday, or holiday, the date shall be the next business day.

K. Risk of Loss. Seller bears all risk of loss arising from the Property prior to Closing.

L. Entire Agreement. This Agreement is the entire agreement of the parties with respect to the subject matter. Except for amendments that may be agreed upon by the parties during the contingency periods under this Agreement, no existing agreements between Seller and Buyer are affected or modified hereby.

11. Signatures. This Agreement is effective as of the Effective Date which reflects the date last signed by the Buyer or Seller. This Agreement may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally scanned signatures are acceptable to evidence complete agreement.

BUYER:

CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation

By:
Its:

Date: _____

APPROVED AS TO FORM:

City Attorney

SELLER:

CORNERSTONE DEVELOPERS, LTD.,
an Ohio limited liability company

By: Oberer Construction Managers, Ltd.,
its Managing Member

By:
As Its:

Date: _____



Exhibit "A"

CORNERSTONE OF CENTERVILLE, NORTH - PUBLIC PARK
 WILMINGTON PIKE AND FEEDWIRE ROAD
 COUNTY OF GREENE, CITY OF CENTERVILLE, OHIO

PUBLIC PARK EXHIBIT
 SCALE: NOT TO SCALE

MAY 2019

The information shown on this concept plan is to illustrate general intent and shall not be construed as final as final with regard to any and all improvements shown herein.



EXHIBIT B

CORNERSTONE EXCLUSIVES

Village:

1. Cabela's: The operation of a retail store selling, displaying, leasing or operating any of the following (the "Core Products"): taxidermy products, marine products, boats, personal water craft and other water craft, trailers, live bait, fishing products and services, campers, camping products and services, hunting products and services, off-road and all-terrain vehicles, scuba gear, outdoor education seminars, firearms, ammunition, knives, hunting related optics and archery products, an archery range (so long as there is an archery range in the Cabela's Store), an indoor gun range, a fishing pond, or products and services included in Cabela's "Wildlife and Land Management" business line, defined as product, tools and services designed to build and sustain ideal wildlife habitat including, without limitation, display, storage, sale, leasing and servicing of compact tractors and attachments, food plot seed products, game cameras, game feeders, off-road and all-terrain vehicles such as ATV's and UTV's and related products and services; or the operation of a store by or under any of the following trade names (or any affiliate or variation thereof) or any trade name which prominently features one of the following trade names (or any affiliate or variation thereof): Academy Sports & Outdoors, Bass Pro Shop, Blaine's Farm & Fleet, Scheels, Dick's or Dick's Field & Stream, Gander Mountain, Overton's Field and Stream, West Marine, Sierra Trading Post, Orvis, Boater's World, Mills Fleet Farm, Fisherman's Marine and Outdoor, REI, Sportsman's Warehouse, Wholesale Sports, MC Sports, The Sports Authority, Big 5 Sporting Goods, Land's End, Eddie Bauer, L.L. Bean, Mac's Sporting Goods, Columbia Outlet, Woolrich Outlet, Mossy Oak Outlet, Sportsman Guide, Oshman's, Frontiersman or Sportmart.
 2. Chick-fil-A: A business operating as a McDonald's, Boston Market, Kentucky Fried Chicken, Popeye's, Church's, Bojangle's, Chicken Out, El Pollo Loco, Pollo Campero, Pollo Tropical, Raising Cane's, Chester's, Willy May's Chicken, Biscuitville, Saxby's Charo Chicken, or Kenny Roger's.
 3. Costco: Any business used or operated (i) as a wholesale or retail general merchandise facility which has a merchandising concept based upon a relatively limited number of stock keeping units in a large number of product categories (the "Merchandising Concept"), (ii) as a grocery store or supermarket that primarily sells food and janitorial products in bulk quantities (a "Wholesale Grocer"), (iii) to support a facility operating either under the Merchandising Concept or as a Wholesale Grocer (i.e., for parking or other necessary improvements for such a facility), (iv) for any business which operates as a warehouse club (other than a Costco Facility, as such term is defined below), (v) for any business operated under the trade names of Sam's, BJ's, Jetro, Price Smart or Smart and Final, (vi) for any business (other than a Costco Facility) similar to those operated under the trade names Costco, Sam's, BJ's, Price Smart, Jetro or Smart and Final or (vii) as a "Wal-Mart" store or "Wal Mart Supercenter" or any other store operated under the "Wal Mart" brand; provided, however, that in no event shall any of the foregoing prohibitions prohibit the Costco Parcel and any other property within the Restricted Parcel (or any property that in the future may become part of the Restrictive Parcel) utilized by Costco or any of Costco's successors, from being used for or as a Costco Wholesale warehouse club or any other facility then operated by Costco or by any successor to Costco (collectively, a "Costco Facility").
- Notwithstanding the foregoing, this restrictive covenant is not intended (and shall not be construed) to prohibit any of the following uses on the Restricted Parcel: (A) a traditional neighborhood grocery store operation similar to that by retail grocers such as Kroger; (B) a specialty retail store which sells primarily goods in a few specific product categories, such as pet food, sporting goods, office supplies, home goods, home improvements, books, toys, party supplies, craft supplies, apparel, shoes, furniture, appliances or electronics; or (C) a traditional department store, discount department store or junior department store, such as Kohl's, Target or K Mart (but specifically excluding Wal Mart).
4. MOD Pizza: A fast, casual restaurant serving pizza, either dine-in, take-out, or delivery, such as Blaze, Pieology, Pizzeria Locale, Cucinova, Pie Five, or any like fast pizza concept.

5. Kroger:

(a) A drug store or a business principally devoted to the sale of health or beauty aids, or for a pharmacy department requiring the services of a registered pharmacist. Notwithstanding the foregoing, parcels identified as "Kroger Restricted Retail" in the Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements recorded July 14, 2014, at Volume 3520, Page 408; as supplemented by a Supplement to Declaration of Covenants, Conditions, and Restrictions and Reservation of Easement dated May 12, 2015, recorded at Volume 3602, Page 208; and as further supplemented by a Second Supplement to Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements recorded March 21, 2016, at Volume 3960, Page 974, all of the records of Greene County, Ohio (collectively, the "Declaration") may contain (i) one (1) health and vitamin store (e.g., GNC or Five Star Nutrition) and one (1) beauty supply store (e.g., Sally Beauty), provided the storeroom for such use shall not exceed 2,500 square feet; and (ii) an on-site pharmacist/pharmacy in an assisted living facility providing services solely for the residents of the assisted living facility.

(b) A food store or food department, or for the sale of groceries, meats, fish, produce, dairy products, bakery products, or any of them, for off premises consumption, provided that nothing herein shall prevent any occupant from selling such products as an incidental part of its principal business so long as the total number of square feet of building area devoted to the display for the sale thereof does not exceed five percent (5%) of the total number of square feet of building area occupied by same or five hundred (500) square feet, including, in either case, one-half of the aisle space adjacent to any such display area, whichever is smaller. Notwithstanding the foregoing, (i) the Kroger Restricted Retail identified in the Declaration may be used for restaurant offering dine-in and carry-out service for ready to eat prepared foods; and (ii) the Kroger Restricted Retail identified in the Declaration may include one (1) ice cream, gelato and/or yogurt store (not to exceed one of each, each such store not to exceed 2,000 square feet).

(c) A business used for the sale of automotive fuel, including without limitation gasoline, diesel fuel, or kerosene.

6. First Watch: A restaurant that sells breakfast and/or brunch items during Tenant's hours of operation, including, but not limited to, Original Pancake House, Daybreak, Crepes Etc., LePeep, Egg & I, Good Egg, Egg Harbor, Another Broken Egg, Denny's, Perkin's, Bob Evans, IHOP, Mimi's Café or any other similar regional or local tenants.

7. Any activity that may be considered noxious or offensive by reason of odor, sound, appearance, or sight, or anything done either willfully or negligently that may be or become an annoyance or nuisance to other owners or occupants.

8. A sexually oriented business or a business that principally features sexually explicit products or drug-related paraphernalia or is otherwise prohibited by law.

9. Declaration:

(i) any mobile home park or trailer court (except that this provision shall not prohibit the temporary use of construction trailers while alterations or repairs are being made at the property in question);

(ii) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;

(iii) any living quarters or sleeping apartments (hotel use, however, being permitted);

(iv) any assembling, manufacturing, distilling (except as part of a micro-distillery or micro-brewery that would otherwise constitute a permitted use), refining, smelting, agricultural or mining operation;

(v) any establishment selling, renting or exhibiting pornographic or "adult" materials or sex toys;

(vi) any topless club, gentlemen's club or strip joint;

- (vii) any so-called "head shop" or other store selling drug paraphernalia;
- (viii) any use which is reasonably determined to be a public or private nuisance;
- (ix) any mortuary, funeral parlor, or crematorium;
- (x) any sexual massage, tattoo or body piercing parlor;
- (xi) any facility that allows gambling of any sort;
- (xii) any carnival, amusement park or circus;
- (xiii) any auto repair or body shop;
- (xiv) any flea market;
- (xv) any use which produces noise or sound that is reasonably determined to be objectionable;
- (xvi) any use which produces obnoxious odors;
- (xvii) any use which produces noxious, toxic, caustic, or corrosive fumes, fuel or gas;
- (xviii) any use which produces dust, dirt or fly ash in excessive quantities (including the storage, display or sale of explosives or fireworks);
- (xix) any use which is likely to increase the rate of any insurance coverage upon the Cabela's Property;
- (xx) any dry cleaning plant;
- (xxi) any bar or establishment in which more than forty percent (40%) of sales are derived from the sale of alcoholic beverages;
- (xxii) any car dealership;
- (xxiii) any pawn shop, payday finance or payday lending company;
- (xxiv) any gas or automobile service station other than the Costco gas station and any Kroger-gas station.

10. Bagger Dave's: A restaurant whose Principal Business is the sale of hamburgers and french fries. "Principal Business" shall mean any business, either (i) generating fifty percent (50%) or more of its gross sales from the sale of hamburgers and french fries, or (ii) devoting more than thirty-five percent (35%) of its menu items to hamburgers and french fries.

11. Wright Patt Credit Union: The operation of credit union or branch banking facility.

12. Panda Express: For the sale of Asian Food or for a "Noodles & Company", or (ii) for the sale of food served in a buffet format (i.e., self-service of pre-prepared items, as opposed to the selection of ingredients as in a Chipotle, Piada, or the like). The term "Asian Food" includes, without limitation, Chinese, Japanese (including sushi), Vietnamese, Thai, Hawaiian, Mongolian, Cajun, Indian and Korean foods, food cooked in a wok, food generally recognized as Chinese food, soy sauce-based food, and food in a buffet format. The foregoing shall not apply to restaurants that are larger than 5,000 square feet that provide full table service and alcoholic beverages. Incidental sales of Asian Food (less than 10% of a restaurant's gross sales) are permitted.

13. Happy Meadows: Declarant, its successors and assigns, shall not enter into any agreement with any medical network or medical system, including any hospital or medical practice group associated therewith, granting naming rights to or advertising rights either (a) on the park to be located on Park Parcels or (b) on any future

common areas or common elements established on the Restricted Parcels (as defined in Happy Meadows Declaration of Restrictions), without the prior written consent of Happy Meadows, which may be granted or denied in Happy Meadows sole discretion. This restriction on the Restricted Parcels also shall not be construed to prevent the sale or lease of the Restricted Parcels for medical uses, and any such users shall have the right to establish signage/advertising on their properties in accordance with applicable law; rather, the restriction contemplated hereby shall apply to common areas, community facilities and the like established within the Restricted Parcels.