

RESOLUTION NO. 88-21
CITY OF CENTERVILLE, OHIO

4th SPONSORED BY COUNCILMEMBER JoAnne Rau ON THE
DAY OF October, 2021.

**RESOLUTION AUTHORIZING AND DIRECTING THE
CITY MANAGER TO ENTER INTO A SECOND
AMENDMENT TO AGREEMENTS WITH CORNERSTONE
DEVELOPERS, LTD. FOR PARK IMPROVEMENTS IN
THE CORNERSTONE PARK.**

WHEREAS, Cornerstone Developers, LTD. (“Cornerstone”) is the current owner of certain real property known as Lot #5, Cornerstone Section Seven B Record Plan, consisting of approximately 9.624 acres of land in Greene County and commonly known as the Cornerstone Park Active Area and additional land consisting of approximately 11.499 acres known as Lot #4 on the Plat and Lot #1 of Cornerstone Section Seven A Record Plan and commonly known as the Cornerstone Park Passive Area (all land collectively referred to as the “Park Area”); and

WHEREAS, pursuant to a Development Agreement between Cornerstone and the City dated November 14, 2013, as amended, as well as the zoning approvals obtained by Cornerstone in connection with the development of the overall site, Cornerstone committed to make private improvements to the Park Area (the “Project”); and

WHEREAS, pursuant to a Donation Agreement and a Right of Entry Agreement between Cornerstone and the City both dated August 26, 2019 (the "Agreements"), Cornerstone agreed to complete construction of the Park Area Improvements on or before November 30, 2020; and

WHEREAS, City Council adopted Resolution No. 79-20, which extended the time for Cornerstone to complete construction of the Park Area Improvements on or before November 30, 2021; and

WHEREAS, Cornerstone has determined that it will require additional time to complete the Project (referred to as the Park Improvements in the Right of Entry Agreement), and has requested an extension of time from the City up to August 31, 2022; and

WHEREAS, the City is willing to grant this extension; and

WHEREAS, Cornerstone desires to modify the requirements regarding third party inspections of the Project; and

WHEREAS, the City is willing to grant modifications of the third party inspection process.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE
HEREBY RESOLVES:

Section 1: That the City Manager is hereby authorized to execute the Amendment to Agreements with Cornerstone Developers, Ltd., to extend the time for construction of Park Improvements in both the Active and Passive Parks as set forth in both the Donation and Right of Entry Agreements. A copy of the Amendment to Agreements 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 4th day of October, 2021.



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. 88-21, passed by the Council of the City of Centerville, Ohio on the 4th day of October, 2021.



Clerk of the Council

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

SECOND AMENDMENT TO AGREEMENTS

This Second Amendment to Agreements (this "Amendment") is made as of the effective date described below, between CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company ("Cornerstone"), whose address is 3445 Newmark Drive, Miamisburg, Ohio 45342, and CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), whose address is 100 W. Spring Valley Road, Centerville, Ohio 45458, under the following circumstances:

A. Pursuant to a Donation Agreement entered into by Cornerstone and the City dated December 26, 2019, as amended by Amendment to Agreements dated December 7, 2020 (the "Donation Agreement"), Cornerstone agreed to construct on the real property known as Lot No. 5, Cornerstone Section Seven B Record Plan (the "Property"), certain improvements consisting of park/recreation features and associated infrastructure (the "Project"). The Donation Agreement requires that, subject to delays beyond Cornerstone's reasonable control, Cornerstone shall the cause the Project to be substantially completed on or before November 30, 2021.

B. Contemporaneously with the Donation Agreement, Cornerstone and the City entered into a Right of Entry Agreement, as amended by Amendment to Agreements dated December 7, 2020 (the "Right of Entry Agreement") which also calls for completion of the Park Improvements (as defined therein) on or before November 30, 2021.

C. Cornerstone has determined that it will require additional time to complete the Project (referred to as the Park Improvements in the Right of Entry Agreement), and has requested an extension of time from the City. The City is willing to grant this extension.

NOW, THEREFORE, for valuable consideration paid, the receipt of sufficiency of which are hereby acknowledged, Cornerstone and the City agree as follows:

1. Section 10(i) of the Donation Agreement is hereby amended to read as follows:

"(i) Subject to delays beyond Cornerstone's reasonable control, Cornerstone shall cause the Project to be substantially completed on or before August 31, 2022."

2. Paragraph 4(i) of the Right of Entry Agreement is hereby amended to read as follows:

"(i) Subject to delays beyond Cornerstone's reasonable control, Cornerstone shall cause the Park Improvements to be substantially completed on or before August 31, 2022."

3. Section 10(g) of the Donation Agreement is hereby amended to read as follows:

"(g) The City may at any time inspect the progress of work being performed by Cornerstone and its contractors. The City will charge Cornerstone \$70.00 per hour (all inclusive, with no overtime charges, vehicle charges or other expenses or added amounts) for inspections by the City inspector. The City will

track the inspector's time and charge a maximum of 40 hours of inspection time per month during construction. To the extent that third party inspection is required (for example, for inspections such as compaction and concrete testing services that the City inspector cannot perform), Cornerstone also will pay those costs as necessary."

4. Section 4(g) of the Right of Entry Agreement is hereby amended to read as follows:

"(g) The City may at any time inspect the progress of work being performed by Cornerstone and its contractors. The City will charge Cornerstone \$70.00 per hour (all inclusive, with no overtime charges, vehicle charges or other expenses or added amounts) for inspections by the City inspector. The City will track the inspector's time and charge a maximum of 40 hours of inspection time per month during construction. To the extent that third party inspection is required (for example, for inspections such as compaction and concrete testing services that the City inspector cannot perform), Cornerstone also will pay those costs as necessary."

5. Except as amended hereby, the Donation Agreement and the Right of Entry Agreement are ratified and confirmed and remain in full force and effect.

6. This Amendment is effective as of the date last signed by the City or Cornerstone. This Amendment may be signed in several counterparts and, together, shall constitute one document. Facsimile copies of signatures or digitally signed signatures (including scanned signatures attached to an email) shall be acceptable to evidence complete agreement.

THE CITY:

CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

By: _____
Wayne S. Davis, City Manager

Date: _____

CORNERSTONE:

CORNERSTONE DEVELOPERS, LTD.,
an Ohio limited liability company

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

By: _____
George R. Oberer, Jr., Manager

Date: _____

APPROVED AS TO FORM:

City Attorney