

RESOLUTION NO. 80-22
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Bill Serr ON THE
26th DAY OF September, 2022.

**RESOLUTION AUTHORIZING AND DIRECTING THE
CITY MANAGER TO ENTER INTO A MAINTENANCE
AGREEMENT WITH CORNERSTONE OF CENTERVILLE
OWNERS ASSOCIATION, INC., AND CORNERSTONE
VILLAGE ASSOCIATES, LTD FOR PARK MAINTENANCE
IN THE CORNERSTONE PARK.**

WHEREAS, the City of Centerville had acquired from Cornerstone Developers, Ltd. ("Developer") the "Passive Park Area" in the Cornerstone of Centerville development; and

WHEREAS, Developer also has agreed to convey to the City, and the City has agreed to accept, the "Active Park Area."

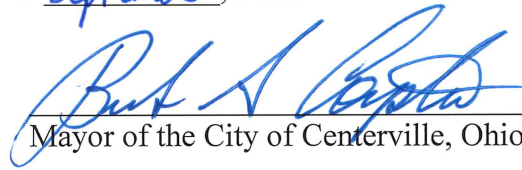
WHEREAS, the two areas are collectively referred to as the "Park"; and

WHEREAS, the Parties to this Agreement desire to establish of record their agreements relating to the maintenance of certain areas of the Park or improvements that are located on properties adjoining their owner parcels.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

- Section 1: That the City Manager is hereby authorized to execute the Maintenance Agreement with Cornerstone of Centerville Owners Association, Inc. and Cornerstone Village Associates, LTD, to provide for the continued maintenance of the Cornerstone Park. A copy of the Agreement 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 26th day of September, 2022.



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. 80-22, passed by the Council of the City of Centerville, Ohio on the 26th day of September, 2022.



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

Exhibit "A"

MAINTENANCE AGREEMENT

This Maintenance Agreement (this "Agreement") is dated as of _____, 2022, among THE CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), CORNERSTONE OF CENTERVILLE OWNERS ASSOCIATION, INC., an Ohio non-profit corporation (the "MPOA"), and CORNERSTONE VILLAGE ASSOCIATES, LTD., an Ohio limited liability company ("Lot 1C Owner") (the City, the MPOA and Lot 1C Owner each a "Party" and collectively the "Parties"), under the following circumstances:

A. The City acquired from Cornerstone Developers, Ltd. ("Developer") the "Passive Park Area" in the Cornerstone of Centerville development by Limited Warranty Deed effective December 26, 2019, and recorded as Instrument _____, Greene County Official Records. Developer also has agreed to convey to the City, and the City has agreed to accept, the "Active Park Area." The Passive Park Area is described on Exhibit A attached to this Agreement and the Active Park Area is described on Exhibit B attached to this Agreement. The two areas are collectively referred to as the "Park."

B. Contemporaneously with the conveyance of the Passive Park Area to the City (immediately prior to such conveyance), Developer and the MPOA entered into a Stormwater Drainage and Detention Easement Agreement under which the MPOA assumed responsibility for the maintenance of the detention ponds located within the Passive Park Area. Such easement is recorded as Instrument No. 2020000626, Recorder's Office, Greene County, Ohio.

C. Developer also deposited with the City, at the time of the conveyance of the Passive Park Area to the City, funds in the amount of \$250,000 to serve as a reserve for the maintenance of the park improvements.

D. Lot 1C Owner owns the property described in Exhibit C attached to this Agreement (referred to herein as "Lot 1C"). A portion of Lot 1C abuts the Park. As more fully described in this Agreement, the Lot 1C Owner has agreed to provide snow removal on a portion of the paved area located within the Park, and the City, as Owner of the Park, will provide maintenance of certain hardscaping and landscaping located on Lot 1C.

E. The Parties to this Agreement desire to establish of record their agreements relating to the maintenance of certain areas or improvements that are located on properties adjoining their owner parcels.

F. National Retail Properties, LP, as owner of the real property described in Exhibit D attached to this Agreement (the "Cooper's Hawk Parcel") is joining in the execution to grant an easement necessary for a portion of the Cooper's Hawk Parcel to be maintained by the City as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties hereto agree as follows:

1. Allocation of Maintenance Obligations. The parties agree that the Maintenance Obligations, as hereinafter defined, will be provided by the applicable parties in accordance with the following:

(a) The Lot 1C Owner will provide snow removal services for the portion of the Park located adjacent to Lot 1C as shown outlined on the Site Plan attached hereto as Exhibit E (the "Site Plan") and identified as Area 2.

(b) The City, as owner of the Park, will perform the Maintenance Obligations with respect to (i) the hardscaping and landscaping areas located on Lot 1C in the area shown outlined on the Site Plan and identified as Area 4 (three areas on Lot 1C); and (ii) landscaping and hardscaping improvements on the Cooper's Hawk Parcel, as shown outlined on the Site Plan and identified as Area 3. Notwithstanding the foregoing, until the improvements are completed in the Active Park Area and title is conveyed to the City, the MPOA will perform the Maintenance Obligations with respect to the Active Park Area.

(c) The MPOA, as the party responsible for maintaining the detention ponds within the Park, will perform the Maintenance Obligations with respect to the electrical equipment which serves the fountains located within the detention ponds in the Park, such equipment being located within the "pump house" identified on the Site Plan as Area 1.

2. Definition of Maintenance Obligations. Except as otherwise provided in this Agreement (for example, Lot 1C Owner's responsibility under Section 1(a) is limited to snow removal only), the "Maintenance Obligations" shall mean the performance of all maintenance, repair and replacements necessary to keep in good condition and repair, and to replace as necessary, all hardscape, landscape, irrigation, retaining walls, railings, structures, lighting, and other amenities on the affected property, as well as providing mowing, trimming, snow removal, and trash removal, for the affected areas and improvements.

3. Other Rights of the City. The City reserves the right to utilize funds in the maintenance reserve in a manner consistent with the purposes for which the reserve was established. This Agreement is intended for the limited purpose of allocating maintenance responsibilities with regard to the affected areas and not to amend any other existing agreements to the extent those other agreements are not in conflict with the terms and conditions of this Agreement.

4. Access Easement. To the extent a Party owns land on which another Party has agreed to perform Maintenance Obligations, the owner of the affected property grants a perpetual, non-exclusive easement and right of access to the other Party for the purpose of performing those Maintenance Obligations on its property. National Retail Properties, LP, as owner of the Cooper's Hawk Parcel, joins in the execution of this Agreement to grant this easement to the City over the portion of the Cooper's Hawk Parcel identified as Area 3 on the Site Plan.

5. Binding Effect. This Agreement shall be binding upon and inure to benefit of the Parties hereto and their respective successors in title, and the benefits of burdens of this Agreement shall be permanent and run with the land. Upon the conveyance of any of the properties in which the owner has a Maintenance Obligation, the transferring party shall have no further liability or obligations under this Agreement accruing after the date of the conveyance (without releasing such Party from liability with respect to such obligations arising prior to the conveyance), and the Party acquiring such property shall become the Party hereto and be deemed to have assumed the applicable obligations under this Agreement from and after the date of such conveyance.

6. Failure to Perform. If a Party fails to perform its Maintenance Obligations under this Agreement and that failure is not cured within ten (10) days after written notice (except that no such notice will be required if immediate action is needed in order to restore or maintain access or use of the affected property), any Party adversely affected shall have the right, but not the obligation, to perform the Maintenance Obligations and to hold the defaulting Party liable for the costs so incurred. All amounts payable under this provision shall be due and payable within thirty (30) days after delivery of written notice to the defaulting Party of the amount so incurred. Amounts not paid within such thirty (30) day period shall bear interest at the rate of 8% per annum, but in no event higher than highest rate permitted by Ohio law, from the expiration of such thirty (30) day period until payment is made. The rights under this Section 6 also shall extend to the owner of the Cooper's Hawk Parcel with respect to the Maintenance Obligations to be performed on its property.

7. Liens. No Party performing Maintenance Obligations shall permit or suffer any liens or encumbrances filed against the property of any other Party, as a result of any work, service or material supplied by the party performing the Maintenance Obligations under this Agreement. If any Party should suffer or permit any such lien to attach, the affected owner may, at its expense, promptly discharge the same, and exercise the other rights described in Section 6.

8. Entire Agreement. This Agreement may not modified or amended except by instrument in recordable form signed by the Party against whom enforcement is sought and any mortgagee of record of the real property owned by the Party that is benefited by or subject to this Agreement. An amendment to this Agreement affecting only a portion of the areas subjected to the Maintenance Obligations may be made by the affected Parties without requiring the consent of the other owners and without affecting the validity and enforceability of this Agreement on the balance of the benefited and burdened properties.

9. Remedies. In the event of a breach of any obligation created under this Agreement, the non-breaching Party, in addition to any other remedy provided in this Agreement, seek any remedies that Party may have at law or in equity, to enforce this Agreement, including specific performance.

10. Severability. A determination by any court, governmental body or otherwise that any provision of this Agreement is invalid or unenforceable in any instance, shall not affect the validity or enforceability of any other provision, or the validity of the same provision in any circumstances not controlled by such determination.

11. Counterparts. This Agreement may be signed in separate counterparts which may be combined to form a complete agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers as of the date first written above.

APPROVED AS TO FORM:

THE CITY OF CENTERVILLE, OHIO,
an Ohio municipal corporation

Scott A. Liberman, City Attorney

By: _____
Wayne S. Davis, City Manager

CORNERSTONE OF CENTERVILLE
OWNERS ASSOCIATION, INC., an Ohio non-
profit corporation

By: _____
Name:
Title:

CORNERSTONE VILLAGE ASSOCIATES,
LTD., an Ohio limited liability company

By: _____
Name:
Title:

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Wayne S. Davis, City Manager of the City of Centerville, Ohio, an Ohio municipal corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, _____ of Cornerstone of Centerville Owners Association, Inc., an Ohio nonprofit corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, _____ of Cornerstone Village Associates, Ltd., an Ohio limited liability company, on behalf of the limited liability company. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

CONSENT OF MORTGAGEE

The undersigned, First Financial Bank, holder of a mortgage on the Active Park Area filed for record October 20, 2020, in Instrument No. 2020021340, of the Greene County, Ohio, Official Records (the "Mortgage"), hereby consents to the foregoing Maintenance Agreement and subordinates the lien of the Mortgage to the Maintenance Agreement in order that the Maintenance Agreement shall survive a foreclosure or similar proceeding with respect to the Mortgage.

Signed this _____ day of _____, 2022.

FIRST FINANCIAL BANK

By: _____

Name:

Title:

STATE OF OHIO)
) SS:
 COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, _____ of First Financial Bank, a _____ banking association, on behalf of the association. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to this notarial act.

 Notary Public

CONSENT OF MORTGAGEE

The undersigned, Dille Laboratories Corporation, an Ohio corporation, holder of a mortgage on the Active Park Area filed for record June 29, 2010, in Volume 3029, Page 598, of the Greene County, Ohio, Official Records (the "Mortgage"), hereby consents to the foregoing Maintenance Agreement and subordinates the lien of the Mortgage to the Maintenance Agreement in order that the Maintenance Agreement shall survive a foreclosure or similar proceeding with respect to the Mortgage.

Signed this _____ day of _____, 2022.

DILLE LABORATORIES CORPORATION,
an Ohio corporation

By: _____

Name:

Title:

STATE OF OHIO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, _____ of Dille Laboratories Corporation, an Ohio corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

CONSENT OF MORTGAGEE

The undersigned, Columbian Life Insurance Company, holder of a mortgage on Lot 1C (as described in Exhibit C attached hereto) filed for record July 2, 2020, in Instrument No. 2020012227, of the Greene County, Ohio, Official Records (the "Mortgage"), hereby consents to the foregoing Maintenance Agreement and subordinates the lien of the Mortgage to the Maintenance Agreement in order that the Maintenance Agreement shall survive a foreclosure or similar proceeding with respect to the Mortgage.

Signed this _____ day of _____, 2022.

COLUMBIAN LIFE INSURANCE COMPANY,
an Illinois corporation

By: _____
Name: _____
Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, _____ of Columbian Life Insurance Company, an Illinois corporation, on behalf of the corporation. This is an acknowledgement. No oath or affirmation was administered to the signer with regard to this notarial act.

Notary Public

This Instrument Prepared By:
Robert M. Curry, Esq.
Thompson Hine LLP
10050 Innovation Dr., Suite 400
Dayton, Ohio 45342

Exhibits:

- A – Passive Park Area
- B – Active Park Area
- C – Lot 1C
- D – Cooper's Hawk Parcel
- E – Site Plan

EXHIBIT A

Passive Park Area

Situate in the City of Centerville, County of Greene, State of Ohio and being Lot Number 1 Cornerstone Section Seven A Record Plan as recorded in Plat Cabinet 38, Pages 306A-307A of the plat records of Greene County, Ohio. Permanent Parcel Number: L49000100010003900.

Situate in the City of Centerville, County of Greene, State of Ohio, and being all of Lot Number 1E, Cornerstone Section Six Replat of Lot 1B, as recorded in Plat Cabinet 38, Page(s) 390A-390B, of the plat records of Greene County, Ohio. Permanent Parcel Number: _____.

Situate in the City of Centerville, County of Greene, State of Ohio and being Lot Number 4 Cornerstone Section Seven B Record Plan as recorded in Plat Cabinet 39, Pages 21B-23B of the plat records of Greene County, Ohio. Permanent Parcel Number: L49000100010004700.

EXHIBIT B

Active Park Area

Situate in the City of Centerville, County of Greene, State of Ohio and being Lot Number 5 Cornerstone Section Seven B Record Plan as recorded in Plat Cabinet 39, Pages 21B-23B of the plat records of Greene County, Ohio. Permanent Parcel Number: L49000100010004300.

EXHIBIT C

Lot 1C

Situate in the City of Centerville, County of Greene, State of Ohio and being Lot Number 1C Cornerstone Section Six Replat of Lot 1B as recorded in Plat Cabinet 38, Pages 390A & B of the plat records of Greene County, Ohio. Permanent Parcel Number: L49000100010004100.

Parcel address: 5244 Cornerstone North Blvd., Centerville, Ohio 45440.

EXHIBIT D

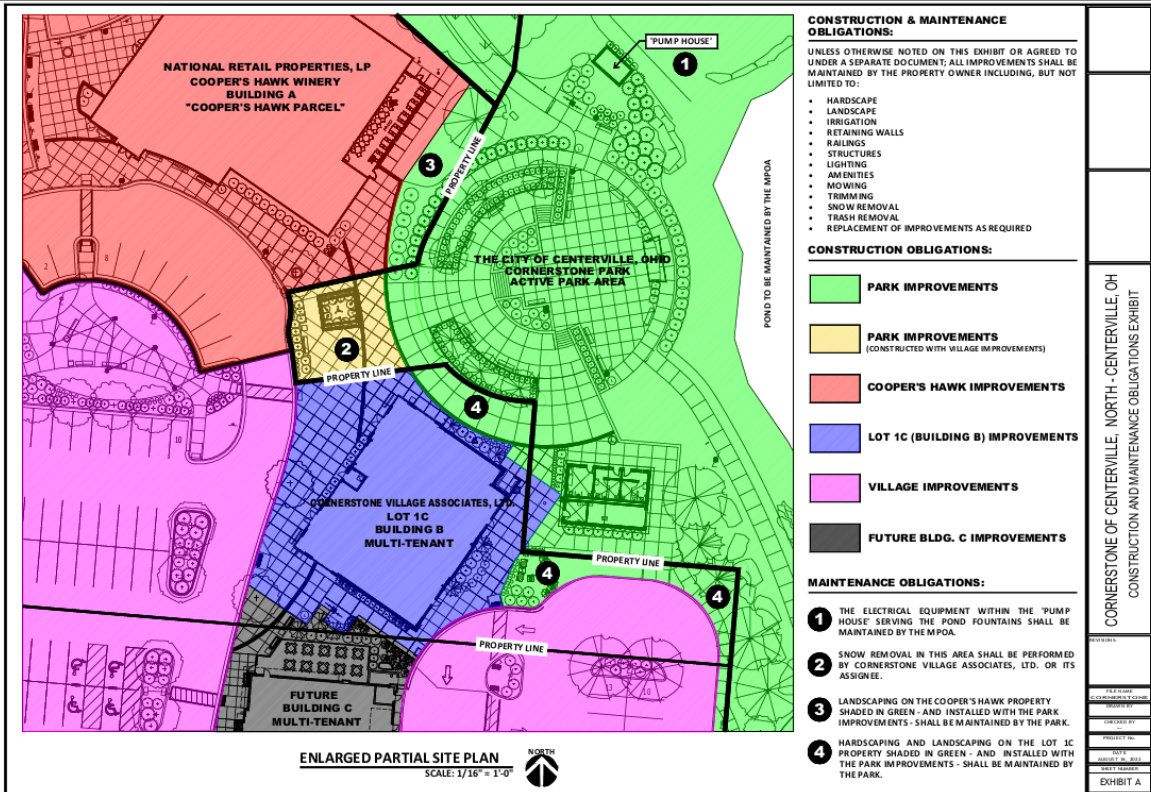
Cooper's Hawk Parcel

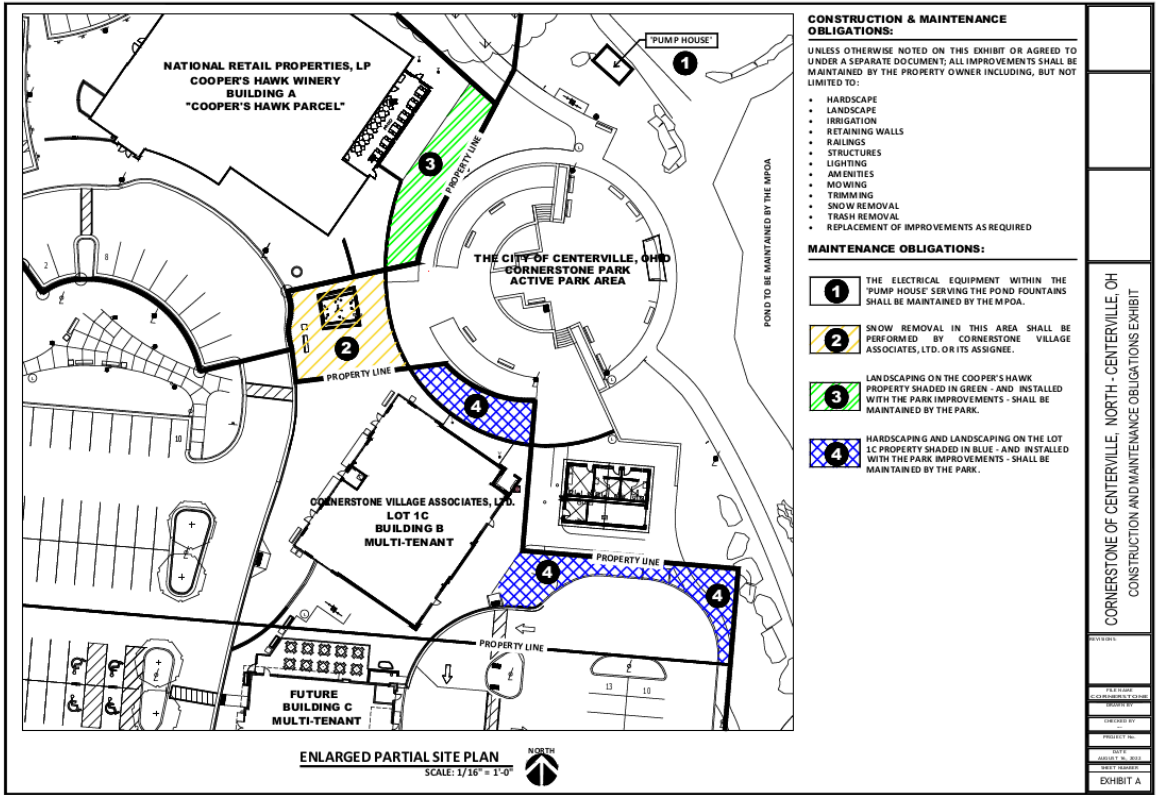
Situate in the City of Centerville, County of Greene, State of Ohio and being Lot Number 1A Cornerstone Section Six Replat of Lot 1 as recorded in Plat Cabinet 38, Pages 336B - 337B of the plat records of Greene County, Ohio. Permanent Parcel Number: L49000100010003400.

Parcel address: 5220 Cornerstone North Blvd., Centerville, Ohio 45440.

EXHIBIT E

Site Plan





CONSTRUCTION & MAINTENANCE OBLIGATIONS:

UNLESS OTHERWISE NOTED ON THIS EXHIBIT OR AGREED TO UNDER A SEPARATE DOCUMENT, ALL IMPROVEMENTS SHALL BE MAINTAINED BY THE PROPERTY OWNER INCLUDING, BUT NOT LIMITED TO:

- HARDSCAPE
- LANDSCAPE
- IRRIGATION
- RETAINING WALLS
- RAILINGS
- STRUCTURES
- LIGHTING
- AMENITIES
- MOWING
- TRIMMING
- SNOW REMOVAL
- TRASH REMOVAL
- REPLACEMENT OF IMPROVEMENTS AS REQUIRED

MAINTENANCE OBLIGATIONS:

- 1** THE ELECTRICAL EQUIPMENT WITHIN THE "PUMP HOUSE" SERVING THE POND FOUNTAINS SHALL BE MAINTAINED BY THE MPOA.
- 2** SNOW REMOVAL IN THIS AREA SHALL BE PERFORMED BY CORNERSTONE VILLAGE ASSOCIATES, LTD. OR ITS ASSIGNEE.
- 3** LANDSCAPING ON THE COOPER'S HAWK PROPERTY SHADED IN GREEN - AND INSTALLED WITH THE PARK IMPROVEMENTS - SHALL BE MAINTAINED BY THE PARK.
- 4** HARDSCAPING AND LANDSCAPING ON THE LOT 1C PROPERTY SHADED IN BLUE - AND INSTALLED WITH THE PARK IMPROVEMENTS - SHALL BE MAINTAINED BY THE PARK.

CORNERSTONE OF CENTERVILLE, NORTH - CENTERVILLE, OH
CONSTRUCTION AND MAINTENANCE OBLIGATIONS EXHIBIT

DESIGNED BY	
PREPARED BY	
DATE	
SCALE	
EXHIBIT	A