

# COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2019-5

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO A REAL ESTATE CONVEYANCE AGREEMENT WITH HINCKLEY RESERVE REALTY, LLC., FOR THE TRANSFER OF PERMANENT PARCEL NUMBER 362-02-017, WHICH IS NO LONGER NEEDED FOR MUNICIPAL PURPOSES, TO, HINCKLEY RESERVE REALTY, LLC., IN EXCHANGE FOR PERMANENT PARCEL NUMBER 362-02-014, AND AUTHORIZING THE EXECUTION OF ALL AGREEMENTS NECESSARY TO EFFECTUATE THE SAME, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Berea owns Permanent Parcel No. 362-02-017, located at 789 Front Street, Berea, Ohio (formerly known as the Kentucky Fried Chicken property); and

WHEREAS, the property located at 789 Front Street was purchased by the City on or about May 8, 2013, for \$265,000 in accordance with Ordinance No. 2013-11, for the purpose of facilitating future comprehensive and cohesive redevelopment of the entire north end gateway area; and

WHEREAS, Hinckley Reserve Realty, LLC, is in negotiations with James J. Stropko, Sr. and Jennifer A. Stropko, Trustees to purchase the property located at 760 North Rocky River Drive, Permanent Parcel Number 362-02-014 (now known as the J & J Appliance Property); and

WHEREAS, it is probable that the purchase agreement between Hinckley Reserve Realty, LLC., and James J. Stropko, Sr. and Jennifer A. Stropko, Trustees will far exceed the purchase price paid by the City for the property formerly known as "Kentucky Fried Chicken"; and

WHEREAS, Hinckley Reserve Realty, LLC. wishes to open a Dunkin' Donut retail establishment on Front Street in Berea; and

WHEREAS, studies conducted by Hinckley Reserve Realty, LLC. indicate that the property best serving their business interests is located at 789 Front Street; and

WHEREAS, the City has determined that the proposal by Hinckley Reserve Realty, LLC. to build a Dunkin' Donut store at 789 Front Street is consistent with the plan for comprehensive and cohesive redevelopment of the entire north end gateway area; and

WHEREAS, the City continues to own other properties on Front Street for the purpose of facilitating future comprehensive and cohesive redevelopment of the entire north end gateway area; and

WHEREAS, the property located at 760 North Rocky River Drive (the J & J Appliance property) is contiguous to other properties owned by the City for the purposes of redevelopment; and

WHEREAS, prior to transfer of title to the City, Hinckley Reserve Realty, LLC. agrees to remove all structures at 760 North Rocky River Drive at their cost, which will result in a transfer of vacant land for vacant land; and

WHEREAS, the Council of the City of Berea finds that the property located at 789 Front Street is no longer needed for any municipal purpose; and

WHEREAS, upon the transfer of title of the property located at 760 North Rocky River Drive from James J. Stropko, Sr. and Jennifer A. Stropko, Trustees to Hinckley Reserve Realty, LLC., the City wishes to enter into a real estate conveyance agreement with Hinckley Reserve Realty, LLC., to exchange the properties listed above; and

WHEREAS, the public interest is best served by the City's acquisition of the property located at 760 North Rocky River Drive.

# COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2019-5

By Maxwell Sponsored By Mayor Kleem

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

**SECTION 1.** That 789 Front Street, Permanent Parcel Number 362-02-017, as described in Exhibit "A", attached hereto and incorporated herein, is no longer needed for any municipal purposes.

**SECTION 2.** That upon the transfer of 760 North Rocky River Drive to Hinckley Reserve Realty, LLC., the Mayor is authorized to enter into a real estate conveyance agreement, as described in Exhibit "B", attached hereto and incorporated herein, for the transfer of 789 Front Street to Hinckley Reserve Realty, LLC., in exchange for 760 Front Street, Permanent Parcel Number 362-02-014, as described in Exhibit "C."

**SECTION 3.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

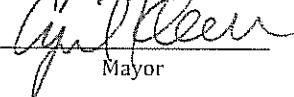
**SECTION 4.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department, and for the further reason that the City's acquisition of the parcel which is the subject of this legislation will aid in facilitating the development of the north end gateway area. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: February 4, 2019

  
President of Council

ATTEST: John E.  
Clerk of Council

APPROVED: February 13, 2019

  
Mayor

Approved as to Form:

Burke  
Director of Law

EXHIBIT "A"  
Legal Description

SITUATED IN THE CITY OF BEREAL, COUNTY OF CUYAHOGA AND STATE OF OHIO, AND KNOWN AS BEING PART OF ORIGINAL MIDDLEBURGH TOWNSHIP SECTION NO. 18, AND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE WESTERLY LINE OF FRONT STREET, 80 FEET WIDE, AT ITS INTERSECTION WITH THE SOUTHERLY LINE OF A PARCEL OF LAND CONVEYED TO NORTH KENDALL PROPERTIES, INC., BY DEED RECORDED IN VOLUME 12501, PAGE 711 OF CUYAHOGA COUNTY RECORDS, WHICH POINT IS DISTANT DUE SOUTH 511.99 FEET FROM THE INTERSECTION OF THE WESTERLY LINE OF FRONT STREET EXTENDED NORTHERLY TO INTERSECT WITH THE EASTERLY LINE OF ROCKY RIVER DRIVE, 100 FEET WIDE, EXTENDED NORTHERLY; THENCE NORTH 76 DEGREES 47' 30" WEST, ALONG THE SOUTHERLY LINE OF LAND SO CONVEYED TO NORTH KENDALL PROPERTIES, INC., A DISTANCE OF 233.97 FEET TO THE EASTERLY LINE OF ROCKY RIVER DRIVE; THENCE SOUTH 26 DEGREES 25' 00" WEST, ALONG THE EASTERLY LINE OF ROCKY RIVER DRIVE A DISTANCE OF 134.66 FEET; THENCE SOUTH 89 DEGREES 51' 00" EAST, A DISTANCE OF 137.12 FEET; THENCE SOUTH 45 DEGREES 9' 00" EAST, A DISTANCE OF 46.75 FEET; THENCE SOUTH 89 DEGREES 09' 00" EAST, A DISTANCE OF 117.43 FEET TO THE WESTERLY LINE OF FRONT STREET; THENCE DUE NORTH 102.20 FEET TO THE PLACE OF BEGINNING, ACCORDING TO A SURVEY BY THE HENRY G. REITZ ENGINEERING COMPANY, DATED OCTOBER 1974, BE THE SAME MORE OR LESS.

PROPERTY ADDRESS: 789 Front Street, Berea, Cuyahoga County, Ohio 44017

PPN: 362-02-017

## REAL ESTATE CONVEYANCE AGREEMENT

### Real Property Located at 760 North Rocky River Drive and 789 Front Street; both of which are located in Berea, Ohio 44017

This real estate conveyance agreement is made at City of Berea, Cuyahoga County, State of Ohio, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by The City of Berea, an Ohio Municipal Corporation, hereinafter referred to as "CITY", and whose principal address is 11 Berea Commons, Berea, Ohio 44017; and Hinckley Reserve Realty, LLC., hereinafter referred to as "HRR", a limited liability company, whose principal address is 2595 Center Road, Hinckley, Ohio 44233; for the exchange of the parcels of real estate more fully described in Exhibits A and B attached hereto.

In consideration of the commitments and covenants made by each party to the other parties, as set forth below, the parties mutually agree as follows:

#### Section I

##### **HRR Conveyance**

HRR agrees to deliver or cause to be delivered to CITY or to a nominee selected by CITY a good and sufficient Quit Claim Deed conveying good title, and CITY agrees to accept, the following parcel of real estate:

760 North Rocky River Drive, Berea, Ohio 44017,  
Permanent Parcel Number: 362-02-014;

and as more fully described in Exhibit "A", attached hereto and incorporated herein, and referred to as the "HRR Property", with dower rights, if any, released, free and clear of all liens and encumbrances whatsoever, including any mortgages, except those noted herein and except restrictions of record, reservations, easements, conditions of record, zoning ordinances, if any, and taxes and assessments, both general and special, if any, but all taxes and assessments, both general and special, shall be prorated as of the date of transfer, upon the basis of a calendar year using the amount shown on the last available tax duplicate.

CITY may obtain a Title Policy showing good title in HRR for the HRR Property at the time of delivery as provided and will be issued in the name of CITY as of the Closing Date

Prior to transfer, all buildings, structures, parking areas and improved surfaces shall be removed from the HRR Property at the sole expense of HRR. HRR shall also clear any debris, grade and seed the HRR Property. The HRR Property shall include the land; all appurtenant rights, privileges and easements located on or under the HRR Property.

#### Section II

##### **CITY Conveyance**

Simultaneously with the conveyance of the HRR Property, CITY agrees to deliver or cause to be delivered to HRR or to a nominee selected by HRR a Quit Claim Deed conveying good title, and HRR agrees to accept, the following parcel of real estate:

789 Front Street, Berea, Ohio 44017  
Permanent Parcel Number: 362-02-017

and as more fully described in Exhibit "B", attached hereto and incorporated herein, collectively referred to as the "CITY Property," with dower rights, if any, released, free and clear of all liens and encumbrances whatsoever, including any mortgages, except those noted herein and except restrictions of record, reservations, easements, conditions of record, zoning ordinances, if any, and taxes and assessments, both general and special, if any, but all taxes and assessments, both general and special, shall be prorated as of the date of transfer, upon the basis of a calendar year using the amount shown on the last available tax duplicate. HRR may obtain a Title Policy showing good title in CITY for the CITY Property at the time of delivery as provided and will be issued in the name of HRR as of the Closing Date

The CITY Property shall include the land; all appurtenant rights, privileges and easements; and all improvements, fixtures, and equipment, if any; located on or under any of the parcel of land.

### Section III

#### **Conditions**

(a) Conveyance of the HRR Property and the CITY Property shall be subject to matters generally accepted by title insurance companies in their title policies issued in the State of Ohio.

(b) All parties will furnish to each other party and for examination within 30 days from this date, a title commitment issued by Maximum Title and Escrow Services, Inc. showing condition of the title of the properties as of the date of issuance of the title commitment. The title commitment shall remain the property of each party pending completion of this transaction.

(c) The respective parties will own their respective properties and title to all properties will be good and marketable, free and clear of all encumbrances including liens, restrictions, easements, defects and burdens, except unpaid taxes not yet due and payable.

(d) If any title restrictions, defects or burdens appear on the title commitment to which any party objects, the objection will be stated in writing to all other parties, and the party owning the property containing the restriction, defect or burden will be allowed a reasonable time, not exceeding 45 days, in which to correct the same. If the party owning the property containing the restriction, defect or burden is unable or unwilling to do so, the other parties may either terminate this contract and recover the deposit and costs, or pursue any other remedy available to any party in law or equity.

### Section IV

#### **Contingencies**

This Real Estate Conveyance Agreement is contingent upon (a) its approval by the Berea City Council and (b) HRR obtaining title to and possession of the 760 North Rocky River Drive, Permanent Parcel No. 362-02-014. Should the foregoing contingencies not be satisfied, this Real Estate Conveyance Agreement shall terminate and become null and void and the parties shall be relieved of all obligations hereunder.

## Section V

### **Closing Date**

The Closing Date of this Real Estate Conveyance Agreement and the conveyance of the properties contemplated herein shall take place on a date mutually agreed upon by the parties. HRR shall deliver possession of the HRR Property to CITY on the Closing Date. CITY shall deliver possession of the CITY Property on the Closing Date. Prior the Closing Date all parties shall have the right to inspect all properties to be transferred, including the improvements on each property, if any, and all parties agree to accept all property in present "As is" condition subject to the terms and conditions in Section I.

## Section VI

### **Time of Essence**

Time is of the essence of this Real Estate Conveyance Agreement.

## Section VII

### **Escrow Agent**

This Real Estate Conveyance shall be placed in escrow with Maximum Title and Escrow Services, Inc. or any other mutually agreed upon agent, herein referred to as the "Escrow Agent." An executed copy of this Real Estate Conveyance Agreement shall be deposited with the Escrow Agent and this document shall serve as the escrow instructions. All documents and funds necessary for the completion of this transaction shall be placed in escrow with the Escrow Agent on or before the Closing Date. The Escrow Agent herein may attach its standard conditions of acceptance hereto; however, should such standard conditions be inconsistent with or in conflict with the terms and provisions hereof, then the terms and provisions of this Real Estate Conveyance Agreement shall control.

## Section VIII

### **Duties of the Escrow Agent**

On the Closing Date, the Escrow Agent shall file for record all appropriate deeds and any other instruments required to be recorded and shall thereupon deliver to each of the parties the documents to which they shall be respectively entitled, together with its escrow statement, provided that the Escrow Agent shall then have on hand all funds and documents necessary to complete the within real estate transaction and provided that the title company has stated in writing that it is in a position to and will issue and deliver, upon the filing of the deed for record, the Title Policy required hereunder.

In closing this transaction, the Escrow Agent shall charge HRR with all closing costs, including but not limited to the following:

- (a) The amount due to discharge any lien encumbering the HRR Property and the cost of recording the cancellation thereof; and
- (b) The full amount of the taxes up to and including the Closing Date, not yet due and payable; and
- (c) The filing fees, transfer taxes or any other fees necessary to complete the transfers referenced in this Real

Estate Conveyance Agreement; and

- (d) The cost of the title commitments, title searches, and title insurance premiums for each Title Policy in the amounts stated above for all properties to be transferred via this Real Estate Conveyance Agreement; and
- (e) The escrow fee; and
- (f) All other prorations and holdbacks set out in this Real Estate Conveyance Agreement;

and immediately thereafter, shall deliver to CITY and HRR the applicable Title Policies, the recorded deeds, or Cuyahoga County Fiscal Officer's receipt therefor, and any prorations to which any party is entitled, and any other funds or documents required by the provisions hereof.

## Section IX

### **Broker's Commission**

HRR represents that it has procured a commercial real estate broker in this transaction and any and all claims to the right to a commission arising out of the transfers of the Property referenced in this Real Estate Conveyance Agreement, shall be paid by HRR. Further HRR agrees to defend, indemnify and hold CITY harmless from any and all claims for any such commission and for any attorney's fees, litigation, and other expenses relating to any such claim.

## Section X

### **Representations and Warranties**

HRR represents and warrants as follows:

- (a) It has full power, authority, and legal right to enter into this Real Estate Conveyance Agreement and to consummate the transaction contemplated hereby.
- (b) Neither the execution, delivery, nor performance of this Real Estate Conveyance Agreement (or of any instrument or document to be executed or delivered pursuant to the terms hereof) will result in the violation of any contractual obligation of HRR to any third party; nor will such execution, delivery, or performance conflict with, constitute an event of default under, or result in a breach or violation of the provisions of any agreement or other instrument to which such party is a party.
- (c) It is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code, and shall, on the Closing Date, provide the Escrow Agent with all instruments and documents required by Section 1445 to comply therewith.
- (d) It is the owner of the HRR Property in fee simple and on the Closing Date such property will be free and clear of all liens, claims, easements, restrictions, conditions, and encumbrances except as permitted herein.
- (e) It has not received any written notice from any governmental authority of any violation of any ordinance, statute, rule, or regulation with respect to their respective properties.

## Section XI

### Authority to Act - HRR

The undersigned, Kenneth A. Blum, with authority granted to him under the laws of the State of Ohio approves the conveyance of all land commonly known as 760 North Rocky River Drive, Berea, Ohio 44017, Permanent Parcel Number 362-02-014 to CITY, upon such terms and conditions as set forth herein, as Kenneth A. Blum is hereby authorized and directed to execute and deliver such contracts, deeds, bills-of-sale, affidavits, closing statements, escrow agreements and other documents in connection with such conveyance as may be deemed appropriate.

IN WITNESS WHEREOF, HINCKLEY RESERVE REALTY, LLC. has hereunto set its hand at \_\_\_\_\_, Ohio, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Signed and acknowledge

In the presence of:

HINCKLEY RESERVE REALTY, LLC.

By \_\_\_\_\_

Its

STATE OF OHIO

ss

CUYAHOGA COUNTY )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named Kenneth A. Blum, the President of HINCKLEY RESERVE REALTY, LLC. who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio, on this \_\_\_\_ day of \_\_\_\_\_, 2019.

---

**Notary Public**

Signed and acknowledged  
In the presence of:

CITY OF BEREAL

By: \_\_\_\_\_  
Cyril Kleem, Mayor

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named individual, Cyril Kleem, Mayor, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Berea, Ohio, on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Notary Public

EXHIBIT A

LEGAL DESCRIPTION

760 N. Rocky River  
Berea, OH 44017

Situated in the City of Berea, County of Cuyahoga and State of Ohio and further known and described as follows:

And known as being part of Original Middleburg Township Lot No. 6, Section No. 18 and Bounded and described as Follows:

Beginning on the center line of Rocky River Drive (100 feet wide) at the Northwesterly corner of land conveyed to Maurice W. Peterseim by deed dated March 19, 1957, and recorded in Volume 8846, Page 266 of Cuyahoga County Records; thence Southwesterly along the center line of Rocky River Drive, 112.69 feet to the Southwesterly corner of land so conveyed to Maurice W. Peterseim; thence Easterly along the Southerly line of land so conveyed, 264.75 feet to a point distant 265 feet Westerly measured along the Southerly line of land so conveyed to Maurice W. Peterseim, from the center line of Front Street 70 feet wide; thence Northerly and parallel with the center line of Front Street, 100 feet to the Northerly line of land so conveyed to Maurice W. Peterseim; thence Westerly along the Northerly line of land so conveyed, 214.61 feet to the place of beginning, be the same more or less but subject to all legal highways.

PPN: 362-02-014

CUYAHOGA COUNTY RECORDER  
200106080472 PAGE 8 of 8

EXHIBIT **B**  
Legal Description

SITUATED IN THE CITY OF BEREAL, COUNTY OF CUYAHOGA AND STATE OF OHIO, AND KNOWN AS BEING PART OF ORIGINAL MIDDLEBURGH TOWNSHIP SECTION NO. 18, AND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING ON THE WESTERLY LINE OF FRONT STREET, 80 FEET WIDE, AT ITS INTERSECTION WITH THE SOUTHERLY LINE OF A PARCEL OF LAND CONVEYED TO NORTH KENDALL PROPERTIES, INC., BY DEED RECORDED IN VOLUME 12501, PAGE 711 OF CUYAHOGA COUNTY RECORDS, WHICH POINT IS DISTANT DUE SOUTH 511.99 FEET FROM THE INTERSECTION OF THE WESTERLY LINE OF FRONT STREET EXTENDED NORTHERLY TO INTERSECT WITH THE EASTERLY LINE OF ROCKY RIVER DRIVE, 100 FEET WIDE, EXTENDED NORTHERLY; THENCE NORTH 76 DEGREES 47' 30" WEST, ALONG THE SOUTHERLY LINE OF LAND SO CONVEYED TO NORTH KENDALL PROPERTIES, INC., A DISTANCE OF 233.97 FEET TO THE EASTERLY LINE OF ROCKY RIVER DRIVE; THENCE SOUTH 26 DEGREES 25' 00" WEST, ALONG THE EASTERLY LINE OF ROCKY RIVER DRIVE A DISTANCE OF 134.66 FEET; THENCE SOUTH 89 DEGREES 51' 00" EAST, A DISTANCE OF 137.12 FEET; THENCE SOUTH 45 DEGREES 9' 00" EAST, A DISTANCE OF 46.75 FEET; THENCE SOUTH 89 DEGREES 09' 00" EAST, A DISTANCE OF 117.43 FEET TO THE WESTERLY LINE OF FRONT STREET; THENCE DUE NORTH 102.20 FEET TO THE PLACE OF BEGINNING, ACCORDING TO A SURVEY BY THE HENRY G. REITZ ENGINEERING COMPANY, DATED OCTOBER 1974, BE THE SAME MORE OR LESS.

PROPERTY ADDRESS: 789 Front Street, Berea, Cuyahoga County, Ohio 44017

PPN: 362-02-017

EXHIBIT 

"C"

LEGAL DESCRIPTION

760 N. Rocky River  
Berea, OH 44017

Situated in the City of Berea, County of Cuyahoga and State of Ohio and further known and described as follows:

And known as being part of Original Middleburg Township Lot No. 6, Section No. 18 and Bounded and described as Follows:

Beginning on the center line of Rocky River Drive (100 feet wide) at the Northwesterly corner of land conveyed to Maurice W. Peterseim by deed dated March 19, 1957, and recorded in Volume 8846, Page 266 of Cuyahoga County Records; thence Southwesterly along the center line of Rocky River Drive, 112.69 feet to the Southwesterly corner of land so conveyed to Maurice W. Peterseim; thence Easterly along the Southerly line of land so conveyed, 264.75 feet to a point distant 265 feet Westerly measured along the Southerly line of land so conveyed to Maurice W. Peterseim, from the center line of Front Street 70 feet wide; thence Northerly and parallel with the center line of Front Street, 100 feet to the Northerly line of land so conveyed to Maurice W. Peterseim; thence Westerly along the Northerly line of land so conveyed, 214.61 feet to the place of beginning, be the same more or less but subject to all legal highways.

PPN: 362-02-014

CUYAHOGA COUNTY RECORDER  
20010000472 PAGE 8 of 8