

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2019-80

By Jim Maxwell Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF BEREAL AND ECHO BEREAL ASSOCIATES, L.L.C. AND ACCEPTING THE GRANT OF A NON-EXCLUSIVE REVOCABLE LICENSE FOR THE PURPOSE OF INSTALLING SEVEN SINGLE DOWNTOWN BIKE RACKS AND ONE FIXIT STATION AT THE PARKWAY SHOPPES, AND DECLARING AN EMERGENCY.

WHEREAS, Echo Berea Associates, L.L.C. is the owner of the property commonly known as "The Parkway Shoppes"; and

WHEREAS, Echo Berea Associates, L.L.C. is willing to grant to the City of Berea a non-exclusive revocable license for the use of various portions of "The Parkway Shoppes" for the purpose of installing seven (7) bike racks and one (1) Fixit Station; and

WHEREAS, the City of Berea agrees to pay Echo Berea Associates, L.L.C. a one-time license fee of One Dollar (\$1.00).

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

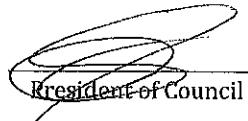
SECTION 1. That subject to the terms and conditions of the Agreement, which is attached hereto as Exhibit "A" and incorporated herein, the City of Berea accepts the grant of a non-exclusive revocable License for the purpose of installing seven (7) bike racks and a Fixit Station at various locations at The Parkway Shoppes.

SECTION 2. That the Mayor be and he is hereby authorized to execute a License Agreement with Berea Echo Associates, L.L.C. in substantially the form which is attached to this Legislation as Exhibit "A" and incorporated herein.

SECTION 3. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of the 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 public welfare and health would be best served by construction of the bike racks and Fixit station. 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.

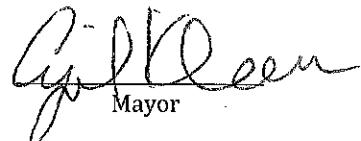
PASSED: November 4, 2019



President of Council

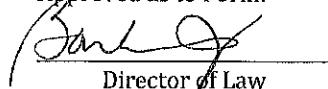
ATTEST: John Es
Clerk of Council

APPROVED:



Mayor

Approved as to Form:



Director of Law

EXHIBIT A

**LICENSE AGREEMENT
(Bike Racks)**

This LICENSE AGREEMENT (the “**Agreement**”) is dated as of October _____, 2019, by and between **ECHO BEREAL ASSOCIATES, LLC**, a Delaware limited liability company (“**Licensor**”) and **THE CITY OF BEREAL** (“**Licensee**”).

1. License. In consideration of the License Fees (as defined below) and the other terms, conditions, and covenants contained herein, Licensor hereby grants to Licensee a non-exclusive revocable license (the “**License**”) to install seven (7) single Downtown Racks and one (1) Fixit station, with said specifications subject to the approval of the Licensor in the locations depicted on **Exhibit 1** attached hereto and made a part hereof (collectively and individually, as applicable, the “**Licensed Premises**”) which Licensed Premises is located in the Parkway Shoppes (“**Shopping Center**”) located in Berea, Ohio.

2. License Term. The term of this Agreement will commence on October 1, 2019 and will continue for a period of one (1) year (the “**Term**”) unless terminated earlier as provided herein. Unless this Agreement is otherwise terminated as set forth herein, the Term of this Agreement shall automatically renew and extend for successive periods of one (1) year each, upon the same terms and conditions herein, without execution of any further instrument.

3. Termination Right. Notwithstanding anything contained herein to the contrary, Licensor and Licensee each have the right to terminate this Agreement at any time, for any reason, with or without cause, upon not less than thirty (30) days written notice to the other party

In the event Licensee defaults in the performance of any of its obligations under this Agreement, in addition to all other rights and remedies Licensor may have at law or in equity, Licensor may terminate this Agreement upon twenty-four (24) hours’ notice to Licensee and Licensee will pay all legal fees incurred by Licensor in enforcing Licensor’s rights hereunder.

4. License Fees. For the Term of the Agreement, including any extension thereof, Licensee shall pay Licensor a one-time license fee of One Dollar and 00/100 (\$1.00) the receipt and sufficiency of which is hereby acknowledged by both parties.

5. Compliance with Laws. Licensee accepts the Licensed Premises “AS-IS” and Licensor is not obligated to make any installations, do any work, make any alterations, repairs, replacements or improvements (whether structural or otherwise). The grant of the License is contingent upon Licensee obtaining and maintaining, at its sole cost and expense, all necessary government or other approvals (collectively, the “**Permits**”) for the placement of the Bike Racks at the Licensed Premises, and Licensor agrees to cooperate with Licensee in obtaining and maintaining the Permits.

6. Location and Use. Licensor and Licensee hereby agree that the Bike Racks will be installed in the areas shown on **Exhibit 1** and Licensee accepts the Licensed Premises subject to all covenants, agreements, easements and other matters affecting title to the Licensed Premises. All Bike Racks placed on the Licensed Premises by Licensee are, and will always be, the exclusive property of Licensee. Licensee shall comply with all laws, rules and regulations affecting the Licensed Premises and shall not do anything that will cause a public or private nuisance.

7. Maintenance. During the License Term, Licensee agrees, at its sole cost and expense, to maintain and keep the Bike Racks, and the portion of the Licensed Premises surrounding the Bike Racks, free of all debris, refuse, waste and other materials. If Licensee does not properly maintain the portion of

the Licensed Premises surrounding the Bike Racks, Licensee agrees to pay Lessor Two Hundred and Fifty and 00/100 Dollars (\$250.00) per hour for cleanup.

8. Abandoned Items. If during the License Term Lessor becomes aware of a bike related item, whether attached to a Bike Rack or not, that has been abandoned for more than five (5) consecutive days within the License Premises or within vicinity of the Licensed Premises ("Abandoned Item"), Lessor shall notify Licensee of such Abandoned Item and Licensee shall, at its sole cost and expenses, immediately start and diligently proceed with the necessary process to legally remove and dispose of such Abandoned Item.

9. Insurance. During the License Term, Licensee agrees to maintain in full force and effect a policy or policies of commercial liability insurance in an amount equal to at least One Million Dollars (\$1,000,000) combined single limit for bodily injury (including death) and property damage in any one occurrence covering the Bike Racks, the Licensed Premises and Licensee's use thereof. All such insurance must name Lessor and ECHO Real Estate Services Company as additional insureds. Licensee will deliver certificates of such insurance, showing such coverage and naming Lessor and ECHO Real Estate Services Company as additional insureds to Lessor prior to Licensee placing the Bike Racks within the Licensed Premises.

10. Release and Indemnity. Lessor shall not assume any liability for any acts or omissions of Licensee in connection with the Bike Racks. Licensee agrees to indemnify and hold harmless Lessor from any fines, losses or penalties incurred for placing the Bike Racks on the Licensed Premises without the Permits. In the event Lessor incurs any fines, losses or penalties associated with Licensee placing the Bike Racks on the Licensed Premises without the Permits, Licensee will reimburse Lessor for any such fines, losses or penalties. Without limiting the generality of the foregoing, Lessor does not make any representation or warranty whatsoever with respect to whether the Licensee's intended use is permitted by zoning and other applicable law.

Licensee does hereby further release Lessor and shall indemnify the Lessor and hold it harmless from any and all claims against Lessor of any kind or nature whatsoever, arising out of or resulting from Licensee's use of the Licensed Premises, including, without limitation, the installation, use, maintenance and/or removal of Licensee's Bike Racks by Licensee, and from any and all claims and/or damages to persons and property resulting from the presence of the Bike Racks on the Licensed Premises and the acts of Licensee, its employees, agents, invitees or any others utilizing the Bike Racks, including any expense and attorneys' fees which Lessor may incur in defending any such claims. This provision will survive the termination or earlier expiration of this Agreement.

11. Notices. All License Fees and other fees payable pursuant to this Agreement, and all written notices required or permitted by this Agreement, must be mailed to Lessor and Licensee at the addresses shown below, unless otherwise provided for by one party to the other in writing:

Lessor: ECHO Berea Associates, LLC
c/o ECHO Real Estate Services Company
560 Epsilon Drive
Pittsburgh, PA 15238
Attn: Property Management

Licensee: City of Berea
11 Berea Commons
Berea, Ohio 44017
Attn: Matt Madzy, Planning & Development
440-826-5816

12. Miscellaneous.

a. *Agreement of the Parties.* This Agreement is a License relating to the Shopping Center, and the exhibits and addenda attached hereto, if any, constitute the entire Agreement between Licensor and Licensee relating in any manner to the subject matter of this Agreement. No prior Agreement or understanding pertaining to the same shall be valid or of any force or effect, and the covenants and Agreements herein cannot be altered, changed or supplemented, except in writing signed by Licensor and Licensee.

b. *Authority.* If Licensee is not an individual, the person whose signature appears below on behalf of Licensee, by such signature, represents that he or she has been duly authorized by Licensee to execute this document and that such signature creates a binding obligation of Licensee.

c. *Captions.* The captions of paragraphs in the Agreement are for convenience only and shall not be considered or referred to in resolving questions or interpretation or construction.

d. *Governing Law.* This Agreement shall be governed and construed according to the laws of the state in which the Licensed Premises is located. In the event of any litigation arising out of this Agreement, including without limitation appellate and bankruptcy proceedings, the prevailing party shall be entitled to recover reasonable attorneys' costs.

e. **WAIVER OF JURY TRIAL. IN THE INTEREST OF OBTAINING A SPEEDIER AND LESS COSTLY HEARING OF ANY DISPUTE, LICENSOR AND LICENSEE HEREBY EXPRESSLY WAIVE THEIR RIGHT TO A TRIAL BY JURY AND WAIVE ANY RIGHTS TO A TRIAL BY JURY UNDER ANY STATUTE, RULE OF LAW OR PUBLIC POLICY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER IN CONNECTION WITH ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT.**

f. *Pronouns.* All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as identity of their person, persons, party or parties may require.

g. *Severability.* If any clause or provision of the Agreement is illegal, invalid or unenforceable under present or future laws effective during the term hereof, thereby, and in lieu of each clause or provision of this Agreement which is illegal, invalid or unenforceable, there shall be added, as a part of the Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and as may be legal, valid and enforceable.

h. *Binding Effect.* This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

i. *Waiver of Subrogation.* Licensor and Licensee hereby waive any right of subrogation against the other which may accrue in their favor for themselves and for any third party acting for or on behalf of them.

j. *Successors and Assigns.* This Agreement inures to the benefit of, and is binding upon, Licensor, Licensee and their respective successors and assigns. Notwithstanding the foregoing, Licensee cannot assign this Agreement or the License granted herein. If any person other than Licensee pays the License Fees, Licensor may accept such payment as having been made on behalf of Licensee and such acceptance will not constitute a deemed acceptance of the assignment or transfer of this Agreement or the License granted hereunder.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives to be effective as of the date and year first above written.

LICENSOR:

ECHO BEREAL ASSOCIATES, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: Authorized Representative

LICENSEE:

CITY OF BEREAL

By: _____
Name: _____
Title: _____

Exhibit B
(The Licensed Premises)

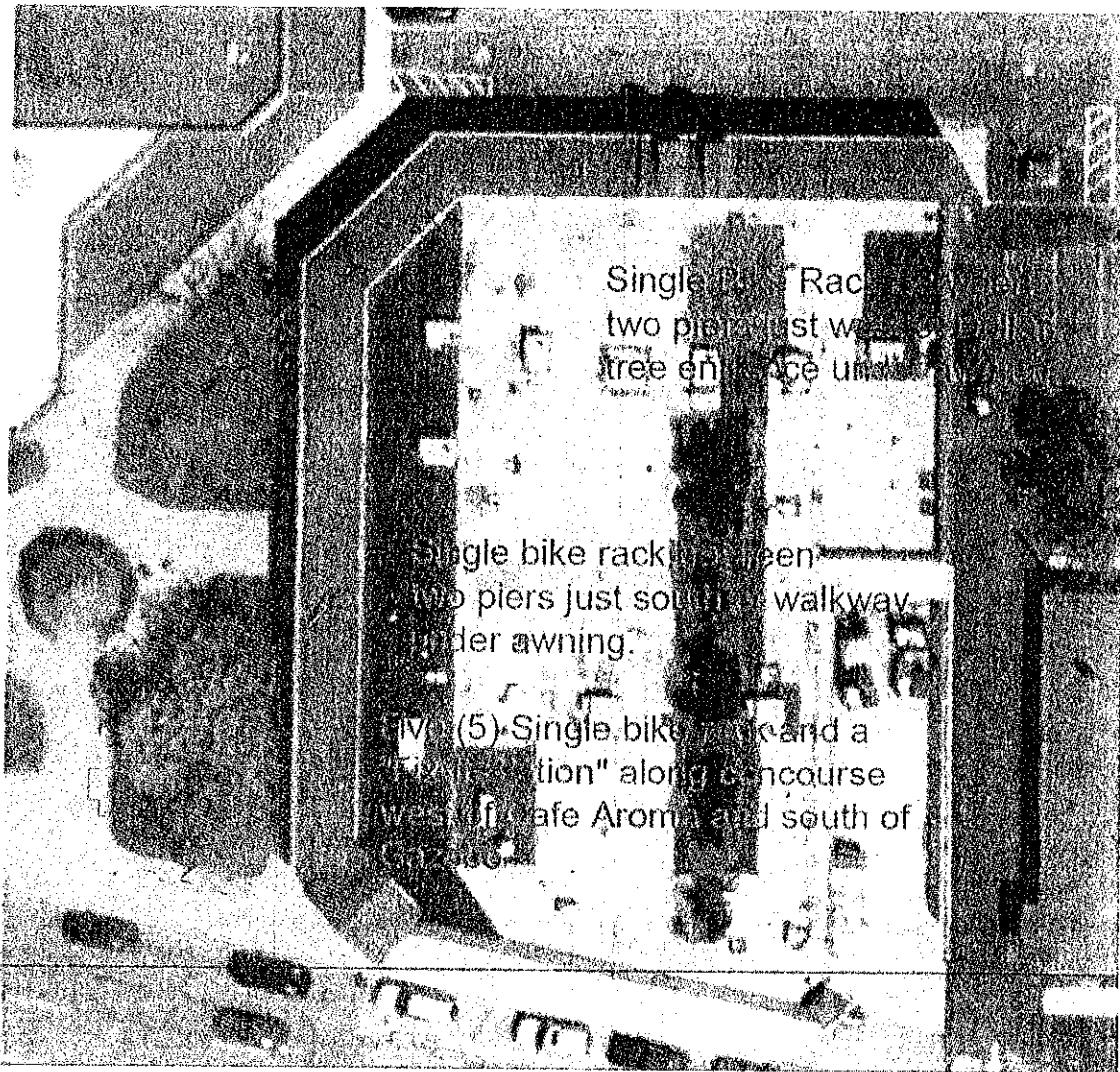


Exhibit B - Parkway Shops Bike Equipment Locations