

COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2020-41

By Leon Dozier Sponsored By Mayor Cyril M. Klein

AN ORDINANCE

**AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT BETWEEN THE CITY OF BREA
AND CLOVER COMMUNITIES BREA, LLC, AND ACCEPTING THE GRANT OF A NON-EXCLUSIVE
REVOCABLE LICENSE FOR THE PURPOSE OF MAINTAINING A FENCE ENCROACHING ON
PERMANENT PARCEL NO. 361-22-001, AND DECLARING AN EMERGENCY.**

WHEREAS, Berea Sheldon, LLC is the owner of certain property located in between Sheldon Road and Riveredge Parkway, east of and adjacent to Dora Lee Soccer Park, in the City of Berea, County of Cuyahoga, State of Ohio, further designated as Permanent Parcel No. 361-22-001; and

WHEREAS, Clover Communities Berea, LLC has entered into a purchase agreement with Berea Sheldon, LLC to purchase Permanent Parcel No. 361-22-001; and

WHEREAS, Clover Communities Berea, LLC has represented to the City that legal ownership will transfer on or before October 31, 2020; and

WHEREAS, the City of Berea is the fee owner of certain property located adjacent to Permanent Parcel No. 361-22-001, commonly referred to as Dora Lee Soccer Park; and

WHEREAS, a portion of the City's fence at Dora Lee Soccer Park encroaches on Permanent Parcel No. 361-22-001, as shown on **Exhibit "A"**, attached hereto and incorporated herein; and

WHEREAS, Clover Communities Berea, LLC, upon taking legal ownership of the property, is willing to grant to the City of Berea a revocable license for the purpose of maintaining the existing fence.

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 "B"** and incorporated herein, the City of Berea accepts the grant of a revocable License for the purpose of maintaining the existing fence.

SECTION 2. That the Mayor be and he is hereby authorized to execute a License Agreement with Clover Communities Berea LLC. in substantially the form which is attached to this Legislation as **Exhibit "B"** 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 the City being able to maintain the fence that encroaches on the property of Clover Communities Berea, LLC. Therefore, upon transfer of title from Berea Sheldon, LLC to Clover Communities Berea, LLC, and further 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.

COUNCIL CHAMBER

City of Berea, Ohio

Ord. 2020-41

By Dozier Sponsored By Mayor Kleem

PASSED: September 21, 2020

J. D. D.
President of Council

ATTEST: Alma E.
Clerk of Council

APPROVED: September 22, 2020

April Kleem
Mayor

Approved as to Form:

Bard J.
Director of Law

LICENSE - ENCROACHMENT AGREEMENT

THIS LICENSE - ENCROACHMENT AGREEMENT (the "Agreement") dated as of _____, 2020 is made by and between CLOVER COMMUNITY BEREALLC, a Delaware limited liability company, having an address at 348 Harris Hill Road, Williamsville, New York 14221 (the "Grantor") and the City of Berea, an Ohio political subdivision, having an address at 11 Berea Commons, Berea, OH 44017 (the "Grantee").

WHEREAS, Grantor is the fee owner of that certain property located at in between Sheldon Road and Riveredge Parkway, east of and adjacent to Dora Lee Soccer Park, in the City of Berea, County of Cuyahoga, State of Ohio, 44017, and having Cuyahoga County tax parcel identification number 361-22-001; and

WHEREAS, Grantee is the fee owner of that certain property, commonly known as the Dora Lee Soccer Field (the "Grantee Property"), which Grantee Property is contiguous to the Grantor Property; and

WHEREAS, a portion of the Grantee's fence encroaches on the Grantor's Property in the location shown on **Exhibit A**, attached hereto and incorporated herein (the "Fence"); and

WHEREAS, the Grantor and Grantee are entering into this Agreement to memorialize the Grantee's rights and obligations relative to the Fence and permitting Grantee to enter on to the Grantor's Property to access and maintain the Fence.

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

1. Revocable License. Grantor hereby grants to the Grantee and the Grantee hereby accepts from Grantor, a revocable license (the "License") permitting the Grantee's Fence to encroach on the Grantor's Property in its current location as depicted on the attached **Exhibit A** (the "Encroachment Area") and the right to enter the Grantor Property for purposes of accessing and maintaining the Fence. Grantee has no right to make any modifications to the Grantor's Property or to place any other structures or property on the Grantor's Property.

2. Term; Termination of License. The License may be revoked or terminated at any time in the sole discretion of the Grantor, provided the Grantor gives at least thirty (30) days prior written notice to Grantee (the "Termination Notice"). In the event of the repair and/or replacement of more than fifty percent (50%) of the Fence or the demolition or destruction of the Fence, Grantee, at its sole cost and expense, shall relocate the Fence onto the Grantee's Property. Upon the revocation or termination of the License, the Grantee, at its sole expense, will immediately restore, to the reasonable satisfaction of Grantor, the portion of the Grantor's Property affected by the Fence to the same condition as it was prior to the construction of the Fence.

3. No Claims of Adverse Possession, Prescriptive Easement or Abandonment. The Grantee acknowledges and agrees that it does not have and will not assert at any time any claim of adverse possession or prescriptive easement with respect to the Fence, the Encroachment Area or any portion of the Grantor's Property nor any claim that by granting the License, Grantor has abandoned the affected segments of the Grantor's Property.

4. Disturbance. The Grantee understands and acknowledges that, should Grantor for any reason damage and/or disturb the Fence or its contents during the exercise of Grantor's development, operation and/or maintenance of the Grantor's Property, Grantor shall be under no obligation whatsoever to repair said damage and/or disturbance.

5. Compliance with Laws. The Grantee, at the Grantee's expense, shall fully comply at all times with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, regional and local authorities or officials, now in force or which may hereafter be in force, which apply to, restrict, or impose a duty upon, Grantor or the Grantee with respect to the Fence and/or the Grantee's use of the portions of the Grantor's Property pursuant to this Agreement.

6. Grantee Responsible for the Encroachment. The Grantee shall be responsible in accordance with applicable law for its acts and the acts of its agents, including, without limitation, any failure to fulfill the obligations specified in this Agreement. Grantee shall defend, protect, indemnify, and hold harmless Grantor from any and all liability, and shall pay all costs and expenses, including reasonable attorney's fees actually incurred by Grantor, arising from, out of, or as a result of any use or enjoyment of the Encroachment Area (including removal or abandonment of the Fence), by Grantee, its related parties, employees, agents, successors, assigns, and any insurers, contractors, subcontractors, consultants, invitees or any other person or entity acting through or under them or any unaffiliated party making use of such Encroachment Area.

7. Costs Related to Work on the Encroachment. The Grantee shall be responsible for all costs related to any work on the Fence pursuant to this Agreement.

8. Successors and Assigns. This Agreement shall inure to the benefit of and bind the respective parties hereto and their successors, assigns, heirs and personal representatives.

9. No Relationship Other than Lessor and Licensee. Nothing contained in this Agreement shall create or be construed to create any relationship between the parties except that of lessor and licensee.

10. Applicable Law; Counterparts. This Agreement, and the rights and obligations of the parties hereto, shall be construed and enforced in accordance with the laws of the state of Ohio. This Agreement may be executed in counterparts.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GRANTOR:

CLOVER COMMUNITY BEREALLC

By: _____
Name: Michael L. Joseph
Title:

STATE OF _____)
SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020 by
[Name of Member or Manager or Officer] the _____
[Title] of _____ [Name of Limited Liability Company Acknowledging], a
[State of Formation] limited liability company, on behalf of the limited liability
company.

(Seal)

Signature of person taking acknowledgment

Printed Name of person taking acknowledgment

Title or rank

Serial Number (if any)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

GRANTEE:

By: _____
Name: _____
Title: _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2020
by _____ [Name of Member or Manager or Officer] the
_____ [Title] of _____ [Name of Limited Liability Company
Acknowledging], a _____ [State of Formation] limited liability company, on
behalf of the limited liability company.

(Seal)

Signature of person taking acknowledgment

Printed Name of person taking acknowledgment

Title or rank

Serial Number (if any)