MEMORANDUM OF UNDERSTANDING AMONG THE BEREA CITY SCHOOL DISTRICT, THE CITY OF BEREA AND THE LONGBROOKE HOMEOWNERS' ASSOCIATION CONCERNING THE PROPERTY KNOWN AS THE FORMER SMITH SCHOOL

This Memorandum of Understand ("MOU") is made and entered into this ___st day of October, 2021 ("Effective Date") by and among the **Berea City School District Board of Education** ("District"), a public school district and political subdivision under the laws of the State of Ohio, having an address of 390 Fair Road, Berea, Ohio, 44017, the **City of Berea**, a political subdivision under the laws of the State of Ohio, having an address of 11 Berea Commons, Berea, Ohio 44017, its successors, assigns and transferees ("City") and the Longbrooke Homeowners' Association ("HOA"), a Homeowners' Association organized under the laws of the State of Ohio, having an address of P.O Box 429, Berea, Ohio 44017.

RECITALS

WHEREAS, the Longbrooke Homeowners' Association was established on or about November 14, 1963 to, among other things, enforce deed restrictions created by Woodland Estates, Inc on property knows as the Longbrooke Subdivision; and

WHEREAS, the District purchased property in the Longbrooke Subdivision from Woodlawn Estates, Inc. ("Woodlawn") the developer of the Longbrooke Subdivision; and

WHEREAS, Woodlawn sold the site of the Smith School to the District in June 1965 by general warranty deed without any deed restrictions, noting only easements in favor of Cleveland Electric Illuminating Company and the Ohio Turnpike Commission; and

WHEREAS, in December, 1965, a concern arose regarding the impact of the deed restrictions on the property sold to the District; and

WHEREAS, the District, prior to constructing the new school, required further assurances of its ability to develop a school on the site and suggested that it may seek a condemnation proceeding; and

WHEREAS, in order to avoid a condemnation proceeding or action on the warranty deed provided by Woodlawn, Woodlawn filed a waiver of the restrictions explicitly invoking its right under paragraph v of the deed restrictions and clearly stating that the District could construct, operate and maintain a school; and

WHEREAS, due to newly constructed elementary schools coupled with enrollment declines, the Smith School is no longer needed to educate the District's students; and

WHEREAS, the District has been using the Smith Building for storage and has leased portions of it to the City of Berea for its purposes; and

WHEREAS, when the property was leased to the City, the HOA expressed its opinion that such lease violated the limitation of the waiver of deed restrictions; and

WHEREAS, The City and District disagreed that they were in violation of any restriction on the property; and

WHEREAS, the City is considering consolidating its Smith operations at other facilities and may no longer need to lease space but is willing to remain at Smith as part of a redevelopment plan; and

WHEREAS, the District has been expending its limited resources maintaining the Smith School which does not enhance the education of a single student and the District desires to dispose of Smith School; and

WHEREAS, Ohio Revised Code Section 3313.41 generally provides for the auctioning of property no longer needed for School District purposes which provides for transparency in the sale but does not take into account other stakeholders; and

WHEREAS, an open outcry auction may result in new ownership of the property whose interest are adverse to the HOA and City; and

WHEREAS, Ohio Revised Code Section 3313.41(C) permits the District to sell its property to a political subdivision on whatever terms they agree to; and

WHEREAS, the City is willing to assist the District in seeking statements of qualification and proposals for the redevelopment of Smith site including the building and all improvements and known as Permanent Parcel No. 364-35-009, consistent with zoning and subject to all easements of record; and

WHEREAS, upon consideration of the redevelopment proposals the District will seek to enter into a Purchase Agreement with the City for the Smith site, whereupon the City will assign its purchase option to a developer, selected in accordance with this Memorandum of Understanding and other terms and conditions set forth in the Request for Proposals; and

WHEREAS, while the District and City dispute the relevance of the deed restrictions and the waiver of those restrictions, the Parties recognize that the HOA has a significant interest in the redevelopment of the Smith property; and

WHEREAS, the District, City and HOA desire to avoid litigating the applicability of the deed restrictions to the Smith site and to collaborate to redevelop the Smith site; and

WHEREAS, failure to collaborate may have adverse consequences for all Parties.

NOW THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the District, City and HOA do hereby agree as follows:

ARTICLE I

1.1 **School District.** The District is the owner of the Smith Site and is willing to work with the City and HOA to redevelop the site. The District goals are reducing its costs, maximizing the value of the property, being a good custodian of District resources and being a responsible neighbor. The District is willing to sell the Smith Site, in its "as is condition," to the City if an acceptable redevelopment plan, as determined by the Parties, is proffered.

1.2 **City.** The City is willing to assist the District by developing and issuing a request for proposals ("RFP") for redevelopment of the Smith Site. The City will take the lead in drafting the RFP and will facilitate the involvement of the District and HOA on that RFP. The RFP shall include a provision stating that one factor to be considered in evaluating the proposals, along with other designated factors, is whether or not the proposed redevelopment will include some right of use or access by the City and the HOA to a building or amenity, or portion thereof. The RFP will also include the concepts in Exhibit A attached hereto. The City will receive the RFPs and facilitate a meeting to evaluate the proposals in accordance with the criteria set forth in the RFP.

1.3 **Longbrooke Homeowners' Association**. The HOA is willing to participate by attending meetings, timely commenting on the RFP, and if agreeable to the proposed re-development, execute documents to evidence that agreement.

1.4 **Waiver of Rights**. This MOU shall not be interpreted to waive any rights of any Party.

1.5 **Timeline**. The City has until March 31, 2022 to present offers/proposals for consideration.

ARTICLE II

DEVELOPMENT PLAN

2.1 **Legal Descriptions; Surveys.** The City or its designee or assignee shall be responsible for developing a legal description in a form approvable by the Cuyahoga County Engineer; and an ALTA survey, or such other form of survey acceptable to Cuyahoga County Engineer's Office. Provided, however, the Cuyahoga County Engineer's Office shall have the right to approve parcel configuration of any new sites, provided such configurations receive the necessary governmental approvals. In the event such surveys show conditions unacceptable to the party for whom the survey was conducted, that party shall bear the cost and responsibility to remedy such conditions. Notwithstanding the same, each party shall reasonably cooperate with the other party to affect any survey remedies but not to the extent that the cooperating party incurs costs.

2.2 **Coordination of Design**. The Developer or its designee or assignee will work cooperatively with community leadership and the City on the design of the redeveloped District Property building and site.

2.3 **Documents.** Upon the request of any party, the District will provide public records that it has relating to the Properties being transferred.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 **As to District.** The District represents and warrants:

A. The execution, delivery and performance of this Agreement and any related agreements do not or will not violate any provision of any existing law or regulation, order or decree of any court of governmental entity, and do not violate any provisions of, or constitute a default under, any agreement, or contract to which the District is a party, including, but not limited to, any agreements with any governmental agency. Further, all work which has been performed, or which will be performed, by the District in accordance with provisions of this Agreement shall be performed in full compliance with all Federal, State and local laws, rules, ordinances, orders and regulations.

B. The District has the power to make, deliver and perform this Agreement and has taken, or will take, all necessary action to obtain all necessary or appropriate authorizations for the execution of this Agreement.

3.2 **As to City.** The City represents and warrants:

A. The execution, delivery and performance of this Agreement and any related agreements do not or will not violate any provision of any existing law or regulation, order or decree of any court of governmental entity, and do not violate any provisions of, or constitute a default under, any agreement, or contract to which the City is a party, including, but not limited to, any agreements with any governmental agency. Further, all work which has been performed, or which will be performed, by the City in accordance with provisions of this Agreement shall be performed in full compliance with all Federal, State and local laws, rules, ordinances, orders and regulations.

B. The City has the power to make, deliver and perform this Agreement and has taken, or will take, all necessary action to obtain all necessary or appropriate authorizations for the execution of this Agreement.

3.3 As to HOA. The HOA represents and warrants:

A. The execution, delivery and performance of this Agreement and any related agreements do not or will not violate any provision of any existing law or regulation, order or decree of any court of governmental entity, and do not violate any provisions of, or constitute a default under, any agreement, or contract to which the HOA is a party, including, but not limited to, any agreements with any governmental agency. Further, all work which has been performed, or which will be performed, by the HOA in accordance with provisions of this Agreement shall be performed in full compliance with all Federal, State and local laws, rules, ordinances, orders and regulations.

B. The HOA has the power to make, deliver and perform this Agreement and has taken, or will take, all necessary action to obtain all necessary or appropriate authorizations for the execution of this Agreement.

ARTICLE IV

COOPERATION BETWEEN THE PARTIES; EXECUTION OF OTHER DOCUMENTS

4.1 **Cooperation** The Parties acknowledge that the transactions provided for in this Agreement present a unique opportunity for a cooperative effort that can provide economic benefits to the Berea community. Therefore, Parties intend to cooperate with one another fully by:

A. Jointly participating in all public hearing processes necessary for any approval from the City of Berea or other governmental entity having jurisdiction over the redevelopment of District Property;

B. Making good faith efforts to adhere to timelines;

C. Seeking creative solutions to problems;

D. Executing in a timely manner all other documents and instruments necessary to fulfill the intent of the parties under this Agreement.

ARTICLE V

MISCELLANEOUS

5.1 **Reports and Information.** The District has various reports and information relating to the Property that are available for review.

5.2 **Notices**. Any notice required or allowed to be sent under this Agreement shall be either (1) hand-delivered to the other party, and if so hand-delivered shall be effective on the day following its delivery, or (2) sent by regular United States mail, and if so sent shall be effective three (3) days following its mailing date.

Any notice to the District shall be addressed to:

Superintendent
Berea City School District
Board of Education Building
390 Fair Street
Berea, Ohio 44017

Any notice to the City shall be addressed to:

Mayor
Berea City Hall
11 Berea Commons
Berea, Ohio 44017

Any notice to the HOA shall be address to:

President
Longbrooke Homeowners' Association
P.O. Box 429
Berea, OH 44017

5.3 **Governing Law**. This Agreement shall be construed under and governed by the laws of the State of Ohio.

5.4 **Headings**. The paragraph captions or headings contained in this Agreement are for convenience of reference only and are not to be used in the interpretation of this Agreement or as a description, expansion, modification, or limitation of the scope of the particular paragraphs to which they refer.

5.5 **Integration.** This Agreement contains the complete understanding and agreement of the Parties with respect to the subject matter of this Agreement, and all prior representations, negotiations, and understandings, written or oral, are superseded by and merged into this Agreement. The District shall not be liable or bound to the other Parties in any manner by any agreement, warranty, representation or guarantee with respect to the subject matter of this Agreement, except as specifically set forth in this Agreement or in any instrument executed in accordance with this Agreement. The introductory Recitals to this Agreement and Exhibits attached hereto are expressly incorporated in and made a part hereof by reference as substantive provisions of this Agreement.

5.6 **Approvals**. All consents and approvals required or permitted under this Agreement shall not be unreasonably withheld or delayed, and in the case of the District, shall be given by the Superintendent or Treasurer or their successors in such offices, upon the consent of the Board of Education, if such consent is required and in the case of the City shall be given by the Mayor or Director of Law, upon the consent of City Council, if such consent is required and in the case of the HOA shall be given by the President. Each party shall be entitled to conclusively rely on the consent or approval of the other provided that the same is executed by the persons holding the offices or authorized to perform the duties of such offices specified herein.

5.7 **Assignment**. The City may assign such rights in this Agreement to the Redevelopers without the written consent of the other Parties.

5.8 **Counterparts**. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same instrument.

5.9 **Severability; Reformation**. In the event any provision of this Agreement shall be found to be illegal or unenforceable by a court of competent jurisdiction, then in that event such illegal or unenforceable provision shall be severed from the balance of this Agreement and the balance of the Agreement shall be enforced in accordance with its terms. In the event the court deems the illegal or unenforceable provision to be not severable from the balance of this Agreement, then in that event the parties authorize the court to reform this Agreement in a manner that accomplishes the objectives of the parties as described herein.

5.10 **Amendment**. This Agreement may only be amended or changed by a writing signed by all parties herein.

IN WITNESS WHEREOF, the District, the City and HOA have executed this Agreement as of the Effective Date first written above.

FOR THE BEREA CITY SCHOOL DISTRICT BOARD OF EDUCATION

By: _____

Superintendent

By: _____

Treasurer

FOR THE HOA

By: _____
President

FOR THE CITY OF BEREA

By: _____
_____
_____

The legal form and correctness of this instrument is approved.

_____, Director, Law

By: _____

Date: _____

Exhibit A

Transfers. In the event of an agreeable proposal and execution of a purchase agreement, title shall transfer by recording of quit-claim deed(s).

Title Work. The City or its designee or its assignee may elect to cause a title insurance company of its selection ("Title Insurer") to examine title and perform a special tax search with respect to the property being transferred and issue a commitment ("binder") for the issuance of an owner's fee policy. If any encumbrances or title defects as to the property being transferred shall appear as exceptions on either binder or otherwise arise on or before the Closing (as defined below), and if either Party ("Objecting Party") notifies the other party ("Notified Party") in writing of its objection, the Notified Party shall have a period not exceeding thirty (30) days from receipt of such notice to remove such encumbrance or cure such defect at its own expense, although the Notified Party shall not be obligated to do so. If the Notified Party shall be unable or unwilling to remove any such encumbrance or cure any such defect within thirty (30) days, such Notified Party shall forthwith give written notice to the Objecting Party of its inability or unwillingness to cure such defect. Neither party need object to any monetary liens or encumbrances on the property being transferred to it, and the current owner shall remove same, at such current property owner's sole cost and expense, prior to Closing. If the Title Insurer reports that it is not willing and able to issue an Owner's Policy of Title Insurance (ALTA Form revised 10-17-05) without exceptions for any such encumbrances or defects which the Notified Party has been unable or unwilling to remove, the Objecting Party shall have the option, exercisable within thirty (30) days after receipt of such notice, to (a) accept title to the property being transferred to it, subject to said encumbrances and/or defects, or (b) terminate the Agreement by written notice to the Notified Party.

Closing, Costs and Prorations. All documents and funds necessary to complete these transactions shall be placed in escrow with the Title Insurer, or an agent thereof (the "Escrow Agent") no later than five (5) days prior to Closing. Closing of these transactions shall take place, provided all the terms and conditions of this Agreement have been fulfilled as provided in this Agreement, not later than five (5) days after the date all such documents have been deposited in escrow on such date as is mutually agreed to by the Parties, but in no case later than July 31, 2023 ("Closing Date"). All funds required for transfer of the Properties shall be deposited in escrow with the Escrow Agent not later than the Closing Date. This Agreement shall be considered the escrow instructions but shall be subject to the Escrow Agent's standard conditions of acceptance of escrow where not inconsistent with the terms and conditions of the Agreement. The standard conditions of acceptance of escrow shall be made a part of and incorporated into the Agreement by reference, and to the extent such incorporation by reference creates any inconsistencies or ambiguities, the terms and conditions of the Agreement shall control. The Escrow Agent is hereby authorized to close the transactions and to make all prorations and allocations which, in accordance with the Agreement, are to be made between the parties. Escrow Agent shall cause Title Insurer to search the title to each property being transferred, and if and when Escrow Agent has received all funds and documents to be deposited in escrow, Escrow Agent shall cause the quit-claim Deeds to be filed for record, the Title Policies to be issued to the Parties and the funds disbursed in accordance with the Agreement.

The Escrow Agent shall prorate real estate taxes and assessments, both general and special, which are a lien but not yet due and payable, with respect to the Premises as of the conveyance date, based upon the latest available tax duplicate. The Escrow Agent shall distribute funds to the appropriate party, less any net prorations or credits, and shall provide to the Parties a copy of the closing statement. The Escrow Agent shall be responsible for compliance with the reporting requirements pursuant to Section 6045 of the Internal Revenue Code, including the preparation of Form 1099.

The Escrow Agent shall charge to the party receiving the property the following costs and expenses: (a) all transfer taxes required by law to be paid at the time of the filing of the Deeds; (b) the Escrow Fee, and (c) the cost of recording and filing the Deeds. The Escrow Agent shall charge to any party receiving a Title Policy the cost of its respective Title Policy.

Condition and Responsibility for Property. Smith School is being offered in the present "AS IS" condition (subject to the District's right to remove loose furniture, fixtures and equipment). The Parties acknowledge that they are not relying upon any representations, warranties or other information given or supplied by the District with respect to environmental conditions existing on the District's Property, or other matters in entering into this transaction or developing and constructing its property. District makes no covenant, representation or warranty as to the suitability of the District's Property for any purposes whatsoever or as to the physical condition of the District's Property.

Environmental Assessments. The City or its designee or assignee will have until June 30, 2023 to conduct such environmental tests, geotechnical tests and surveys as they deem appropriate and shall have a license to enter upon the Premises to do so. In the event, the City or its designee believes there is a condition on the property, they may elect to send a letter to the District and City stating its desire to terminate this Agreement as it applies to them.

Disclaimer:

A. EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS AGREEMENT, THE DISTRICT HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY, OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE OF, AS TO OR CONCERNING THE NATURE AND CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, AND THE SUITABILITY THEREOF AND OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH THE CITY OR ITS DESIGNEE MAY ELECT TO CONDUCT THEREON.

B. THE CITY AND ITS DESIGNEE OR ASSIGNEE ACKNOWLEDGE THAT IT HAS BEEN GIVEN AN UNIMPEDED OPPORTUNITY TO INSPECT THE PROPERTY, AND IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY IN ARRIVING AT ITS DECISION TO OBTAIN THE PROPERTY, AND THAT IT IS

OBTAINING THE PROPERTY IN ITS PRESENT CONDITION, "AS IS, WHERE IS," AND THE DISTRICT HAS NO OBLIGATION TO CONSTRUCT ANY IMPROVEMENTS THEREON, OR TO PERFORM ANY OTHER ACT REGARDING THE PROPERTY.

C. ANY FACTUAL INFORMATION SUCH AS PROPERTY DIMENSIONS, SQUARE FOOTAGE, OR SKETCHES SHOWN TO THE RESPECTIVE PARTY OR SET FORTH HEREIN ARE OR MAY BE APPROXIMATE. NO LIABILITY FOR ANY INACCURACIES, ERRORS OR OMISSIONS IS ASSUMED BY THE DISTRICT OR OTHER RESPECTIVE AGENTS.

D. THE DISTRICT EXPRESSES NO EXPERTISE WITH RESPECT TO ENVIRONMENTAL MATTERS. PROPER INSPECTIONS OF THE PROPERTY BY CITY'S, ITS DESIGNEE'S OR ASSIGNEE'S QUALIFIED EXPERTS ARE AN ABSOLUTE NECESSITY TO DETERMINE WHETHER OR NOT THERE ARE ANY CURRENT OR POTENTIAL ENVIRONMENTAL CONCERNS RELATING TO THE PROPERTY. THE DISTRICT HAS NOT, NOR WILL IT MAKE, ANY REPRESENTATION, EITHER EXPRESSED OR IMPLIED, REGARDING THE EXISTENCE OR NON-EXISTENCE OF ANY SUCH ENVIRONMENTAL CONCERNS IN OR ON THE PROPERTY. PROBLEMS INVOLVING ENVIRONMENTAL CONCERNS CAN BE EXTREMELY COSTLY TO CORRECT. IT IS THE RESPONSIBILITY OF THE CITY OR ITS DESIGNEE TO RETAIN QUALIFIED EXPERTS TO DEAL WITH THE DETECTION AND CORRECTION OF SUCH MATTERS. THE PARTIES AGREE THE DISCLAIMERS SET FORTH IN PARAGRAPH 5.1 SHALL SURVIVE AND NOT MERGE WITH CLOSING OF THIS TRANSACTION.