

# COUNCIL CHAMBER

City of Berea, Ohio

Ordinance No. 2016-85

By Nick Haschka Sponsored By Mayor Cyril M. Klem

## AN ORDINANCE

### AUTHORIZING THE MAYOR TO ENTER INTO A COMMUNITY REINVESTMENT AREA ("CRA") AGREEMENT WITH FRONT STREET GROUP, LLC., AND DECLARING AN EMERGENCY.

WHEREAS, Front Street Group, LLC., intends to purchase and demolish the existing buildings at 106 Front Street (Permanent Parcel Number 364-11-009) and 118 Front Street (Permanent Parcel Number 364-11-006) in order to develop a mixed use facility at this site; and

WHEREAS, Front Street Group, LLC. will retain ownership of the first floor of this mixed use development, including approximately 16,000 square feet for commercial use; and

WHEREAS, such redevelopment project qualifies for benefits associated with the City's duly adopted (as amended) Community Reinvestment Area program.

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

**SECTION 1.** That the Mayor is hereby authorized to enter into a Community Reinvestment Area Agreement with Front Street Group, LLC. in substantially the form of Agreement attached hereto as Exhibit "A" and incorporated herein.

**SECTION 2.** That due notice of such Agreement has been provided by the Mayor (or his designee) to the Berea City School District and Polaris Vocational School District in accordance with current law and/or regulations, and that all other notices, requirements, application contents and/or reviews be otherwise completed and provided, as may be required or called for in said Agreement, or pursuant to law.

**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.

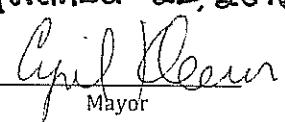
**SECTION 4.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department and for the further reason that said Agreement must be in place before improvements on the property may begin, and the improvements are ready to immediately commence upon such approval, thereby enhancing business expansion and creating jobs. 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 21, 2016

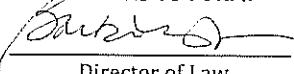
  
President of Council

ATTEST: Andy Dorn  
Clerk of Council

APPROVED: November 22, 2016

  
Mayor

APPROVED AS TO FORM:

  
Director of Law

## COMMUNITY REINVESTMENT AREA AGREEMENT

This Community Reinvestment Area Agreement (the "Agreement"), dated as of \_\_\_\_\_ 2016, is entered into by and between the City of Berea, Ohio (the "City"), a municipal corporation and political subdivision, organized and existing under the laws of the State of Ohio (the "State"), with its main offices located at 11 Berea Commons, Berea, Ohio 44017, (hereinafter referred to as the "City"); and Front Street Group LLC, an Ohio limited liability company with its offices located at 5720 East Schaaf Road, Independence, Ohio 44131 (hereinafter referred to as "FSG")

### WITNESSETH

**WHEREAS**, by Ordinance No. 94-60, 97-24, 2007-11, 2008-27 passed by this Council on June 21, 1994, as amended by 97-24, 2007-11, 2008-27 (collectively the "CRA Ordinance"), the Council found and determined that the Community Reinvestment Area (the "Community Reinvestment Area") designated in Ordinance No. 94-60 constitutes an area in which housing facilities or structures of historical significance are located and in which new construction and repair of existing facilities has been discouraged; and

**WHEREAS**, effective June 20, 1994, the Director of Development of the State determined that the aforementioned area designated in said Ordinance No. 94-60 June 21, 1994, as amended by 97-24, 2007-11, 2008-27 contains the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed said area as a Community Reinvestment Area under said Chapter 3735; and

**WHEREAS**, the City has encouraged the development of real property located in the Community Reinvestment Area; and

**WHEREAS**, FSG intends to purchase the property located at 102-118 Front Street, Berea, Ohio, also known as Permanent Parcel Numbers 364-11-014; 364-11-009; 364-11-008; 364-11-007; and 364-11-006; to demolish the existing structures and then construct a four story mixed use building containing approximately 67,000 square feet of commercial and multi-family dormitory space. All commercial space will be located on the first floor while the multi-family dormitory space will on the second, third and fourth floors; and

**WHEREAS**, FSG will consolidate and split the parcels, herein referenced above, to create one parcel for the parking lot, site landscaping and associated space, one parcel for the first floor and one air rights parcel for second, third and fourth floors. It is anticipated that the Cuyahoga County Engineer and/or other County offices in charge of delineating parcels will create new permanent parcel numbers for each area; and

**WHEREAS**, upon completion of the new mixed use building, FSG will transfer ownership of the second, third, and fourth floors of the new building contained in the newly created air rights parcel to Baldwin Wallace University. Baldwin Wallace University will then own, control and operate the multifamily dormitory space; and

**WHEREAS**, following the transfer of the second, third, and fourth floors of the new mixed use building contained in the newly created air rights parcel to Baldwin Wallace University, FSG will retain ownership, control and operation of the first floor of the new mixed use building, the parcel containing the first floor and the parcel containing the parking lot, site landscaping and associated space; and

**WHEREAS**, the first floor will contain approximately 16,400 square feet of commercial space to be occupied by businesses who will supplement the shopping, dining and professional service needs

of residents of the City of Berea and surrounding communities as well as preserve and create employment opportunities, (hereinafter also referred to as the "Project"); and

**WHEREAS**, the Project is within the boundaries of the aforementioned Community Reinvestment Area, and can proceed provided that the appropriate development incentives are available to support the economic viability of said Project; and

**WHEREAS**, the Project maximizes the use of property owned by FSG and is likely to encourage similar development within Downtown Berea and achieves goals identified in various City of Berea Master Plans; and

**WHEREAS**, the City, having the appropriate authority, is desirous of providing FSG with incentives available for the development of the Project in the Community Reinvestment Area under Chapter 3735 of the Ohio Revised Code; and

**WHEREAS**, FSG has submitted a Community Reinvestment Area Agreement Application (herein attached as Exhibit A) for the Project to the City and said application is hereinafter referred to as the "Application"); and

**WHEREAS**, FSG will remit the required state application fee of \$750.00 made payable to the Ohio Department of Development with the application to be forwarded to said Department with a copy of the final agreement; and

**WHEREAS**, the administrative staff of the City investigated the application submitted by FSG and has recommended approval of the same to Berea City Council on the basis that FSG is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Community Reinvestment Area and improve the economic climate of the City; and

**WHEREAS**, if FSG builds the proposed Project pursuant to this agreement, the Project is estimated to cause the retention of ten (10) Full-Time Employees or Full Time Equivalent Employees and estimated to cause the creation of an addition of thirty (30) additional Full Time Employees or Full Time Equivalent Employees by December 31, 2020; and

**WHEREAS**, if FSG builds the proposed Project pursuant to this agreement and the new Full Time Employees or Full Time Equivalent Employees are employed as projected, the additional payroll is estimated to be \$900,000.00 by December 31, 2020; and

**WHEREAS**, pursuant to Section 3735.67(A) and in accordance with the format required under Section 3735.671(B) of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained and the benefits to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Construction of the Project. The Project shall consist of the construction of an approximately 16,400 square foot of commercial space on the first floor of a new mixed use building to be used as a commercial, retail, dining and/or professional services. Said new building shall be constructed on the Site which is located in the Ward 4 of Berea, Ohio.

FSG agrees that the investment in the Project shall be not less than \$4,000,000.00 (plus or minus 10%) in the aggregate and that such investment shall be made at the Site. Included in this investment will be \$2,400,000.00 for construction of the Project.

The Project is estimated to begin in February, 2017 and all acquisition and construction is estimated to be completed by April, 2018.

2. Job Creation and Retention. FSG or its tenants of the Site shall work to estimate and create the equivalent of thirty (30) new full-time permanent job opportunities by December 31, 2020 (the "Job Creation Estimate").

FSG or its tenants of the Site will retain the equivalent of ten (10) full-time permanent jobs during the abatement period (the "Job Retention Estimate").

The increase in the number of employees to be created in accordance with this Section 2 will result in approximately \$900,000.00 of new additional annual payroll for FSG or its tenants (the "Payroll Estimate"). The entire increase in payroll shall be attributed to the creation of permanent employment positions.

3. Exemption Granted. As authorized under Section 3735.67 of the Ohio Revised Code, the City hereby grants to FSG a tax exemption for real property improvements made to the first floor of the Site. Such real property improvements will receive a ten year exemption period, commencing the first year for which such real property improvements would first be taxable were that property not exempted from taxation. The exemptions provided for herein in each year shall be in the amounts set forth below.

<i>Years of Tax Exemption</i>	<i>Tax Exemption Amount</i>
Years 1-10	49%

FSG acknowledges and agrees that it shall have sole and full responsibility for filing the appropriate tax forms to effect and maintain the exemptions contemplated herein, including without limitation, form DTE 23 with the County Auditor and that neither the City nor any employee or agent thereof shall have any responsibility for taking any actions, other than those expressly set forth herein, to effect or maintain such exemption.

4. Provision of Information. FSG agrees that it shall promptly provide to the City of Berea Tax Incentive Review Council (the "Council") any information reasonably required by the Council to evaluate the compliance of FSG with this Agreement, including, but not limited to, employee counts, payroll figures, and returns filed pursuant to Section 5711.02 of the Ohio Revised Code if requested by the Council. At a minimum employee counts and payroll figures shall be required for the yearly report required by the State of Ohio Development Services Agency and the Cuyahoga County Fiscal Office.

5. Annual Fee. FSG shall pay to the City an annual fee equal to the greater of one percent of the dollar value of the taxes abated in such year under this Agreement or five hundred dollars: provided, however, that if in any year, the value of the taxes abated pursuant to this Agreement shall exceed two hundred fifty thousand dollars, the fee shall be two thousand five hundred dollars.

Each such payment shall be made to the City on March 1st of each year that this Agreement shall be in effect, commencing March 1, 2017 and ending on the March 1st of the calendar year following the last tax year in which taxes shall be abated hereunder. Each such payment shall be made to the Director of Finance of the City and shall be made by certified check or such other method as may be approved by the Director of Finance. Any amounts received by the City may be used for such purposes as are authorized by applicable law, including but not limited to Section 3735.671(D) of the Revised Code.

6. Payment of Taxes. FSG shall pay such real and tangible personal property taxes as are not exempted under this Agreement and are charged against the property contained in the Site as well as any other property owned by FSG within the City of Berea and shall file all tax reports and returns as required by law. In the event that FSG shall fail to pay such taxes or file such returns and reports, all incentives granted under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

7. Further Acts. The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitations, joining to the execution of all documentation, providing any necessary certificates required in connection with such exemptions; provided, however FSG acknowledges and agrees that the City shall have no monetary liability for any damages caused or incurred by FSG by any failure of the City to perform its obligations under Section 7 or any other provisions of this Agreement. FSG will contribute \$500.00 annually to the City of Berea Special Events Fund for the support of events put on or sponsored by the city or not-for-profit organizations for the support of events that draw people to Berea and to Berea businesses for the duration of the agreement, of which is the first payment is due within 45 days of the passage of this Agreement. Subsequent donations will be made by August 1, of every year the agreement is active.

8. Entitlements to Survive Revocation of Area Designation. If for any reason the Community Reinvestment Area designation expires, the Director of the State of Ohio Department of Development revokes certification of the area, or the City revokes the designation of the area, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless FSG materially fails to fulfill its obligation under this Agreement and the City terminates or modifies the exemptions for taxation granted under this agreement.

9. Termination or Modification of the Exemption; Repayment to the City of the Amounts Exempted. If FSG materially fails to fulfill its obligation under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement and may require the repayment of the amount of taxes that would have been repayable had the property not been exempted from taxation. If the City requires the repayment of the amount of the taxes that would have been payable had the property not been exempted from taxation, the City is authorized to secure repayment of such taxes by a lien on the exempted property in the amount required to be repaid and such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property. If FSG relocates from the City of Berea for any reason during the abatement period, the total amount of all taxes abated is due and payable to the City of Berea within 30 days of the said relocation.

10. No Delinquent Amounts. FSG hereby certifies that at the time this Agreement is executed FSG does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State, and does not owe delinquent taxes for which FSG is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code or, if such delinquent taxes are owed, FSG is not currently paying delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against FSG. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

FSG further covenants that it does not owe (1) any moneys to the State of Ohio or any state agency for the administration or enforcement of any environmental laws of the State; and (2) any

other moneys to the State of Ohio, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

11. Further Approvals. FSG and the City acknowledge that this Agreement must be approved by formal action of the legislative authority of the City of Berea as a condition for the agreement to take effect. This agreement takes effect upon such approval.

12. Revocation of Exemption Under Certain Circumstances. The exemptions from taxation granted under this agreement shall be revoked if it is determined that FSG, any successor property owner, or any related member (as those terms are defined in Section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.

13. No False Statements. FSG affirmatively covenants that it has made no false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area incentives. If any representative of FSG has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, FSG acknowledge and agrees that it shall be required to immediately return and shall return, all benefits received under this Agreement pursuant Ohio Revised Code Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to Ohio Revised Code Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

14. Non-Discriminatory Hiring. FSG acknowledges that the City has developed a policy to ensure that recipients of Community Reinvestment Area tax benefits practice non-discriminatory hiring in their operations. By executing this Agreement, FSG agrees to follow non-discriminatory hiring practices, and acknowledges and agrees that no individual shall be denied employment with FSG or its tenants on the basis of race, religion, sex, disability, color, national origin, or ancestry.

15. Assignment and Transfer. This Agreement is not transferable or assignable without the express, written approval of the City.

16. No Waiver. No failure by the City to insist upon the strict performance by FSG of any provisions hereof shall constitute a waiver of the City's right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by FSG to observe or comply with any provision hereof, including but not limited to any rights of the City under Section 9 of this Agreement.

17. Revisions to Project Estimates. City and FSG agree that the Job Creation Estimate, the Job Retention Estimate and the Payroll Estimate (collectively referred to herein as the "Project Estimates") will be reviewed and revised to reflect actual, definitive numbers once the Project is further defined. The parties anticipate that the Project Estimates will be finalized on or before June 30, 2017. Once the Project Estimates are finalized, the parties will enter into an amendment to this Agreement to reflect such finalized Project Estimates and the exemption granted herein shall be revised accordingly, subject to the approval of Berea City Council.

18. Miscellaneous. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same

instrument. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable provisions were not contained herein and each such provision, covenant obligation or agreement shall be deemed to be effective in the manner and to the full extent permitted by law. This Agreement may not be amended except by a written instrument executed by the parties hereto.

All covenants, obligations and agreements of the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any employee, officer, agent, independent contractor or elected representative of the City in other than his or her official capacity, acting pursuant to the laws of the State, and no such employee, officer, agent, independent contractor or elected representative shall be personally liable or in any way obligated by reason hereof or by reason of any other action taken by the City or any representative thereof.

**IN WITNESS WHEREOF**, the City of Berea, Ohio, by its Mayor, and FSG, by its authorized representatives, have caused this instrument to be executed all as of the date first written above.

**City of Berea, Ohio**

By **Mayor**

**Front Street Group LLC**

By \_\_\_\_\_

Title \_\_\_\_\_

**Approved as to form:**

**Director of Law**

Note: A copy of this agreement must be forwarded to the Ohio Department of Taxation and Development within fifteen (15) days of finalization.