

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2016-86

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

### VACATING PORTIONS OF CENTER STREET AND WEST ALLEY, WHICH ARE NO LONGER NEEDED FOR MUNICIPAL PURPOSES, BUT RETAINING PUBLIC UTILITIES EASEMENTS THEREIN.

**WHEREAS**, portions of Center Street and West Alley, as described in Exhibit "A" which is attached hereto and incorporated herein, and as shown on the Map attached hereto as Exhibit "B", are no longer needed for municipal purposes, except for the retention and utilization of the same for public utilities; and

**WHEREAS**, the City shall retain an easement in the said lands for public utilities repair, maintenance, installation, replacement and other public utility purposes; and

**WHEREAS**, there is good cause for vacating portions of said land, and vacation will not be detrimental to the public interest; and

**WHEREAS**, upon vacating said portions of Center Street and West Alley, the adjoining property owners, Front Street Group, LLC. and Baldwin Wallace University, will receive the land; and

**WHEREAS**, all abutting Property Owners have provided Council with their written consent to the Vacation of said portions of Center Street and West Alley as described herein, and that, therefore, no Publication Notice is required per O.R.C. 723.06.

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

**SECTION 1.** That this Council hereby vacates those portions of Center Street and West Alley as described in Exhibit "A" and shown on the map in Exhibit "B", respectively attached hereto and incorporated herein, the same being no longer needed for municipal purposes, except for the retention of public utilities easements.

**SECTION 2.** That this Council finds good and sufficient reason and cause to vacate the subject real property described in Exhibit "A" and, more particularly, that the said real property area is no longer needed for any municipal purpose, except public utilities easements, and that the vacation of the same is not, nor will be, detrimental to the public interest, but in fact aids the public interest.

**SECTION 3.** Should the Mixed Use Development not break ground by June 15, 2017, the land vacated through this ordinance shall revert back to the City of Berea.

**SECTION 4.** That pursuant to Section X of the City of Berea Charter, this Council has referred this Ordinance to the Municipal Planning Commission for review and consideration, and the Planning Commission has recommended approval.

**SECTION 5.** That the parcels of real property consisting of the above-described portions of Center Street and West Alley as fully described on Exhibit "A", attached hereto, and as shown on the map attached hereto as Exhibit "B", are hereby vacated without reservation or restriction, except for the retention of the public utilities easements.

# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2016-86

By Haschka Sponsored By Mayor Cyril M. Kleem

SECTION 6. That the Adjoining Property Owners have agreed to accept said portions of Center Street and West Alley in total and, upon vacation, said land shall therefore attach in total to the Adjoining Property Owners' land, such Adjoining Property Owners having provided written consent to the vacation and agreement on vacation that said land shall attach to the Adjoining Property Owners' lands.

SECTION 7. That the Mayor of the City and appropriate City Administrators be, and hereby are, authorized and directed to execute the Plat of Vacation and all other documents on behalf of the City of Berea consistent with this Ordinance, and to cause the same to be filed for record in the Office of the Recorder of Cuyahoga County, Ohio.


SECTION 8. That the Clerk of Council is hereby directed to notify the Auditor of Cuyahoga County of the vacation by sending a copy of this Ordinance, immediately upon its passage and approval, to the Auditor of the County.

SECTION 9. That the City hereby retains rights in the property to the extent of certain Public Utilities Easements in substantially the form as described in Exhibit "C", attached hereto and incorporated herein.

SECTION 10. 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.

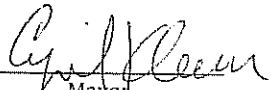
SECTION 11. That this Ordinance shall take effect and be in force from and after the earliest period allowed by law.

PASSED: November 21, 2016

  
\_\_\_\_\_  
President of Council

ATTEST: Alyssa  
Clerk of Council

APPROVED: November 22, 2016

  
\_\_\_\_\_  
Mayor

Approved as to Form:

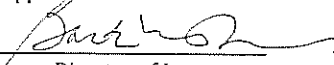
  
\_\_\_\_\_  
Director of Law

Exhibit  
"A"  
(9-7)



Legal Description  
Vacated Roadway Parcel "1-V"  
Berea, Ohio  
October 25, 2016  
File No. 13936-LD002  
Page 1 of 2

Situated in the City of Berea, County of Cuyahoga and State of Ohio, and known as being all of Vacated Center Street (66 feet wide) and part of Vacated West Alley (33 feet wide) as shown by recorded plat of Vacation of Portions of Center Street and West Alley in Volume \_\_\_\_\_ of Maps, Page \_\_\_\_ of Cuyahoga County Records and bounded and described as following:

Beginning at a 5/8" iron pin monument at the intersection of the centerline of Center Street (66 feet wide) and the centerline of Front Street (width varies);

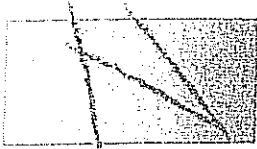
Thence North 89°50'11" East, along the centerline of said Center Street, a distance of 41.00 feet to a point on the Easterly right of way for said Front Street and the principal place of beginning;

- Course 1 Thence North 00°09'02" West, along the Westerly right of way of said Front Street, a distance of 33.00 feet to its intersection with the Northerly right of way for said Center Street;
- Course 2 Thence North 89°50'11" East, along the Northerly right of way of said Center Street, a distance of 148.60 feet to its intersection with the Westerly right of way of West Alley;
- Course 3 Thence North 00°09'02" West, along the Westerly right of way of said West Alley, a distance of 27.28 feet;
- Course 4 Thence North 89°55'07" East, a distance of 16.50 to a point on the centerline of said West Alley;
- Course 5 Thence South 00°09'02" East, along the centerline of said West Alley, a distance of 18.64 feet;
- Course 6 Thence North 89°51'11" East, a distance of 16.50 feet to a point on the Easterly right of way of said West Alley;

Legal Description  
Vacated Roadway Parcel "J-V"  
Berea, Ohio  
October 25, 2016  
File No. 13936-LD002  
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- Course 7 Thence South  $00^{\circ}09'22''$  East, along the Easterly right of way of said West Alley, a distance of 74.61 feet to its intersection with the Southerly right of way of said Center Street;
- Course 8 Thence South  $89^{\circ}50'11''$  West, along the Southerly right of way of said Center Street, a distance of 181.60 feet to a point on the Easterly right of way of said Front Street;
- Course 9 Thence North  $00^{\circ}09'02''$  West, along the Easterly right of way of said Front Street, a distance of 33.00 feet to the principal place of beginning and containing 0.2887 acres (12,577.83 square feet) of land as surveyed by Thomas J. Neff Jr., Registered Surveyor No. 7065-Ohio of Neff & Associates, dated September 01, 2016.

Be the same more or less, but subject to all legal highways and easements of record.



NEFF  
& ASSOCIATES

Civil Engineers · Landscape Architects · Planners · Surveyors  
Traffic Engineers · Environmental Engineers

Legal Description

Vacated Roadway Parcel "2-V"

Berea, Ohio

October 25, 2016

File No. 13936-LD003

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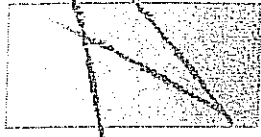
Situated in the City of Berea, County of Cuyahoga and State of Ohio, and known as being part of Vacated West Alley (33 feet wide) as shown by recorded plat of Vacation of Portions of Center Street and West Alley in Volume \_\_\_\_\_ of Maps, Page \_\_\_ of Cuyahoga County Records and bounded and described as following:

Beginning at a 3/4" iron pin monument at the intersection of the centerline of West Alley and the Southerly right of way of School Street (33 feet wide);

Thence South 00°09'02" East, along the centerline of said West Alley, a distance of 198.85 feet to the principal place of beginning;

- Course 1 Thence South 00°09'02" East, continuing along the centerline of said West Alley, a distance of 39.01 feet;
- Course 2 Thence South 89°55'07" West, a distance of 16.50 feet to a point on the Westerly right of way of West Alley;
- Course 3 Thence North 00°09'02" West, along the Westerly right of way of said West Alley, a distance of 39.00 feet;
- Course 4 Thence North 89°49'56" East, a distance of 16.50 to the principal place of beginning and containing 0.0148 acres (643.39 square feet) of land as surveyed by Thomas J. Neff Jr., Registered Surveyor No. 7065-Ohio of Neff & Associates, dated September 01, 2016.

Be the same more or less, but subject to all legal highways and easements of record.



NEFF  
& ASSOCIATES

Civil Engineers · Landscape Architects · Planners · Surveyors  
Traffic Engineers · Environmental Engineers

Legal Description

Vacated Roadway Parcel "3-V"

Berea, Ohio

October 25, 2016

File No. 13936-LD004

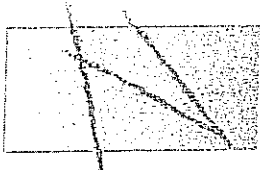
Page 1 of 1

Situated in the City of Berea, County of Cuyahoga and State of Ohio, and known as being part of Vacated West Alley (33 feet wide) as shown by recorded plat of Vacation of Portions of Center Street and West Alley in Volume \_\_\_\_\_ of Maps, Page \_\_\_\_ of Cuyahoga County Records and bounded and described as following:

Beginning at a 3/4" iron pin monument at the intersection of the centerline of West Alley and the Southerly right of way of School Street (33 feet wide);

- Course 1 Thence South 00°09'02" East, continuing along the centerline of said West Alley, a distance of 198.85 feet;
- Course 2 Thence South 89°49'56" West, a distance of 16.50 feet to a point on the Westerly right of way of West Alley;
- Course 3 Thence North 00°09'02" West, along the Westerly right of way of said West Alley, a distance of 198.85 feet to a point on the Southerly right of way of said School Street;
- Course 4 Thence North 89°49'56" East, along the Southerly right of way of said School Street, a distance of 16.50 to the principal place of beginning and containing 0.0753 acres (3,281.10 square feet) of land as surveyed by Thomas J. Neff Jr., Registered Surveyor No. 7065-Ohio of Neff & Associates, dated September 01, 2016.

Be the same more or less, but subject to all legal highways and easements of record.



NEFF  
& ASSOCIATES

Civil Engineers - Landscape Architects - Planners - Surveyors  
Traffic Engineers - Environmental Engineers

### Legal Description

Vacated Roadway Parcel "4-V"

Berea, Ohio

October 25, 2016

File No. 13936-LD005

Page 1 of 1

Situated in the City of Berea, County of Cuyahoga and State of Ohio, and known as being part of Vacated West Alley (33 feet wide) as shown by recorded plat of Vacation of Portions of Center Street and West Alley in Volume \_\_\_\_\_ of Maps, Page \_\_\_\_ of Cuyahoga County Records and bounded and described as following:

Beginning at a 3/4" iron pin monument at the intersection of the centerline of West Alley and the Southerly right of way of School Street (33 feet wide);

- Course 1 Thence North  $89^{\circ}49'56''$  East, along the Southerly right of way of said School Street, a distance of 16.50 feet to its intersection with the Easterly right of way of said West Alley;
- Course 2 Thence South  $00^{\circ}09'02''$  East, along the Easterly right of way of said West Alley, a distance of 256.49 feet;
- Course 3 Thence South  $89^{\circ}51'11''$  West, a distance of 16.50 feet to a point on the centerline of said West Alley;
- Course 4 Thence North  $00^{\circ}09'02''$  West, along the centerline of said West Alley, a distance of 256.50 to the principal place of beginning and containing 0.0972 acres (4,232.28 square feet) of land as surveyed by Thomas J. Neff Jr., Registered Surveyor No. 7065-Ohio of Neff & Associates, dated September 01, 2016.

Be the same more or less, but subject to all legal highways and easements of record.





Exhibit  
"C"  
(9-7)

UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT Front Street Group, LLC., the "GRANTOR" herein, for valuable consideration received and to be received to its full satisfaction, does hereby give, grant, bargain and convey to the CITY OF BEREA, a Municipal Corporation of the State of Ohio, the "GRANTEE" herein, the perpetual right-of-way and easement, for the purposes hereinafter set forth in, over and subjacent to the vacated right of way of the former Center Street and West Alley, (hereinafter referred to as the "Easement Premises").

GRANTEE shall have the right and easement to enter upon the above described Easement Premises and to operate, maintain, repair and install existing and new storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales and other appurtenances related to the delivery of public utilities. This right and easement shall include the right to remove from the Easement Premises, concrete, asphalt, pavement, trees, woody growth, fences, walls, out buildings or any other obstructions to the free operate of public utilities that in the opinion of the proper local authorities of GRANTEE, its successors or assigns, may be necessary at any time, and also to do any other thing that may be necessary or advisable in the judgement of the local authorities of the GRANTEE, its successors or assigns, in order to operate, maintain, repair and install storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales and other appurtenances related to the delivery of public utilities in accordance with the ordinances, rules and regulations for the management and protection of said GRANTEE, now in force or that may hereinafter be adopted. The said right-of-way and easement is granted for the further purposes and upon the further covenants and conditions hereafter set forth:

1. All costs of operation, maintenance, repair, reconstruction and installation of said public utility lines shall be borne by the GRANTEE, and the GRANTEE, upon completion of any work in connection with the exercise of the easement right herein granted, shall restore the surface of the land substantially to the condition existing prior to the performance of any such work by the GRANTEE.
2. It is a condition of this easement that the GRANTOR hereby reserves, and shall have the right and privilege to connect to and have the normal use of the public utility lines and other improvements in said Easement Premises, to serve GRANTOR'S real property in or adjoining the Easement Premises.
3. The GRANTOR hereby restricts said premises within the limits of the above described easement against the construction thereon of any buildings of a permanent type, excepting any drains, pipes, sewers, wires or other utilities serving the GRANTOR'S real property encumbered by or adjoining the Easement Premises.
4. The GRANTOR hereby reserves the right to use said premises within the limits of the above described easement for the passage or transportation of personnel, materials or equipment over or across the described easement, and to make such other use of said premises within the limits of the above described easement as are not herein expressly prohibited by and are not inconsistent with the rights and easement hereby granted.

- 5. TO HAVE AND TO HOLD the above granted easement, right-of-way, for storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales and other appurtenances related to the delivery of public utilities in, over and subjacent to the above described Easement Premises, for the purposes above mentioned unto said GRANTEE, the City of Berea, forever.
- 6. And the GRANTOR does for itself, its successors and assigns, covenant with the said GRANTEE, and its successors and assigns that at and until the sealing of these presents, it is well seized of the above described Easement Premises as a good and indefeasible estate in FEE SIMPLE and has a good right to bargain and grant the same in manner and forms as above written, and that it will WARRANT AND DEFEND SAID EASEMENT PREMISES with appurtenances thereunto belonging to the GRANTEE, its successors and assigns against all lawful claims and demands whatsoever for the purposes herein described, except restrictions, conditions, limitations, easements and rights-of-way of record and taxes and assessments not yet due and payable.
- 7. It is agreed that this instrument shall be for the benefit of and binding upon the GRANTOR and GRANTEE and their respective successors, assigns, heirs, administrators and personal representatives.

IN WITNESS WHEREOF, the GRANTOR has hereunto set her hand at Berea, Ohio this \_\_\_\_ day of \_\_\_\_\_ 2016.

Signed and acknowledged in the presence of: GRANTOR:  
FRONT STREET GROUP, LLC.

\_\_\_\_\_ By: \_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_

STATE OF OHIO            )  
  )     ss:  
CUYAHOGA COUNTY        )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named, KEVIN DIGERONIMO, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said person.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Berea, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC

IN WITNESS WHEREOF, the GRANTEE has hereunto set its hand at  
Berea,  
Ohio this \_\_\_\_ day of \_\_\_\_\_ 2016.

Signed and acknowledged in the presence of: GRANTEE:  
CITY OF BEREA.

\_\_\_\_\_  
By: \_\_\_\_\_  
CYRIL KLEEM,  
MAYOR

STATE OF OHIO            )  
                                  )    ss:  
CUYAHOGA COUNTY        )

BEFORE ME, a Notary Public in and for said County and State, personally  
appeared the above named Municipal Corporation, CITY OF BEREA, by CYRIL  
KLEEM, its Mayor who acknowledged that he did sign the foregoing instrument  
and that the same is the free act and deed of the CITY OF BEREA and the free  
act and deed of him personally and as Mayor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal  
at Berea, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC

## UTILITY EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

THAT BALDWIN WALLACE UNIVERSITY, the "GRANTOR" herein, for valuable consideration received and to be received to its full satisfaction, does hereby give, grant, bargain and convey to the CITY OF BEREA, a Municipal Corporation of the State of Ohio, the "GRANTEE" herein, the perpetual right-of-way and easement, for the purposes hereinafter set forth in, over and subjacent to the vacated right of way of the former West Alley, (hereinafter referred to as the "Easement Premises").

GRANTEE shall have the right and easement to enter upon the above described Easement Premises and to operate, maintain, repair and install existing and new storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales and other appurtenances related to the delivery of public utilities. This right and easement shall include the right to remove from the Easement Premises, concrete, asphalt, pavement, trees, woody growth, fences, walls, out buildings or any other obstructions to the free operate of public utilities that in the opinion of the proper local authorities of GRANTEE, its successors or assigns, may be necessary at any time, and also to do any other thing that may be necessary or advisable in the judgement of the local authorities of the GRANTEE, its successors or assigns, in order to operate, maintain, repair and install storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales and other appurtenances related to the delivery of public utilities in accordance with the ordinances, rules and regulations for the management and protection of said GRANTEE, now in force or that may hereinafter be adopted. The said right-of-way and easement is granted for the further purposes and upon the further covenants and conditions hereafter set forth:

1. All costs of operation, maintenance, repair, reconstruction and installation of said public utility lines shall be borne by the GRANTEE, and the GRANTEE, upon completion of any work in connection with the exercise of the easement right herein granted, shall restore the surface of the land substantially to the condition existing prior to the performance of any such work by the GRANTEE.
2. It is a condition of this easement that the GRANTOR hereby reserves, and shall have the right and privilege to connect to and have the normal use of the public utility lines and other improvements in said Easement Premises, to serve GRANTOR'S real property in or adjoining the Easement Premises.
3. The GRANTOR hereby restricts said premises within the limits of the above described easement against the construction thereon of any buildings of a permanent type, excepting any drains, pipes, sewers, wires or other utilities serving the GRANTOR'S real property encumbered by or adjoining the Easement Premises.
4. The GRANTOR hereby reserves the right to use said premises within the limits of the above described easement for the passage or transportation of personnel, materials or equipment over or across the described easement, and to make such other use of said premises within the limits of the above described easement as are not herein expressly prohibited by and are not inconsistent with the rights and easement hereby granted.

5. TO HAVE AND TO HOLD the above granted easement, right-of-way, for storm sewers, sanitary sewers, water lines, electric lines, gas lines, telephone lines, cable lines, high-speed internet lines and similar public utilities, including pipes, wires, catch basins, manholes, outlets, swales and other appurtenances related to the delivery of public utilities in, over and subjacent to the above described Easement Premises, for the purposes above mentioned unto said GRANTEE, the City of Berea, forever.
6. And the GRANTOR does for itself, its successors and assigns, covenant with the said GRANTEE, and its successors and assigns that at and until the sealing of these presents, it is well seized of the above described Easement Premises as a good and indefeasible estate in FEE SIMPLE and has a good right to bargain and grant the same in manner and forms as above written, and that it will WARRANT AND DEFEND SAID EASEMENT PREMISES with appurtenances thereunto belonging to the GRANTEE, its successors and assigns against all lawful claims and demands whatsoever for the purposes herein described, except restrictions, conditions, limitations, easements and rights-of-way of record and taxes and assessments not yet due and payable.
7. It is agreed that this instrument shall be for the benefit of and binding upon the GRANTOR and GRANTEE and their respective successors, assigns, heirs, administrators and personal representatives.

IN WITNESS WHEREOF, the GRANTOR has hereunto set her hand at Berea, Ohio this \_\_\_\_ day of \_\_\_\_\_ 2016.

Signed and acknowledged in the presence of: GRANTOR:

BALDWIN WALLACE UNIVERSITY

\_\_\_\_\_  
 By: \_\_\_\_\_  
 PRESIDENT

STATE OF OHIO            )  
                                   )    ss:  
 CUYAHOGA COUNTY    )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named, ROBERT C. HELMER, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of said person.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Berea, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
 NOTARY PUBLIC

IN WITNESS WHEREOF, the GRANTEE has hereunto set its hand at  
Berea,  
Ohio this \_\_\_\_ day of \_\_\_\_\_ 2016.

Signed and acknowledged in the presence of: GRANTEE:  
CITY OF BEREA.

\_\_\_\_\_  
By: \_\_\_\_\_  
CYRIL KLEEM,  
MAYOR

STATE OF OHIO            )  
                                  )    ss:  
CUYAHOGA COUNTY        )

BEFORE ME, a Notary Public in and for said County and State, personally  
appeared the above named Municipal Corporation, CITY OF BEREA, by CYRIL  
KLEEM, its Mayor who acknowledged that he did sign the foregoing instrument  
and that the same is the free act and deed of the CITY OF BEREA and the free  
act and deed of him personally and as Mayor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal  
at Berea, Ohio, this \_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
NOTARY PUBLIC