

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2024-38

By: Councilman Chris McManis

Sponsor: Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO A TEMPORARY LEASE AGREEMENT WITH BEREAM MIXED USE PROJECT, LLC FOR CERTAIN PARCELS OWNED BY THE CITY OF BEREAM AND THE BEREAM LAND UTILIZATION CORPORATION, AND DECLARING AN EMERGENCY.

WHEREAS, Berea Mixed Use Project, LLC, an affiliate of the Cleveland Browns, has expressed an interest in purchasing various parcels owned by the City of Berea and the Berea Land Utilization Corporation, for the purpose of future development; and

WHEREAS, the City is actively negotiating terms for the sale of these parcels to Berea Mixed Use Project, LLC, however, the parties have not yet finalized the terms of the proposed sales; and

WHEREAS, Berea Mixed Use Project, LLC wishes to apply for grant funding to be used toward the development of these parcels; and

WHEREAS, in order to meet the time requirements of the grant application, the applicant must demonstrate that it has a property interest and site control for each parcel; and

WHEREAS, the parties have agreed in good faith to continue negotiations for the anticipated sale of the parcels to Berea Mixed Use Project, LLC, which will provide Berea City Council sufficient time to review and consider approval of a purchase agreement for the sale of said parcels; and

WHEREAS, the parcels subject to this legislation are no longer needed for any municipal purpose.

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

SECTION 1. That this Council finds that the parcels owned by the City, described in Exhibit "A", which is attached hereto and incorporated herein by reference, are not needed for any municipal purpose and hereby authorizes and directs the Mayor to enter into a Temporary Lease Agreement with Berea Mixed Use Project, LLC, which is attached hereto as Exhibit "C" and incorporated herein by reference.

SECTION 2. That this Council finds that the parcels owned by the Berea Land Utilization Corporation, described in Exhibit "B", which is attached hereto and incorporated herein by reference, are not needed for any municipal purpose and hereby authorizes and directs the Mayor

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to enter into a Temporary Lease Agreement with Berea Mixed Use Project, LLC, which is attached hereto as Exhibit "C" and incorporated herein by reference.


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 it is in the best interests of the City to lease these properties at the earliest possible time in order to facilitate the redevelopment of the area. 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: September 16, 2024

ATTEST: 
Clerk of Council

APPROVED AS TO FORM:


Director of Law


President of Council

APPROVED: September 16, 2024

Mayor

EXHIBIT A
CITY PROPERTY

362-15-056
362-15-058
362-15-059
362-15-020
362-15-053
362-15-054
362-15-001
362-15-060

EXHIBIT B

REUTILIZATION CORP. PROPERTY

362-15-021

Draft: 9-10-24

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made and entered into as of the ____ day of _____, 2024 ("Effective Date"), by and between **THE CITY OF BEREА**, an Ohio municipal corporation ("City"), **BEREA LAND REUTILIZATION CORPORATION**, an Ohio land reutilization corporation ("Reutilization Corp.," and together with the City, sometimes collectively referred to herein as the "Lessor"), and **BEREA MIXED USE PROJECT LLC**, a Delaware limited liability company, or its permitted assignee ("Lessee"), referred to together as the "Parties" and individually as a "Party."

RECITALS:

A. City is the owner of certain parcels of land located in the City of Berea, Ohio, as more fully described in Exhibit A attached hereto and incorporated herein by reference (the "City Property"). Reutilization Corp. is the owner of certain parcels of land located in the City of Berea, Ohio, as more fully described in Exhibit B attached hereto and incorporated herein by reference (the "Reutilization Corp. Property," and together with the City Property, collectively referred to herein as the "Premises").

B. Lessee desires to develop the Premises and other adjacent parcels owned by Lessee's affiliate into a mixed-use development (the "Project").

C. The Parties desire to enter into this Lease to provide Lessee with a leasehold interest in the Premises pursuant to the terms and conditions herein.

AGREEMENTS:

In consideration of the foregoing Recitals and the mutual covenants and agreements set forth herein, Lessor and Lessee agree as follows:

Section 1. Grant: Rights and Obligations of Lessee and Lessor

A. City, for and in consideration of the covenants and conditions herein contained to be kept, performed and observed by Lessee, does lease and demise to Lessee, and Lessee does rent and accept from City, the City Property, together with all easements, rights and appurtenances relating thereto. Reutilization Corp., for and in consideration of the covenants and conditions herein contained to be kept, performed and observed by Lessee, does lease and demise to Lessee, and Lessee does rent and accept from Reutilization Corp., the Reutilization Corp. Property, together with all easements, rights and appurtenances relating thereto. Lessor hereby agrees to provide all maintenance and repair work necessary in the ordinary course (including mowing and snow removal) on the Premises at its sole cost and expense.

B. Lessor covenants and agrees that it has full right, power and authority to execute and perform this Lease and grant the estate demised herein, and that Lessee, in consideration of the terms and conditions hereof, shall be entitled to lawfully and quietly hold, occupy and enjoy the Premises during the Term without any hindrance, interference or molestation by Lessor or any person claiming by, through or under Lessor. Lessor shall not sell, restrict, encumber or improve the Premises without the prior approval of Lessee, such approval not to be unreasonably withheld, conditioned or delayed.

Section 2. Term and Rent.

A. The term of the Lease shall begin on the Effective Date and shall continue until the earliest of: (a) the execution of a definitive development agreement or other agreements that provides for the conveyance of the Premises from Lessor to Lessee to be executed by Lessor and Lessee, (b) the termination of this Lease by Lessee as a result of its determination not to proceed with the Project, or (c) December 31, 2025. In the event that Lessee desires to terminate this Lease as provide herein, Lessee shall notify Lessor in writing and such termination shall be effective ten (10) days after the date of the termination notice, unless the Parties otherwise agree.

B. Lessee shall pay to Lessor rent ("Rent") in an amount equal to One Dollar (\$1.00) for the Term on the Effective Date. Lessor shall be responsible for the payment of all real estate taxes and assessments associated with the Premises, if any.

Section 3. Use.

Lessee shall have the right to use and occupy the Premises for all purposes associated with the development of the Project. Lessee covenants that it will use the Premises in a safe and reasonable manner.

Section 4. Insurance: Claims and Responsibility for Damages.

A. Lessee shall obtain and maintain commercial general liability insurance covering the Premises and Lessee's use thereof against claims for bodily injury or death and property damage, which insurance shall provide coverage on an occurrence basis with a per occurrence limit of not less than \$1,000,000, and with general aggregate limits of not less than \$1,000,000 for each policy year. Lessor shall be named as an additional insured on such insurance policy.

B. Lessee shall indemnify, defend and hold harmless Lessor from and against any and all losses, claims or suits, in contract or in tort, arising, from, out of or in connection with the use of the Premises by Lessee under this Lease, except Lessee shall not be liable for any losses to the extent incurred in connection with any injury to or death of a person or any damage to property (including loss of use) to the extent caused by the negligence or willful misconduct of Lessor, its employees, contractors, invitees and representatives.

C. Each Party hereby waives all causes and rights of recovery which it has or may have or which may arise hereafter against the other Party, its agents, officers, members or employees by way of subrogation or otherwise, for any loss occurring to the Premises or its property or business (regardless of cause or origin, including the negligence of such other Party, its agents, officers, members or employees) resulting from any of the perils against which the damaged Party is insured or could have been insured by fire, extended coverage, building and contents, business interruption or other insurance. If any additional premium should be charged for such a waiver provision, the Party benefiting from such waiver shall pay its own costs for such additional premium under the policies it is obligated by this Lease to carry. Each Party will cause each insurance policy carried by it on the Premises or any contents thereof or trade fixtures or merchandise therein to provide that the insurer waives all right of recovery against Lessor or Lessee, as the case may be, by way of subrogation in connection with any loss or damage covered by the policy and that such waiver will not invalidate the policy.

Section 5. Obligation to Obey All Laws.

In exercising its rights and performing its obligations under this Lease, Lessee agrees to and shall obey all applicable laws, rules, regulations, ordinances and statutes. Lessee may not create or maintain any nuisances on the Premises.

Section 6. Default.

If any of the following occurs (each, an "Event of Default"): (i) Lessee defaults in the payment of any rent hereunder and such default continues uncured for seven (7) days after written notice thereof from Lessor to Lessee; (ii) Lessee defaults in the performance of any of the other covenants contained herein and such default continues uncured for thirty (30) days after written notice thereof from Lessor to Lessee, however, if Lessee's default cannot reasonably be cured within said thirty (30) day period, Lessee shall not be in default hereunder so long as Lessee begins the cure within said thirty (30) day period and diligently pursues the cure to completion; or (iii) a petition is filed by or against Lessee under the Bankruptcy Act or any amendment thereto (including a petition for reorganization, arrangement or an extension) and such petition is not dismissed within sixty (60) days, then Lessor, in addition to all other remedies given to Lessor at law or in equity, may by written notice to Lessee terminate this Lease, or without terminating this Lease may re-enter the Premises by summary proceedings or otherwise, and in any event may dispossess Lessee. Notwithstanding any other provision of this Lease, in no event will an Event of Default by Lessee be the basis for the termination of this Lease or result in the eviction of Lessee from the Premises unless Lessee fails to cure the Event of Default within the applicable cure period (if any) referred to in this Section.

Section 7. Surrender.

Lessee shall peaceably vacate the Premises upon the termination or expiration of the Lease, unless this Lease is terminated due to the transfer of title to the Premises to Lessee or its affiliate.

Section 8. Joint Venture.

It is understood and agreed that Lessor does not in any manner become a partner or enter into a joint venture with Lessee in the conduct of Lessee's business and/or activities on the Premises or otherwise as a result of this Lease.

Section 9. Notice.

Any notice or demand required or permitted to be given by or to either of the Parties hereto shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when delivered by: (a) hand delivery; (b) facsimile or electronic PDF with evidence of delivery; (c) express overnight delivery service with receipt; or (d) certified mail, return receipt requested, and shall be deemed to have been delivered upon (i) receipt if hand delivered, faxed, or sent by electronic copy, (ii) the next business day if delivered by express overnight delivery service, or (iii) the third business day following the day of deposit of such notice with the United States Postal Service if sent by certified mail, return receipt requested. Notices shall be provided to the parties and addresses specified below:

If to Lessee: Berea Mixed Use Project LLC

Attn.: _____
Email:: _____

If to Lessor: City of Berea
 Berea Land Reutilization Corp.

Attn.: _____
Email: _____

or to such other address as may have been designated in a prior written notice. Notices sent by registered or certified mail, return receipt requested, will be deemed to have been given two (2) business days after being mailed; otherwise, notices will be deemed to have been given when received by the person to whom the notice is addressed.

Section 10. Governing Law.

This Lease shall be governed by and construed in accordance with the laws of the State of Ohio, applicable to agreements made and to be performed entirely within such state.

Section 11. Miscellaneous.

- A. All of the provisions of this Lease shall be deemed as running with the land.
- B. Lessee may assign this Lease or any of Lessee's rights or obligations hereunder to an affiliate of Lessee.
- C. The parties acknowledge that there are no brokers involved in this transaction. Each of Lessee and Lessor agrees to indemnify the other party from and against all loss, cost, damage or expense arising out of any act of such party which gives rise to any claim of any broker or agent in connection with this transaction.
- D. This Lease may be executed in counterparts, and all such executed counterparts shall constitute the same agreement. This Lease may be signed by electronic or manual signature and delivered by facsimile or other electronic transmission and the electronic or other signature of a Party appearing on any counterpart of this Lease delivered in such manner shall be as binding upon such party as if such Party had delivered a counterpart of this Lease with such Party's original signature thereon.

(signature page follows)

IN WITNESS WHEREOF, authorized representatives of the Parties to this Lease have indicated their Party's approval to the terms herein by signing below.

LESSOR:

THE CITY OF BEREА, OHIO,
an Ohio municipal corporation

By: _____
Name: _____
Title: _____

BEREA LAND REUTILIZATION CORP.,
an Ohio land reutilization corporation

By: _____
Name: _____
Title: _____

Approved as to legal form:

By: _____
Name: _____
Title: _____

LESSEE:

**BEREA MIXED USE PROJECT
LLC,**
a Delaware limited liability company

By: _____
Name: _____
Title: _____