

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2025-37

By: Councilwoman Mary K. Brown Sponsor: Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE CITY TO ACCEPT TITLE TO CERTAIN REAL PROPERTY LOCATED WITHIN THE CITY AND TRANSFER TITLE BACK TO THE CURRENT OWNER FOR THE PURPOSE OF IMPLEMENTING TAX INCREMENT FINANCING PURSUANT TO OHIO REVISED CODE SECTION 5709.41, THE MAYOR TO EXECUTE ANY AND ALL DOCUMENTS RELATED THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance 2025-17, passed by this Council on March 24, 2025, the City approved the execution and delivery of a Development Agreement (the “Development Agreement”) with Berea Mixed Use Project LLC (the “Developer”) for the development of a multi-purpose community field, hotel, sports medicine facility, multifamily apartments, restaurants, a parking garage and other mixed uses (the “Project”); and

WHEREAS, as evidenced by the Development Agreement and other City documents, the City is “engaged in urban redevelopment” as provided in Ohio Revised Code (“R.C.”) Section 5709.41; and

WHEREAS, pursuant to R.C. Sections 5709.41, 5709.42 and 5709.43, the City is authorized to enact an ordinance (the “TIF Ordinance”) to declare “Improvement” (as defined in R.C. Section 5709.41) to be a public purpose and exempt from real property taxation so long as (1) the City held fee title to such real property prior to the adoption of the TIF Ordinance, and (2) such real property is leased or conveyed to any person either before or after the adoption of the TIF Ordinance; and

WHEREAS, the Developer desires to construct or cause to be constructed a portion of the Project on certain parcels of real property described and depicted on Exhibit A attached hereto (the “Property”) within the City; and

WHEREAS, the City desires to support the project through the passage of the TIF Ordinance pursuant to R.C. Section 5709.41; and

WHEREAS, in order to pass the TIF Ordinance, the City is required to accept fee title to the Property and transfer fee title to the Property back to the current owner; and

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WHEREAS, an emergency exists in the usual daily operations of the City, that emergency being related to the need to pass this Ordinance as quickly as possible, in order to comply with the provisions of the Development Agreement which will result in the development of the Project and creation and retention of jobs, all of which improve the health, safety and welfare of the residents of the City;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, County of Cuyahoga, Ohio, that:

SECTION 1. Authorization of Transfer and Indemnification Agreement. This Council hereby authorizes the Mayor for and in the name of the City to (a) enter into a Transfer and Indemnification Agreement, which shall be and read substantially in the form on file with this Council, with such changes therein as are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor, the approval of such changes, and that such changes are not inconsistent with this ordinance and not substantially adverse to the City, shall be conclusively evidenced by the execution of the Transfer and Indemnification Agreement by the Mayor, (b) accept title to the Property, as described and depicted on Exhibit A attached hereto, via quitclaim deed, (c) to transfer title to the Property back to the current owner(s) via quitclaim deed, and (d) to take any and all other actions required to effectuate the transfer of the property, including, but not limited to, recording the deeds with the Fiscal Officer's office.

SECTION 2. Further Authorizations. This Council hereby authorizes and directs the Mayor, the Law Director, the Director of Finance, Director of Planning and Development or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

SECTION 3. Open Meetings. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including ORC Section 121.22.

SECTION 4. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that this Ordinance is required to be immediately effective in order to enable the timely development of the Project, wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

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PASSED: *May 19, 2025*

ATTEST: *[Signature]*
Clerk of Council

APPROVED AS TO FORM:

[Signature]
Director of Law

[Signature]
President of Council

APPROVED: *May 19, 2025*
[Signature]
Mayor

**TRANSFER AND INDEMNIFICATION AGREEMENT
(BEREA MIXED USE PROJECT .41 TIF)**

This Transfer and Indemnification Agreement ("Agreement") is entered into this ____ day of _____, 2025, by and between the CITY OF BERE, OHIO (the "City"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio, and BERE MIXED USE PROJECT LLC, a Delaware limited liability company, having its principal office in Independence, Ohio (the "Developer" and, together with the City, the "Parties" and each individually a "Party").

Recitals

WHEREAS, the parties are undertaking the urban redevelopment of the real property described in Exhibit A (the "Project Site"); and

WHEREAS, to support that urban redevelopment, the City agreed to include the Project Site in a tax increment financing ("TIF") area under Ohio Revised Code Section 5709.41; and

WHEREAS, in order to include the Project Site in that TIF area, the City must have acquired fee title to the Project Site while engaged in urban redevelopment, and the parties intend to transfer fee title to the Project Site to the City and then back to the Indemnitor; and

WHEREAS, the parties desire to memorialize their agreement to convey the Project Site and protect the City against any liabilities that may occur as a result of the conveyance to the City and re-conveyance back to the Indemnitor of the Project Site.

Agreement

NOW THEREFORE, in consideration of their mutual covenants set forth herein and their respective commitments for the urban redevelopment of the Project Site, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the foregoing and as follows:

Section 1. Transfer. The Indemnitor agrees to convey to the City title to the Project Site via quitclaim deed (the "Transfer Deed"). The City hereby agrees to reconvey to the Indemnitor or its designee title to the Project Site via quitclaim deed within three days following recordation of the Transfer Deed in the records of the Cuyahoga County Fiscal Officer.

Section 2. Indemnification. The Indemnitor agrees to indemnify the City and hold harmless and defend the City from and against, and pay for, any and all costs, losses, liabilities, damages and expenses, including reasonable fees and expenses of attorneys, that are not offset by insurance proceeds and that are paid or incurred by the City as a result of or relating to the conveyance of the Project Site to the City by Indemnitor or the re-conveyance of the Project Site by the City to the Indemnitor or its designee, including but not limited to costs, losses, liabilities, damages, and expenses incurred due to claims of any violations of any local, state, or federal environmental rules, ordinances, acts, laws or regulations; provided, however, that the foregoing

indemnification and agreement to hold harmless shall not include any costs, losses, liabilities, damages, or expenses paid or incurred by the City to the extent that the same result from the act or omission of the City, its elected officials, employees, contractors, agents, or others under the City's control. The City must give prompt notice to the Indemnitor of the assertion of any claim or the commencement of any suit, action or proceeding with respect to which indemnity may be sought hereunder, specifying, if known, the facts pertaining thereto and the amount or an estimate of the amount of the liability arising therefrom, provided, however, failure to give such notice does not relieve the Indemnitor of any liability hereunder (except to the extent the Indemnitor has suffered actual prejudice thereby). The Indemnitor has the right to participate in or assume the defense of any such suit, action or proceeding at its own expense, and the City has the right (but not the duty) to participate in the defense thereof, which will be at the Indemnitor's expense unless it has assumed the defense thereof. Whether or not the Indemnitor chooses to defend or prosecute any claim, the Indemnitor and the City will cooperate in the defense or prosecution thereof and will take all such actions as may be reasonably requested in connection therewith.

The Indemnitor also hereby agrees to forever acquit and discharge the City from any and all liabilities, damages, losses, costs, actions, manners of action, causes of action, claims and/or demands of any nature and description, both known and unknown, suspected and unsuspected, foreseen and unforeseen, and whether arising in law or in equity, which result or may result in the future as a result of or relating to the conveyance of the Project Site to the City by the Indemnitor, or the re-conveyance of the Project Site by the City to the Indemnitor or its designee; provided, however, that the foregoing acquittal and discharge shall not include any costs, losses, liabilities, damages and expenses, including reasonable fees and expenses of attorneys, that are not offset by insurance proceeds and that are paid or incurred by Indemnitor, to the extent that the same result from the act or omission of the City, its elected officials, employees, contractors, agents, or others under the City's control.

The Indemnitor must obtain the same release of the City as that contained in Paragraph 2 above from any other developer(s) with whom it partners in connection with the development of the Project Site.

Section 3. Notices. All notices or other correspondence relating to this Agreement must be in writing (including e-mail or facsimile) and must be delivered or sent guaranteed overnight delivery, by facsimile or e-mail (to be followed by personal or overnight guaranteed delivery, if requested) or by postage prepaid registered or certified mail, return receipt requested, and will be deemed to be given for purposes of this Agreement on the date such writing is received by the intended recipient. Unless otherwise specified in a notice sent in accordance with this section, all communications in writing must be given to the parties at the following addresses:

- (i) To the Indemnitor: Berea Mixed Use Project LLC
5720 East Schaaf Road
Independence, Ohio 44131

Attention: Kevin DiGeronimo

With a copy to: Karla M. Rogers, Esq.
Calfee, Halter & Griswold LLP
1405 East Sixth Street
Cleveland, OH 44114

And: Ted Tywang, Esq.
HSG Berea Development, LLC
76 Lou Groza Boulevard
Berea, OH 44017

(ii) To the City: City of Berea, Ohio
11 Berea Commons
Berea, Ohio 44017
Attention: Mayor

With a copy to: Director of Law
City of Berea
11 Berea Commons
Berea, Ohio 44017

And: Michael L. Sharb, Esq.
Squire Patton Boggs (US) LLP
1000 Key Tower, 127 Public Square
Cleveland, OH 44114

Section 4. Successors; Assignment; Amendments, Changes and Modifications. This Agreement is binding upon the Indemnitor, the City and their respective successors in interest and the City and its successors in interest. This Agreement may not be assigned by the Indemnitor or the City without the prior written consent of the other. This Agreement may only be amended by written instrument executed by the City and the Indemnitor.

Section 5. Extent of Covenants; No Personal Liability. All obligations of the parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. No such obligation will be deemed an obligation of any present or future member, officer, agent, or employee of any of the parties hereto in their individual capacity.

Section 6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, that provision is fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

Section 7. Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original,

but all such counterparts will together constitute one and the same instrument. Electronic signatures (such as documents executed pursuant to a reputable document execution software, e.g. DocuSign) or signatures transmitted or stored by facsimile or electronic means are deemed original signatures and duplicates are deemed original copies of this Agreement.

Section 8. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties on this subject matter.

Section 9. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute this Agreement as of the date first set forth above.

CITY OF BEREHA, OHIO

Date: May 20, 2025

By: Cyril Kleem
Cyril Kleem, Mayor

Approved as to Form:

Barbara Jones
Barbara Jones, Director of Law

BEREA MIXED USE PROJECT LLC

Date: _____, 2025

By: _____

Printed: _____

Title: _____

Exhibit A
[See Attached]