

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2025-38

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

AN ORDINANCE

AUTHORIZING THE PROVISION OF CERTAIN TAX EXEMPTIONS FOR THE PURPOSE OF ENCOURAGING ECONOMIC DEVELOPMENT WITHIN THE CITY; AUTHORIZING THE EXECUTION OF A MUNICIPAL INCOME TAX REIMBURSEMENT AGREEMENT, 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, the City is committed to spurring the creation of new jobs and retention of existing jobs within the City; and

WHEREAS, in order to induce the Developer to undertake the Project, the Development Agreement provides for certain incentives including a 15-year, 100% municipal income tax reimbursement for work done, services performed or rendered or activities conducted within the area of the Project (the “Reimbursement”); and

WHEREAS, this Council has determined to provide for the execution and delivery of the Job Creation and Municipal Income Tax Reimbursement Agreement (the “Reimbursement Agreement”) with the Developer to provide for the Reimbursement; and

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:

BEREA CITY COUNCIL

City of Berea, Ohio

ORDINANCE NO. 2025-38

SECTION 1. Authorization of Reimbursement Agreement. This Council confirms its prior determination that the Project is in the best interest of the City, that the Project will create and retain jobs in the City and furthers the health, safety and welfare of its residents, and has previously authorized the Development Agreement in furtherance thereof. The Mayor is hereby authorized, for and in the name of the City and on its behalf, to execute and deliver the Reimbursement 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 Reimbursement Agreement by the Mayor.

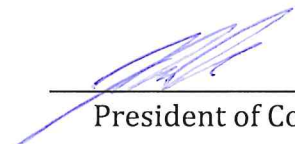

SECTION 2. Further Authorizations. This Council hereby authorizes and directs the Mayor, the Law Director, the Director of Finance, Director of Planning and Development or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be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

PASSED: June 2, 2025

ATTEST: 
Clerk of Council


President of Council
APPROVED: June 3, 2025

Mayor

APPROVED AS TO FORM:


Director of Law

JOB CREATION AND MUNICIPAL INCOME TAX REIMBURSEMENT AGREEMENT

This Job Creation and Municipal Income Tax Reimbursement Agreement (the “Agreement”) is made and 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, the laws of the State of Ohio (the “State”) and the Charter of the City, and BERE MIXED USE PROJECT LLC, a Delaware limited liability company, having its principal office in Brecksville, Ohio (the “Developer”), under the circumstances summarized in the following recitals.

RECITALS:

WHEREAS, the City desires to increase and retain employment opportunities and improve the economic welfare of the people of the City; and

WHEREAS, the City and the Developer have entered into a Development Agreement (the “Development Agreement”) in connection with the development on the Site (defined below) of a multi-purpose community field, hotel, office, multifamily apartments, restaurants, and other mixed uses (the “Project”); and

WHEREAS, pursuant to the Development Agreement, the Project will be located on: (i) certain property located within the City which the City will convey to the Developer for purposes of the Project (the “City Site”) and (ii) certain other real property owned and/or leased by Developer and located in the City (the “Developer Site,” and together with the City Site, collectively referred to herein as the “Site”, which is further depicted on the attached ***Exhibit A***); and

WHEREAS, the Development Agreement provides certain incentives for the development of the Project; and

WHEREAS, the Developer has heretofore submitted a request to the City for consideration by the City for a municipal income tax reimbursement for fifteen (15) years; and

WHEREAS, pursuant to Ordinance No. 2025-__ passed _____, 2025, the City has determined that the Project will preserve, maintain or provide additional opportunities for gainful employment of the people of the City, has further determined to provide a municipal income tax reimbursement to the Developer and Developer affiliates and to further authorize the execution and delivery of this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties hereby agree to the foregoing and as follows:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this Agreement, the following words and terms as used in this Agreement shall have the following meanings, unless another meaning is plainly intended:

“Employee” shall mean a full-time or part-time employee or person receiving income, qualifying wages, salaries, commissions and other compensation and on net profits and any other

money eligible for taxation with respect to the Project, including but not limited to any City and non-City resident's work done, services performs or rendered or activities conducted within the area of the Site. "Employee" does not include (i) City residents domiciled within the Site but employed outside of the Site; and (ii) employees of the Cleveland Browns Football Company LLC ("CBFC"), working at the Project pursuant to the terms of that certain Amendment to Lease dated as of August __, 2019 by and between the City and CBFC.

"Incentive Period" means the 15-year period for which the Developer is entitled to the Tax Reimbursement, beginning on the date or dates as provided in the Development Agreement and Section 4(c) hereof.

"Phase I of the Project" shall mean the development of the Site for a multi-purpose community field, hotel, sports medicine facility, multifamily apartments, restaurants, parking garage and other mixed-uses.

"Phase II of the Project" shall mean the development of the Site for a possible recreation complex or other mixed-uses.

"Taxable Income" shall mean "Municipal Taxable Income" as defined in Section 191.02 of Codified Ordinances of the City of Berea, Ohio, as amended from time to time.

"Taxable Year" shall mean each calendar year for the Incentive Period.

"Tax Reimbursement" shall mean the amount payable to the Developer pursuant to this Agreement as more specifically described in Section 4.

"Total Annual Withholdings" shall, for each Taxable Year, mean an amount equal to the total City municipal income tax withheld from the Taxable Income of Employees during that Taxable Year.

Section 2. Determinations. Based upon a review of relevant information and the representations made by the Developer, the City has determined the following:

- (a) The development of the Project on the Site will create job opportunities in the City;
- (b) The location and operations of the Project and the Site is economically sound and will benefit the people of the City by maintaining and increasing opportunities for employment and strengthening the economy of the City; and
- (c) Receiving the Tax Reimbursement is a major factor in the Developer's decision to develop the Project on the Site.

Section 3. [Reserved]

Section 4. Tax Reimbursement.

- (a) General. In consideration for the Developer's agreement to develop the Project on the Site, the City hereby grants the Tax Reimbursement to the Developer. The Tax Reimbursement shall be calculated and paid to the Developer by the City no later than April 15th, July 15th, October

15th, and January 15th for each quarter of a Taxable Year (for example, January through March, April 15th, April through June, July 15th, July through September, October 15th and October through December, January 15th) during the Incentive Period.

(b) Tax Reimbursement Amount; Reductions.

(i) Tax Reimbursement Amount. The Tax Reimbursement for each quarter of a Taxable Year of the Incentive Period shall be 100% of any of the Total Annual Withholdings, after any income tax sharing payments to the Berea City School District or the Polaris Career Center pursuant to the Ohio Revised Code and the School Compensation Agreement dated as of _____, 2025 between the City and the Berea City School District, for that applicable quarter of a Taxable Year, unless the Tax Reimbursement amount is reduced as set forth in paragraph (ii) below.

(ii) Reduction Amount. If there exists a Developer Default, as defined in the Development Agreement, and such Developer Default is not cured as provided therein, the entire amount of Tax Reimbursement for such quarter of a Taxable Year, and for any quarter of a Taxable Year in which such Developer Default continues, shall be withheld by the City. If the Developer subsequently cures such Developer Default, the City shall provide the Developer with all previously withheld Tax Reimbursements within 30 days of such cure.

(c) Incentive Period. The Developer shall claim the applicable Tax Reimbursement provided herein for each of the Taxable Years from 2028 through 2042, inclusive, attributable to Phase I of the Project and for each of the Taxable Years from 2030 through 2044, inclusive, with respect to Phase II of the Project.

(d) Payment Obligations Not Debt; Limited to Nontax Revenues; Back-up Tax Credit. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and the Developer shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments required to be made by the City pursuant to this Agreement shall be payable solely from the City's available nontax revenues, are subordinate to any bonded indebtedness of the City, and are subject to any appropriation requirements of Ohio law. For the avoidance of doubt, the City shall not make any payments under this Agreement with bed tax revenues or admission tax revenues that would otherwise be payable to Developer or its assigns under the separate Bed Tax Agreement and Admission Tax Agreement between the City and the Developer, each dated as of the date of this Agreement. If City Council fails to appropriate sufficient funds to make any payment required hereunder, or if its nontax revenues are insufficient, then the Developer shall be entitled to claim the amount of such insufficiency as a credit against the Developer's corporate net profit tax under Section 191.03 of the City's Income Tax Code pursuant to Section 718.15 or 718.151 of the Ohio Revised Code. Any such credits may be carried forward past the date upon which this Agreement terminates as necessary for the Developer to fully claim such credit. Solely for the purpose of claiming such credit, the credit shall be for 100% of the new or retained income tax revenue, not to exceed the unpaid Tax Reimbursement.

(e) No Setoff. Unless otherwise agreed to in writing by the parties, neither party shall have the right to set off any amount due under this Agreement against any amounts that may be due from the other party, whether under this Agreement or any other agreement.

Section 5. Further Covenants of the Developer.

(a) Records, Access and Maintenance. The Developer shall establish and maintain for at least four (4) years from the end of the Incentive Period such records as are reasonably required by the City in this Section 5 and all relevant supporting documentation as may be reasonably required by the City. The parties further agree that records reasonably required by the City with respect to any litigation or dispute between the City and the Developer shall be maintained for the time needed for the resolution of such litigation or dispute and that in the event of early termination of this Agreement, or if for any other reason the City reasonably requires a review of the records related to this Agreement, the Developer shall, at its own cost and expense, segregate all such records related to this Agreement from its other records of operation.

(b) Audits and Inspections. At any time during normal business hours upon prior written notice and as often as the City may reasonably deem necessary, the Developer shall, within a reasonable period following such prior written notice, make available to the City, for examination, and to appropriate the City agencies or officials, all its records with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment and shall permit the City to audit, examine and make excerpts or transcripts from such records.

(c) Adherence to State and Federal Laws and Regulations. The Developer agrees to comply in all material respects with all applicable Federal, State and local laws related to the Project.

(d) Developer Representations. The Developer represents and warrants that it does not owe (i) any delinquent taxes to the State or a political subdivision of the State; and (ii) any other moneys to the City, State or other political subdivision that are past due, whether or not the amount owed is being contested in a court of law. The Developer authorizes the City to inspect the personal or corporate financial statements of the Developer, including tax records and other similar information not open to public inspection, as necessary to confirm the foregoing representations and warranties.

(e) False Statements. The Developer represents and warrants that it has not knowingly made any false statements to the City in the process of obtaining approval for the Tax Reimbursement. If any representative of the Developer has knowingly made a false statement to the City to obtain the incentives provided hereunder, the Developer shall be required to immediately return all benefits received under this Agreement and shall be ineligible for any future economic development assistance from the City. 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 Section 2921.13 of the Ohio Revised Code, which is punishable by a fine of not more than One Thousand Dollars (\$1,000) and/or a term of imprisonment of not more than six (6) months.

(f) Public Records. The City qualifies as a public office under Section 149.43 of the Ohio Revised Code (the "Public Records Act"). As such, the parties acknowledge that any records held by the City are potentially subject to disclosure under the Public Records Act, notwithstanding any other provision of this Agreement. When, pursuant to the Public Records Act, the City receives a properly formulated request for information provided by the Developer to the City, the City agrees to notify the Developer of such request. If the City determines that there may be a question as to the validity of the claim of confidentiality and/or its exemption under the Public Records Act or any other applicable law, including Ohio trade secret laws, the City shall notify the Developer of such determination prior to releasing such confidential information to the requestor. The Developer shall undertake any and all appropriate legal action within a court of competent jurisdiction in Cuyahoga County, Ohio to have such confidential information declared exempt from disclosure under a public records request under the Public Records Act or other applicable law.

Section 6. Termination.

(a) Effect of Failure to Maintain Operations. If there exists a Developer Default, as defined in the Development Agreement, and such Developer Default is not cured as provided therein, the City shall be entitled to terminate this Agreement upon written notice to the Developer, but only after the expiration of any applicable cure periods described in the Development Agreement.

(b) Termination. If, as reasonably determined in good faith by the City, the Developer has failed to perform satisfactorily any material requirements of this Agreement, or if the Developer is in violation of any material provision of this Agreement, the City may terminate this Agreement after providing the Developer with written notice, in accordance with the notice provisions of this Agreement, of its failure to perform satisfactorily any material requirement of this Agreement. The notice shall provide the Developer with a sixty (60) day period to cure any and all defaults under this Agreement.

Section 7. Miscellaneous.

(a) Governing Law. This Agreement shall be governed by the laws of the State as are applicable to all matters herein, including, but not limited to, matters of validity, construction, effect and performance.

(b) Entire Agreement. Except as described below, this Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof. Notwithstanding the foregoing, this Agreement supplements the agreements with respect to the use of the Tax Reimbursement as set forth in the Development Agreement.

(c) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall

be ineffective only to the extent of such provision or invalidity, without invalidating the remainder of such provisions of this Agreement.

(d) Forbearance Not a Waiver; Remedies. No act of forbearance or failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in any way be construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or noncompliance with this Agreement shall be held to be a waiver of any other or subsequent breach or noncompliance. Upon breach of this Agreement, the aggrieved party may exercise any and all other rights and remedies under this Agreement or available at law or in equity.

(e) Notification. Any notices, statements, acknowledgments, consents, approvals, certificates or requests required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered, sent by nationally recognized overnight courier, or United States mail, registered or certified, return receipt requested, postage prepaid, to the addressees set forth hereunder or to such other address as the other party when the receipt is signed hereto may designate in written notice transmitted in accordance with this provision.

If 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
If to the Developer:	Berea Mixed Use Project LLC 5720 Independence Drive, Suite 400 Brecksville, Ohio 44141 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

(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement. Counterparts or signatures delivered or stored by electronic means (such as e-mailed PDF files) are deemed to be original counterparts or signatures for all purposes.

(g) Captions; Construction. The captions contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement has been prepared by the parties and their professional advisors. The parties and their respective advisors believe that this Agreement is the product of all of their efforts, that it expresses their agreement and that it should not be interpreted in favor of or against any party as a result of party drafting this Agreement. The parties further agree that this Agreement will be construed to effectuate the normal and reasonable expectations of sophisticated parties.

(h) Successors and Assigns. The terms and provisions hereof shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns (including successive as well as immediate successors and assigns).

(i) Extent of Provisions; No Personal Liability; Limitation on Damages. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future elected official, trustee, member, officer, agent or employee of the City or Developer in other than his or her official capacity. No official executing or approving the City's or Developer's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of this Agreement or the City's or Developer's obligations hereunder. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or Developer be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(j) Assignment. The Developer shall not have the right to assign this Agreement to any successor or assign without the prior written consent of the City, which may not be unreasonably withheld; provided, however, the Developer shall have the right, without obtaining the prior written consent of the City, to assign this agreement to an affiliate of Developer or its members or any other third party that agrees to assume Developer's rights and obligations hereunder and thereafter, Developer shall be released from all obligations and liabilities under this Agreement. Additionally, Developer may, without obtaining the consent of the City: (i) collaterally assign this Agreement to one or more lenders for the Project or to a bond trustee or purchaser of securities issued in connection with the Project, provided that any such assignment shall not relieve the Developer of its obligations hereunder or (ii) assign or transfer its rights to receive payments from the City hereunder to one or more lenders for the Project or to a bond trustee or purchaser of securities

issued in connection with the Project. Nothing in this Agreement shall be construed to require consent of the City for the Developer's transfer of title or all or portion of the Project.

(k) Amendments or Modifications. Amendments or modifications to this Agreement shall not be effective until a written amendment is signed by the Mayor, on behalf of the City, and by an authorized officer of the Developer, on behalf of the Developer.

[Remainder of this page left intentionally blank – signatures on following page]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Agreement by their duly authorized representative to be effective as of the day and year first above written.

CITY OF BERE, OHIO

By Cyril Kleem
Cyril Kleem, Mayor

Approved as to form:

Barbara Jones
Barbara Jones, Director of Law

BEREA MIXED USE PROJECT LLC

By: HSG Berea Development, LLC,
a Delaware limited liability company

Its: Manager

By: _____

Name: David A. Jenkins

Title: COO

DIRECTOR OF FINANCE CERTIFICATE

The undersigned, Director of Finance of the City of Berea (the "City") under the foregoing Agreement, certifies hereby that the monies required to meet the obligations of the City during the year 2025 under the foregoing Agreement, being \$0.00, have been appropriated lawfully for that purpose, and is in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with O.R.C. Sections 5705.41 and 5705.44.

Dated: June 3, 2025

Andrea Morris
Andrea Morris, Director of Finance
City of Berea, Ohio

Exhibit A

The Site

DISTRICT 46

OVERVIEW

R1.1

