

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is made as of _____, 2025 (the “Effective Date”) by and among the **CITY OF BEREAL, OHIO**, an Ohio municipal corporation (“City”), and **GD3 VENTURES I, LLC**, an Ohio limited liability company (“Developer”). The City and Developer are sometimes referred to herein collectively as the “Parties”.

RECITALS

A. The 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 “Site”).

B. The City issued the Revitalization of Front Street & North Rocky River Drive Corridor Request for Proposals, dated December 1, 2024 (the “RFP”) seeking a qualified developer to develop the Site and the Developer submitted a response to the RFP (the “Developer’s Proposal”).

C. The City selected the Developer’s Proposal as the best response to the RFP and in accordance with Ohio Revised Code, the City has the authority to convey real property and interests in real property owned by the City and determined: (1) not to be required by the City for its purposes, and (2) that the conveyance will promote the welfare of the people of the City, stabilize the economy, provide housing, employment and assist in the development of commercial, recreational, residential, and other mixed use activities to the benefit of the people of the City, and preserve, maintain or provide additional opportunities for their gainful employment.

D. In furtherance of its goals, the City desires to convey the Site to the Developer for the purpose of causing redevelopment of the Site in accordance with this Agreement and consistent with the RFP, Developer’s Proposal and the City’s desire to promote economic, commercial, residential, and other development in the City.

E. This Agreement was presented to the City Council and approved by City Ordinance No. _____ on _____ 2025, which authorized the Mayor to enter into this Agreement on behalf of the City.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1

GENERAL

1.1 **Defined Terms.** In addition to other terms defined herein, as used in this Agreement, the following terms shall have the meanings indicated below.

“Affiliate” shall mean a person or entity that controls, is controlled by, or is under common control with or has common membership interests in, a person or entity, whether by ownership of equity interests or voting power and their successors and assigns.

“Agreement” shall have the meaning set forth in the preamble hereof.

“Applicable Laws” shall mean all applicable local, state and federal laws, codes, rules and regulations, including, but not limited to, the Zoning Code.

“City” shall have the meaning set forth in the preamble of this Agreement.

“City Council” shall mean City Council of the City of Berea, Ohio.

“City Default” shall have the meaning set forth in Section 8.3 below.

“City Review Bodies” shall mean all boards, commissions, committees and subcommittees of the City having authority with respect to the Project under Applicable Laws, including the City’s Planning Commission.

“Closing” shall have the meaning set forth in Section 5.1 below.

“Customary Closing Documents” shall have the meaning set forth in Section 5.2 below.

“Deed” shall have the meaning set forth in Section 5.2 below.

“Developer” shall have the meaning set forth in the preamble of this Agreement.

“Developer Default” shall have the meaning set forth in Section 8.1 below.

“Effective Date” shall have the meaning set forth in the preamble of this Agreement.

“Escrow Agent” shall have the meaning set forth in Section 5.1 below.

“Force Majeure” shall have the meaning set forth in Section 10.14 below.

“Mayor” shall mean the Mayor of the City.

“Memorandum” shall mean the memorandum of this Agreement as mutually agreed upon and executed by the Parties.

“Parties” shall have the meaning set forth in the preamble of this Agreement.

“Party” shall mean either the City or Developer, individually.

“Project” shall mean the development of the Site to install private roads and related infrastructure and approximately 55 individually owned townhouses on the 5.5-acre site and approximately 22 individually owned townhouses on the 1.878 acre site and more fully described and depicted on Exhibit B.

“Project Development Plan” shall mean the overall proposed development plan for the Project, presented by the Developer and approved by the City in writing, as a condition of Closing.

“Recorder’s Office” shall mean the Fiscal Officer’s Office of Cuyahoga County, Ohio.

“Site” shall have the meaning set forth in Recital A above.

“Term” shall have the meaning set forth in Section 2.4 below.

“Transfer Amount” shall have the meaning set forth in Section 3.1 below.

“Zoning Code” shall mean the City’s Zoning Code.

1.2 **Interpretation**. As the context of this Agreement may require, terms in the singular shall include the plural (and vice versa) and the use of feminine, masculine or neuter genders shall include each other. Wherever the word “including” or any variation thereof is used herein, it shall mean “including, without limitation,” and shall be construed as a term of illustration, not a term of limitation. Wherever the word “or” is used herein, it shall mean “and/or”.

1.3 **Incorporation by Reference**. The following exhibits, schedules ~~or~~ and other attachments identified herein and referenced in this Agreement are hereby incorporated into this Agreement by such reference and shall be considered a part of this Agreement as if fully rewritten or set forth herein, to wit:

Exhibit A: Legal Descriptions

Exhibit B: Developer’s Proposal (dated 02/03/2025)

Exhibit C: Berea RFP (dated 12/01/2024)

1.4 **Calculation of Time**. Unless otherwise stated, all references to “day” or “days” shall mean calendar days and any reference to “business days” means any day that is not a Saturday, Sunday or holiday observed by the State of Ohio.

ARTICLE 2

GENERAL AGREEMENT; TERM

2.1 **Public-Private Partnership**. The Parties agree that the purpose of the collaborative relationships contemplated by this Agreement is to create the opportunity for the redevelopment of the Site into a vibrant housing development furthering the goals and objectives of the City consistent with the RFP, Developer’s Proposal, and the City’s master plan, including those goals and objectives set forth in the recitals, which are hereby incorporated by reference.

2.2 **Relationship of the Parties**. Notwithstanding any term or condition of this Agreement to the contrary, nothing in this Agreement shall be deemed to create the relationship of principal and agent or to create any joint venture or partnership of any kind by or among the Parties.

2.3 **Compliance With Applicable Law**. Developer will comply with Applicable Laws in connection with its performance under this Agreement.

2.4 **Term** 2.4.1. The term of this Agreement shall be the period beginning on the Effective Date and ending on the date that the Parties have completed all of their respective obligations hereunder or as earlier terminated as provided herein (“**Term**”). The Parties agree that the Term shall be extended as a result of Force Majeure.

ARTICLE 3

TRANSFER OF THE SITE

3.1 **Transfer of the Site.** At the Closing, the City will transfer the Site to Developer or Developer’s Affiliate for the sum of One Million Two Hundred and Four Thousand and 00/100 Dollars (\$1,204,000.00) (the “**Transfer Amount**”).

3.2 **Cash Payments.** All payments to be made by Developer to the City under this Agreement shall be paid to the City by wire transfer or immediately available funds.

ARTICLE 4

PROJECT APPROVALS

4.1 **Efforts With City Review Bodies.** The Parties agree to work cooperatively and to coordinate on all future steps in the permitting process associated with the Project. These steps may include, but are not limited to, zoning variances that may arise out of mutually agreed upon changes in the Project Development Plan, and various City approvals required for the planned modifications to the public rights-of-way, if any, and utilities required as part implementing the Project Development Plan.

ARTICLE 5

CONVEYANCE OF SITE

5.1 **Conveyance of Site to Developer.** Subject to the provisions of this Agreement, the City shall convey the Site to Developer or to Developer’s Affiliate. Closing of the transaction to convey the Site to Developer or Developer’s Affiliate, as applicable (the “**Closing**”), shall occur within sixty (60) days after Approval Period.

The Closing shall occur in escrow at Emerald Glen Title Agency, 2723 SOM Center Road, Suite 200, Willoughby Hills, Ohio 44094 (the “**Escrow Agent**”). Emerald Glen shall further serve as the Title Company. At the Closing, the following shall occur:

5.1.1 The City shall deliver to Developer or Developer’s Affiliate a duly executed and acknowledged Quitclaim conveying fee simple title to the Site to Developer or Developer’s Affiliate, as applicable, and the Customary Closing Documents, as applicable.

5.1.2 Developer shall pay to the City the Transfer Amount.

5.1.3 The City and Developer or Developer's Affiliate, as applicable, shall execute and deliver a settlement statement prepared by the Escrow Agent and approved by the City and Developer, reflecting terms consistent with this Agreement.

5.1.4 Closing Costs.

The Escrow Agent shall charge to City and pay out of the purchase price the following:

- (i) One-half (½) of the Escrow Fee;
- (ii) Any amounts that are required to satisfy any outstanding liens;
- (iii) Any amounts due Developer by reason of any prorations hereunder;
- (iv) Any amounts due City's real estate agent/broker payable from Escrow pursuant to their agency agreement;
- (v) The cost of the preparation of the Deed.

Developer shall pay the following charges and expenses:

- (i) The cost of the title examination and Title Commitment, and the full cost of the Title Policy in the amount of the purchase price;
- (ii) One-half (½) the Escrow Fee;
- (iii) All costs associated with any mortgage loan obtained by Developer;
- (iv) Any amounts due City by reason of any prorations hereunder;
- (v) Any amounts due Developer's real estate agent/broker payable from Escrow pursuant to their agency agreement;
- (vi) The costs of recording of the Deed; and
- (vii) The cost of the survey, if a survey is obtained.

5.1.5 The City and Developer shall deliver such other documents and instruments as may be reasonably necessary to effectuate the intent of this Agreement.

5.2 As-Is Conveyance. Developer hereby acknowledges and agrees that the conveyance of all or any portion of the Site to Developer or Developer's Affiliate, as applicable, shall be "as-is", "where-is" without representation or warranty of any kind or nature. Such conveyance shall be via Quitclaim Deed(s) in form and substance reasonably satisfactory to the City and Developer (the "**Deed**"). Additionally, the City agrees to execute and effectuate any and all reasonable title or owner affidavits and any other reasonably required documents, releases, terminations or affidavits required by the Title Company in connection with the issuance of any owner's or loan title insurance policies associated with the transfer of the Site (the "**Customary Closing Documents**").

5.3 Title Exam and Commitment.

5.3.1 Developer shall obtain within sixty (60) days of the Effective Date (the "Title Commitment Period") a commitment for an Owner's Title Insurance Policy (the "Title Commitment") issued by the Title Company and dated as of the then current date, pursuant to which the Title Company shall commit to issue to Developer at Closing an ALTA Owner's policy of title insurance in the amount of the Transfer Amount (aka the "purchase price") insuring in Developer marketable fee simple title to the Site, subject only to the Permitted Exceptions as defined below. Developer shall deliver to City a copy of the Title Commitment and legible copies

(to the extent reasonably available) of any restrictive covenants, easements, and other items listed as title exceptions therein.

5.3.2 If the Title Commitment indicates the Site is subject to any matters which are unacceptable to Developer, Developer shall deliver written notice of Developer's objections to such matters to City (the "Title Defect Notice") on or before the earlier of (i) ten (10) days following receipt of the Title Commitment or (ii) ten (10) business days prior to expiration of the Title Commitment Period. Within seven (7) business days after receipt of the Title Defect Notice, City shall notify Developer in writing as to whether it is prepared to remove any items objected to by Developer (the "City Response Notice"). If the City fails to provide a City Response Notice, City shall be deemed to have elected not to remove any items objected to by Developer. If the City Response Notice states that City is unable or unwilling to remove any matters objected to by Developer at or prior to Closing or City is deemed to have elected not to remove any items objected to by Developer, Developer may terminate this Agreement by giving written Notice of such termination to City no later than 5:00 p.m. Eastern Time on the date the Title Commitment Period expires, in which event the parties shall have no further rights or duties hereunder, except for those that expressly survive termination of this Agreement. If Developer does not deliver to City a timely notice of termination, Developer shall accept title to the Site subject to all such matters, which shall thereupon become Permitted Exceptions. Developer's failure to deliver a timely Title Defect Notice or a timely Developer Response Notice shall be deemed to constitute Developer's election to waive such matters. Developer may elect to request such endorsements to the Title Commitment which Developer deems appropriate which special endorsements shall be obtained at Developer's sole cost and expense.

5.3.3 At Closing, City shall convey the Site to Developer by transferable and recordable Quitclaim Deed, free and clear of all defects, liens, encumbrances, easements, restrictions, covenants, conditions, encroachments, or any other exceptions, except the following which are herein referred to as the "Permitted Exceptions": (a) zoning, building and other laws, ordinances, codes and regulations; (b) easements, rights of way, conditions, covenants, and restrictions of record; (c) installments of real estate taxes and assessments which are liens upon the premises, but not yet due and payable; and (d) any matters created by or through Developer; (e) any matter which would be disclosed by an accurate survey of the Site; and (f) any other matters which become Permitted Exceptions pursuant to the terms of this section.

5.4 Approval Period.

5.4.1 The acquisition and use of all of the parcels comprising the Site for the Project is material to this Agreement and no lesser number of parcels (as they are identified in Exhibit "A") regardless of the number of parcels which may not be developable and/or usable as contemplated by the Developer's Proposal due to the failure of any of the contingencies stated in this Agreement shall require Developer to purchase either the entirety of the Site or a lesser number of the parcels identified in Exhibit "A."

5.4.2 This Agreement is contingent on final approval and permit issuance by all governmental subdivisions and agencies of jurisdiction, and, all utility providers of jurisdiction of and for, but not necessarily limited, to: (i) rezoning, (ii) the final development plan and subdivision plat(s), inclusive of architectural approval, (iii) demolition permit(s), (iv) wetlands permit(s), (v)

required stormwater management plans and permits, (vi) County soil and water department approval, (vii) permits to install, (viii) City engineer approvals, (ix) approval of all utility connections for the Project, (x) all other required governmental permits required for the Project to commence construction (collectively, the “Approvals”). Developer shall have until December 31, 2025 in which to obtain all Approvals (the “Approval Period”).

5.4.3 City shall execute such legal instruments (either on its own behalf or granting to Developer authority to act, if necessary) as reasonably required by governmental subdivisions and agencies of jurisdiction to permit Developer to file the application(s) for all necessary Approvals; provided, however, that City shall not be required to incur any expenses in connection with these matters, and further provided that the legal instruments and applications are approved by City, which approval shall not be unreasonably withheld. Any agency relationship this may arguably create between Developer and City is expressly limited to the foregoing Approvals and shall not extend to any other matter. Under no circumstance is Developer authorized to encumber the Site, incur any liabilities, or conduct any other matter of any nature whatsoever on behalf of City. Developer shall fully defend, indemnify and hold City harmless in the event of any claims, liens, or other charges against City caused by its violation of this section. The terms of this section will survive the Closing.

5.4.4 In the event any governmental subdivision or agency of jurisdiction denies an Approval required for the Project, then Developer shall provide written Notice to City that it is terminating this Agreement. Upon the termination of this Agreement pursuant to this section, neither party shall have any further obligations or liabilities hereunder, except those which expressly survive termination. If this Agreement is not terminated by Developer prior to the expiration of the Approval Period, then Developer shall be conclusively deemed to have waived its right to terminate this Agreement pursuant to the terms of this section.

5.4.5 The parties acknowledge that development plan and subdivision approval is an administrative and/or legislative act which affords the City (or any Cuyahoga County governmental boards/commissions of jurisdiction, if any) degrees of discretion to approve a development plan and/or subdivision plat with non-enumerated conditions generally related to various matters of public concern. The nature of any such conditions are unknowable at the time of execution of this Agreement. Governmental conditions that may be imposed which are not acceptable to Developer include, without limitation, conditions which (i) render the development financially unfeasible (such that they do not allow a reasonable return on investment and/or require an unreasonable assumption of risk), (ii) are not commercially reasonable (such that they diminish the marketability of the housing product contemplated to be built), and (iii) are contrary to the terms of this Agreement and/or the development contemplated by the Developer's Proposal and shall, notwithstanding the approval of the development plan and/or subdivision plat, be good cause at Developer's sole discretion for Developer to terminate this Agreement upon written notice to City prior to expiration of the Approval Period.

5.4.6 Provided that Developer shall have timely made application for all Approvals as detailed in this section and is diligently and in good faith pursuing the Approvals, Developer shall have the right to exercise two (2) options to extend the Approval Period for a period of time not to exceed ninety (90) days per option in the event of delay(s) caused by governmental agencies with jurisdiction (for example, but not by way of limitation, for reasons such as cancelled meetings,

unavailability of officials with decision-making authority, failure to timely process applications or permits, and any inter-agency disputes related to the agency (Army Corps or OEPA) that may lawfully exercise jurisdiction).

Developer shall exercise these option periods by providing written notice to City at least seven (7) days prior to the expiration of the Approvals Period (or expiration of the first extension period) that Developer is extending the period by a specified period of time, not to exceed ninety days for each period.

5.5 Financing Commitment. Developer's obligation to consummate the transaction contemplated under this Agreement is contingent upon Developer obtaining a commitment for property acquisition and construction financing from a lending institution in the principal amount of not more than Three Million (\$3,000,000.00) Dollars, for a two (2) year term at a fixed interest rate not to exceed eight (8) percent, upon such terms and conditions that are commercially acceptable and customary in Northeast Ohio. Developer shall apply for financing within sixty (60) days after the Effective Date. In the event Developer is unable to obtain such financing commitment, Developer shall have the option to terminate this Agreement by giving written notice of such termination (a "Financing Failure Termination Notice") to City no later than 5:00 p.m. Eastern Time on the date that is sixty (60) days after the Effective Date, in which event this Agreement shall terminate and the Parties shall be relieved of any further obligations hereunder except for obligations or liabilities specifically stated herein to survive the termination of this Agreement. If Developer fails to deliver a timely Financing Failure Termination Notice, then the Financing Closing Condition shall be deemed waived, and Developer shall be conclusively deemed to have waived any right to cancel or terminate the Agreement pursuant to this section.

ARTICLE 6

GENERAL OBLIGATIONS

6.1 Responsibility for the Site. As of the Effective Date and until the Site is conveyed to Developer, the City will continue to be responsible for the Site, including maintenance and repair and insurance.

6.2 Developer Obligations and Project Development. Once the Site is conveyed to the Developer, the ~~Developer shall develop the Project on~~ the Site shall be developed and maintained consistent with the Project Development Plan, which shall be a covenant running with the land binding on all Developer's successors and assigns. Developer shall execute such recordable instruments the City may require to memorialize and effect this provision of record. Upon request by the City, the Developer shall provide updates on the Project, including construction timelines and anticipated completion dates. The Developer shall commence the Project, consistent with the Project Development Plan, no later than one (1) year from the date of Closing. The Developer shall use commercially reasonable efforts and to the extent within their control, to complete the Project, consistent with the Project Development Plan, no later than three (3) years from the date of Closing.

The Developer acknowledges that the City intends to implement tax increment financing pursuant to Ohio Revised Code Sections 5709.40, 5709.42 and 5709.43 to fund certain public infrastructure

improvements, including without limitation, improvements to Thacker Street, and the ability to implement said tax increment financing is a material inducement for the City to enter into this Agreement. The Developer shall cooperate with the City to implement tax increment financing and ensure the Site is not exempted from real property taxation, without the consent of the City, for any reason, including without limitation, pursuant to Ohio Revised Code Section 5709.87. Notwithstanding the foregoing, Ohio Revised Code Section 5709.56 is not included with the operation of this section and Developer is permitted to apply for the exemption provided by said Code.

ARTICLE 7

INDEMNIFICATION AND EXCULPATION

7.1 Indemnification. Developer hereby indemnifies and agrees to defend and hold harmless the City and its officials, officers, directors, members, representatives, agents and employees from and against any actions, suits, claims, losses, costs, demands, judgements, liabilities and damages asserted against the City or to the extent such actions, suits, claims, losses, costs, demands, judgements, liabilities or damages are a result of or arise from any of the following: (a) Developer's breach of this Agreement; or (b) the acts or omissions of Developer or any of its respective Affiliates, agents, employees, contractors, subcontractors, engineers, architects, consultants, licensees, invitees or anyone other person or party acting on Developer's behalf.

7.2 No Liability. In no event shall the City have any liability in connection with the development of the Site or Project as a result of or arising from any approvals relating thereto given or withheld (or the right to give or withhold such approvals) pursuant to this Agreement, or as a result of or arising from any other right or non-delegable governmental duty to review, comment on or evaluate any plans, drawings, specifications or other documents in connection with the Project. In no event shall any such review, approval, comment or evaluation by the City relieve Developer of (a) any liability or responsibility under this Agreement, it being understood and agreed that Developer is at all times ultimately relying on Developer's skill, knowledge and professional training and experience in preparing (or causing the preparation of) any plans, drawings, specifications or other documents or (b) the responsibility of Developer to comply with Applicable Laws. Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement are limited special obligations of the City and those obligations are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and neither the Developer nor any other person has any right to have taxes levied by the City for the payment of its obligations under this Agreement.

7.3 Sovereign Rights. Nothing contained in this Agreement shall be construed to be a waiver of the City's sovereign immunity, any immunity provided under Applicable Laws or any individual's qualified good faith or official immunities.

7.4 Waiver of Consequential Damages. In no event shall the City or Developer, their associated entities, Affiliates or any of their respective directors, members, officers, officials or employees be liable to the other Party or Parties, or anyone claiming by, through or any of them,

for any special, incidental, indirect or consequential damages whatsoever arising out of, resulting from or in any way related to this Agreement.

ARTICLE 8

EVENTS OF DEFAULT; TERMINATION

8.1 Developer Default. “**Developer Default**” shall mean any of the following:

8.1.1 failure of Developer to comply with any payment obligation under this Agreement and such failure is not cured within twenty-one (21) days after written notice from the City;

8.1.2 failure of Developer to comply with any non-monetary obligation under this Agreement and such failure is not cured within forty-five (45) days after written notice from the City; provided, however, if such failure cannot be cured within such forty-five (45) day period, and Developer is expeditiously and continuously using best efforts to cure such failure, then Developer shall have such additional time as is necessary to cure such failure not to exceed a total of one hundred and twenty (120) days after Developer’s receipt of the above written notice from the City; or

8.1.3 the filing by Developer of a petition for the appointment of a receiver or a trustee, and such petition is not dismissed within sixty (60) days, or the making by Developer of a general assignment for the benefit of creditors, and such assignment is not dismissed within sixty (60) days; or the entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with Developer as debtor, and such entry is not dismissed within sixty (60) days; or the filing by Developer of an insolvency proceeding with respect to Developer or any proceeding with respect to Developer for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors, and such proceeding is not dismissed within sixty (60) days.

8.2 Remedies for Developer default. At any time as of which a Developer Default exists, the City may, but shall not be obligated to:

8.2.1 terminate this Agreement;

8.2.2 recover from Developer any sums of money that are or become due and payable by Developer to or for the benefit of the City under this Agreement; or enforce, or avail themselves of, any other remedies available at law or in equity.

8.3 City Default. “**City Default**” shall mean failure by the City in the due and punctual payment, performance or observance of any obligation of the City under this Agreement and such failure is not cured by the City within forty-five (45) days after written notice from Developer; provided, however, if such failure cannot be cured within such forty-five (45)-day period, and the City is expeditiously and continuously using best efforts to cure such failure, then the City shall have such additional time as is necessary to cure such failure not to exceed a total of ninety (90) days after the City’s receipt of the above written notice from Developer.

8.4 Remedies for City Default. At any time as of which a City Default exists, Developer, at Developer's option, may, but shall not be obligated to:

- 8.4.1 by written notice to the City, terminate this Agreement; or
- 8.4.2 enforce, or avail itself of, any other remedies available to it at law or in equity.

ARTICLE 9

DISPUTE RESOLUTION

9.1 Mediation. The Parties shall attempt to negotiate a resolution of any dispute arising out of this Agreement; provided, however that at any point, any of the Parties may submit any such dispute to non-binding mediation. Except as otherwise set forth in this Agreement, costs and expenses of the mediation shall be shared equally by the Parties. The Parties agree that all records or other information marked as "confidential" and submitted to any mediator(s) or other parties to any mediation proceeding concerning any and all disputes arising hereunder shall be deemed "mediation communications" for purposes of Ohio Revised Code Section 149.43(A)(1). In the event of a dispute hereunder, mediation is mandatory and shall be a condition precedent to the institution of legal or equitable proceedings hereunder by the Parties.

9.2 Litigation. If the Parties are unable to reach a settlement of any dispute arising out of or relating to this Agreement through non-binding mediation within a reasonable time, but in any event no later than sixty (60) days after first notice of the dispute, then the dispute shall be resolved by litigation filed and maintained in any State or Federal Court located in Cuyahoga County, Ohio or the Northern District of Ohio, Eastern Division.

ARTICLE 10

MISCELLANEOUS

10.1 Governing Law. This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio, without regard to its conflict of law provisions that would cause the application of the laws of another jurisdiction.

10.2 Entire Agreement. This Agreement represents the entire and integrated agreement among the Parties concerning the Project and supersedes all prior negotiations, representations or agreements, either written or oral.

10.3 Assignment; Mortgagee Protection . No Party shall have the right to assign all or any of this Agreement, to any other person or party without the prior written consent of the other Parties, which may not be unreasonably withheld; provided, however Developer shall have the right to assign this Agreement to an Affiliate. The City acknowledges and agrees that this Agreement neither prevents nor limits Developer or Developer's Affiliate, as applicable, from encumbering all or any portion of the Site or improvements thereon by any mortgage or other security device securing financing with respect to the Project or assigning or transferring their rights to receive any payments hereunder. The City shall execute all reasonably requested

estoppels or other agreements reasonably acceptable to the City and reasonably required by a mortgagee pertaining to the terms and conditions of this Agreement.

10.4 No Individual Liability. No official, officer, director, member, representative, agent or employee of the City shall be personally liable to Developer or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Developer or successor or on any obligation under the terms of this Agreement. No officer, director, member, representative, agent or employee of the Developer shall be personally liable to the City or any successor in interest, in the event of any default or breach by the Developer or for any amount which may become due to the City or successor or on any obligation under the terms of this Agreement.

10.5 Amendments; Waiver. Except as otherwise provided herein, no amendment to this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement. Whenever the Mayor is entitled to act under this Agreement (e.g. delivery of notices, written waivers or consents), such action shall be deemed authorized by the City Council provided such action is taken in accordance with this Agreement. All waivers of the provisions of this Agreement shall be in writing and signed by the Mayor and a representative of the Developer.

10.6 Consent in Writing. Unless otherwise specifically provided herein, no consent or approval by a Party permitted or required under the terms of this Agreement shall be valid unless the same shall be in writing, signed by the Party by or on whose behalf such consent is given.

10.7 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

10.8 Public Announcements. The Parties agree that they will use reasonable, good faith efforts to jointly coordinate any public announcements or press releases relating to terms and conditions of this Agreement.

10.9 Notices. Any notice, demand, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by overnight courier or registered letter, to the other Party at the address set forth below.

If Delivered to City:

11 Berea Commons
Berea, Ohio 44017
Attn: Mayor Cyril Kleem

With a copy to:

Director of Law
City of Berea, Ohio
11 Berea Commons

Berea, Ohio 44017

And:

Michael L. Sharb, Esq.
Russ Balthis, Esq.
Squire Patton Boggs (US) LLP
1000 Key Tower
127 Public Square
Cleveland, Ohio 44114

If delivered to Developer:

GD3 Ventures I, LLC
Attn: George E. Davis, III
P.O. Box 384
Mentor, Ohio 44060

With a copy to:

Joseph P. Szeman, Esq.
Hennig, Szeman & Klammer Co., L.P.A.
8500 Station Street, Suite 245
Mentor, Ohio 44060

Each party shall have the right to change the place to which notice shall be sent or delivered by sending a similar notice to the others in like manner. The effective date of any notice issued pursuant to this Agreement shall be as of the addressee's receipt of such notice.

10.10 Severability. If any clause or provision in this Agreement shall be held by final judgment of a court of competent jurisdiction to be invalid or unenforceable for any reason, such invalidity or lack of enforceability shall not affect the validity or enforceability of any other clause or provision of this Agreement.

10.11 Counterparts. This Agreement may be executed by the parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile or other electronic means shall be equally as effective as delivery of a manually executed original counterpart of this Agreement.

10.12 Contract Language. The language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent, and no rule of strict construction shall be applied against any Party. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Agreement shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Agreement.

10.13 Recording. This Agreement will not be recorded; provided, however, the Parties agree to record the Memorandum.

10.14 Force Majeure. If any Party is delayed or hindered in, or prevented from the performance or completion of any obligation required under this Agreement by reason of earthquakes; landslides; strikes; lockouts; labor troubles; failure of power; riots; pandemics, endemics, governmental orders, insurrection; war; terrorism (international and domestic); acts of God; federal, state or local regulations, laws, rules or requirements; or other reason of the like nature not the fault of the Party delayed in performance of its obligation; unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, but not including lack of financing or financial capacity by any Party hereto (“**Force Majeure**”), such Party is excused from such performance for the period of delay. The period for the performance of any such act will then be extended for the period of such delay. The Party claiming Force Majeure shall take commercially reasonable steps to remove the Force Majeure event, and shall promptly notify the other Parties, as applicable, within a period of thirty (30) days, when it first learns of the existence of a Force Majeure condition and will similarly notify the other Parties, as applicable, within a period seven (7) business days, when a Force Majeure is terminated. Notwithstanding anything herein to the contrary, if a Party fails to notify the other Parties, as applicable, within a period of thirty (30) days, after it first learns of the existence of an event of Force Majeure, then such Party shall be deemed to have waived its right to be excused from performance of its obligations by reason of such event of Force Majeure.

10.15 Good Faith. Whenever in this Agreement any Party is required or permitted to grant approval or consent, take any action or request any other Party to take any action, make decisions or otherwise exercise judgment as to a particular matter, arrangement or term, the Party granting such approval or consent, taking or requesting such action, making decisions or otherwise exercising judgment shall act reasonably and in good faith and, in the case of approvals or consents, shall act with all deliberate speed in making its determination of whether or not to approve or consent to any particular matter and shall not impose conditions on the granting of such approval or consent that the approving or consenting Party does not believe are necessary in connection with such approval or consent.

10.6 Further Assurances. The Parties shall take or cause to be taken any and all other further actions reasonably necessary, required or requested of the other Parties in order to effectuate the terms and conditions herein.

10.7 Assignment. Developer contemplates the creation of an Affiliate company to take title and undertake the Project under transfer and assignment of this Agreement. Such an assignment is permitted without prior consent of City, which may however request and receive assurances that the development company is an Affiliate as defined by this Agreement. Notwithstanding such transfer and assignment, Developer shall remain subject to the terms and provisions of this Agreement, including those expressly intended to survive post-termination and/or Closing.

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IN WITNESS WHEREOF, the Parties sign this Agreement as of the Effective Date.

CITY:

CITY OF BEREAL, OHIO, an Ohio
municipal corporation

By: _____

Name: Cyril Kleem

Title: Mayor

DEVELOPER:

GD3 VENTURES I, an Ohio limited
liability company

By: _____

Name: George E. Davis, III

Title: Managing Member

Approved as to Form:

By: _____

Name: Barbara L. Jones

Title: City of Berea, Law Director

Exhibit A

LEGAL DESCRIPTION OF SITE

Exhibit B

DEVELOPER'S PROPOSAL

Exhibit C

BEREA RFP