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# COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2016-3

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

## AN ORDINANCE

**AUTHORIZING THE MAYOR TO ENTER INTO A PASS-THROUGH SALE/PURCHASE AGREEMENT WITH THE CUYAHOGA COUNTY LAND REUTILIZATION CORPORATION ("CCLRC" OR "LAND BANK"), FOR THE ACQUISITION OF A CERTAIN PARCEL OF LAND IN DOWNTOWN BERA, AND DECLARING AN EMERGENCY.**

WHEREAS, The Cuyahoga County Land Reutilization Corporation has agreed to accept a donation of land located in downtown Berea from a developer and to hold it for transfer to the City of Berea in about a year, for use by the City of Berea following the completion of the East Center Street Bridge replacement project; and

WHEREAS, entering into an agreement with the Cuyahoga County Land Reutilization Corporation will facilitate the bridge replacement project and the later public use of the property.

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

SECTION 1. That the Mayor be and is hereby authorized and directed to enter into an agreement contract with the Cuyahoga County Land Reutilization Corporation substantially similar to the "Sample Agreement" marked as Exhibit A, attached hereto and incorporated herein by reference, and to do all things necessary in furtherance thereof.

SECTION 2. 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 3. 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 the services of Cuyahoga County Land Reutilization Corporation to the City cannot otherwise be assured. 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: January 28, 2016

[Signature]  
President of Council

ATTEST: [Signature]  
Clerk of Council

APPROVED: January 29, 2016  
[Signature]  
Mayor

Approved as to Form:

[Signature]  
Director of Law

## PASS THROUGH SALE/PURCHASE AGREEMENT

THIS PASS THROUGH SALE/PURCHASE AGREEMENT ("Agreement") is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016 ("Effective Date") by and between the **CUYAHOGA COUNTY LAND REUTILIZATION CORPORATION**, a nonprofit community improvement corporation organized and existing under Ohio Revised Code ("R.C.") Chapters 1724 and 1702 ("CCLRC"), and **CITY OF BEREA, OHIO**, a municipal corporation duly organized and validly existing under the laws of the State of Ohio ("Purchaser")(CCLRC and Purchaser collectively, the "Parties").

### BACKGROUND

- A. Certain real property located near the intersection of W. Center Street and Front Street, Berea, Ohio, 44107 and being identified as **Permanent Parcel Number 364-09-013** in the real estate records of Cuyahoga County, and further described in Exhibit A (hereinafter, the "Premises") may become available for acquisition by the CCLRC.
- B. Purchaser has indicated its willingness to acquire the Premises from CCLRC for the purpose of causing the development of the Premises if CCLRC is willing and able to acquire and temporarily hold title to the Premises.
- C. CCLRC desires to sell the Premises to Purchaser and Purchaser desires to Purchase the Premises from CCLRC under the terms of this Agreement.

### AGREEMENT

1. **AGREEMENT OF PURCHASE AND SALE.** If CCLRC acquires the Premises, CCLRC hereby agrees to sell to Purchaser and Purchaser agrees to purchase from CCLRC, for the price and on the terms and conditions set forth in this Agreement, CCLRC's right, title and interest in and to the Premises.
2. **PURCHASE PRICE AND CLOSING COSTS.** The purchase price for the Premises shall be **Five Hundred Dollars (\$500.00)** (the "Purchase Price"). Purchaser shall pay the Purchase Price at Closing (as defined in Section 6 of this Agreement). Purchaser shall pay one hundred percent (100%) of all closing and title insurance costs associated with the transfer of the Premises, including all such closing and title insurance costs incurred by CCLRC in its acquisition of the Premises.
3. **CCLRC HOLDING PERIOD.** The CCLRC shall hold title to the Premises during the CCLRC Holding Period and shall take such actions as are necessary to cause the Premises to be exempt from real property taxation as may be permitted by law. The CCLRC Holding Period means the time period between the CCLRC Acquisition Date and the Closing Date. The CCLRC Acquisition Date means the date the deed vesting

title to the Premises in the name of the CCLRC is recorded in the real estate records of Cuyahoga County.

4. ACCEPTANCE OF TITLE; POWER OF ATTORNEY. CCLRC shall convey title to the Premises to Purchaser by quit claim deed (the "Deed") at Closing, free and clear of all liens and encumbrances and subject only to (a) restrictions, reservations, easements, covenants and conditions of record acceptable to Purchaser (expressly excluding any pending litigation affecting the Property); and (b) zoning ordinances, if any (collectively, the "Permitted Exceptions"). By executing this instrument, Purchaser hereby expressly authorizes CCLRC to file the Deed in the real estate records of Cuyahoga County as contemplated in this Agreement, subject to the condition that title to the Premises be subject only to the Permitted Exceptions; and further, such continuing and irrevocable power of attorney hereby includes authorization to CCLRC upon the filing of the Deed to accept delivery of the Deed on Purchaser's behalf; and for such purposes Purchaser additionally hereby grants CCLRC a continuing power of attorney to file the Deed and to accept delivery thereof as Purchaser's agent and on its behalf. Title will be taken by Purchaser in its name or that of a permitted assignee (as to which CCLRC has been given written notice).

5. LICENSE FOR NON-EXCLUSIVE USE OF THE PREMISES. During the CCLRC Holding Period, CCLRC agrees to grant a non-exclusive license for entry on the Premises to Purchaser, its successors, heirs and assigns, and/or personal and legal representatives, and its licensees, invitees, guests or any person associated with Purchaser's non-exclusive use of the Premises (collectively, "Licensee").

6. CLOSING. Closing (the "Closing" or "Closing date") shall occur on February 1st, 2017, except in the event of any one of the following: (i) Purchaser requests that closing occur prior to February 1<sup>st</sup>, 2017, (ii) the Parties mutually agree to reschedule closing to a date after February 1<sup>st</sup>, 2017, or (iii) CCLRC elects to accelerate the closing due to an Event of Default, as set forth in Section 8, of which Purchaser has been given ten (10) days written notice and opportunity to cure. In the event of (i), (ii), or (iii) described in this section, Closing shall occur on the date of title transfer from CCLRC to Purchaser.

7. CONDITION OF THE PREMISES; MAINTENANCE. The Premises shall be sold in its present "As Is," "Where Is" condition. CCLRC does not warrant or guaranty any aspect or condition of the Premises, structural, environmental or physical, nor does CCLRC make, merchantability, fitness for particular purpose, warranty of habitability, and any other express or implied warranties or representations. Purchaser affirmatively warrants and represents that it has had the opportunity to fully inspect the Premises and is acquiring the Premises solely based thereon and not due to any representation, promise, communication, act or omission to act by CCLRC, its agents, attorneys, representatives, employees and/or affiliated persons. Purchaser shall be responsible for causing the Premises to be maintained and secured at all times in accordance with the health and building codes of the City of Berea, Ohio. Purchaser shall be responsible for paying all costs associated with the maintenance of the Premises, including the prompt payment of

any ticket, citation, fine, fee or penalty issued against the Premises, CCLRC, or Purchaser for the violation of any building or health code or other local ordinance related to property maintenance. CCLRC shall not have any obligation to maintain any aspect of the Premises under this Agreement. In the event that CCLRC incurs costs associated with the maintenance of the Premises, Purchaser shall reimburse the CCLRC the full amount incurred by CCLRC no later than ten (10) business days after written demand for payment is delivered by CCLRC to Purchaser, time is of the essence.

8. EVENTS OF DEFAULT. Each of the following, without limitation, shall constitute an Event of Default by Purchaser: (i) Purchaser voluntarily terminates this Agreement in writing; (ii) Purchaser fails to comply with or perform as required by this Agreement; or (iii) any lien is filed against the Premises because of an act or omission of Purchaser.

9. REMEDIES. In addition to any other remedy set forth in this Agreement, upon the occurrence of any Event of Default as set forth in Section 8 of this Agreement, CCLRC may, in its sole discretion, elect to exercise any one or more of the following rights and remedies: (i) deny Purchaser access to the Premises; (ii) terminate this Agreement; (iii) accelerate the Closing date by immediately transferring title to the Premises to Purchaser; or (iv) exercise any and all additional rights or remedies that CCLRC may have at law or equity.

10. INSURANCE. During the CCLRC Holding Period, Purchaser shall maintain or, upon mutual agreement of the Parties, reimburse the CCLRC at Closing for maintaining:

(a) comprehensive general liability insurance that names CCLRC as an additional insured with minimum "personal injury" coverage of One Million Dollars (\$1,000,000) per person up to Two Million Dollars (\$2,000,000) total coverage for bodily injuries to or death of one or more persons as the result of any one accident and One Million Dollars (\$1,000,000) for property damage; and

(b) fire, vandalism and malicious mischief and all-risk insurance on the Real Property with limits reasonably acceptable to CCLRC.

Said insurance shall be in form and with companies satisfactory to CCLRC and shall not be canceled, terminated or changed except after at least ten (10) days prior written notice to CCLRC. Such insurance shall name CCLRC as an additional insured, and certificates therefore shall be deposited with CCLRC at the commencement of the CCLRC Holding Period and upon renewals of such policies. Said insurance and additional insured certificates shall be in full force throughout the duration of the CCLRC Holding Period and submitted to CCLRC upon CCLRC's request.

11. CCLRC'S RIGHT OF ENTRY. Prior to the Closing date, CCLRC, its officers, employees, agents and contractors shall be entitled to enter the Premises at any time for all reasonable purposes, including, without limitation, inspection of the Premises and Purchaser's activities thereon.

12. UTILITIES. Purchaser shall promptly pay for all utilities furnished to the Premises during the CCLRC Holding Period at utility provider or city rates, including water, electricity, sewer charges, and gas. Unless specifically not permitted by the applicable utility provider, all utilities serving the Premises shall be in separate account in the separate name of Purchaser; if not permitted by such applicable local utility provider, than CCLRC shall provide Purchaser with any utility bills which Purchaser shall pay no later than 5 business days thereafter, time being of the essence.

13. MISCELLANEOUS.

- a. *Entire Agreement.* This Agreement represents the entire agreement between CCLRC and Purchaser with respect to the subject matter hereof. All understandings and agreements, oral or written, previously made between the parties are merged into this Agreement.
- b. *Assignment of Rights Prohibited.* Purchaser shall not assign any of its rights under this Agreement, in whole or in part, without the prior written consent of CCLRC. If CCLRC has not consented in writing to the assignment of any of Purchaser's rights under this Agreement any such assignment of rights is void and may, in the sole discretion of CCLRC, result in a Default. Notwithstanding the foregoing, Purchaser may assign its rights hereunder to a limited partnership or other entity in which Purchaser owns a controlling interest; provided, however, that Purchaser shall remain liable for all obligations hereunder.
- c. *No waiver by CCLRC.* No failure by CCLRC to insist upon the strict performance by Purchaser of any provision of this Agreement shall constitute a waiver of the CCLRC's right to strict performance, and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by Purchaser to observe or comply with any provision of this agreement.
- d. *Governing Law; Compliance.* This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Purchaser shall comply with local, state, and federal laws, regulations, ordinances and orders governing the Premises and the activities authorized hereunder, and shall obtain all necessary permits prior to commencement of the activities authorized hereunder.
- e. *Termination.* This Agreement may be terminated by CCLRC at any time prior to the commencement of the CCLRC holding period with written notice to Purchaser. After the commencement of the CCLRC Holding Period, this Agreement may be terminated by Purchaser or CCLRC only with the express written consent of the other Party.
- f. *Severability.* In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other

covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

- g. *Counterparts.* This Agreement may be signed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

**CCLRC:**  
Cuyahoga County Land Reutilization Corporation

By: \_\_\_\_\_  
Gus Frangos, President and General Counsel

Date: \_\_\_\_\_

**PURCHASER:**  
City of Berea, Ohio

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

Name: \_\_\_\_\_

Date: \_\_\_\_\_

County of Cuyahoga    )  
                                  ) ss:  
State of Ohio            )

Sworn to, subscribed and acknowledged in my presence this \_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_ in his/her role as \_\_\_\_\_ of Purchaser, for and on behalf of Purchaser.

\_\_\_\_\_  
NOTARY

EXHIBIT A  
LEGAL DESCRIPTION