

ORDINANCE NO. 258-2025(PD), *Second
Reading*

By Mayor Cuda

An Ordinance authorizing the Mayor to execute a property transfer and indemnification agreement with RP Derbyshire LLC concerning the real property located at 2450 Derbyshire Road; and declaring the necessity that this legislation become immediately effective as an emergency measure.

WHEREAS, RP Derbyshire LLC (the "Owner"), owner of the real property located at 2450 Derbyshire Road, Cleveland Heights, OH 44106 (the "Property") has requested that the City temporarily take ownership of the Property prior to transferring the same back to the Owner for the purpose of potentially pursuing a real property tax exemption pursuant to Section 5704.41 of the Ohio Revised Code, under which provision City ownership for some period of time is a prerequisite; and

WHEREAS, the City desires to undertake the aforementioned transactions, but only subject to a Transfer and Indemnification Agreement (the "Agreement") whereby the transactions are set forth in detail, all costs of the transactions are mandated to be the responsibility of the Owner, and the Owner shall agree to indemnify the City against any claims brought against the City concerning any environmental conditions of the Property, substantially in accordance with the Agreement attached hereto as Exhibit A; and

WHEREAS, this Council has determined that it is in the best interest of the City and its residents to authorize the Mayor to execute the Agreement to facilitate the aforementioned transactions.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, Ohio, that:

SECTION 1. The Mayor is hereby authorized to execute the Agreement and any and all other related documents, and take any other actions necessary, to facilitate the transfer of the Property from the Owner to the City and the subsequent transfer of the Property from the City back to the Owner. The Agreement shall be substantially in accordance with the form attached hereto as Exhibit A. The Agreement shall contain such further terms as recommended by the Mayor and Director of Law and shall be subject to approval as to form by the Director of Law.

SECTION 2. It is found and determined that all formal actions of the Council relating to the adoption of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

SECTION 3. Notice of the passage of this Ordinance shall be given by publishing the title and abstract of its contents, prepared by the Director of Law, once in one

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newspaper of general circulation in the City of Cleveland Heights, or by posting the full text of this Ordinance on the City's website.

SECTION 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the City of Cleveland Heights, such emergency being the need for the transactions to occur prior to the end of calendar year 2025. Wherefore, provided it receives the affirmative vote of five (5) or more of the members elected or appointed to this Council, this Ordinance shall take immediate effect and be force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.



GAIL L. LARSON
President of Council



ADDIE BALESTER
Clerk of Council

PASSED: December 15, 2025

Presented to Mayor: 12/17/2025 Approved: 12/17/2025



TONY CUDA
Mayor

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Exhibit A

See attached.

TRANSFER AND INDEMNITY AGREEMENT

This Transfer and Indemnity (the “Agreement”) is being entered into as of _____, 2025 by **RP DERBYSHIRE LLC**, an Ohio limited liability company (the “Developer”), in favor of **THE CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation (the “City”).

I. DEFINITIONS

The following terms, except where the context indicates otherwise, shall have the meanings in this Agreement set forth below:

(a) The term “Environmental Law” or “Environmental Laws” means any federal, state, local, municipal law, or other administrative order, constitution, law, ordinance, common law, regulation, or statute, that requires or relates to: (a) human health and safety and worker/occupational health and safety, (b) pollution or protection of the environment or natural resources or (c) the presence, use, manufacturing, production, generation, handling, transportation, treatment, recycling, storage, disposal, distribution, importing, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any hazardous substance or harmful or deleterious substance, including, but not limited liability for remediation of a release of Hazardous Substances.

(b) The term “Hazardous Substances” means any material, substance or waste which is regulated by, or which is subject to liability or standards of conduct under, any Environmental and Safety Requirement, including any material, substance or waste which is defined or classified as a “hazardous material”, “hazardous substance”, “hazardous waste”, “solid waste”, “toxic waste”, “toxic substance”, “pollutant”, “contaminant” or words of similar import under any Environmental and Safety Requirements, and including petroleum or any fraction thereof, petroleum-derived products or byproducts, natural gas, natural gas liquids, radon, toxic mold, radioactive materials or wastes, asbestos or asbestos-containing materials, lead or lead-containing materials, polychlorinated biphenyls, noise, odors, urea formaldehyde, per- or polyfluoroalkyl substances, and 1,4-dioxane.

(c) The term “Property” shall mean all real property located at 2450 Derbyshire Road, Cleveland Heights, OH 44106, having the Cuyahoga County Parcel Number 68516040, as further described in the attached **Exhibit A** and includes all surface water, groundwater, land surface, subsurface strata, soils, sewers, buildings, foundations, piping, fill and other materials and improvements, on, in or under such real property.

(d) The terms “Storage,” “Treatment,” and “Disposal” shall have the same meanings as those terms are defined by the Resource Conservation and Recovery Act as amended 42 U.S.C. §6901 et seq. or regulations promulgated thereunder (collectively “RCRA”).

(e) The term “Release” shall mean the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant).

II. TRANSFER OF THE PROPERTY

(a) On or before December 29, 2025, the Developer shall transfer the Property to the City, via quit-claim deed, for the consideration of \$10.00 and such other valuable consideration, the receipt and sufficiency of which is hereby recognized by the City and Developer.

(b) Immediately upon receipt of the Property, the City shall transfer the Property to the Developer, via quit-claim deed, for the consideration of \$10.00 and such other valuable consideration, the receipt and sufficiency of which is hereby recognized by the City and Developer.

(c) Kingdom Title Solutions of Akron, Ohio (the "Escrow Agent") shall serve as the escrow agent for the transfers set forth in Sections II(a) and (b), above. The quit-claim deeds and any other documents necessary to effectuate the aforementioned transfers of the Property shall be deposited by the City and Developer with the Escrow Agent.

(d) The Developer shall be responsible for all costs, fees and taxes related to the aforementioned transfers of the Property and shall deposit with the Escrow Agent all necessary funds to provide for payment of the same.

(e) For the avoidance of doubt, the City and Developer intend to undertake and complete the transfers set forth in Sections II(a) and (b) on the same calendar day, as close to immediately consecutive, or back-to-back, as practicable.

III. ENVIRONMENTAL INDEMNITY - RELEASE, HOLD HARMLESS, INDEMNITY

(a) The Developer hereby agrees to release, hold harmless, defend and indemnify the City from, for and against all actual or threatened claims, costs (including but not limited to the cost of investigation, removal, remediation and other cleanup of Hazardous Substances, and reasonable fees of attorneys and other professionals, experts and consultants retained by the City) demands, orders, losses, lawsuits, liabilities, damages (including without limitation all consequential damages) and expenses whether brought by the Developer, a governmental authority or any other third party (all the foregoing hereinafter collectively referred to as "Losses") arising from or related to any of the following:

(i) The past, present or future Release, threatened Release, Storage, Treatment, accumulation, generation, utilization, Disposal, transportation or other handling or migration of any Hazardous Substance on, in, onto, or from the Property.

(ii) The violation or alleged violation of Environmental Laws occurring on or related to the Property.

(iii) Any action taken by the City in accordance with this Agreement to eliminate, prevent, or mitigate the potential adverse impact on the Property or the City as a result of or in anticipation of any actual, suspected or threatened violation of Environmental Laws or Release or threatened Release of a Hazardous Substance on, in or from or otherwise affecting the Property.

(iv) The costs of any required or necessary repair, investigation, monitoring, cleanup, or detoxification of the Property and the preparation and implementation of any closure, remedial, or other required plans.

Clauses III(a)(i), III(a)(ii), III(a)(iii) and III(a)(iv) above are hereinafter referred to collectively as "Environmental Matters."

(b) The Developer hereby agrees that the City shall be reimbursed directly by the Developer and all of its legally available assets and revenues, and if a sale of all or part of the Property occurs, from the Property or proceeds thereof for any Losses suffered or sustained by the City as a result of Environmental Matters, until such time as the City have been reimbursed in full.

IV. ENVIRONMENTAL INDEMNITY-COVENANTS REGARDING ENVIRONMENTAL COMPLIANCE

(a) The Developer hereby separately and independently covenants that it has not used, generated, manufactured, produced, Stored, Released, discharged, or Disposed of on, under or about the Property, or transported to or from the Property, any Hazardous Substance or allowed any other person or entity to do so except in Minor Amounts under conditions permitted by and in compliance with applicable laws, including Environmental Laws. "Minor Amounts" shall mean those amounts reasonably necessary in connection with the construction, maintenance, repair, and operation of the Property.

(b) At all times pertinent to this Agreement, the Developer shall independently keep and maintain the Property in compliance with, and shall not cause or permit such Property to be in violation of, any Environmental Laws.

(c) The Developer shall give prompt written notice to the City of the following to the extent that the following apply to such Developer:

(i) any proceeding or inquiry by any governmental authority with respect to the presence of any Hazardous Substance on the Property relating to the Developer or the migration thereof from or to other property;

(ii) all claims made or threatened by any third party against the Developer or associated with the Property, which claim relating to any loss or injury resulting from any Hazardous Substance; and

(iii) the discovery by the Developer of any occurrence or condition on any real property adjoining or in the vicinity of the Property that could have an adverse environmental impact on such Property or cause such Property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of such Property under any Environmental Law.

(d) The City shall have the right to join and participate in, as a party if it so elects, any legal proceedings or actions initiated with respect to the Property in connection with any Environmental Law and have its reasonable attorneys' fees in connection therewith paid by the

Developer.

(e) Subject to Section II(b) and II(d), in the event that any investigation, site monitoring, containment, cleanup, removal, restoration, or other remedial work of any kind or nature (the "Remedial Work") is required under Environmental Laws, judicial order, or by any governmental or nongovernmental entity or person because of, or in connection with, the presence, suspected presence, Release or suspected Release of a Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor, about, under or within the Property (or any portion thereof), the Developer shall within thirty (30) days after written notice of demand for performance thereof by the City (or such shorter period of time as may be required under any applicable law, regulation, order or agreement, or to protect human health and the environment), commence and thereafter diligently prosecute to completion, all such Remedial Work. In the event the Developer shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, City may, but shall not be required to, cause such Remedial Work to be performed and all costs and expenses thereof, or incurred in connection therewith, shall be reimbursed to the City.

V. GENERAL INDEMNITY

(a) To the extent provided by applicable Law, the Developer shall indemnify, protect, hold harmless, save and keep harmless the City (other than for actions or omissions resulting from the willful misconduct of the City) from and against any and all liabilities, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the City's ownership of the Property. The indemnification by the Developer hereunder shall include any indemnification for any federal, State or local taxes which may be incurred by City as a result of the consummation of the transactions contemplated by the Development Agreement, unless otherwise agreed in writing.

(b) To the extent provided by applicable law, the Developer (i) releases the City from, (ii) covenants and agrees that City will not be liable for, and (iii) covenants and agrees to indemnify the City for and to hold the City harmless against all liabilities, claims, costs, losses and expenses (including without limitation, to the extent permitted by law, reasonable attorneys' fees and expenses), joint or several, imposed upon or asserted against the City on account of:

(i) any injury to, death of or loss by any Person, or loss of or damage to property, that may be occasioned by any cause whatsoever pertaining to the Property, or any part thereof, or occurring otherwise on or about such Property, or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any;

(ii) any use, nonuse or condition of the Property, or any part thereof, or the adjoining sidewalks, curbs, vaults and vault space, if any;

(iii) any breach or Event of Default on the part of the Developer in the observance or performance of any covenant, agreement or obligation of the Developer under or arising from the transaction contemplated by the Development Agreement or any act or failure to act by the Developer or any of its agents, contractors, servants, employees

or licensees;

(iv) ownership of any interest in the Property, or any part thereof;

(v) the performance of any labor or services or the furnishing of any materials or other property in respect of the Property, or any part thereof;

(vi) any action, claim or proceeding brought in connection with any of the foregoing; and

(vii) to the extent of the aggregate amount paid in settlement of any action, claim or proceeding commenced or threatened based upon any of the foregoing, if the settlement is effected with the written consent of the Developer (which consent shall not be withheld unreasonably);

(viii) and will reimburse any legal or other expenses incurred reasonably by the City in connection with investigating or defending any liability, claim, cost, loss, expense, action or proceeding described above.

(c) The Developer covenants and agrees further (a) to assume the cost of, and to indemnify the City and to hold them harmless against, all liabilities, claims, costs, losses and expenses, to which the City may become subject under law, and (b) to reimburse the City for any out-of-pocket, legal and other expenses (including without limitation, to the extent permitted by law, reasonable attorneys' fees) incurred by the City in connection therewith with investigating any of those liabilities, claims, costs, losses or expenses, or with defending against any actions, claims or proceedings, except in each case to the extent related to solely information furnished by the respective City which was not provided by or in the name or on behalf of the Developer.

(d) At the request and the expense of the Developer, the City shall cooperate in making any investigation and defense of any action, claim or proceeding and shall assert appropriately the rights, privileges and defenses which are liable to City, but solely at the expense of the Developer.

(e) In case any action, claim or proceeding is brought or asserted against the City with respect to which indemnification may be sought under this Section, the City (as applicable) shall give written notice thereof promptly to the Developer and the Developer shall have the obligation and the right, upon receipt of that notice, to assume the defense of the action or proceeding with legal counsel reasonably acceptable to the City (as applicable). No failure of the City to give, and no delay in giving, that notice shall relieve the Developer to any extent from any of its covenants, agreements, or obligations under this Section, unless that failure or delay materially prejudices the defense by the Developer of the action, claim or proceeding, and only to the extent of the prejudice. The failure to give that notice shall not relieve the Developer from any obligation which it may have to the City otherwise than under this Section. If the Developer shall not actively and diligently pursue such defense, or if the counsel so selected and approved shall be unable by reason of any conflict of interest or other reason, including without limitation, the availability of defenses for one party that are not available to other parties, to represent the interests of the City, the City (as applicable) shall have the right to engage separate legal counsel

as may be necessary and separately participate in the defense of any such matter at the reasonable cost and expense of the Developer. Without limiting the obligations of the Developer as set forth in the preceding sentence, the City may employ separate legal counsel at their own expense and participate in the defense.

(f) The release and indemnification pursuant to this Section are intended to and shall include the release and indemnification of all affected officials, contractors, directors, officers, and employees of the City, to the same extent and subject to the same terms as are the release and indemnification of the City, respectively. The release and indemnification are intended to and shall be enforceable by each indemnified person to the full extent permitted by law. All amounts payable under this Section, together with interest thereon from the date of any payment of any amount by the indemnified person, shall be paid by the Developer on demand by the indemnified person. In any action brought to collect those amounts, the indemnified person shall be entitled to the recovery of the amounts, except as limited by law or judicial order or decision.

The independent covenants, agreements, and obligations of the Developer under this Section shall survive the termination of the Development Agreement.

VI. BINDING ON SUCCESSORS

The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereunder.

VII. NOTICES

All notices, certificates, requests, demands and other communications hereunder shall be in writing and may be personally served or sent by telefax or certified or registered mail. All such notices, certificates, requests, demands and other communications shall be delivered to the party to receive the same at the addresses indicated below (or at such other address(es) as a party may specify in a written notice):

To the City: City of Cleveland Heights, Ohio
 40 Severance Circle
 Cleveland Heights, OH 44118
 Attention: Mayor

With a copy to: City of Cleveland Heights, Ohio
 40 Severance Circle
 Cleveland Heights, OH 44118
 Attention: Law Director

To: RP Derbyshire LLC

Attention: _____

With a copy to: _____

Attention: _____

VIII. ACKNOWLEDGEMENT

The Developer hereby acknowledges that the City has not created, caused or contributed to the presence, Release or threatened Release of Hazardous Substances on, in or from the Property and further that the City shall not function as an owner or operator of such Property. The Developer further acknowledges that the release, hold harmless, and indemnity as provided to the City herein, are being provided in exchange for good and valuable consideration.

IX. APPLICABLE LAW

This Agreement shall be interpreted pursuant to the laws of the State of Ohio. If any provisions contained herein are ultimately declared or held by a court of law to be in violation of law, the remaining provisions herein not so declared or held shall remain in full force and effect.

X. COUNTERPARTS

This Agreement may be executed in multiple copies counterparts, which, when taken together, shall constitute a completely executed document.

[Remainder of page intentionally left blank; signature pages follow]

IN WITNESS WHEREOF, the parties have executed this instrument on the dates of their respective acknowledgments but as of the date first written hereinabove.

DEVELOPER:

RP DERBYSHIRE LLC

By: _____
Its: _____

STATE OF _____)
) SS
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025 by _____, _____ of **RP DERBYSHIRE, LLC**, an Ohio limited liability company, on behalf of the limited liability company.

Notary Public

CITY:

CITY OF CLEVELAND HEIGHTS, OHIO

By: Tony Cuda
Its: Mayor

STATE OF OHIO)
) SS
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025 by Tony Cuda, the Mayor of the **CITY OF CLEVELAND HEIGHTS, OHIO**, an Ohio municipal corporation, on behalf of the City

Notary Public

EXHIBIT A

[PROPERTY- LEGAL DESCRIPTION]