

ORDINANCE NO. 2022 -059

AN ORDINANCE AUTHORIZING THE TRANSFER OF A TREX LIQUOR LICENSE INTO THE CITY OF KENT BY THE ACES ENTERPRISE, LLC, AN OHIO LIMITED LIABILITY COMPANY, CONDITIONED UPON THE EXECUTION OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF KENT, OHIO AND ACES ENTERPRISE, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, ACES Enterprise, LLC has proposed the redevelopment of a portion of 176 East Main Street, Kent, Ohio, property owned by Acorn at Kent, LLC into a wine bar/jazz club; and

WHEREAS, ACES Enterprise, LLC has asked Kent City Council to allow the transfer of a liquor license from outside of Kent, into the City, by the TREX process, for use at 176 East Main Street, Kent, Ohio; and

WHEREAS, the City of Kent, Ohio requires the approval of City Council to allow the transfer of a liquor license from outside of the City limits, for use within the City limits; and

WHEREAS, the City of Kent Council requires that certain economic development criteria be met and that a Development Agreement be executed, before Kent City Council will authorize the transfer of a liquor license into the City by the TREX process; and

WHEREAS, ACES Enterprise, LLC has indicated in its application to the City for the TREX liquor license transfer approval that it will do the following:

- a) It will spend a minimum of \$175.00 per square foot for the redevelopment of the basement of 176 East Main Street, Kent, Ohio, consisting of approximately 3,046 square feet of space, which includes leasehold improvements and furnishings; and
- b) It will sell wine, beer, and spirituous liquor (D-2, D2X, D3, D3A, D6) as well as other non-alcoholic beverages; and
- c) That it will not transfer the liquor license or licenses within the City without prior approval from Kent City Council.

WHEREAS, the City of Kent may approve the transfer of a liquor license into the City if the redevelopment of properties that are currently blighted, deteriorated or underdevelopment/underused will occur; and

WHEREAS, the City of Kent, Ohio will only approve the transfer of a TREX liquor license into the City of Kent, Ohio if City Council retains the right to approve the future transfer of said liquor license to a new location within the City and/or to a new owner at the same or new location within the City. ACES Enterprise, LLC may move the liquor license outside of the City limits without City Council's approval; and

WHEREAS, the Kent City Council also looks at the character of the principals of the applicant in making its decision to approve a TREX, as the City Council does not want applicants who will cause problems for the City in the future, negatively affecting economic development within the City.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kent, Portage County, Ohio, that:

SECTION 1. Kent City Council hereby approves the Development Agreement with ACES Enterprise, LLC, and the City Manager is hereby authorized to execute the Development Agreement on behalf of the City in substantial conformity with a copy of which is marked as Exhibit "A", attached hereto and incorporated herein.

SECTION 2. Conditioned upon the execution of the Development Agreement attached hereto, the Kent City Council hereby approves the transfer of D-2, D2X, D3, D3A, D6 liquor license into the City of Kent, Ohio via the TREX process, to be used by ACES Enterprise, LLC at 176 East Main Street, Kent, Ohio.

SECTION 3. 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 of Section 121.22 of the Ohio Revised Code.

SECTION 4. That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of the City, and for the further reason that this Ordinance is required to be immediately effective in order to induce the redevelopment to proceed, thereby eliminating blighted conditions and preventing the recurrence of those conditions, for which reasons and other reasons manifest to this Council this Ordinance is hereby declared to be an emergency measure and shall take effect and be in force immediately after passage.

PASSED: June 15, 2022
Date

Jerry T. Fiala
Jerry T. Fiala
Mayor and President of Council

EFFECTIVE: June 15, 2022
Date

ATTEST: Amy Wilkens
Amy Wilkens
Clerk of Council

I, AMY WILKENS, CLERK OF COUNCIL FOR THE CITY OF KENT, COUNTY OF PORTAGE, AND STATE OF OHIO, AND IN WHOSE CUSTODY THE ORIGINAL FILES AND RECORDS OF SAID COUNCIL ARE REQUIRED TO BE KEPT BY THE LAWS OF THE STATE OF OHIO, HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND EXACT COPY OF ORDINANCE No. 2022-059, ADOPTED BY THE COUNCIL OF THE CITY OF KENT ON June 15, 2022.

(SEAL)

Amy Wilkens
AMY WILKENS
CLERK OF COUNCIL
(SEAL)

DRAFT 6-8-22

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2022, by and between the CITY OF KENT, OHIO, a municipal corporation duly organized and existing under and by virtue of the constitution and laws of the State of Ohio and a duly adopted Charter (hereinafter referred to as the "City"), and ACES ENTERPRISE, LLC, an Ohio limited liability company (hereinafter referred to as the "Redeveloper").

WITNESSETH:

WHEREAS, the City has been active in the redevelopment and clearance of underdeveloped, blighted, and deteriorated areas in the City, and in this connection implemented the Downtown Urban Renewal Plan dated January 2001 (the "Urban Renewal Plan"); and

WHEREAS, Acorn At Kent, LLC currently owns the previously redeveloped property located at 176 East Main Street, Kent, Ohio (the "Property") which is an approximately 3,046 square foot retail/commercial space located in the basement, such improvements hereinafter referred to as the "Private Improvements;" and

WHEREAS, Acorn At Kent, LLC, as the owner of the Private Improvements, intends to enter into a lease with the Redeveloper for 176 East Main Street and the Redeveloper intends to use the space as a wine/beer jazz club bar; and

WHEREAS, the City believes that the redevelopment of the Property with the Private Improvements, pursuant to this Agreement and the fulfillment generally of this Agreement, are in the best interests of the City and its residents, and are necessary to provide for the productive development and reuse of property, to provide for the creation of jobs and employment opportunities, and to improve the economic and general welfare of the residents of the City; and

WHEREAS, the City has determined that it is in the best interests of the City and its citizens to aid the Redeveloper in its repurposing of the Private Improvements; and

WHEREAS, the Redeveloper needs to acquire liquor licenses in order to sell wine, beer and spirituous liquor at said location – specifically, D-2, D2X, D3, D3A, and D6 licenses, using the TREX liquor license provisions of Ohio Revised Code § 4303.29.

WHEREAS, the Redeveloper's use of the Private Improvements is dependent upon the City agreeing to accept a transfer of a liquor license from another location in the State to the City (TREX license); and

WHEREAS, the City has previously acknowledged that the Private Improvements at 176 East Main Street, Kent, Ohio is at a minimum amount of \$175.00 per square foot for the completion of the build out of the space, the provided fixtures, a liquor license, inventory and supplies for the wine/beer jazz club bar; and

WHEREAS, pursuant to the provisions of Ohio Revised Code § 4303.29, the City of Kent will only agree to execute this agreement and approve the TREX liquor license, if its approval is required before Redeveloper may transfer the liquor license referred to above to another location and/or to another owner, whether at the same location or another location; and

WHEREAS, the Kent City Council considered the following criteria prior to consenting to entering into this Agreement:

- a) The financial strength of the Redeveloper; and
- b) The amount of monies previously invested into 176 East Main Street, Kent, Ohio; and
- c) The amount of square foot space being repurposed by the Redeveloper; and
- d) The character of the principals of ACES ENTERPRISE, LLC; and
- e) That it is D-2, D2X, D3, D3A, and D6 licenses being requested.

WHEREAS, the Kent City Council authorized a TREX liquor license transfer policy based upon items listed above; and

WHEREAS, both parties acknowledge that the additions of new venues open for the sale of alcoholic beverages within the City, may cause additional work for the staffs of the Kent City Police Department and Fire Department.

NOW THEREFORE, in consideration of the premises and covenants contained herein, the City and the Redeveloper agree as follows:

Section 1. Redevelopment of the Property.

(a) The Redeveloper agrees to repurpose the Private Improvements thereon consistent with all Federal, State and local laws.

The Redeveloper shall commence the Private Improvements when it is ready to do so and has the necessary approvals from the City.

All of the redevelopment on the Property shall be made in accordance with the Redeveloper's approved Project Plans.

The City and the Redeveloper each shall proceed in good faith and diligently, and in cooperation with the other, to carry out its activities necessary to meet the conditions of the Commencement Date.

The Redeveloper shall give notice to the City within ten (10) days of the occurrence of the Commencement Date. If the Commencement Date has not occurred by the 180 day anniversary of the execution of this Agreement by both the City and the Redeveloper, this Agreement shall terminate, unless that date is further extended in writing by the City and the Redeveloper. Any

such extension must be approved by City Council. If this Agreement terminates because the Commencement Date has not occurred within the permitted period, neither the City nor the Redeveloper shall be deemed to have defaulted hereunder and the sole remedy of the City and the Redeveloper is the termination or extension of this Agreement.

Section 2. Redevelopers Responsibilities.

In exchange for the approval of the transfer of the liquor license into the City by the City Council, described in Section 3 of this Agreement, the City shall permit the Redeveloper to use the property for a wine/beer jazz club bar. The Redeveloper shall:

- a) Repurpose the space at 176 East Main Street, which the City acknowledges has Private Improvements valued at a minimum of \$175.00 per square foot, which monies may include leasehold improvements, in the space consisting of approximately 3,046 square feet.
- b) Continually follow and obey all local, state and federal laws in the redevelopment of the property and in the operation of the wine bar.
- c) Receive the written permission of the City of Kent Council to transfer said license to a new location and/or to a new owner at the same or different location.

Section 3. Responsibilities of the City.

- a) The City, in exchange for the Redeveloper performing the requirements listed in Section 2, above, shall conditionally approve the transfer of a liquor license into the City of Kent pursuant to Ohio Revised Code § 4303.29, in the name of the Redeveloper, for location at 176 East Main Street, Kent, Portage County, Ohio.
- b) The City, upon written request from the Redeveloper, shall review any proposal to relocate the said liquor license to a different location within the City of Kent, or to transfer said liquor license to a different owner at the same or different location within the City of Kent. The City shall approve the transfer and/or relocation of the license within the City, if the City Council, after reviewing the following criteria, to see if the new owner will provide some or all of the following:
 - i) The financial strength of the proposed new owner is adequate to complete the new redevelopment criteria; and
 - ii) The amount of monies, if any, being invested into the new location in Kent, Ohio meet or exceed those expended by this Redeveloper; and
 - iii) The amount of square foot space being redeveloped by the new owner; and
 - vi) The character of the person or people constituting the new owner shall be upstanding; and

- v) That it will sell wine, beer and spirituous liquor at said location – specifically, D-2, D2X, D3, D3A, and D6 licenses are being transferred.

Said consent shall not be unreasonably withheld.

Section 4. Assignment or Sale of Liquor License.

The liquor license in question may only be transferred by the Redeveloper with the consent of the City as outlined in Section 3.

Section 5. Remedies.

(a) General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by the Redeveloper, or any successor, the City may, upon written notice to the Redeveloper proceed to revoke the approval of the transfer of the liquor license into the Kent City limits within thirty (30) days after receipt of such notice. In case such action is taken by the City and the default or breach is not diligently pursued by the Redeveloper to cure the default or breach within a reasonable time, the City may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; or to revoke the approval of the transfer of the liquor license into the City, mandating the closing of the wine bar and the relocation of the liquor license to a location outside of the City limits.

(b) Force Majeure. Neither the City nor the Redeveloper shall be considered in default in its obligations to be performed hereunder, other than for the payment of money, if delay in the performance of such obligations is due to causes beyond its reasonable control and without its fault or negligence, including but not limited to, acts of God or of the public enemy, acts of the federal or State government, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of such causes, or other events beyond the reasonable control of a party and without its fault or negligence; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the party seeking the benefit of the provisions of this paragraph shall within 30 days after the beginning of such enforced delay, notify the other party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within 30 days after the end of the delay, notify the other party in writing of the duration of the delay.

Section 6. Conflict of Interest; City's Representatives not Individually Liable.

No member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No

member, official or employee of the City shall be personally liable to the Redeveloper 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 the Redeveloper or successor or on any obligations under the terms of this Agreement.

Section 7. Notice.

(a) A notice, demand, or other communication under this Agreement by either the City or the Redeveloper to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (i) in the case of the Redeveloper is addressed to or delivered personally to the Redeveloper at:

ACES ENTERPRISE, LLC.
176 East Main Street
Kent, Ohio 44240
ATTENTION: Andrew Dible

- (ii) in the case of the City, is addressed to or delivered personally to the City at:

City Manager
301 S. Depeyster Street
Kent, Ohio 44240

with a copy to the Law Director at 320 S. Depeyster Street, Kent Ohio.

or at such other address with respect to either the City or the Redeveloper may from time to time, designate in writing and forward to the other as provided in this Section.

Section 8. Counterparts.

This Agreement may be signed in several counterparts, each of which shall be an original but all of which shall constitute but one and the same instrument.

Section 9. Jurisdiction.

The parties hereto irrevocably (a) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement may be brought in a court of record in Portage County, Ohio or in the courts of the United States of America located in such state or commonwealth.

Section 10. Captions.

The captions to the section of this Agreement are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary, by implication or otherwise, any of the provisions of this Agreement.

Section 11. Severability.

The parties hereto intend and believe that each provision of this Agreement comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or any portion of any provision contained in this Agreement is held by a court of law to be invalid, illegal, unlawful, void or unenforceable as written in any respect, then it is the intent of all parties hereto that such portion or provision shall be given force to the fullest possible extent that it is legal, valid and enforceable, that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion or provision was not contained therein, and the rights, obligations and interests of the City and Redeveloper under the remainder of this Agreement shall continue in full force and effect.

Section 12. No Oral Modification.

This Agreement may not be modified or discharged orally, but only by an agreement in writing signed by the City and Redeveloper.

Section 13. Costs of Enforcement.

Redeveloper agrees to pay the costs and expenses, including but not limited to reasonable attorneys' fees and legal expenses incurred by City in the exercise of any right or remedy available to the City under this Agreement.

IN WITNESS WHEREOF, the City of Kent, Ohio and ACES ENTERPRISE, LLC have each caused this Agreement to be duly executed in its behalf, on or as of the day and year first above written.

CITY OF KENT, OHIO

By _____
Dave Ruller, City Manager

ACES ENTERPRISE, LLC

By _____,
Andrew Dible, Managing Member

STATE OF OHIO)
)SS:
COUNTY OF PORTAGE)

Before me a Notary Public in and for said County and State, personally appeared DAVID RULLER, the City Manager for the City of Kent, Ohio, who acknowledged that he signed the foregoing instrument as the fully authorized officer of said City of Kent, Ohio, a municipal corporation of the State of Ohio, and that the same is its free act and deed and his free act and deed, respectively, as such officer and individually.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2022.

NOTARY PUBLIC

STATE OF OHIO)
)SS:
COUNTY OF _____)

Before me a Notary Public in and for said County and State, personally appeared _____, Andrew Dible, the Managing Member of ACES ENTERPRISE, LLC, an Ohio limited liability company, who acknowledged that he did sign the foregoing instrument on behalf of such company as the free act and deed of himself and of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at _____, Ohio, this _____ day of _____, 2022.

NOTARY PUBLIC

APPROVED AS TO FORM:

Hope Jones, Law Director
City of Kent

DRAFT