



# ORDINANCE 2021-08



## OF THE VILLAGE OF ASHVILLE

**AN ORDINANCE AUTHORIZING THE VILLAGE ADMINISTRATOR AND FISCAL OFFICER TO EXECUTE A PRE-ANNEXATION AGREEMENT FOR A PROPERTY AT PARCEL NUMBER D1200010014700 PROPERTY THAT IS BEING DESIRED TO BE ANNEXED AND DECLARING AN EMERGENCY.**

WHEREAS, Clifton Brothers Land LLC being represented by Ronald L. Clifton, Managing Member, landowners (hereinafter referred to as "Landowner") and BEW Development, LLC, represented by Larry Wills, Member — Ohio, LLC, an Ohio limited liability company (hereinafter the "Developer") is desirous of annexing twenty-one point four-one-nine (21.419+/-) acres more or less into the Village of Ashville, Exhibit A, and

WHEREAS, the Landowner, Developer, and the Village of Ashville wish to complete a Pre-annexation Agreement.

NOW, AND HEREAFTER BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF ASHVILLE, PICKAWAY COUNTY, OHIO THAT:

### SECTION ONE

The Village Administrator and Fiscal Officer are hereby authorized and directed to enter into an Agreement for with the Landowner and Developer, in substantially the same form and content as the document attached hereto as Exhibit "A" and incorporated herein by reference, on behalf of the Village of Ashville.

### SECTION TWO

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of Council and that all deliberations of Council and any of the decision-making bodies of the Village of Ashville which resulted in such formal actions were in meetings open to the public in compliance with all legal requirements of the State of Ohio.

### SECTION THREE

All prior legislation, or any parts thereof, which is/are inconsistent with this Ordinance is/are hereby repealed as to the inconsistent parts thereof.

### SECTION FOUR

Council declares this to be an emergency measure immediately necessary for the preservation of the public peace, health, and safety of this municipality and the further reason that Village Council needs to approve and enter into this Agreement in order to continue the annexation and development process. Wherefore, provided this Ordinance receives the required affirmative votes of Council, this Ordinance shall take effect and be in force immediately upon passage by Council and approval by the Mayor.

Offered by: Nelson R. Embrey

Seconded to the Motion Offered by: Tracie N. Sorvillo

Upon roll call on the adoption of the ordinance, the vote was as follow:

Roger L. Clark	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Nelson R. Embrey	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Randy S. Loveless	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	R. David Rainev	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Tracie N. Sorvillo	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	Darrvl E. Ward	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Excused Absense																	

PASSED THIS 2<sup>nd</sup> DAY OF August, 2021

ATTEST:

DATE: 8/3/2021

April D. Grube, Clerk-Fiscal Officer

APPROVED:

DATE: 03/AUG/2021

Charles K. Wise, Mayor

#### CERTIFICATE OF RECORDING OFFICER

I, the undersigned, hereby certify, that the foregoing is a true and correct copy of the ordinance adopted by the Village of Ashville Council held on 2<sup>nd</sup> day of August 2021, and that I am duly authorized to execute this certificate.



Prepared: 07/07/2021  
Revised Date:  
Review Date:

\_\_\_\_\_  
(Original signature of April D. Grube) Clerk-Fiscal Officer  
(TITLE)

**PRE-ANNEXATION  
AGREEMENT**

This Pre-Annexation Agreement (hereinafter the “Agreement”) is entered into, by and among the Village of Ashville, Ohio, an Ohio municipal corporation (hereinafter the “Village”), and Clifton Brothers Land LLC, landowner (hereinafter referred to as “Landowner”) and BEW Development, LLC, an Ohio limited liability company (hereinafter the “Developer”).

**PURPOSE**

Landowner is the owner of certain tracts of land consisting of approximately 21.419 +/- acres located in Harrison Township, Pickaway County, Ohio, consisting of 1 parcel known as Pickaway County Auditor Tax Parcel ID No. D12-0-001-00-147-00 and more fully described in Exhibit “A” attached hereto and incorporated herein (the “Property”), which Property is contiguous with the boundaries of the Village.

Landowner has contracted with Developer for the sale of the Property in order for the Developer to develop and build a multifamily housing development, together with related improvements, including, but not limited to, streets, drainage facilities, sewer lines, entry features, open spaces, community amenities, model homes and signage (collectively, the “Improvements”) on the Property. Developer intends to file for approval of its proposed development plan through a re-zoning application with the Village. Developer and Landowner intend that the Property be rezoned to an AR – Apartment Residential Zoning District, as defined herein, under Village zoning ordinances, and via contract Landowner has named the Developer its agent for the purposes of filing a separate re-zoning and development plan application to aid the Village in its consideration same. In general, the Property would benefit from Village services including, but not limited to, sanitary sewer, water, police protection, refuse service, and planning and zoning services. As described in more detail in the following sections of this Agreement, the Village can offer its municipal services to the Property if the Property is annexed to the Village. The mutual purposes of the Village, Developer and Landowner can be accomplished through the annexation of the Property to the Village, and appropriate re-zoning and development under the Village’s zoning ordinances.

**AGREEMENT**

Therefore, in order to gain mutual benefits, the Village and Landowner agree as follows:

1. **ANNEXATION PETITION.** The Landowner and Developer will prepare an annexation petition for the purpose of seeking annexation of the Property into the Village of Ashville, Ohio. Landowner will sign the annexation petition agreeing to request annexation of the Property in the Village of Ashville pursuant to Ohio Revised Code Section 709.023 and appointing Developer as the petitioners’ agent in connection with the annexation petition. The annexation petition may be filed only for the Property or may be filed as a joint annexation petition with other parcels so long as all other parcels so joined are supported by one hundred percent (100%) of the owners of each parcel, and the joinder of any such additional parcels will in no way affect the agreements of the parties memorialized in this Agreement. The petition shall be filed with the Pickaway County Commissioners (“Commissioners”). The Landowner and Developer agree that all costs and expenses in petitioning for the annexation of shall be borne by Developer. Should Village desire for its attorney to represent its interests with regard to the annexation petitions, those costs will be borne by Village. Once the Agreement is signed and accepted by the Village, Landowner agrees that it will not remove its name(s) from the petitions and will continue to support the annexation to the Village throughout the entire annexation process, including any appeal or court action; provided however, Landowner’s continued cooperation in the annexation of the Property shall be subject to and conditioned upon the Village’s performance of its duties and obligations as memorialized in this Agreement. Landowner and Developer will provide statutorily required affidavits to the Village for presentation to the Commissioners in support of annexation of the Property and, if necessary, Landowner,

Developer, or Village, and/or their respective agents or assigns, will testify at the request of each other regarding the merits of the annexation at a hearing held before the Commissioners or subsequent court hearings.

2. **SERVICE RESOLUTION.** Pursuant to R.C. Section 709.03(D), the Village agrees to enact the appropriate Service Resolutions for the annexation stating the municipal services that will be provided to the area sought to be annexed, including the Property. The Village agrees if required to provide witnesses for the hearing before the Commissioners and to provide affidavits in support of its Service Resolution, if necessary.

3. **ZONING.** The Property is currently zoned Agricultural under the Harrison Township Zoning Resolution. Contemporaneously with, or shortly after, the filing of the annexation petition, the Parties agree the Property will annex into the Village to be zoned under Village of Ashville Codified Ordinance Chapter 1143, AR – Apartment Residential District (“AR Zoning District”), which shall, among other things, permit the Developer’s intended use as a multifamily housing community and allow for the Improvements to support such use on the Property as principal permitted uses and will permit installation on the Property of road access, streets, drainage facilities, model homes, signage and other improvements. The Developer agrees it has to follow the process, procedure, and requirements set forth in Chapter 1143 in order to receive approval of the AR Zoning District. And, the Village agrees it will process the application as expeditiously as possible to re-zone the Property to an AR Zoning District.

4. **ACCEPTANCE OF ANNEXATION/DETACHMENT OF PROPERTY.** The Village shall have one hundred twenty (120) days to accept the annexation after the annexation petition has been approved by the Commissioners and a copy of the record is filed with the Clerk of Village Council (“Council”) and laid before Council for a waiting period of a minimum of sixty (60) days pursuant to ORC Section 709.04. At the request of Developer, the Village agrees to delay acceptance of the annexation until legislative approval of the re-zoning can be accomplished contemporaneously with the acceptance of the annexation. If, for any reason, the re-zoning ordinance, Development Plan, and/or development standards cannot be approved in a form or substance acceptable to Developer, in its sole discretion, the Village agrees, at the request of Developer and/or Landowner, to permit Landowner to withdraw its request for Council to accept the annexations and annex the Property to the Village and/or to forbear from acceptance of the annexation by allowing the one hundred twenty (120) day period to expire, thus effectively rejecting the annexation of the Property.

If the annexation approval occurs prior to or other than concurrently with the legislative approval of the re-zoning, Development Plan, and/or development standards, and the re-zoning, Development Plan, and/or development standards are subsequently not approved to Developer’s satisfaction or is referred to the electorate or a building or other moratorium or restriction is enacted which would limit Developer’s use of the Property, Village agrees, at Developer’s request to one of the following: (1) to reconsider the ordinance accepting the annexation, and to rescind, repeal and reject the annexation approval within fourteen (14) days of the date of the disapproval or unacceptable action on the re-zoning, Development Plan, and/or development standards or referral to a vote of the electorate or the enactment of the building or other moratorium or restriction, at the request of Developer and/or Landowner; or (2) to cooperate with Developer and Landowner to have the property detached/de-annexed the Property from the Village, and to consent to and not oppose any Landowner’s petition to detach/de-annex its Property from the Village and take any other action provided by law to detach or de-annex the Property.

5. **OFF-SITE SANITARY SEWER FORCE MAIN IMPROVEMENTS AND OVERSIZING OF SANITARY SEWERS.** The Village acknowledges that the existing sanitary sewer infrastructure is not adequate to serve the Property as proposed by the Development Plan, but Developer will provide a new force main to provide sanitary sewer service for the Property and for future growth



areas in the Village, as agreed to in writing in a development agreement between the Parties. The development agreement shall set forth that the gravity sewer that will be extended through the proposed development will be oversized for future growth and the Developer will be reimbursed for oversizing costs and the oversizing for future growth and the Developer will be reimbursed for oversizing costs and the oversizing of the off-site force main, based upon Codified Ordinance Chapter 1181. The Developer will reimburse the Village for Developer's proportionate share to the existing lift station and sewer lines that were oversized to service the Property. Such agreement shall be documented in a development agreement, to be executed and approved between the Parties as part of the re-zoning application.

**6. STANDARD OF CONDUCT BY THE VILLAGE.** In all matters related to the (1) adoption of the statutorily required Service Resolution, (2) the acceptance of the Property in the corporate boundaries of the Village, and (3) the re-zoning of the Property of the AR Zoning District in accordance with the terms of Section 3 of this Agreement, the Village will act in good faith with all reasonable dispatch, concurrent with the timing and requirements of the annexation process.

**7. CONDITION PRECEDENT.** Landowner, Developer and the Village acknowledge and agree that this Agreement is not effective until authorized to be executed by formal action of Council and shall take effect upon such approval and execution. Landowner, Developer and the Village also acknowledge that any action on a re-zoning or annexation matter must be finally approved by Council to become effective.

**8. MISCELLANEOUS.**

(a) **Intent of Parties.** This Agreement shall be binding upon the parties hereto and their respective successors and/or assigns, and by execution hereof, all parties represent that they are duly authorized to sign it.

(b) **Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the parties hereto.

(c) **Remedies.** Except as otherwise limited by ORC Chapter 2744 as to action for or against the Village, the parties hereto shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges, and rights of this Agreement and the enforcement thereof.

(d) **Enforcement.** Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any party hereto per the laws, ordinances, resolutions, regulations or policies in effect at the time of the execution of this Agreement.

(e) **Assignment of Agreement.** By the execution of this Agreement, Landowner expressly consents to the assignment of the Agreement by the Developer, in its sole discretion. Developer shall not assign this Agreement, or any part thereof, or any duty obligation privilege or right granted under this Agreement to any other developer without the express written consent of the Village, which shall not be unreasonably withheld. The parties agree that Developer may transfer all or any portion of the Property and assign this Agreement (as it relates to that portion of the Property) to any individual, corporation, limited liability company, partnership, limited partnership, trust or any other person that is related to, owned by or affiliated in any way with Developer in Developer's discretion without the consent of the Village or Landowner.

(f) **Addresses for Notices.** Notice to the parties as required or provided for herein shall be in writing and shall be deemed if given or sent in typed memo or e-mail form to all parties of this Agreement, or such other method as mutually agreeable:

If to Landowner: Ronald L. Clifton

Clifton Brothers Land LLC  
17814 Florence Chapel  
Circleville, Ohio 43113

If to Developer: Larry Wills  
BEW Development, LLC  
2238 Picket Post Lane  
Columbus, Ohio 43220

With a copy to: Scott N. Schaeffer  
Kemp, Schaeffer & Rowe Co., L.P.A.  
88 West Mound Street  
Columbus, Ohio 43215

If to Village: Franklin Christman  
Village Administrator  
200 Station Street East  
Ashville, Ohio, 43103

(g) **Relative Rights.** The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

(h) **Entire Agreement Merger Clause; Statement of Incorporation.** It is agreed that the Agreement merges all of the oral negotiations, representations, discussions and understandings between the Developer and the Village, their legal counsel, agents and representatives. This Agreement contains the entire agreement of the parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

(i) **Severability.** If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

(j) **Cooperation.** The Village agrees to cooperate and work expeditiously and in good faith with the Developer to obtain any required and/or necessary permit from any government or governmental agency not a party to this agreement upon Council's approval of the re-zoning and development plans.

(k) **Modifications or Amendment of Agreement.** No modifications, amendments, alterations, or additions shall be made to this Agreement except in a writing signed by all parties hereto.

(l) **Recitals.** The parties acknowledge and agree that the facts and circumstances as described in the recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(m) **Executed Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of these counterparts.

(n) **Captions.** The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this

Agreement.

(o) **Survival of Representations and Warranties.** All representations and warranties of the parties in this Agreement shall survive the execution and delivery of this Agreement.

(p) **Effective Date.** This Agreement shall be effective when signed by all the parties hereto.

(q) **Time.** Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date set forth below. This Agreement shall be effective on the date last executed.

Signed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

[Signatures on following page.]

**The Village of Ashville**

By: Franklin Christman  
Franklin Christman, Village Administrator

By: April Grube  
April Grube, Fiscal Officer

Per authority granted in Ordinance No.: 2021-08, passed by Village Council on August 2, 2021.

**Landowner**

CLIFTON BROTHERS LAND LLC  
By: Ronald L. Clifton  
Ronald L. Clifton, Managing Member

**Developer's Company Name**

BEW DEVELOPMENT, LLC  
By: Larry Wills  
Larry Wills, Member

## Exhibit "A"

## Legal Description

Situate in the State of Ohio, County of Pickaway, Township of Harrison, and lying in the Section 12, Township 2, Range 22 and being all that remains of an original 36.023 acre tract (First Tract (PID: D12-0-001-00-147-00) being conveyed to Leo J. Hall, Trustee, by deed of record in Official Record 628, Page 2278, all records herein are from the Recorder's Office Pickaway County, Ohio, said 21.419 acre tract being more particularly described as follows:

BEGINNING at a 5/8" iron pin found at a northwest corner of a 11.268 acre tract being conveyed to the Village of Ashville, by deed of record in Official Record 694 Page 977, also being in the easterly line of the CSXT Railroad;

Thence North 04°20'49" West, a distance of 818.25 feet, along the CSXT Railroad, passing an iron rebar set at 788.25 feet, to a point in the centerline of State Route 752;

Thence South 87°28'55" East, a distance of 965.15 feet, to a point in the centerline of said State Route 752 and at the corner of said 11.268 acre tract;

Thence the following six (6) courses and distances along the lines of said 11.268 acre tract:

1. South 28°56'14" East, a distance of 52.61 feet, passing an iron rebar set at a distance of 23.42 feet, to an iron rebar set;
2. South 02°31'05" West, a distance of 155.12 feet, to an iron rebar set;
3. South 87°28'55" East, a distance of 94.89 feet, to an iron rebar set;
4. South 24°41'17" East, a distance of 188.43 feet, to an iron rebar found;
5. Along a curve to the right, having a delta of 10°50'17", a radius of 2715.00 feet, a tangent of 257.55 feet, a chord which bears South 20°42'24" East, a distance of 512.80 feet, to an iron rebar found;
6. North 86°17'48" West, a distance of 1278.33 feet, to the POINT OF BEGINNING, containing 21.419 acres of land more or less. Being subject to all easements, rights-of-way and restrictions of record.

Bearings are based on the centerline of State Route 752 as being South 87°28'55" East, as being observed by GPS observations using the Ohio VRS Network South Coordinate Zone.

All set iron pins are 5/8 inch, 30 inch long having a yellow I.D. cap stamped "BLUE 8382"

The description is based on an actual field survey as performed by Blue-J Surveying LLC in July, 2020 under the direct supervision of Jennifer L. Blue, Registered Surveyor No. 8382.