

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND DIRECTOR OF PUBLIC SERVICE AND SAFETY TO ENTER INTO AGREEMENT(S) WITH KING AVENUE 1.0, LLC/FRESENIUS MEDICAL CARE OF YOUNGSTOWN, LLC, PROVIDING FOR TAX INCENTIVES BY A PROGRAM OF ABATEMENT OF REAL PROPERTY TAXES OVER A PERIOD OF TEN YEARS FOR THE ADOPTION OF A PROJECT TO ESTABLISH A NEW MEDICAL FACILITY WITHIN THE COMMUNITY REINVESTMENT AREA LOCATED WITHIN THE CITY OF WARREN, OHIO, AND DECLARING AN EMERGENCY.

ORDINANCE NO. 12709/17

WHEREAS, the City Council of the City of Warren, Ohio on March 23, 2016, by Ordinance 12644/16, designated the area as "The City of Warren Community Reinvestment Area" Pursuant to Chapter 3735 of the Ohio Revised Code; and

WHEREAS, on June 6, 2016, the Director of Development Services Agency of the State of Ohio determined that the aforementioned area designated in said Ordinance contained the characteristics set forth in Section 3735.66 of the Ohio Revised Code and confirmed said area as a Community Reinvestment Area under said Chapter 3735; and

WHEREAS, King Avenue 1.0, LLC/Fresenius Care of Youngstown, LLC have proposed a project estimated to involve an investment of approximately \$3.1 million dollars in the area; and

WHEREAS, a draft of the proposed Community Reinvestment Area Agreement attached to this Ordinance as "Exhibit A" is hereby fully incorporated herein, for all purposes, as if fully rewritten herein; and

WHEREAS, the City Council of the City of Warren has reviewed the proposed project and is of the opinion that King Avenue 1.0, LLC / Fresenius Care of Youngstown, LLC, is qualified by financial responsibility and business experience to create and preserve employment opportunities in the area and to improve the economic climate of the City; NOW THEREFORE



BE IT ORDAINED by the Council of the City of Warren, State of Ohio:

Section 1: That the City Council of the City of Warren does hereby consent to and approve a Community Reinvestment Area Agreement the same as or substantially similar to the Agreement attached to this Ordinance as "Exhibit A". The Mayor and Director of Public Service and Safety are hereby authorized and directed to approve and execute such an Agreement on behalf of City Council and the City of Warren.

Section 2: That this City Council hereby finds and determines that all formal actions of the City Council relative to the passage of this Ordinance were taken in an open meeting of the City Council, and that all deliberations of the City Council and of its members, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Ohio Revised Code of Ohio.


Section 3: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety, and for the further reason of the benefit to, and protection of, the City and its residents, and for the further reason that the immediate approval of an Enterprise Zone Agreement as attached to this Ordinance is necessary, at the earliest possible time so as to maximize the investment that will be made by King Avenue 1.0, LLC/Fresenius Care of Youngstown, LLC within the City limits and may be more fully insured at the earliest possible time and without undue delay. WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 22ND day of MARCH, 2017.

SIGNED:  ATTEST: 
PRESIDENT OF COUNCIL CLERK

FILED WITH THE MAYOR: 3-22-17

DATE APPROVED: 3-22-17

MAYOR, CITY OF WARREN, OHIO 

WARREN COUNTY DEPT 3003

COMMUNITY REINVESTMENT AREA AGREEMENT

This agreement made and entered into this _____ day of _____, 2017, by and between the City of Warren of Trumbull County, Ohio, with its main offices located at 391 Mahoning Avenue, NW, Warren, Ohio 44483 (hereinafter referred to as "CITY OF WARREN") and King Avenue 1.0, LLC, Kentucky Limited Liability Company with its principal offices located at 10531 Timberwood Circle, Suite D, Louisville, Kentucky 40223 (hereinafter referred to as "PROPERTY OWNER"), and Fresenius Medical Care of Youngstown, LLC, a Pennsylvania Limited Liability Company with its principal offices located at 144 Emeryville Drive, Suite 300, Cranberry Township, Pennsylvania 16066 (hereinafter referred to as "TENANT") WITNESSETH;

RECITALS

WHEREAS, the CITY OF WARREN has encouraged the development of real property located in the area designated as the City of Warren Community Reinvestment Area; and

WHEREAS, the PROPERTY OWNER/TENANT is desirous of establishing a new 9,173 square foot medical building to provide dialysis services at 4941 Enterprise Drive, N.W., Warren, Ohio 44481 in the City of Warren, known as being Lot No. 1 in Enterprise Drive Plat No. 1 recorded as Instrument No. 201701180001005, Trumbull County Records (Parcel Number 40-221272), (hereinafter referred to as the "PROJECT") located within the boundaries of the aforementioned Community Reinvestment Area, provided that the appropriate development incentives are available to support the economic viability of said PROJECT; and

WHEREAS, Warren City Council by Ordinance No. 12644/16, adopted March 23, 2016, designated the area as the "City of Warren Community Reinvestment Area" pursuant to Chapter 3735 of the *Ohio Revised Code*; and

WHEREAS, effective June 6, 2016 the Director of Development Services Agency of the State of Ohio determined that the aforementioned area designated in said Ordinance contained the characteristics set forth in Section 3735.66 of the *Ohio Revised Code* and confirmed said area as a Community Reinvestment Area under said Chapter 3735 (Confirmation Area No. 155-80892-145); and

WHEREAS, the CITY OF WARREN having the appropriate authority for the stated type of project, is desirous of providing the PROPERTY OWNER/TENANT with incentives available for the development of the PROJECT in said Community Reinvestment Area under Chapter 3735 of the *Ohio Revised Code*; and

WHEREAS, the PROPERTY OWNER/TENANT submitted a proposed agreement application, herein attached as Exhibit "A" (hereinafter referred to as "APPLICATION"); to the CITY OF WARREN; and

WHEREAS, the PROPERTY OWNER/TENANT has remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the application to be

forwarded to said department with a copy of the final agreement; and

WHEREAS, the Trumbull County Planning Commission has investigated the application of the PROPERTY OWNER/TENANT and has recommended the same to Warren City Council on the basis that the PROPERTY OWNER/TENANT is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Community Reinvestment Area and improve the economic climate of Trumbull County, Ohio; and

WHEREAS, the project site as proposed by the PROPERTY OWNER/TENANT is located in the LaBrae Local School District, and the Board of Education of the LaBrae Local School District and affected Joint Vocational School District have been notified in accordance with Section 5709.83 of the *Ohio Revised Code* and have been given a copy of the APPLICATION; and

WHEREAS, pursuant to Section 3735.67(A) and in conformance with the format required under Section 3735.671(B) of the *Ohio Revised Code*, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

SECTION 1. DESCRIPTION OF INVESTMENTS

The PROPERTY OWNER/TENANT shall construct a 9,173 square foot medical building to provide dialysis services at 4941 Enterprise Drive, N.W., Warren, Ohio 44481 in the City of Warren, known as being Lot No. 1 in Enterprise Drive Plat No. 1 recorded as Instrument No. 201701180001005, Trumbull County Records (Parcel Number 40-221272), (hereinafter referred to as the "PROJECT") located within the boundaries of the aforementioned Community Reinvestment Area.

The PROJECT will involve a total investment by the PROPERTY OWNER/TENANT of three million, seven hundred thousand dollars and zero cents (\$3,700,000.00), plus or minus 10%. Included in this investment are one hundred thousand dollars and zero cents (\$100,000.00) for acquisition of land, three million dollars and zero cents (\$3,000,000.00) for new construction of the facility, two hundred fifty thousand dollars and zero cents (\$250,000.00) in machinery and equipment, two hundred fifty thousand dollars and zero cents (\$250,000.00) in furniture and fixtures, and one hundred thousand dollars and zero cents (\$100,000.00) in inventory. The PROPERTY OWNER/TENANT currently has zero dollars (\$0) in equipment, furniture, fixtures, and inventory that will be relocated to the project site and currently has zero dollars (\$0) in inventory held at the property prior to the execution of the agreement.

The PROJECT is projected to begin in April 2017 and all acquisition, construction and installation are estimated to be completed by December 2017.

SECTION 2. EMPLOYMENT

The PROPERTY OWNER/TENANT shall create within a time period not exceeding 36 months after the commencement of construction of the aforesaid facility, the equivalent of 16 (sixteen) new full-time permanent job opportunities, 4 (four) new part-time permanent job opportunities, three hundred (300) temporary job opportunities (construction) and (0) part-time temporary job opportunities.

The PROPERTY OWNER/TENANT'S schedule for hiring is as follows: create six (6) new full-time permanent jobs and four (4) new part-time jobs in year one; six (6) new full-time permanent jobs in year two; and four (4) new full-time jobs in year three.

The job creation period begins October 2017 and all jobs will be in place by April 2018.

The PROPERTY OWNER/TENANT currently has zero (0) full-time permanent employees, zero (0) part-time employees, zero (0) full-time temporary employees, and zero (0) part-time temporary employees at the project site. In total, the PROPERTY OWNER/TENANT has 2,500 employees in the State of Ohio.

This increase in the number of employees will result in approximately five hundred thirty-nine thousand, eight hundred twenty-two dollars and zero cents (\$539,822.00) of additional annual payroll. The following is an itemization of new payroll by the type of jobs created:

Full-time permanent: \$ 477,822.00
Part-time permanent: \$ 62,000.00

SECTION 3. TAX INCENTIVE REVIEW COUNCIL

The PROPERTY OWNER/TENANT shall provide to the proper Tax Incentive Review Council any information reasonably required by the council to evaluate the PROPERTY OWNER/TENANT's compliance with the agreement, including returns filed pursuant to section 5711.02 and 5727.08 of the *Ohio Revised Code* if requested by the council.

SECTION 4. TAX INCENTIVES FOR REAL PROPERTY

The CITY OF WARREN hereby grants the PROPERTY OWNER/TENANT a tax exemption for real property improvements made to the PROJECT site pursuant to Section 3735.67 of the *Ohio Revised Code* and shall be in the following amounts:

Year of Tax Exemption	Tax Exemption Amount
Year 1	50%
Year 2	50%
Year 3	50%
Year 4	50%
Year 5	50%
Year 6	50%
Year 7	50%

Year 8	50%
Year 9	50%
Year 10	50%

The exemption commences the first year for which the real property exemption would first be taxable were that property not exempted from taxation. No exemption shall commence later than year 2018 nor extend beyond year 2027.

SECTION 5. EXEMPTION FILINGS

The PROPERTY OWNER/TENANT must file the appropriate tax forms (DTE 23) with the County Auditor and (#913) with the State Department of Taxation to effect and maintain the exemptions covered in the agreement. The #913 Ohio tax form must be filed annually.

SECTION 6. ANNUAL FEE

The PROPERTY OWNER/TENANT shall pay an annual fee equal to the greater of one percent of the amount of taxes exempted under the agreement or five hundred dollars (\$500.00); provided, however, that if the value of the incentives exceeds two hundred fifty thousand dollars (\$250,000.00), the fee shall not exceed two thousand five hundred dollars (\$2,500.00).

The fee shall be made payable to the legislative authority once per year for each year the agreement is effective on the days and in the following form: a check by March 31. The fee is to be sent to the Trumbull County Planning Commission and made out to the City of Warren. Fees paid shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with section 3735.672 of the Revised Code and by the Tax Incentive Review Council created under section 5709.85 of the Revised Code exclusively for the purposes of performing the duties prescribed under that section.

SECTION 7. PAYMENT OF TAXES NOT EXEMPT

The PROPERTY OWNER/TENANT shall pay such real property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. If the PROPERTY OWNER/TENANT fails to pay such taxes or file such returns and reports, exemptions from taxation granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

SECTION 8. MAINTENANCE OF TAX INCENTIVES

The CITY OF WARREN shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

SECTION 9. REVOCATION

If for any reason the Community Reinvestment Area designation expires, or the Director of the Ohio Development Services Agency revokes certification of the area, or the CITY OF WARREN revokes the designation of the area, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless the PROPERTY OWNER/TENANT materially fails to fulfill its obligations under this agreement and the CITY OF WARREN terminates or modifies the exemptions from taxation granted under this agreement, per the recommendation of the Tax Incentive Review Council.

SECTION 10. TERMINATION OR MODIFICATION

If the PROPERTY OWNER/TENANT materially fails to fulfill its obligations under this agreement, or if the CITY OF WARREN determines that the certification as to delinquent taxes required by this agreement is fraudulent, the CITY OF WARREN may terminate or modify the exemptions from taxation granted under this agreement and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this agreement. This agreement authorizes the City of Warren to secure such repayment by a lien on the exempted property in the amount required to be repaid. Such a lien shall attach, and may be perfected, collected, and enforced, in the same manner as a mortgage lien on real property, and shall otherwise have the same force and effect as a mortgage lien on real property.

SECTION 11. DELINQUENT TAXES CERTIFICATION

The PROPERTY OWNER/TENANT hereby certifies that at the time this agreement is executed, the PROPERTY OWNER/TENANT does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which the PROPERTY OWNER/TENANT is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, the PROPERTY OWNER/TENANT currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the PROPERTY OWNER/TENANT. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

SECTION 12. DELINQUENCIES

The PROPERTY OWNER/TENANT affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not. The PROPERTY OWNER/TENANT affirmatively covenant that it does not owe (1) any delinquent taxes to the Federal Government, the State of Ohio, Trumbull County, or the City of Warren. (2) any moneys to Federal, State or Local Agencies; and (3) any other monies to the Federal Government or federal agency, the State of Ohio or state agency, Trumbull County or county

agency, or the City of Warren or city agency, whether the amounts owed are being contested in a court of law or not.

SECTION 13. COUNCIL APPROVAL

The PROPERTY OWNER/TENANT and the CITY OF WARREN acknowledge that this agreement must be approved by formal action of the legislative authority of the CITY OF WARREN as a condition for the agreement to take effect. This agreement takes effect upon such approval.

SECTION 14. NON-DISCRIMINATION

The CITY OF WARREN has developed a policy to ensure recipients of Community Reinvestment Area tax benefits practice non-discriminating hiring in its operations. By executing this agreement, the PROPERTY OWNER/TENANT is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

SECTION 15. RELOCATION

Exemptions from taxation granted under this agreement shall be revoked if it is determined that the PROPERTY OWNER/TENANT, any successor property owner and/or tenant, or any related member (as those terms are defined in Section 3735.671 of the *Ohio Revised Code*) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the *Ohio Revised Code* prior to the time prescribed by that division or either of those sections.

SECTION 16. FALSE STATEMENTS

The PROPERTY OWNER/TENANT affirmatively covenants that it has made no false statements to the State or local political subdivisions in the process of obtaining approval of the Community Reinvestment Area incentives. If any representative of the PROPERTY OWNER/TENANT has knowingly made a false statement to the State or local political subdivision to obtain the Community Reinvestment Area incentives, the PROPERTY OWNER/TENANT shall be required to immediately return all benefits received under the Community Reinvestment Area Agreement pursuant ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

SECTION 17. TRANSFER OR ASSIGNMENT OF EXEMPTIONS

This agreement is not transferable or assignable without the express, written approval of Warren City Council.

SECTION 18. TRANSMITTAL OF AGREEMENT

The CITY OF WARREN acknowledges that, pursuant to R.C. 3735.671(F), a copy of this agreement must be forwarded to the Ohio Development Services Agency within fifteen (15) days of finalization.

IN WITNESS WHEREOF, the City of Warren, Ohio, by William D. Franklin, its Mayor and Enzo Cantalamessa, its Director of Service and Safety, and pursuant to Ordinance No. _____ have caused this instrument to be executed this _____ day of _____, 2017, and King Avenue 1.0, LLC by Chad Middendorf, its Manager, has caused this instrument to be executed on this _____ day of _____, 2017, and Fresenius Medical Care of Youngstown, LLC by Mark Sciorilli, its Regional Vice President, has caused this instrument to be executed on this _____ day of _____, 2017.

THE CITY OF WARREN, OHIO

Witness

By: _____
William D. Franklin, Mayor

Witness

By: _____
Enzo Cantalamessa, Director of Service and Safety

KING AVENUE 1.0, LLC

Witness

By: _____
Chad Middendorf, Manager

**FRESENIUS MEDICAL CARE OF
YOUNGSTOWN, LLC**

Witness

By: _____
Mark Sciorilli, Regional Vice President

APPROVED AS TO FORM

By: _____
Atty. Gregory V. Hicks, Law Director