**DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT**

This DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_\_\_\_\_ \_\_, 2017 (the “Effective Date”) by and between the **CITY OF BEXLEY, OHIO** (the “City”), a charter municipal corporation organized and existing under the constitution, the laws of the State of Ohio (the “State”) and its Charter, and **CSD BEXLEY LLC** (the “Developer”), an Ohio limited liability company.

W I T N E S S E T H:

WHEREAS, the Developer has acquired and intends to renovate a two story, 10,180 square foot building located at 2691 E. Main Street, Bexley, Ohio 43209 (the “Project Site”) into a coworking and meeting space consisting of approximately 40 private offices, 6 meeting spaces, an outdoor patio (the “Project”); and

WHEREAS, in order to encourage the Developer to undertake the Project, and in consideration of the jobs and employment opportunities created in the City by the Project, the City desires to reimburse the Developer for costs incurred by the Developer to acquire the Project Site; and

WHEREAS, the City expects to adopt an ordinance (the “TIF Ordinance”) declaring that 100% of the increase in the assessed value of the Project Site subsequent to the City’s acquisition of title to such property to be a public purpose and exempt from taxation in accordance with the requirements of Ohio Revised Code Sections 5709.40 or 5709.41, 5709.42 and 5709.43 (the “TIF Statutes”); and

WHEREAS, the TIF Ordinance will require the owners of the Project Site to make service payments in lieu of taxes with respect to any improvement on the Project Site (the “Service Payments”), all pursuant to and in accordance with the TIF Statutes and the TIF Ordinance; and

WHEREAS, the City and the Developer desire to enter into this Agreement to provide for the completion of the Project as contemplated herein and reimbursement payments to the Developer, and to memorialize their mutual understandings with regard to the manner in which the Project will be developed; and

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties hereto agree to the foregoing and as follows:

1. Project. The Developer agrees to redevelop the Project Site into a COhatch co-working facility by undertaking and completing the Project in a manner consistent with the development plans approved by the City and associated zoning regulations (subject to any waivers, variances, or deviations from such objectives and/or regulations that may be approved by the City). The Developer will complete the Project by December 31, 2024. The City has no responsibility for the costs of the Project.

The Developer will invest approximately $3,000,000 in the acquisition of the Project Site and the renovation or demolition of the buildings currently on the Project Site that are part of the Project. The Developer estimates there will be created or retained by December 31, 2025, and maintained for the subsequent 30 years thereafter, approximately \_\_\_\_\_\_ new full time equivalent jobs or employees with an estimated total annual new payroll of $4,000,000. In addition to the remedies set forth in Section 7, if the Developer or Project substantially fails to meet or maintain its investment obligation or the payroll estimate as provided for in this paragraph, the City, at its sole discretion, may modify payments of the Reimbursement Amount.

1. Tax Increment Financing Area.
2. General. The Developer will reasonably cooperate with the City in the creation of a 30-year, 100% non-school tax increment financing area including the Project Site granted by a TIF Ordinance and pursuant to and in accordance with the TIF Statutes. The City hereby further agrees that it will use its best efforts to perform such acts as are reasonably necessary or appropriate to establish a 30-year, 100% non-school tax increment financing area including the Project Site granted by a TIF Ordinance and pursuant to and in accordance with the TIF Statutes. The City shall not modify the TIF Ordinance prior to the repayment in full of the Reimbursement Amount (as defined below) without the consent of the Developer.
3. Service Payments. The Developer shall make Service Payments so long as it owns the Project Site, all pursuant to and in accordance with the requirements of the TIF Statutes and the TIF Ordinance, and any subsequent amendments or supplements thereto. The City will deposit all Service Payments it receives into the tax increment equivalent fund created by the TIF Ordinance (the “TIF Fund”). Monies deposited in the TIF Fund (except those monies required to be paid to a school district under the Ohio Revised Code) will be used as follows to reimburse the Developer for the acquisition of the [Project Site] in the amount of $675,000 (the “Reimbursement Amount”). Amounts available to reimburse the Developer or its designees pursuant to the preceding sentence are referred to herein as “Available Funds”. Once the Reimbursement Amount is paid in full, all amounts deposited into the TIF Fund may be used for any other purpose as the City may determine.
4. Exemption Application. The Developer agrees to prepare, execute and file of all necessary applications and supporting documents to obtain from time to time the exemption granted by the TIF Ordinance and to enable the City to collect Service Payments. The City agrees to cooperate with the Developer filing such applications and supporting documents. The City and the Developer each agree to perform such acts as are reasonably necessary or appropriate to claim and maintain that exemption and collect the Service Payments, including, without limitation, joining in the execution of all documentation required in connection with that exemption or the Service Payments. Nothing in this Agreement constitutes the consent of the Developer under Section 5709.911(B) of the Ohio Revised Code.
5. Information Reporting. The Developer will cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated Tax Increment Review Council to enable that Tax Increment Review Council to review and determine annually during the term of this Agreement the compliance of the Developer with the terms of this Agreement.

The Developer further covenants to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by Ohio Revised Code Section 5709.40(I) to the Director of the Ohio Department of Development on or before March 31 of each year.

1. Nondiscriminatory Hiring Policy. With respect to operations within the City, the Developer will comply with the City’s nondiscriminatory hiring policy adopted pursuant to Ohio Revised Code Section 5709.832. In furtherance of that policy, the Developer agrees not to deny any individual employment located upon the Project Site solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
2. Payments of the Reimbursement Amount. The City agrees to pay to the Developer or its designee in accordance with the terms of this Agreement and to the extent of Available Funds, upon the satisfaction of the conditions of Section 4 with respect to the Project, the Reimbursement Amount.

Until the Reimbursement Amount has been paid in full, and subject to the prior payment by the Developer of the City Payment (as defined below) in each year the City Payment is due, the City will pay to the Developer or its designee on the first business day following each May 31 and November 30 (each, a “Payment Date”) an amount equal to the lesser of (a) the outstanding Reimbursement Amount and (b) 100% of all Available Funds. Payments of the Reimbursement Amount will be made by the City beginning with the first Payment Date following the satisfaction of the conditions of Section 4.

All payments to the Developer hereunder on each Payment Date must be made pursuant to written instructions provided by the Developer or its designee.

Notwithstanding any other provision of this Agreement, the City’s payment obligations hereunder are limited to Available Funds and do not constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Developer does not have the right to have taxes or excises levied by the City for the payment of the Reimbursement Amount. Nothing herein will be deemed to prohibit the City from using, of its own volition, any other lawfully available resources for the fulfillment of any of the City’s obligations hereunder and the City may, at any time upon seven (7) days written notice to the Developer, elect to prepay all or a portion of remaining unpaid Reimbursement Amount.

1. Conditions Precedent to Payment of the Reimbursement Amount. The City’s obligations to make payments to the Developer under Section 3 commence when all of the following conditions have been met:

(a) The Developer has provided evidence reasonably acceptable to the City that the Developer has spent at least $3,000,000 to acquire the Project Site and renovate the Project.

(b) The Developer has substantially completed, or caused to be substantially completed, all work associated with the Project in material conformance with the approved plans and all applicable City Codes, as evidenced by issuance of a certificate of occupancy for the entire Project.

1. Representations and Warranties of the City. The City represents and warrants as of the date of delivery of this Agreement that:
2. It is a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter.
3. It will have duly accomplished all conditions necessary to be accomplished by it prior to the execution and delivery of this Agreement and to constitute this Agreement as a valid and binding obligation of the City enforceable in accordance with its terms.
4. It is not in violation of or in conflict with any provision of the laws of the State of Ohio that would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement.
5. It has and will have full power and authority to (i) execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by the City in connection herewith and (ii) enter into, observe and perform the transactions contemplated in this Agreement and those other instruments and documents.
6. It has or will have duly authorized the execution, delivery, observance and performance of this Agreement.
7. Representations and Warranties of the Developer. The Developer represents and warrants as of the date of delivery of this Agreement that:
8. It (i) is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio and (ii) has all requisite power and authority and all necessary licenses and permits to own and operate the Project Site and the Project and to carry on its business as now being conducted and as presently proposed to be conducted.
9. It has the authority and power to execute and deliver this Agreement, perform its obligations hereunder, and complete the Project.
10. Its execution and delivery of this Agreement and its compliance with all of the provisions hereof (i) will not conflict with or result in any breach of any of the provisions of, or constitute a default under, any agreement, its organizational documents, or other instrument to which it is a party or by which it may be bound, or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, and (ii) have been duly authorized by all necessary action on its part.
11. There are no actions, suits, proceedings, inquiries or investigations pending, or to its knowledge threatened, against or affecting it in any court or before any governmental authority or arbitration board or tribunal that challenges the validity or enforceability of, or seeks to enjoin performance of, this Agreement or the completion of the Project, or if successful would materially impair its ability to perform its obligations under this Agreement or to complete the Project.
12. It is in compliance with State of Ohio campaign financing laws contained in Ohio Revised Code Chapter 3517.
13. No event has occurred and no condition exists with respect to it that would constitute an Event of Default under this Agreement or that, with the lapse of time or with the giving of notice or both, would constitute a default under this Agreement.
14. Events of Default and Remedies.
15. Events of Default. Any one or more of the following constitutes an “Event of Default” under this Agreement:
    1. The Developer or City fails to perform any material obligation punctually and as due under this Agreement, provided that if a Force Majeure (as such term is defined below) event causes the failure, the Developer or City may receive an additional period of time as is reasonably necessary to perform or observe the material obligation in light of the event if it notifies the other of the potential event and the extent of the delay promptly after becoming aware of the event.
    2. The Developer fails to complete the Project by December 31, 2024, and in accordance with the terms of the plans for the Project approved by the City.
    3. The Developer fails to provide 4 “unlimited memberships” during the term of this Agreement to the City for the COhatch facility at the Site, some or all of which may be reallocated by the City to the Bexley City School District or the Bexley Public Library.
    4. Any representation of warranty of the Developer is determined by the City to be materially false or misleading when made.
    5. Filing of a mechanic’s lean against the Project or Project Site that is not discharged of record within sixty (6) days after notice of its filing.
    6. Developer files a voluntary petition in under federal bankruptcy laws, or is subject to an involuntary petition that is not dismissed within 90 days of filing.
    7. The COhatch facility at the Project Site closes operations for more than 30 consecutive days.

As used in this Section, “Force Majeure” means any event that is not within the control of the Developer, the City or their respective employees, contractors, subcontractors and material suppliers, including the following: acts of God; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies, political subdivisions or officials, or any civil or military authority; insurrections; nuclear accidents; fires; restraint of government and people; explosions; and partial or entire failure of utilities.

1. General Right to Cure. In the event of any Event of Default in or breach of this Agreement, or any of its terms or conditions, by any party hereto, the defaulting party will, upon written notice from the other, proceed, as soon as reasonably possible, to cure or remedy such Event of Default or breach, and, in any event, within 30 days after receipt of such notice. In the event such Event of Default or breach is of such nature that it cannot be cured or remedied within said 30 day period, then in such event the defaulting party will upon written notice from the other commence its actions to cure or remedy said breach within said 30-day period, and proceed diligently thereafter to cure or remedy said breach.
2. Remedies. If the defaulting party fails to cure any Event of Default pursuant to paragraph (b) of this Section, the other party may institute such proceedings against the defaulting party as may be necessary or desirable in its opinion to cure and remedy such default or breach. Such remedies include, but are not limited to, instituting proceedings to compel specific performance by the defaulting party, and any other rights and remedies available at law, in equity or otherwise to collect all amounts then becoming due or to enforce the performance of any obligation under this Agreement. In addition, if any Event of Default described in Section 7(a) occurs, the City may terminate or suspend its obligations under this Agreement.
3. Indemnification by Developer.
4. General Indemnity.
   * 1. The Developer releases the City and each council member, officer, official and employee thereof (collectively, the “Indemnified Parties” and each an “Indemnified Party”) from, agrees that the Indemnified Parties are not liable for, and indemnifies each Indemnified Party against, all liabilities, obligations, damages, costs and expenses (including without limitation, reasonable attorneys’ fees and losses and costs described in division (b) of this Section) asserted against, imposed upon or incurred by an Indemnified Party (collectively, the “Liabilities” and each a “Liability”), other than any Excluded Liability as hereinafter defined, arising out of, in connection with or resulting from the City’s acquisition and ownership of the Project Site, the completion of the Project or the Developer’s performance of its obligations hereunder.

“Excluded Liability” means each Liability to the extent it is attributable to (i) the gross negligence or willful misconduct of any Indemnified Party (other than that caused by the Developer, its affiliates, or individuals employed by or with an ownership interest in the Developer or its affiliates), (ii) the failure of the City to comply with any of its obligations under this Agreement, or (iii) the failure of any Indemnified Party that is a third party beneficiary of this Section to perform any obligation required to be performed by the Indemnified Party under this Section as a condition to being indemnified hereunder. Excluded Liabilities include, without limitation, any Liabilities settled without the consent of the Developer and any Liability to the extent that the Developer’s ability to defend that Liability is prejudiced materially by the failure of an Indemnified Party to give timely written notice to the Developer of the assertion of that Liability.

* + 1. Upon notice of the assertion of any Liability, the Indemnified Party must give prompt written notice of the same to the Developer.
    2. Upon receipt of written notice of the assertion of a Liability, the Developer has the duty to assume, and must assume, the defense thereof, with full power and authority to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party has the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest, which approval may not be unreasonably withheld.
    3. At its own expense, an Indemnified Party may employ separate counsel and participate in the defense of any Liability; provided, however, if it is ethically inappropriate for one firm to represent the interests of the Developer and the Indemnified Party, the Developer must pay the reasonable legal expenses of the Indemnified Party in connection with its retention of separate counsel. The Developer is not liable for any settlement of any Liability effected without its written consent, but if settled with the written consent of the Developer, or if there is a final judgment for the plaintiff in an action, the Developer agrees to indemnify and hold harmless the Indemnified Party except only to the extent of any Excluded Liability.

(b) Environmental Indemnity. The Developer agrees to indemnify and hold the City harmless from and against all claims, liabilities and losses including, without limitation, investigative and remediation costs, incurred by the City as a result of the existence on, disposal or release on, to or from, the Project Site of Hazardous Materials or violations of Environmental Laws; provided, that the Developer is not required to indemnify the City to the extent the losses arise out of any gross negligence or willful misconduct of the City or any officer, employee or agent of the City. The Developer further agrees that neither the Developer, nor any of its independent contractors, invitees, licensees, successors, assignees or tenants will store, release or dispose of, or permit the storage, release or disposal of any Hazardous Materials at the Project Site at any time during the City’s period of ownership of the Project Site other than in accordance with Environmental Laws, and that they will perform their obligations under this Agreement in compliance with Environmental Laws. If the Developer receives a notification or clean up requirement under Environmental Law, the Developer will promptly notify the City of such receipt, together with a written statement of the Developer setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of the Developer’s knowledge. On receipt by the Developer of any such notification or clean up requirement, the Developer will either proceed with appropriate diligence to comply with such notification or clean up requirement or will commence and continue negotiation concerning, or contest the liability of, the Developer or the City with respect to such notification or clean up requirement.

As used in the foregoing paragraph:

“Environmental Laws” means all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing use, storage, treatment, generation, transportation, processing, handling, management, production, release or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto, including, without limitation, Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the Emergency Planning and Community Right-to-Know Act, the Hazardous Materials Transportation Act, and their respective state and local counterparts.

“Hazardous Materials” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances, pollutants, contaminants or related or similar materials which are regulated by or identified in any Environmental Laws.

1. Notices. All notices or other correspondence relating to this Agreement must be in writing (including e-mail or facsimile) and must be delivered or sent guaranteed overnight delivery, by facsimile or e-mail (to be followed by personal or overnight guaranteed delivery, of requested) or by postage prepaid registered or certified mail, return receipt requested, and will be deemed to be given for purposes of this Agreement on the date such writing is received by the intended recipient. Unless otherwise specified in a notice sent in accordance with this Section, all communications in writing must be given to the parties at the following addresses:
2. As to the City:

City of Bexley, Ohio

Attn: Mayor

2242 E. Main Street

Bexley, Ohio 43209

1. As to the Developer:

1. Successors; Assignment; Amendments, Changes and Modifications. This Agreement is binding upon the parties hereto and their successors and assigns. The parties may only assign this Agreement with the written consent of the parties hereto. Nothing in this Agreement prevents the Developer from transferring any or all of its interest in the Project Site to another person. This Agreement may only be amended by written instrument executed by all parties to this Agreement. Unless otherwise noted, any consent of the City to be given under this Agreement may be given by the Mayor and must be given in writing.
2. Extent of Covenants; No Personal Liability. All obligations of the City contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law; provided, however, that the City’s financial obligations under this Agreement are not a debt or general obligation of the City and are subject to the City Council’s appropriation of the funds necessary therefor. In no event shall the City be liable for indirect, consequential or punitive damages, and the City’s monetary liability under this Agreement, including for any damages or other remedies, is expressly limited to amounts on deposit in the TIF Fund. No such obligation shall be deemed an obligation of any present or future member, officer, agent, or employee of any of the City in his or her individual capacity.
3. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, said provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.
4. Separate Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original, and all of which taken together shall constitute but one and the same instrument. Delivery of a manually or electronically executed counterpart hereof by facsimile or in electronic format shall be effective as manual delivery of such counterpart.
5. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties on this subject matter.
6. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

***[Signature Lines Found on Next Pages]***

IN WITNESS WHEREOF, the City and the Developer have caused this Development and Tax Increment Financing Agreement to be executed in their respective names by their duly authorized officers as of the last date set forth below.

**City of Bexley, Ohio**

By:

Benjamin Kessler, Mayor of Bexley

Approved as to Form:

By:

Marc Fishel, Bexley City Attorney

**CSD Bexley LLC**

By:

Printed:

Title:

FISCAL OFFICER’S CERTIFICATE

The undersigned, Auditor of the City under the foregoing Agreement, certifies hereby that the City has no financial obligations during Fiscal Year 2023 under the foregoing Agreement. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_\_\_\_\_, 2023

Matt McPeek, City Auditor

City of Bexley, Ohio