

TAX INCREMENT FINANCING COMPENSATION AND COOPERATION AGREEMENT

This Tax Increment Financing Compensation and Cooperation Agreement (this “Agreement”), is made and entered into this ____ day of _____, 2023, by and between, the CITY OF BEXLEY, OHIO (the “City”), a municipal corporation organized and existing under the laws of the State of Ohio, and the BOARD OF EDUCATION OF THE BEXLEY CITY SCHOOL DISTRICT (the “School District”), a public school district organized and existing under the laws of the State of Ohio.

RECITALS:

A. Continental Development Ventures, LLC, or its designated affiliate, (the “Developer”) owns or intends to purchase certain parcels of land within the City, as set forth in Exhibit A to the TIF Ordinance (defined below) (the “Parcels”), and to cause the construction of mixed-use development consisting of multi-family apartment units, commercial retail and office space, to be generally known as the Trinity apartment complex (collectively, the “Project,” as further described in Section 1 of this Agreement).

B. In connection with undertaking the Project, the City desires to enact an ordinance (the “TIF Ordinance,” substantially in the form attached hereto as **Exhibit A** and incorporated herein by this reference) to establish tax increment financing (“TIF”) on the Parcels pursuant to Ohio Revised Code (“R.C.”) Sections 5709.40, 5709.42 and 5709.43. The resulting TIF revenues would be used by the City for debt service on bonds issued by the City to finance the Project. The TIF Ordinance would provide for a 30 year, 100% TIF exemption for the Parcels, which are currently comprised of Parcels 020-000217, 020-000350 and 020-000836.

C. Pursuant to R.C. Section 5709.40(D)(2), School District approval is necessary for the City to establish a 30 year, 100% TIF exemption. In addition, pursuant to R.C. Section 5709.82(C) and (D), if the payroll associated with “New Employees” (as defined in R.C. Section 5709.82(A), including construction employee payroll) equals or exceeds \$1 million during any year in which an exemption is provided pursuant to the TIF Ordinance, the City is required to negotiate with the School District with respect to the sharing of City income tax revenues associated with such New Employees.

D. The City and the School District desire to cooperate with each other with respect to the financing and construction of the Project and with respect to the establishment of a TIF for the Parcels. That cooperation is described in this Agreement, and includes, but is not limited to, the School District’s approval of a 30 year, 100% TIF exemption pursuant to R.C. Section 5709.40 and adequate compensation to the School District.

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

Section 1. The Project. The Project consists of a mixed-use development with approximately 219 multi-family apartment units (the “Residential Space”), 17,226 of commercial

retail space (the “Retail Space”), 12,355 square feet of office space (the “Office Space”), and certain site infrastructure improvements.

Section 2. Service Payments. The City, or the Columbus-Franklin County Finance Authority (the “Finance Authority”), anticipates issuing one or more series of bonds (collectively, the “Bonds”) to finance the Project costs. The annual debt service on the Bonds is expected to be paid, in part, from Service Payments (as defined in the TIF Ordinance, and for purposes hereof shall include Property Tax Rollback Payments) received by the City pursuant to the TIF Ordinance. If more favorable financing terms to reduce annual debt service on the Bonds become available during the TIF exemption period, to the extent possible and permitted by law, the City should utilize commercially reasonable efforts to refinance the Bonds or encourage the Finance Authority to refinance such Bonds.

Section 3. School District Compensation.

(1) **TIF Revenue Sharing:** In consideration of the terms set forth herein, the parties agree to the following:

- (a) For each year of the TIF exemption period:
 - (i) If, and only if, the amount of real property taxes received by the School District from the base value of the Parcels not subject to the TIF exemption is less than \$56,000, the School District shall receive the first \$56,000 of Service Payments received by the City for the applicable year of the TIF exemption period up to an amount equal to the positive difference of (i) \$56,000, less (ii) the amount of real property taxes the School District has received from such base value.
 - (ii) The School District shall receive the Tuition Assistance Payment as hereinafter described in Section 3(3), if applicable.
 - (iii) After payment of the amounts to the School District described in Section 3(1)(a)(i), the remaining Service Payments shall be applied by, or on behalf of, the City in the following order: (x) to the annual debt service on the Bonds (including any annual reserve amount required on the Bonds) and to pay annual costs associated with the Bonds, including but not limited to any trustee or other administrative costs, (y) to the annual Reimbursement Obligation of the City under the Tax Increment Financing and Redevelopment Agreement with the Developer, and (z) to any amounts described under subsection (x) and (y) that are in arrears for prior years of the TIF exemption period and/or to reimburse the City for any amounts that would have been in arrears but for the payment of those amounts by the City from funds other than Service Payments.
 - (iv) Any amount of Service Payments remaining after payments made pursuant to Sections 3(1)(a)(i),(ii) and (iii) above shall be paid to the School District.

- (v) Notwithstanding the provisions set forth above, if any portion of the Service Payments received by the City are amounts based on new School District tax levies that are first added to the tax list after tax year 2023 (excluding renewal, replacement or substitutions of tax levies on the tax list on the effective date of this Agreement) (“New Tax Levies”), the entire portion of the Service Payments based upon the New Tax Levies shall be paid to the School District.

The payments due to the School District under Section 3(1)(a) above are hereinafter referred to as the “School District Compensation”. Upon written request by the School District with reasonable advance notice, the City shall provide to the School District the necessary records supporting its determination of the annual amount payable to the School District pursuant to Section 3(1)(a)(iv).

- (b) In the TIF Ordinance, the City shall request that the Franklin County Treasurer distribute the Service Payments to the City at the same time and in the same manner as real property tax distributions. The City shall pay the School District Compensation to the School District on or before the thirty-first (31st) day of December for each year in which the Franklin County Treasurer has deposited Service Payments in the City’s TIF Fund established in the TIF Ordinance. Should any property owners make a Service Payment that is less than the full amount due, the City and the School District shall negotiate in good faith to determine what portion of the partial Service Payment will be paid to the School District as the School District Compensation.
- (2) Income Tax Sharing: In consideration of the terms set forth herein, the School District hereby waives its right under R.C. 5709.82 to receive income tax revenue sharing from the City based upon the payroll of “New Employees” working in the Residential Space and the Retail Space before and during the exemption period. Notwithstanding the foregoing, the City acknowledges and agrees that the School District duly enacted and levies an income tax pursuant to R.C. Chapter 5748 and may collect income tax revenue from residents of the Residential Space. If the City collects new income tax revenue upon the payroll of “New Employees” working in the Office Space during the exemption period, other than employees of the School District and after deducting any income tax revenue incentives provided by the City upon such employee payroll, the City shall pay the School District fifty percent (50%) of such annual net income tax revenue collected by the City, on or before the first (1st) day of June of the calendar year following the calendar year for which income taxes are collected.
- (3) Tuition Assistance Payment for Additional Students of the School District: If the Residential Space generates more than thirteen (13) students of the School District in any Fiscal Year during the exemption period, the City shall pay the School District, from the Service Payments, an annual Tuition Assistance Payment in the amount of seventy-five percent (75%) of the annual In-State Tuition Rate per student for the School District, as certified by the Ohio Department of Education pursuant to R.C. 3317.08 in August of each year, for each additional student in excess of thirteen (13) students enrolled in the School District for the Fiscal Year (the “Tuition Assistance Payment”). The School

District shall notify the City of the amount of the Tuition Assistance Payment due on or before the first (1st) day of April and payment shall be made by the City on or before the first (1st) day of May of each year. If the remaining Service Payments following the City's payment of the Tuition Assistance Payment to the School District are insufficient to satisfy the City's payment obligations in Section 3(1)(a)(iii) for the applicable year, the City may deduct such amount necessary to satisfy those obligations from the Tuition Assistance Payment paid to the School District and any amount of the Tuition Assistance Payment remaining unpaid after that deduction shall be added to the Tuition Assistance Payment due for the next following calendar year.

Section 4. School District Consents and Waivers. The School District hereby acknowledges that it has received a copy of the TIF Ordinance. In consideration of the execution of this Agreement, the School District hereby:

- (i) approves the 30 year, 100% TIF exemption for the Parcels specified in the TIF Ordinance;
- (ii) waives any notice requirements set forth in R.C. Sections 5709.40, 5709.83 and 5715.27 with respect to the TIF exemption;
- (iii) waives any defects or irregularities relating to the TIF exemption; and
- (iv) if necessary, agrees to support the City's TIF exemption application to the Ohio Tax Commissioner.

Section 5. Property Valuation. Neither party shall attempt to establish a tax year 2023 true value for the Parcels that is greater or less than \$2,523,700. The School District shall not initiate a real property valuation challenge pursuant to R.C. 5715.19 against the Project while the Developer owns the Parcels. If the Developer initiates a valuation challenge pursuant to R.C. 5715.19, the School District is entitled file a counter-complaint so that it may participate in any case originated for the Parcels. The School District may initiate a real property valuation challenge pursuant to R.C. 5715.19 upon any sale or transfer for consideration of the Project or the Parcels by the Developer, including but not limited to, any sale of the membership interests in any entity holding title to the Project or Parcels or any transfer that results in the Developer's release of ownership or control over the Project or Parcels.

Section 6. Application of Ohio Revised Code Section 5709.82. The School District acknowledges and agrees that this Agreement provides for the only compensation to be received by the School District in connection with real property tax exemptions granted pursuant to the TIF Ordinance and the compensation provided for in this Agreement is in lieu of any other compensation that may be provided for in R.C. Section 5709.82.

Section 7. Amendment. This Agreement may be amended or modified by the parties only in writing, duly authorized and signed by both parties to the Agreement.

Section 8. Entire Agreement. This Agreement is executed pursuant to R.C. Sections 5709.40, 5709.82, 5709.83 and 5715.27, and sets forth the entire agreement and understanding between the parties, including without limitation all forms of compensation to be paid to the School District pursuant to those sections, and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature between the parties with respect to the subject matter of this Agreement.

Section 9. Notices. All payments, certificates, and notices, which are required to or may be given pursuant to the provisions of this Agreement shall be provided via hand delivery or sent by United States ordinary or certified mail, postage prepaid, and shall be deemed to have been given or delivered when actually delivered or when so mailed to the following addresses:

If to the City:	City of Bexley 2242 E. Main Street Bexley, Ohio 43209 Attention: Mayor
If to the School District:	Bexley City School District 348 South Cassingham Road Bexley, Ohio 43209 Attention: Superintendent
With a copy to:	Kelley A. Gorry, Esq. Rich & Gillis Law Group, LLC 5747 Perimeter Dr., Suite 150 Dublin, Ohio 43017

Any party may change its address for receiving notices and reports by giving written notice of such change to the other parties.

Section 10. Severability of Provisions. The invalidity of any provision of this Agreement shall not affect the other provisions of this Agreement, and this Agreement shall be construed in all respects as if any invalid portions were omitted.

Section 11. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this Agreement by signing any such counterpart. Facsimile signatures shall be effective as originals.

Section 12. Extent of Covenants; Binding Effect; Entire Agreement; No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law, and all representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussions, agreements, and undertakings of every kind between the parties with respect to the

subject matter of this agreement. Each provision of the Agreement is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this Agreement. Each duty of the School District and its bodies, officers and employees, and the City and its bodies, officers and employees undertaken pursuant to the Agreement, is established as a duty with the School District and the City and of each such officer, employee or body having authority to perform that duty, specifically and enjoined by law resulting from an office, trust or station within the meaning of R.C. Section 2731.01 providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation or agreement shall be deemed a covenant, stipulation, obligation or agreement of any present or future member, officer, agent, or employee of any of the parties in their individual capacity.

Section 13. Ohio Laws. Any reference to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented, or superseded from time to time; provided, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the City and the School District have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

CITY OF BEXLEY, OHIO

BEXLEY CITY SCHOOL DISTRICT

By: _____
Mayor

Approved as to Form and Correctness

By: _____
Treasurer

By: _____
Law Director

By: _____
President of the Board of Education

FISCAL OFFICER'S CERTIFICATE

The undersigned, fiscal officer of the City under the foregoing Agreement, certifies that the money required to meet the obligations of the City during the year 2023 under the foregoing Agreement is appropriated lawfully for that purpose, and is in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: _____, 2023

City Auditor
City of Bexley, Ohio