

**ORDINANCE NO. 07 - 20**

**By: Jessica Saad**

**An Ordinance authorizing the execution of a Community Reinvestment Area Agreement with 528 North Cassady, LLC; and declaring an emergency**

**WHEREAS**, the Council of the City of Bexley, Ohio (the "City") by its Ordinance No. 71-06 created the North Cassady/Delmar Drive Re/Development District Community Reinvestment Area (the "CRA") pursuant to the Ohio Revised Code §§ 3735.65 – 3735.70 (the "CRA Act"); and

**WHEREAS**, effective December 13, 2006, the Director of the Ohio Development Services Agency determined that the CRA contains the characteristics set forth in Ohio Revised Code § 3735.66 and certified said area as a CRA under Ohio Revised Code § 3735.66; and

**WHEREAS**, the City has encouraged the development of real property and the acquisition of personal property to be located in the CRA; and

**WHEREAS**, 528 North Cassady, LLC (the "Company") plans to repurpose a former convenience store into a daycare facility (the "Project") and to create new employment opportunities on the property described and depicted in Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

**WHEREAS**, the City desires to provide the Company with incentives for development of the Project on the Property located within the boundaries of the CRA; and

**WHEREAS**, the Company and City representatives have submitted a proposed Community Reinvestment Area Agreement by and between the City and the Company (the "CRA Agreement") for consideration by the Council of the City; and

**WHEREAS**, the CRA Agreement provides the Company with a ten (10) year, fifty percent (50%) real property tax exemption for the increase in assessed value of the Project, as further described in the CRA Agreement (the "CRA Exemption"); and

**WHEREAS**, the Property is located in the Bexley City School District (the "School District"); and

**WHEREAS**, the School District has been timely provided proper notice of the Council's intention to enter into the CRA Agreement pursuant to Ohio Revised Code § 3735.671 and § 5709.83; and

**WHEREAS**, it is imperative that this Ordinance go into effect immediately so that the Company can commence construction in order to meet its project completion deadline, which

will enable it to promptly create construction job opportunities and permanent job opportunities for City residents;

**NOW THEREFORE BE IT ORDAINED** by the Council of the City of Bexley, County of Franklin, and State of Ohio:

**Section 1.**

**CRA Agreement.** That, in consideration of the covenants set forth in the CRA Agreement in the form on file with the City Attorney, this Council hereby approves the CRA Agreement substantially in the form on file with the City Attorney and authorizes the Mayor to execute and deliver the CRA Agreement on behalf of the City, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the City. This Council further authorizes the Mayor, for and in the name of the City, to execute any amendments to the CRA Agreement executed in accordance with the authority hereunder, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City. The City is hereby authorized to perform the CRA Agreement.

**Section 2.**

**Filing with DSA.** That, pursuant to Ohio Revised Code § 3735.671(F), the Clerk of Council is hereby authorized and directed to forward a copy of the CRA Agreement to the Director of the Ohio Development Services Agency within fifteen (15) days after the CRA Agreement is effective.

**Section 3.**

**Open Meeting.** That, 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 this Council and that all deliberations of this Council and any decision making bodies of the City which resulted in such formal actions were in meetings open to the public or in compliance with all legal requirements of the City.

**Section 4.**

**Emergency Measure.** That, for the reasons noted in the last recital of this Ordinance, this Ordinance is hereby determined to be an emergency measure and shall take effect and be in force immediately upon its passage and execution by the Mayor.

Passed this 25 day of February 2020.

  
\_\_\_\_\_  
Wm. Harvey Clerk of Council

  
\_\_\_\_\_  
Lori Ann Feibel, President of Council

Approved:

  
\_\_\_\_\_  
Ben Kessler, Mayor

First Reading: 1-28-20  
Second Reading: 2-11-20  
Third Reading: 2-25-20

**BEXLEY**  
**COMMUNITY REINVESTMENT AREA AGREEMENT**

This agreement (the "Agreement") made and entered into as of \_\_\_\_\_, 2020 (the "Effective Date"), by and among the City of Bexley, Ohio (the "City"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio, with its main offices located at 2242 East Main Street in the City, and 528 North Cassady, LLC, an Ohio limited liability company (the "Company").

**WITNESSETH:**

WHEREAS, the City has determined to encourage the development of real property and the acquisition of personal property located in the area it has designated as the North Cassady/Delmar Drive Re/Development District Community Reinvestment Area (the "Area" or "CRA"); and

WHEREAS, the Company has acquired or will acquire certain real property in the City located at 528 North Cassady Avenue (the "Project Site"), and intends to repurpose an existing, unoccupied convenience store building and site into a daycare facility on the Project Site (the "Project"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, the Director of the Ohio Development Services Agency determined and certified that the aforementioned Area contains the characteristics set forth in Ohio Revised Code Section 3735.66 and confirmed that Area as a "Community Reinvestment Area" pursuant to that Section 3735.66; and

WHEREAS, the City, having the appropriate authority for the Project, desires to provide incentives available for the development of the Project on the Project Site in the CRA; and

WHEREAS, the Company has submitted to the City the agreement application attached hereto as Exhibit A (the "Agreement Application"); and

WHEREAS, the Company has remitted with the Agreement Application the required State application fee of \$750.00 made payable to the Ohio Development Services Agency to be forwarded to that Agency with a copy of the final Agreement; and

WHEREAS, the City's Housing Officer under Ohio Revised Code Section 3735.65 has reviewed the Agreement Application and has recommended the same to the City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities in the CRA and improve the economic climate of the City; and

WHEREAS, the Project Site is located in the Bexley City School District; and

5. Fee to City. The Company shall pay an annual reporting fee equal to the greater of one percent of the amount of taxes exempted under this Agreement or one hundred dollars (\$100), not to exceed two thousand five hundred dollars (\$2,500) as permitted under Ohio Revised Code Section 3735.671(D). The City shall invoice this fee to the Company annually on April 1 of each year for which this Agreement is in effect.

6. Payment of Other Taxes. The Company shall pay such real and tangible personal 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 Company 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.

7. City Cooperation to Claim and Maintain Exemption. The City 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.

8. Continuation of Exemption under Certain Circumstances. If for any reason the CRA designation expires, the Director of the Ohio Development Services Agency revokes certification of the Area, or the City revokes the designation of the Area, this Agreement shall nevertheless continue in effect in accordance with its terms and (i) exemptions previously granted under Section 4 of this Agreement for the building at the Project Site shall continue for the number of years specified under this Agreement, and (ii) exemptions yet to be granted but provided for under Section 4 shall be granted by the City in accordance with the terms of this Agreement. The preceding sentence shall not apply to circumstances in which the Company materially fails to fulfill its obligations under this Agreement and the City terminates or modifies exemptions pursuant to Section 9 of this Agreement.

9. Modification of Exemption for Material Failure. If the Company materially fails to fulfill its obligations under this Agreement, or if the City determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the City may terminate or modify the exemptions from taxation granted under this Agreement.

10. Certification of No Delinquent Taxes. The Company hereby certifies that at the time this Agreement is executed, the Company 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 Company is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, the Company 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 Company. For the purposes of this 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.

not limited to an application for a real property tax exemption under Ohio Revised Code Sections 3735.67 to 3735.70), knowingly makes a false statement or fails to provide any information required by Ohio Revised Code Section 9.66(B) (i) shall be ineligible for any future economic development assistance from the State of Ohio, any State agency or a political subdivision under Ohio Revised Code Section 9.66(C)(1), (ii) shall return any moneys received from the State, a State agency or a political subdivision in connection with that application under Ohio Revised Code Section 9.66(C)(2), and (iii) may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than six months.

19. Compliance with Campaign Finance Laws. The Company hereby certifies that it is in compliance with State of Ohio campaign financing laws contained in Ohio Revised Code Chapter 3517 including, but not limited to, divisions (I) and (J) of Ohio Revised Code Section 3517.13. In addition, the Company hereby certifies that it is currently in compliance with, and not currently in violation of, any provisions of Ohio Revised Code Section 2921.42 that may be applicable to it.

20. Termination. Unless terminated earlier pursuant to its terms, this Agreement shall be in full force and effect until December 31 of the last tax year for which an exemption granted pursuant to Section 4 remains in effect, after which this Agreement and the obligations of all parties hereto shall terminate.

21. Estoppel Certificate. Upon request of the Company, the City shall execute and deliver to the Company or any proposed purchaser, mortgagee or lessee of the Project Site, a certificate stating: (a) that the Agreement is in full force and effect, if the same is true; (b) that the Company is not in default under any of the terms, covenants or conditions of the Agreement, or, if the Company is in default, specifying same; and (c) such other matters as the Company reasonably requests.

22. No Personal Liability. No covenant, obligation or agreement is deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of the parties other than in his or her official capacity, and neither officers of the City, members of the legislative authority of the City, nor any officers of the Company executing this Agreement are liable personally under this Agreement or subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the parties contained in this Agreement.

23. Notices. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any party to this Agreement shall be made in writing addressed as follows and sent by (i) registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed, or (ii) by nationally recognized overnight delivery courier service, and shall be deemed delivered the next business day after acceptance by the courier service with instructions for next-business-day delivery:

IN WITNESS WHEREOF, the City of Bexley, Ohio, pursuant to Ordinance No. \_\_\_ adopted \_\_\_\_\_, 2020, has caused this instrument to be executed effective the \_\_\_ day of \_\_\_\_\_, 2020, and 528 North Cassady, LLC has caused this instrument to be executed by its \_\_\_\_\_ effective the \_\_\_ day of \_\_\_\_\_, 2020.

CITY OF BEXLEY, OHIO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
City Attorney

528 NORTH CASSADY, LLC

By: \_\_\_\_\_

Title: \_\_\_\_\_

NOTE: A copy of this Agreement must be forwarded to the Ohio Development Services Agency within fifteen (15) days of its execution.