

AMENDED ORDINANCE NO. 19- 23

By: Matt Klingler

Declaring the improvements to the former Trinity Seminary apartments site to be a public purpose; declaring such improvements to be exempt from real property taxation; requiring the owners thereof to make service payments in lieu of taxes; designating the public infrastructure improvements to be made that will directly benefit the real property; establishing a public improvement tax increment equivalent fund for the deposit of service payments; and authorizing a revenue sharing agreement with the Bexley City School District.

WHEREAS, the City of Bexley, Ohio (the "City") desires to increase employment opportunities and encourage the creation of new jobs in the City to improve the overall economic health of the City and its citizens; and

WHEREAS, in furtherance of this effort, the City and Continental Development Ventures, LLC, an Ohio limited liability company (or its designated affiliate, the "Developer") expect to cooperate to facilitate the redevelopment of the real property depicted on Exhibit A hereto (the "Parcels") into a mixed use development containing approximately 219 residential apartment units, 12,355 square feet of medical office space and 12,355 square feet of commercial retail space, together with approximately 302 parking spaces (collectively, the "Project"); and

WHEREAS, the City desires to pursue all reasonable and legitimate incentives measures to enable the Public Infrastructure Improvements to be undertaken and recognizes that the Public Infrastructure Improvements and the Project can benefit the City; and

WHEREAS, Ohio Revised Code ("R.C.") Sections 5709.40, 5709.42 and 5709.43 (collectively, the "TIF Act") and to facilitate redevelopment of the Parcels and the Project, this Council has determined to (i) declare 100% of the increase in assessed value of each Parcel subsequent to the acquisition of that property by the City (which increase in assessed value is also hereinafter referred to as the "Improvement" as defined in the TIF Act) to be a public purpose and exempt from real property taxation for a period of 30 years, with the tax exemption commencing for each Parcel in the year an Improvement due to a new building appears on the tax list and duplicate for that Parcel (e.g. separate 30 year exemptions for each Parcel); (ii) require the owner of each such parcel to make service payments in lieu of taxes; (iii) establish a municipal public improvement tax increment equivalent fund for the deposit of those service payments and specify the purposes for which money in that fund will be expended, and (iv) provide for the distribution of an applicable portion of such service payments of certain costs of the Project and revenue sharing payments to the Bexley City School District (the "School District"); and

WHEREAS, the development of the Project will necessitate and will be enhanced by the undertaking of certain of the public infrastructure improvements described in Exhibit B hereto (the "Public Infrastructure Improvements") including, without limitation, demolition and remediation of the current buildings on the Parcels and the construction of a parking facility; and

WHEREAS, it has been proposed that the City enter into a Revenue Sharing Agreement with the Bexley City School District (the "School Revenue Sharing Agreement") substantially in the form attached hereto as Exhibit C to provide for payments to the School District in connection with the Project; and

WHEREAS, any reimbursements to the Developer for the costs associated with the completed Public Infrastructure Improvements or cooperative arrangements for the issuance of bonds by the Columbus-Franklin County Finance Authority or other issuer shall be subject to approval by this Council by separate ordinance and will be made solely from the Service Payments (as defined in Section 4) generated from the Parcels and received by the City pursuant to R.C. Section 5709.42 and deposited into the TIF Fund (as established herein);

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL FOR THE CITY OF BEXLEY, OHIO:

Section 1.

The real property subject to this ordinance is identified and depicted on Exhibit A (as each currently or subsequently configured tax parcel, the "Parcels", with each individual tax parcel a "Parcel").

Section 2.

This Council hereby designates the Public Infrastructure Improvements described in Exhibit B attached hereto as "public infrastructure improvements" (as such term is defined in Ohio Revised Code Sections 5709.40(A)(8) made, to be made, or in the process of being made, and that, once made, will directly benefit the Parcels.

Section 3.

This Council hereby finds and determines that 100% of the increase in assessed value of each Parcel subsequent to the effective date of this ordinance (which increase in assessed value is hereinafter referred to as the "Improvement" as defined in ORC 5709.40(A)) is declared to be a public purpose and will be exempt from taxation for a period commencing for each separate Parcel on the date an Improvement due to the construction of a new building on that Parcel first appears on the tax list and duplicate were it not for the exemption granted by this ordinance and ending on the earlier of (a) 30 years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Act. It is the express intention of Council that each separate tax Parcel will have a separate 30-year exemption period. The exemption granted by this Section 3 is subordinate to any exemptions granted pursuant to ORC 3735.65 et. seq. (CRA abatements) or ORC 5709.61 et. seq. (Enterprise Zone abatements).

Section 4.

As provided in ORC 5709.42, the owner of each Parcel is hereby required to make service payments in lieu of taxes with respect to the Improvement allocable to each Parcel to the Franklin County Treasurer on or before the final dates for payment of real property taxes. The service payments in lieu of taxes will be charged and collected in the same manner and in the same amount as the real

property taxes that would have been charged and collected against that Improvement if it were not exempt from taxation pursuant to Section 3, including any penalties and interest (collectively, the "Service Payments"). The Service Payments, and any other payments with respect to the Improvement to each Parcel that are received in connection with the reduction required by ORC 319.302, 321.24, 323.152 and 323.156, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the "Property Tax Rollback Payments"), will be deposited and distributed in accordance with Section 6.

Section 5.

This Council establishes, pursuant to and in accordance with the provisions of ORC 5709.43, the Trinity Apartments Municipal Public Improvement Tax Increment Equivalent Fund (the "TIF Fund"), into which the Service Payments and Property Tax Rollback Payments collected with respect to the Parcels will be deposited. The TIF Fund will be maintained in the custody of the City. The City may use amounts deposited into the TIF Fund only for the purposes authorized in the TIF Act and this ordinance (as it may be amended). The TIF Fund will remain in existence so long as the Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund will be dissolved and any surplus funds remaining therein transferred to the City's General Fund, all in accordance with ORC 5709.43.

Section 6.

Pursuant to the TIF Act, the County Treasurer is requested to distribute the Service Payments and the Property Tax Rollback Payments to the City for deposit into the TIF Fund for payment of costs of the Public Infrastructure Improvements, including, without limitation, debt charges on any notes or bonds issued to pay or reimburse finance costs or costs of those Public Infrastructure Improvements, to make revenue sharing payments to the School District authorized pursuant to Section 7, to make payments pursuant to the TIF Agreement authorized pursuant to Section 8, and for any other lawful purpose. The distribution from the County Treasurer to the City required under this Section is requested to be made at the same time and in the same manner as real property tax distributions. The City shall make all distributions requested under clause (i) of this Section to the extent not made by the County Treasurer.

Section 7.

The form of School Revenue Sharing Agreement between the City and the School District attached as Exhibit C hereto is hereby approved, together with any completions and changes thereto that are not substantially adverse to the City and are approved by the Mayor and the City Auditor. The Mayor and the City Auditor, for and in the name of the City, are hereby authorized to execute and deliver the Revenue Sharing Agreement in substantially that form, together with any such completions or changes. The approval of such completions and changes, and that such completions and changes are not substantially adverse to the City, shall be conclusively evidenced by the execution of the Revenue Sharing Agreement by the Mayor and the City Auditor. This Council hereby further authorizes the making of revenue sharing payments pursuant to the terms of the School Revenue Sharing Agreement from the TIF Fund.

Section 8.

This Council hereby authorizes and directs the Mayor or other appropriate officers of the City to deliver a copy of this ordinance to the Director of Development of the State of Ohio and to make such arrangements as are necessary and proper for collection of the Service Payments. This Council further authorizes the Mayor or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this ordinance.

Section 9.

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 of Bexley which resulted in such formal actions were in meetings open to the public or in compliance with all legal requirements of the City of Bexley, Franklin County, Ohio.

Section 10.

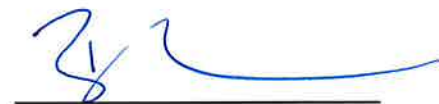
This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed: Nov 14, 2023

Attest: 
Matt McPeck, Clerk of Council


Troy Markham, President of Council

Approved: Nov. 14, 2023


Ben Kessler, Mayor

First Reading: June 27, 2023

Second Reading: August 15, 2023

Third Reading: November 1⁴, 2023

EXHIBIT A TO ORDINANCE

TIF Parcels

The Parcels are shown on the following map.

[Attached]



Exhibit A

2200 East Main Street TIF



EXHIBIT B TO ORDINANCE

Public Infrastructure Improvements

The Public Infrastructure Improvements consist generally of acquiring and constructing the infrastructure described below:

- Construction of one or more public parking facilities, including a new parking garage on the Parcels with approximately 302 parking spaces and related improvements, off-street parking facilities, including those in which all or a portion of the parking spaces are reserved for specific uses when determined to be necessary for economic development purposes, and all other appurtenances thereto;
- Construction, reconstruction or installation of improvements (including any underground utilities) of public storm lines and associated structures and the continued maintenance of water and sewer lines, and all other appurtenances thereto;
- Construction, reconstruction or installation of gas, electric, and communication service facilities, including broadband and fiber services, and all other appurtenances thereto;
- Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways, streets, bridges (both roadway and pedestrian), traffic calming devices, sidewalks, bikeways, medians and viaducts accessible to and serving the public, and providing lighting systems, signalization, and traffic controls, the continued maintenance of public roads and highways, and all other appurtenances thereto;
- Construction or installation of streetscape and landscape improvements including trees and shrubs, landscaping mounds and fencing, tree grates, planting beds, signage, curbs, sidewalks, street and sidewalk lighting, trash receptacles, benches, newspaper racks, burial of overhead utility lines and related improvements, and all other appurtenances thereto;
- Demolition, remediation and excavation, including demolition, remediation and excavation on the Parcels and other private property when determined to be necessary for economic development purposes;
- Acquisition of the Parcels and other real estate or interests in real estate (including easements) necessary to accomplish the foregoing improvements;
- Any on-going administrative expenses relating to the Public Infrastructure Improvements and maintaining the TIF revenues, including but not limited to engineering, architectural, legal, TIF administration, and other consulting and professional services; and,
- All inspection fees and other governmental fees related to the foregoing.

The Public Infrastructure Improvements specifically include the costs of financing the Public Infrastructure Improvements, including the items of “costs of permanent improvements” set forth in Ohio Revised Code Section 133.15(B), and incurred with respect to the Public Infrastructure Improvements, which “costs” specifically include any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements and the debt service on, and

other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the Public Infrastructure Improvements.

All of the Public Infrastructure Improvements described above are hereby determined to be “public infrastructure improvements” (as defined in Ohio Revised Code Sections 5709.40(A)(8)) and are intended to benefit the real property described in Exhibit A.

EXHIBIT C TO ORDINANCE

Form of School Revenue Sharing Agreement

(attached hereto)

TAX INCREMENT FINANCING COMPENSATION AND COOPERATION AGREEMENT

This Tax Increment Financing Compensation and Cooperation Agreement (this "Agreement"), is made and entered into this 14 day of November 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: 

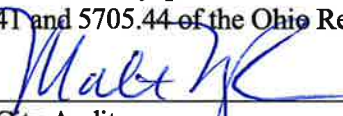
Law Director

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: Nov 14, 2023



City Auditor
City of Bexley, Ohio

TAX INCREMENT FINANCING COMPENSATION AND COOPERATION AGREEMENT

This Tax Increment Financing Compensation and Cooperation Agreement (this "Agreement"), is made and entered into this 11 day of October, 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: _____
Law Director

By: Kyle F. Smith
Treasurer

By: [Signature]
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