

ORDINANCE NO. 17 - 24

By: Sam Marcellino

An ordinance to authorize the Mayor to execute an Access Easement between the City of Bexley and CAG Bexley Apts, LLC, in order to provide for cross-access to and from the Bexley City Hall site (parcel #020-001825) and the adjacent property to the west at 2200 East Main Street (parcel #020-00350).

WHEREAS, The City of Bexley ("City") is the owner of certain property in at 2242 East Main Street (the Bexley City Hall site); and

WHEREAS, CAG Bexley Apts, LLC ("Developer") is the developer of a proposed mixed-use project to be located at 2200 East Main Street (parcel #020-00350); and

WHEREAS, The Developer wishes to obtain access upon, over, and across the drive aisles on the City Hall site in order to provide for enhanced access to their site; and

WHEREAS, The City wishes to promote cross-access across sites in the Mixed Use Commercial District, in keeping with the goals and the objectives of the Main Street Design Guidelines as well as general economic development principles which promote the value of shared access as a contributor to commercial viability and vitality; and

WHEREAS, The Developer is also working with the Bexley Community Improvement Corporation to obtain similar cross-access upon, over, and across the Bexley Square site;

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

Section 1. The City of Bexley grants the Access Easement attached hereto as Exhibit A.

Section 2. The Mayor is authorized to do all acts and to execute all agreements and instruments appropriate or necessary to facilitate and carry out the transfer and acceptance of the property interests identified in this ordinance, and to make any minor modifications to the instruments attached to this ordinance that are necessary to carry out the intent of this ordinance and the recording of the deed and easements.

Section 3. This Ordinance shall go into full force and effect at the earliest period allowed by law.

Passed Oct 22, 2024

Monique A. Lampke
Monique Lampke, President of Council

Attest: Matt McPeek
Matt McPeek, Clerk of Council

Approved: Oct 22, 2024

Ben Kessler
Ben Kessler, Mayor

First Reading: June 11, 2024

Second Reading: June 25, 2024

Third Reading: August 13, 2024

Passed: October 22, 2024

(Tabled 8-13-24)

Scenario:

	1	2	3
	Cross-parking with no parking gates / physical controls	Scenario with parking gates on CAG Tract, where Bexley Tract does not completely restrict parking to Bexley Tract Only*	Scenario with parking gates on CAG Tract, where all 55 Bexley Tract parking spots are restricted to Bexley Tract permittees only*
Min # of non-exclusive spaces on CAG Tract available for use for cross-parking	124	124	0
Min # of non-exclusive spaces on CAG Tract available for use for cross parking that must be located in generally convenient locations areas of the garage	70	70	0
Min # of exclusive spaces on CAG Tract available for users of COB site	NA	NA	16 (calculated based upon total loss from 70 after final parking lot configuration is determined) (Incorporated into 16 spots above)
Min # of spaces on CAG Tract available to employees of COB for daily parking	10	10	
Spaces available on CAG Tract for employees of businesses at Bexley Square	0	0	0
Spaces available on Bexley Tract for employees of businesses on CAG Tract	0	0	0
Cost of parking on CAG Tract to Bexley Tract Permittees	Free	Free with validation (reasonable time limits apply)	Free-with-validation-(reasonable-time limits-apply)
Cost of enforcing No Parking by CAG Permittees on Bexley Tract	NA	NA	Costs solely on CAG
Cost of installing drive aisle between Bexley Tract and CAG Tract to access rear parking lot, including design, engineering, construction and other related fees	NA	NA	Costs solely on CAG
Responsibility for securing necessary permits for drive aisle noted above	NA	NA	Permit responsibility on City of Bexley
Reduction Factor on Bexley Tract	One to one	One to one	NA

*Reasonable alternatives to gating shall be considered in good faith

*City maintains discretion as to whether or not to restrict Bexley Tract should CAG Gate

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this "Agreement") is made and entered into as of _____, 2024 (the "Effective Date"), by and between CITY OF BEXLEY, an Ohio municipality ("City" and together with BCIC, "Bexley"), BCIC BEXLEY SQUARE, LLC, an Ohio limited liability company ("BCIC", and together with City, "Bexley"), and CAG BEXLEY APTS, LLC, an Ohio limited liability company ("CAG") for the mutual benefit of the City, BCIC and CAG (each individually, a "Party" and collectively, the "Parties" as further defined herein).

WITNESSETH:

WHEREAS, the City is the fee simple owner of a certain tract of land located in the city of Bexley, Franklin County, Ohio that is legally described in Exhibit A, and identified on Exhibit X (the "Site Plan") and referred to herein as the "City Tract"; and

WHEREAS, BCIC is the fee simple owner of a certain tract of land located in the city of Bexley, Franklin County, Ohio, that is legally described in Exhibit B, and identified on the Site Plan and referred to herein as the "BCIC Tract"; and

WHEREAS, the City Tract and BCIC Tract are collectively referred to herein as the "Bexley Tract"; and

WHEREAS, CAG is the fee simple owner of a certain tract of land located in the city of Bexley, Franklin County, Ohio, that is legally described in Exhibit C, and identified on the Site Plan and referred to herein as the "CAG Tract"; and

WHEREAS, the City Tract, BCIC Tract, and the CAG Tract are contiguous and adjacent to each other as shown on Exhibit D; and

WHEREAS, the Parties hereto desire to establish certain easements upon, over and across portions of the Bexley Tract and the CAG Tract in order to facilitate the development and use of the City, BCIC and CAG properties and for the mutual benefit of parties on the terms set forth herein.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein, the Parties, intending to be legally bound, hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the meanings indicated below:

"Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this Agreement. There shall be one Approving Party representing the City Tract, one Approving Party representing the BCIC Tract, and one Approving Party representing the CAG Tract. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the City Tract, BCIC Tract, or Grantee Tract, as the case may be. The Party designated as Approving Party for its Tract shall have the right to assign such status to any other Party in writing. Notice of any such assignment shall be given to all other Parties as provided in Section 26 of this Agreement. Any assignment that is not made in writing is void. City shall be the initial Approving Party for the City Tract; BCIC shall be the initial Approving Party for the BCIC Tract, and CAG shall be the initial Approving Party for the CAG Tract.

"Bexley Tract Access Easement Area" shall mean the areas on the Bexley Tract identified as such and shown on the Site Plan.

"No Change Areas" shall mean the areas identified as such and shown on the Site Plan.

"Occupant" shall mean any Person from time to time entitled to the use and occupancy of any portion of a building on the Bexley Tract or the CAG Tract under an ownership right or under any lease, sublease, license, concession, or other similar agreement granted by, through, or under a Party.

"Party" shall mean each signatory hereto and its successors and assigns during the period of such person's fee ownership of any portion of a Tract.

"Parties" shall mean all signatories hereto and the successors and assigns of each of them during the period of such person's fee ownership of any portion of a Tract.

"Permittee" shall mean all Occupants and the officers, directors, employees, agents, contractors, laborers, customers, vendors, suppliers, visitors, invitees, licensees, tenants, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of a Tract.

"Person" shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

"Restricted Parking Spaces" shall mean parking spaces on a Tract the use of which is subject to limitations, fees or charges, imposed by the owner of such Tract from time to time, such as, without limitation, particular use limitations (e.g., pickup/takeout only) and reserved spaces, but excluding the number of handicap or accessible parking spaces required by applicable law or governmental approvals. Restricted Parking Spaces shall not include parking spaces with time limitations so long as such time limitations (e.g., 4-hour parking, no overnight parking) apply uniformly to all users thereof and do not effectively prohibit parking during business hours. For the avoidance of doubt, parking spaces with time limitations that benefit one or more Permittee's, but not all Permittee's, (e.g., 2-hour parking for City of Bexley) shall be considered Restricted Parking Spaces for the purpose of this Agreement.

"Tract" shall mean, as the case may be, the City Tract, BCIC Tract (the City Tract and the BCIC are collectively referred to as the "Bexley Tract"), and/or CAG Tract or any portion thereof owned by a Party.

2. Bexley Tract Ingress, Egress, and Parking Easement. Bexley hereby grants and conveys a perpetual, non-exclusive easement to (i) CAG for its use and for the use of the customers of its Occupants, in common with others entitled to use the same, for the parking of vehicles on the Bexley Tract in the areas

designated by Bexley from time to time for parking, and (ii) CAG for its use and for the use of its Permittees for the passage and accommodation of vehicles and pedestrians over and across the Bexley Tract Access Easement Area. The easements herein established shall be appurtenant to and for the benefit of the CAG Tract, and shall be binding on, enforceable against and burden the Bexley Tract. As of the Effective Date, the Bexley Tract is improved generally as shown on the Site Plan. Notwithstanding the foregoing:

- (a) Access.
 - (i) The minimum width of the Bexley Tract Access Easement Area shall not be less than that specified in Section 8.
 - (ii) The Bexley Tract Access Easement Area may be utilized by CAG and its Permittees for delivery trucks, solid waste or trash services and any other commercial delivery or service access routes or for construction or any other commercial vehicles for ingress, egress or access to or servicing the CAG Tract provided that (i) CAG shall use commercially reasonable efforts to have its trash collected on the same schedule as the Bexley Tract; and (ii) delivery trucks shall be limited in size to no larger than "box trucks" and shall not include semi-trucks.
- (b) Parking.
 - (i) The easement for parking on the Bexley Tract shall be limited to the customers of Occupants of the CAG Tract during such time as such customers are patronizing such Occupants and, for avoidance of doubt, shall exclude employees of CAG and its Occupants.
 - (ii) The easement for parking on the Bexley Tract shall not include (A) the right to park trash, delivery, construction, or commercial vehicles, recreational vehicles, campers, trailers, boats, bicycles, storage facilities (such as portable on demand storage units), and non-operational vehicles or (B) the right to park overnight.
 - (iii) Bexley shall have the right to designate Restricted Parking Spaces on the Bexley Tract.

3. CAG Tract Parking and Access Easement. CAG hereby grants and conveys to Bexley for the use of customers of its Occupants and for the use of employees of the City, in common with others entitled to use the same, a perpetual, non-exclusive easement for (i) the parking of vehicles on the CAG Tract in the areas designated by CAG from time to time for parking, including any structured parking that may exist, and (ii) the passage of vehicles and pedestrians over and across the CAG Tract in the areas designated by CAG from time to time for such passage for purposes of accessing such parking on the CAG Tract at the East Main Street access drive or from the Bexley Tract on the same terms and conditions that apply uniformly to all users permitted to access the CAG Tract. Notwithstanding the foregoing, if structured parking exists on the CAG Tract, the parking areas referenced in this Section 3 shall be located in such locations as are similarly situated for use by the non-residential Permittees of the CAG Tract. The easements herein established shall be appurtenant to and for the benefit of the Bexley Tract, and shall be binding on, enforceable against and burden the CAG Tract. Notwithstanding the foregoing:

- (a) The easement for parking on the CAG Tract shall be limited to the customers of Occupants of the Bexley Tract during such times as such customers are patronizing such Occupants and, for avoidance of doubt, shall exclude employees of Bexley and its Occupants, except that as long as Bexley City Hall is located on the City Tract, the City shall have the non-

exclusive right to use up to ten non-reserved parking spaces for employee parking during the business hours of Bexley City Hall.

- (b) The easement for parking on the CAG Tract shall not include (A) the right to park trash, delivery, construction, or commercial vehicles, recreational vehicles, campers, trailers, boats, bicycles, storage facilities (such as portable on demand storage units), and non-operational vehicles or (B) the right to park overnight.
- (c) CAG shall have the right to designate Restricted Parking Spaces on the CAG Tract, so long as the number of non-exclusive, free of charge parking spaces on the CAG Tract is no fewer than 124 minus the Reduction Amount if any. For avoidance of doubt, such non-exclusive spaces may be subject to time limitations so long as such time limitations apply uniformly to all permitted users thereof.
- (d) The easement for parking on the CAG Tract and the number of parking spaces customers of Occupants of the Bexley Tract and the ten City employees are permitted to use on the CAG Tract shall be limited to the lesser of (i) 70 of the non-exclusive, free of charge parking spaces thereon, and (ii) 16 plus the total number of parking spaces on the Bexley Tract from time to time that are not Restricted Parking Spaces (the positive amount, if any, by which the number of spaces under this clause (ii) is fewer than 70 is referred to herein as the "Reduction Amount"), and such parking spaces shall be in such locations as are similarly situated for use by the non-residential Permittees of the CAG Tract. For example, if the Bexley Tract contains 54 parking spaces, but 10 are Restricted Parking Spaces, then the parking rights of the Bexley Tract hereunder shall be limited to 60 parking spaces (i.e., 44 non-Restricted Parking Spaces plus 16) on the CAG Tract and the Reduction Amount shall be 10, with such 60 parking spaces to be allocated to the City and BCIC pro rata based on the number of Restricted Parking Spaces on each of the City Tract and BCIC Tract.
- (e) If CAG requests a reduction in parking spaces on the Bexley Tract beyond the 16 spaces that will be lost as a result of the CAG Bexley Tract Improvements set forth in Section 4, and the City approves the reduction in its sole discretion, then CAG shall provide one additional non-exclusive, free of charge parking space on the CAG Tract for each parking space lost beyond such 16 spaces on the Bexley Tract under the same terms and conditions as otherwise provided in this Agreement.
- (f) CAG shall be permitted to install one or more gates or other restricted access devices on the CAG Tract (including within any No Change Areas on the CAG Tract) if Persons not permitted by CAG to park on the CAG Tract or not otherwise permitted to park on the CAG Tract pursuant to this Agreement are using the CAG Tract for parking ("Unauthorized Use") and such use is adversely impacting the availability of convenient parking for CAG's Permittees. Prior to installing such gates or other devices, CAG shall in good faith discuss with Bexley other options to prevent such Unauthorized Use, provided that if CAG and Bexley do not reach agreement on such other options, CAG shall have the right to install such gates or devices. If CAG elects to install such gates or other devices, then CAG shall, at the election of Bexley, either (i) suspend the parking rights of each Party granted hereunder and the access easement granted to Bexley hereunder on the CAG Tract to East Main Street, or (ii) adopt a validation or other system to accommodate the free of charge parking set forth in Section 3(d) for so long as such gates or other devices are in use. If Bexley elects option (i) above, then for so long as such gates or other devices are in use CAG shall:

- (i) be responsible for enforcing (whether by towing or otherwise) violations of its Permittees who use Restricted Parking Spaces on the Bexley Tract for parking in violation of the applicable restrictions;
 - (ii) designate 16 parking spaces in the area designated on the Site Plan as "Bexley Replacement Parking" for the exclusive use of Permittees of the Bexley Tract; and
 - (iii) provide access on the CAG Tract in the location designated on the Site Plan as "Access for Bexley Replacement Parking" at its sole cost. Bexley shall remove any trash receptacles or other obstructions in such area at its expense and shall obtain all governmental and other approvals and permits that may be required for such use, and once removed and such approvals and permits obtained CAG shall make improvements (e.g., grading and/or paving) to such area as may be reasonably necessary to provide a paved connection to the Bexley Replacement Parking.
- (g) As of the Effective Date, the Bexley Tract consists of approximately 21,816 square feet of floor area. Bexley may not increase such floor area unless the Parties agree in writing (which may be by amendment to this Agreement), in light of additional parking provided on the Bexley Tract to accommodate such increase, that such additional floor area will not result in additional burden on the CAG Tract and the parking and access thereon.

4. Improvements to the Bexley Tract by CAG. CAG shall have the right and obligation to modify the existing conditions of the Bexley Tract, at its cost, to improve the Bexley Tract to be in substantial conformance with the improvements identified on Exhibit E as the "CAG Bexley Tract Improvements". CAG shall pay all hard and soft costs for such improvements including design, engineering, and contractor fees and all other fees, costs and expenses incurred by CAG pursuant to plans approved by the City.

5. Modifications to the CAG Tract. Upon CAG's receipt of a permanent certificate of occupancy for any redevelopment on the CAG Tract after the Effective Date, and subject to any taking or deed in lieu thereof and temporary closures due to emergencies, construction, maintenance, or preservation of property rights, CAG shall maintain a vehicular access point to and from the CAG Tract and East Main Street substantially comparable to the access shown on the Site Plan.

6. Mutual Right of Access to and Use of Easements. Bexley shall not restrict or block access to the Bexley Tract Access Easement Area, and except as provided in Section 3 CAG shall not restrict or block access from the Bexley Tract to the areas on the CAG Tract that are subject to Bexley's parking easement, except that each Party reserves the right to temporarily erect or place barriers in and around such areas on its Tract for emergencies, maintenance, or preservation of property rights. If either Party needs to temporarily restrict or block access to the easement area(s) on its Tract, such Party shall only do so in stages to ensure that one of the two No Change Areas shall always remain open for vehicular ingress and egress to and from the CAG Tract and the Bexley Tract Access Easement Area.

7. Maintenance of Easement Areas. Following the construction and improvements of the easement areas as provided herein, each Party shall operate, maintain, repair and replace, or cause to be operated, maintained, repaired and replaced the portion of the easement area(s) located on its Tract in a sightly, safe condition (including reasonably free from accumulations of snow, ice, and trash) and good state of repair comparable to the standard of operation and maintenance followed in other first class mixed-use residential, commercial and public or quasi-public developments in the City of Bexley, Ohio and the Columbus metropolitan area and in compliance with all applicable laws. Upon CAG's receipt of a permanent certificate of occupancy for any redevelopment on the CAG Tract after the Effective Date, Bexley and CAG shall equally share the cost of maintaining the Bexley Tract Access Easement Area. Bexley shall not share in the cost of any maintenance of the CAG Tract. Within 120 days after the end of each calendar year after CAG's receipt of such certificate of occupancy, Bexley shall provide CAG with reasonably sufficient

documentation specifying the maintenance performed to the Bexley Tract Access Easement Area and the cost thereof during the preceding calendar year, and CAG shall reimburse Bexley for 50% of Bexley's reasonable third-party, out-of-pocket costs and expenses for such maintenance within thirty (30) days after receipt of demand therefor together with such documentation. If Bexley fails to timely provide CAG with such documentation within such 120 days, then CAG shall not be responsible for reimbursing Bexley the maintenance costs for such preceding calendar year and Bexley shall be solely responsible for all such costs.

8. Bexley's Limited Right to Relocate the Bexley Tract Access Easement Area. Notwithstanding anything herein to the contrary, Bexley shall be entitled to relocate and/or reposition the Bexley Tract Access Easement Area from that depicted on the Site Plan; provided that

- (i) Bexley shall give CAG at least thirty (30) days prior written notice of such relocation and/or repositioning,
- (ii) no relocation, repositioning or any other change shall be made to the No Change Areas,
- (iii) the relocated and/or repositioned portions of the Bexley Tract Access Easement Area shall consist of a paved driveway of not less than sixteen feet (16') in width, except for the No Change Areas which shall not be less than twenty-two feet (22') in width,
- (iv) the relocated and/or repositioned Bexley Tract Access Easement Area shall at all times provide a paved driveway connection to the No Change Areas in a manner that provides two-way vehicular ingress and egress (one in and one out of the No Change Areas) to and from the No Change Areas and the remainder of the Bexley Tract Access Easement Area that is substantially comparable to that existing prior to such relocation and/or repositioning, and
- (v) the relocated and/or repositioned portions of the Bexley Tract Access Easement Area shall at all times provide vehicular ingress and egress to a signalized access to East Main Street that is substantially comparable to that existing prior to such relocation and/or repositioning.

9. Insurance. All Parties shall maintain, or cause to be maintained comprehensive general liability insurance, including auto, with limits of liability for property damage and personal injury or death, of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate with a commercially reasonable deductible, which may be provided by umbrella or excess liability policies. All such liability policies shall name the other Parties as additional insureds. All policies must be issued by carriers with a *Best's Insurance Reports* policyholder's rating, to the extent commercially reasonable, of "A-".

10. Indemnification. CAG shall indemnify and hold harmless the City and BCIC from and against all loss, liability, damage, actions, causes of action, or claims for injury, death or damage of whatever nature to any person, property or business interest caused by or resulting from the exercise of the rights afforded to CAG under this Agreement.

11. Damage. If, as a result of the exercise of any easement rights created hereby, a Party shall damage or disturb the improvements of another Party, the Party causing such damage or disturbance shall promptly repair and restore the property of such other Party to, as nearly as possible, the condition existing prior to such damage or disturbance. If such damage is not promptly restored, the Party causing such damage shall be responsible for and reimburse the non-damaging Party for any necessary, reasonable and actual costs incurred by the non-damaging Party relative to repair of such damage.

12. Liens. In the event any mechanic's lien is recorded against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so recorded agrees to cause such lien to be discharged within 30 days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. The Party permitting or causing such lien agrees to defend, protect, indemnify and hold harmless each other Party and its Tract from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and costs of a lawsuit arising out of or resulting from such lien.

13. Default.

- (a) The occurrence of any one or more of the following events shall constitute a material default and breach of this Agreement by the non-performing Party (the "Defaulting Party"):
- (i) The failure to make any payment required to be made hereunder within ten days after issuance of a written notice by another Party (the "Non-Defaulting Party").
 - (ii) The failure to observe or perform any of the covenants, conditions or obligations of this Agreement, other than as described in (i) above, within 30 days after the issuance of a written notice by any Non-Defaulting Party specifying the nature of the default claimed.
 - (iii) The failure of the responsible Party to maintain the easement area(s) on its Tract within 30 days after the issuance of a written notice by any Non-Defaulting Party specifying the nature of the default claimed.
- (b) With respect to any default under Section 13(a)(ii) or (iii), any Non-Defaulting Party shall have the right, following the expiration of any applicable cure period, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all actual, third-party out-of-pocket costs and expenses incurred in connection with such curative action, plus interest at the lesser of the maximum rate allowed by law and the prime rate of Huntington National Bank (or its successor) plus three percent or a commercially reasonable equivalent thereto if such prime rate is no longer published, within ten days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. Except for emergency situations, a Non-Defaulting Party shall take no action under this Section 13(b) so long as the Defaulting Party has commenced to cure the default and is continuing to use commercially reasonable efforts to complete the cure of the default.

- (c) All of the remedies permitted or available to a Party under this Agreement or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

14. Title to Parties' Tracts. Each Party represents and warrants to every other Party that it is the owner of such Party's Tract as identified in attached Exhibits A, B, and C.

15. Covenants Running With Land. The terms of this Agreement and all easements and covenants created hereunder shall run with the land, shall burden the City Tract, BCIC Tract and CAG Tract and shall be binding upon and shall benefit each Party and its successors and assigns, and shall be subject to all matters of record as of the Effective Date, including without limitation, the Easement Agreement recorded as Instrument Number 201406230078700 and the Access Easement recorded as Instrument Number 201506190082661 in the Recorder's Office, Franklin County, Ohio, provided that such matters of record shall not confer any rights of third parties benefitted thereby to the easements or rights granted hereunder. The easements shall be considered easements appurtenant to the tracts of each Party and their successors and assigns, shall burden the tract or any portion thereof owned by each Party and benefit the tracts of or any portion thereof of all other Parties whose tracts are burdened thereby and all of their successors and assigns. It is intended that the covenants, easements, promises and duties of each Party, as set forth in this Agreement, shall be construed as covenants and not as conditions and that, to the fullest extent legally possible, all such covenants shall run with the land and be enforceable against the City, BCIC and CAG and their successors and assigns.

16. Legal Effect: Non-Merger. All of the provisions of this Agreement in respect of the easements herein granted are for the mutual benefit and protection of the present and all future owners of the fee simple estates in the benefitted Property; and if there should at any time be common ownership of any of said premises or estates therein, it is the intention of the Parties that there shall be no merger into the respective fee simple estates of the rights, benefits and obligations and burdens of this Agreement, but that such obligations shall be separately preserved, nor shall the easements be extinguished thereby.

17. No Dedication to the Public/No Third-Party Beneficiaries. The easements created herein are not intended to be a gift or dedication or to grant any rights to the public. No rights, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

18. Notice Of Transfer. If the City, BCIC or CAG should transfer any portion of its property or interest therein to another person or entity, it shall promptly notify the other parties of such transfer in the manner provided in Section 26 hereof. Such notice shall contain the name of the transferee and the address of such transferee for purposes of receiving notices hereunder. If a party fails to notify the other of a transfer of its interest in its property, or fails to include the address of the transferee in a transfer notice, the other party may send notices hereunder to such transferee, at the tax mailing address listed for such transferee on the books of the Franklin County, Ohio Treasurer, until such time as the transferee has notified the other party of a different notice address in the manner provided in Section 26 hereof.

19. Waiver. Failure on the part of any Party to complain of any action or inaction on the part of the other Parties no matter how long the same may continue, shall not be deemed to be the waiver of any such Party's rights hereunder. Furthermore, it is covenanted and agreed that no waiver at any time of the provisions hereof by any Party shall be construed as a waiver of any of the other provisions hereof and that a waiver at any time of any of the provisions hereof shall not be construed at any subsequent time as a waiver of the same provisions. The approval of any Party to or for any action by the other Parties requiring that Party's consent or approval shall not be deemed to waive or render unnecessary the Party's consent or approval to or of any subsequent similar act by the other Parties.

20. Amendments/Modifications. This Agreement and the exhibits hereto contain the entire agreement between the Parties with respect to the subject matter hereof, and any prior agreement, whether oral or written, is superseded in total hereby. This Agreement may not be modified, terminated or amended except by written agreement signed by the then-current Approving Parties, and recorded in the real property records of Franklin County, Ohio.

21. Independent Contractors. Nothing contained in this Agreement shall be construed to make the Parties hereto partners or joint venturers or to render any said Parties liable for the debts or obligations of the other, except as expressly provided in this Agreement.

22. Partial Invalidity/Severability. If any term, provision or condition contained in this Agreement shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each and every other term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

23. Captions. The captions of the paragraphs of this Agreement are for convenience only and shall not be construed or referred to in resolving questions of interpretations or conditions.

24. Governing Law. This Agreement and all the provisions hereof shall be governed by and construed in accordance with the laws of the State of Ohio.

25. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one original document.

26. Notices. All notices or communications to be given under or pursuant to this Agreement shall be in writing, addressed to the parties at their respective addresses as provided below, and delivered (i) personally, (ii) overnight by a nationally recognized courier, or (iii) by certified or registered mail, postage prepaid, return receipt requested. Any such notice shall be deemed to have been given as follows: (i) when sent by certified or registered mail, as of the date of receipt, as evidenced by the return receipt and (ii) when sent by any other means, upon receipt. Until further notice, the addresses of the parties to which notices are to be addressed will be as follows:

If to City: City of Bexley
 2242 E. Main Street
 Bexley, Ohio 43209
 Attention: Mayor Benjamin J. Kessler

If to BCIC: BCIC Bexley Square, LLC
 c/o Bexley Community Improvement Corporation
 2242 E. Main Street
 Bexley, Ohio 43209
 Attention: President

With a copy to Megan Meyer at the BCIC address

If to CAG: CAG Bexley Apts, LLC
 150 East Broad Street, Suite 800
 Columbus, Ohio 43215
 Attention: Mark. A Damante

Each Party may change its address by written notice given to the other Parties in the manner hereinabove provided.

27. Exculpation; Limitations on Remedies. None of the Persons comprising a Party (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party. Each Party agrees to look solely to the interest in a Tract of a Defaulting Party for recovery of damages for any breach of this Agreement; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party to pursue equitable relief in connection with any term, covenant or condition of this Agreement, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance, and recover all costs, including interest thereon, relating to such enforcement action.

28. Recording. This Agreement shall be recorded after execution in the office of the Recorder of Franklin County, Ohio.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CITY:

CITY OF BEXLEY,
an Ohio municipality

By: _____
Name: Benjamin J. Kessler
Title: Mayor

STATE OF OHIO

COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me, a notary public in and for said County and State, on _____, 2024, by Benjamin J. Kessler, the Mayor of City of Bexley, an Ohio municipality, on behalf of the municipality.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

BCIC:

**BCIC BEXLEY SQUARE, LLC,
an Ohio limited liability company**

By: _____

Name: _____

Title: _____

STATE OF OHIO

COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me, a notary public in and for said County and State, on _____, 2024, by _____, the _____ of BCIC Bexley Square, LLC, an Ohio limited liability company, on behalf of the company.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

CAG:

CAG BEXLEY APTS, LLC,
an Ohio limited liability company

By: _____
Mark A. Damante
Vice President

STATE OF OHIO

COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me, a notary public in and for said County and State, on _____, 2024, by Mark A. Damante, Vice President of CAG Bexley Apts, LLC, an Ohio limited liability company on behalf of the company.

Notary Public

Commission expires: _____

[NTD: ADD JOINDER OF MORTGAGE LENDER FOR EACH PARTY THAT HAS A MORTGAGE]

LIST OF EXHIBITS

<u>Exhibit A</u>	City Tract Legal Description 0.58± acres
<u>Exhibit B</u>	BCIC Tract Legal Description 0.94± acres
<u>Exhibit C</u>	CAG Tract Legal Description 2.96± acres
<u>Exhibit D</u>	Parcel Exhibit of City Tract, BCIC Tract, and CAG Tract
<u>Exhibit E</u>	CAG Bexley Tract Improvements
<u>Exhibit X</u>	Site Plan

