

**TAX INCREMENT FINANCING AND COOPERATIVE AGREEMENT**

by and among

**COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY**

and

**CITY OF BEXLEY, OHIO**

and

**CAG BEXLEY APTS, LLC**

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Dated as of

\_\_\_\_\_ 1, 2024

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## **TAX INCREMENT FINANCING AND COOPERATIVE AGREEMENT**

THIS TAX INCREMENT FINANCING AND COOPERATIVE AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_\_ 1, 2024, by and among the COLUMBUS-FRANKLIN COUNTY FINANCE AUTHORITY (the “Issuer”), a port authority and body corporate and politic duly organized and validly existing under the laws of the State of Ohio, the CITY OF BEXLEY, OHIO, a municipal corporation duly organized and validly existing under the laws of the State of Ohio and its Charter (the “City”), and CAG BEXLEY APTS, LLC, an Ohio limited liability company (the “Developer”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

### **RECITALS:**

WHEREAS, City Council, by its Amended Ordinance No. 19-23, passed on November 14, 2023 (the “TIF Ordinance”), declared 100% of the increase in true value of the property subject to the TIF Ordinance and generally known as the Trinity Apartments TIF (the “Trinity Apartments TIF”) to be a public purpose, exempted such increase in true value from real property taxation for a period of thirty (30) years commencing with the first year that begins after the effective date of the TIF Ordinance (defined below) and in which an improvement first appears on the tax list and duplicate of real and public utility property; and

WHEREAS, the Developer has acquired certain real property located at 2160-2184 East Main Street (collectively, the “Site”) on which the Developer will construct a mixed-use building that will include approximately 232 residential apartment units, 11,850 square feet of class A office, 10,800 square feet of retail space and related site improvements (the “Private Project”) on approximately 3 acres in the City that are subject to the TIF Ordinance and that will create jobs in the City; and

WHEREAS, to enable the construction of the Private Project, certain public infrastructure improvements must be constructed to support the Private Project, which public infrastructure improvements will include a public parking facility containing approximately 269 spaces and related improvements, as such are more specifically described in the Plans and Specifications (the “Project”); and

WHEREAS, the Developer has now requested that the Issuer issue bonds (the “Bonds”) in order to finance the costs of the Project, and the proceeds of the Bonds will assist the Developer or its affiliates to invest in the Private Project; and

WHEREAS, the Issuer has agreed to provide the requested financing for the Project by issuing Bonds, provided that the City and the Developer enter into this Agreement with the Issuer in order that the City transfer Service Payments to the Trustee to fund debt charges on, fund debt charge reserves for, and pay costs incurred in connection with the Bonds as well as reimbursing and refunding minimum service payments; and

WHEREAS, the Issuer confirms its findings and determinations that upon execution and delivery of this Agreement by the Parties that: (a) the Project is a “project” and a “port authority facility” within the meaning of those terms as defined in Section 4582.21, Ohio Revised Code; (b)

the design, construction, and operation of the Project is consistent with the purposes of Sections 13 and 16 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the City and the State of Ohio; and (c) the Project is consistent with the purposes of Section 4582.21(B)(1), Ohio Revised Code, to enhance, foster, aid, provide, or promote economic development and housing opportunities within the City of Bexley and Franklin County; and

WHEREAS, the Parties desire to set forth their cooperative arrangements for the design, construction, and financing of the Project;

NOW, THEREFORE, in consideration of the premises, promises, and the mutual representations and agreements hereinafter contained, the Issuer, the City, and the Developer agree as follows (provided that any obligation of the Issuer hereunder is not a general debt of that Issuer and does not give rise to any pecuniary liability of the Issuer but is payable solely from proceeds received from the sale of the Bonds (with respect to Project Costs) or Service Payments (with respect to Permitted Costs) available to the Issuer, and any obligation of the City hereunder to pay the Service Payments to the Issuer is not a general debt of the City and does not give rise to any pecuniary liability of the City but is payable solely from the Service Payments received by the City):

(END OF RECITALS)

## **ARTICLE I** **DEFINITIONS**

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement, the words and terms set forth in Section 1.2 hereof shall have the meanings set forth therein unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2. Definitions. In addition to the terms defined in the recitals, the following terms shall have the meanings as used herein:

“Agreement” means this Agreement, as amended and supplemented from time to time. This Agreement is the Tax Increment Financing and Redevelopment Agreement referred to in the School Compensation Agreement.

“Bond Expenses” means all reasonable out-of-pocket expenses of the Issuer in connection with their obligations under the Bonds of the type normally incurred by bond issuers, including fees and expenses of bond trustees, fees and expenses of any bond registrar, paying agent, disbursing agent, authenticating agent, continuing disclosure agent, calculation agent, or TIF administrator, and professional fees such as accounting and legal expenses in connection with any rebate calculations or obligations for tax-exempt Bonds. Bond Expenses also include ongoing annual Issuer fees to the extent based on the amount of its outstanding Bonds, and any amounts advanced from the Issuer’s reserves or other funds of the Issuer for the payment of debt charges on the Bonds.

“Bonds” means the Issuer’s Special Obligation Revenue Bonds, Series 2024 (Bexley Main Street Mixed-Use Redevelopment Project – Public Infrastructure and Parking Garage), together with any bonds issued to refund those bonds with the written consent of the City. The initial debt charges and scheduled Bond Expenses on the initial Bonds shall be attached as Exhibit B hereto and shall be updated from time to time by the Issuer upon the issuance of any refunding bonds.

“Calculation Agent” means initially DiPerna and Company, LLC, or a replacement Calculation Agent approved by the City and the Issuer and consented to by the Trustee, at the direction of the Holders (if Holder consent is required under the Trust Agreement).

“Cooperative Agreement Ordinance” means City Ordinance No. \_\_\_\_-24, as enacted by City Council on \_\_\_\_\_, 2024, approving this Agreement and pledging the Service Payments for payment under this Agreement.

“Declaration” means the Declaration of Covenants and Imposition of Continuing Priority Lien recorded against the parcels comprising the Site (except for the Garage Parcel) in connection with the issuance of the Bonds to ensure sufficient revenue to pay Debt Charges and Bond Expenses by the imposition of the Minimum PILOTs.

“Environmental Laws” means all applicable federal, state, and local environmental, land use, zoning, health, chemical use, safety, and sanitation laws, statutes, ordinances, and codes relating to the protection of the environment or governing use, storage, treatment, generation,

transportation, processing, handling, production, or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders, and directives of federal, state, and local governmental agencies and authorities with respect thereto, including, without limitation, CERCLA and Chapter 3734 of the Ohio Revised Code.

“Event of Default” has the meaning designated in Section 6.1.

“Garage Parcel” means the parcels, parcel or portion of a parcel on the Site upon which the Parking Garage (as described in Exhibit A) is located.

“Hazardous Materials” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, *et seq.*), RCRA, or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Holders” has the meaning assigned thereto in the Trust Agreement.

“Issuance Costs” mean all fees and expenses of the Issuer and the City incurred in connection with the original issuance of the Bonds, including, without limitation, direct out-of-pocket costs of the Issuer, fees and expenses of the underwriter or placement agent, Trustee fees and expenses, financial advisory fees, costs of analyses of the Service Payments securing the Bonds, appraisals, attorneys’ fees and expenses (including for the purchaser of the Bonds), rating agency fees and expenses, printing costs for offering documents for the Bonds and other usual and customary expenses incurred in connection with the issuance of municipal bonds.

“Issuer Act” means Ohio Revised Code Sections 4582.21 *et seq.*, as enacted and amended from time to time.

“Minimum PILOTs” means the Minimum PILOTs payable by the owners of the Site pursuant to the Declaration.

“Parties” means, collectively, the Issuer, the City and the Developer.

“Party” means any one of the Issuer, the City or the Developer.

“Payment Date” means each May 15 and November 15.

“Permitted Costs” means the following uses of Service Payments: (i) debt charges on the Bonds, including principal, interest and premium, if any, and any optional or mandatory redemption of all or a portion of the Bonds prior to their scheduled redemption date as provided in the Bond proceedings; (ii) required rebate payments to the U.S. Treasury; (iii) funding necessary to fund or replenish the debt charge reserves for the Bonds (or reimburse payments made by the Issuer to avoid draws on debt charge reserves); (iv) Bond Expenses; (v) Reimbursement Obligation; and (vi) payment of School Compensation.

**“Plans and Specifications”** means the detailed final working drawings and specifications and addenda thereto for the construction of the Project or portions thereof, as applicable, as amended by any change orders, as those documents have been or will be prepared by the Developer and approved by the City pursuant to its normal practices and procedures.

**“Project”** means the acquisition, development, design, finance, and construction of a public improvement as generally set forth in Exhibit A hereto and as more specifically described in the Plans and Specifications.

**“Project Costs”** means only those costs reasonably necessary to accomplish the Project as shown on the Project budget attached as Exhibit A.

**“Reimbursement Obligation”** means reimbursements and refunds of the Minimum PILOTs (without interest thereon), to the Developer, its respective successors and assigns, or any other subsequent property owner as defined in and pursuant to Ohio Revised Code Section 5709.91 and to the Declaration, with (a) reimbursements of Minimum PILOTs made as Statutory Service Payments become available for such reimbursements of Minimum PILOTs (as identified in the Calculation Agent Reports), and (b) refunds of Minimum PILOTs made only if the Trustee, Issuer, and/or City receive Minimum PILOTs for a parcel included in the Site for a period of time in an amount that does not reflect a credit for the amount of the Statutory Service Payments received with respect to that parcel included in the Site for the same period of time and only in an amount up to the value of such Statutory Service Payments received less any penalties or interest paid for late payment of the Statutory Service Payments, which shall never be included in the calculation of any such credit or refund based thereon, all in accordance with the Declaration, and provided that there are no overdue Service Payments or other payments due hereunder from the applicable property owner.

**“School Compensation”** means payments due to the School District under the School Compensation Agreement.

**“School Compensation Agreement”** means the Tax Increment Financing Compensation and Cooperation Agreement dated as of November 14, 2023, by and between the City and the School District, as the same may be amended.

**“School District”** means the Board of Education of the Bexley City School District.

**“Semi-Annual Minimum Amount”** means the amount to be transferred to the Trustee, on behalf of the Issuer, for debt charges on the Bonds and scheduled Bond Expenses as shown on Exhibit B for the corresponding Payment Date. The Semi-Annual Minimum Amount shown on Exhibit B shall be updated to reflect interest rate re-sets for the Bonds (as calculated by the Calculation Agent) and may be updated from time to time with the consent of the City to reflect the issuance of refunding Bonds or the issuance of additional Bonds (subject to any required consents under the Trust Agreement) to finance additional Project Costs approved by the City pursuant to its change order approval process.

**“Service Payments”** mean, collectively, the Statutory Service Payments and the Minimum PILOTs.

“Site” means that certain real property located at 2160-2184 East Main Street in the City owned by the Developer or an affiliate of the Developer.

“Statutory Service Payments” means service payments in lieu of taxes generated from the Site due to the City as required by the TIF Ordinance during the original 30-year term, including any penalties and interest at the then current rates for real-property taxes and any “property tax rollback payments” made with respect to service payments in lieu of taxes (i.e., those rollback payments that are paid to the City with respect to an improvement exempted from taxation by the TIF Ordinance). Statutory Service Payments do not include the portion of payments in lieu of taxes (and any related property tax rollback payments) due to the School District pursuant to the School Compensation Agreement.

“Surplus Service Payments” means all Service Payments received by the Trustee that are to be returned to the City under the Trust Agreement.

“TIF Act” means Ohio Revised Code Sections 5709.40, 5709.42, 5709.43, and 5709.91.

“TIF Fund” means the Trinity Apartments Municipal Public Improvement Tax Increment Equivalent Fund, created by the City pursuant to the TIF Ordinance and the provisions of the TIF Act.

“TIF Ordinance” means City Amended Ordinance No. 19-23 creating the Trinity Apartments TIF, as enacted by City Council on November 14, 2023.

“Trust Agreement” means the Trust Agreement dated as of \_\_\_\_\_, 2024, by and between the Issuer and the Trustee.

“Trustee” means The Huntington National Bank, or such other successor trustee appointed pursuant to the terms of the Trust Agreement.

Section 1.3. Interpretation. Any reference herein to a Party or public body or to any member or officer of either includes entities or officials succeeding to their respective functions, duties, or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a Section or provision of the Constitution of the State of Ohio, or the TIF Act, the Issuer Act, or to any other section, provision, or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America or the City of Bexley Charter or its City Code, includes that section, provision, or chapter as amended, 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 provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the City, or the Developer under this Agreement.

This Agreement shall not be construed more strictly against a party by virtue of the fact that a contract may be more strictly construed against the party preparing the contract, it being understood and agreed that the Parties have equally negotiated the provisions hereof and contributed substantially and materially to the preparation of this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Agreement; and the term “hereafter” means after, and the term “heretofore” means before. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs, or clauses hereof.

(END OF ARTICLE I)

## **ARTICLE II** **REPRESENTATIONS**

Section 2.1. Representations by the City. The City represents to the other Parties as follows:

(a) It has the power and authority to enter into and perform its obligations set forth in this Agreement.

(b) It has duly authorized, executed, and delivered this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable in accordance with its terms.

(c) Neither the entry into nor the performance of and compliance with this Agreement has resulted or to its knowledge will result in any violation of, or a conflict with, or a default under, any judgment, decree, order, or material contract or agreement by which it is bound or any legal requirement applicable to it.

(d) There is no action, proceeding or investigation pending for which it has received notice or, to the actual knowledge of the individuals signing this Agreement on its behalf, threatened, which questions, directly or indirectly, the validity or enforceability of this Agreement or any action taken or to be taken pursuant to this Agreement.

(e) There does not exist any Event of Default by it or fact or circumstance which, with the giving of notice, the passage of time or both, could become an Event of Default by it.

(f) The TIF Ordinance has been duly adopted by City Council, has not been amended or repealed, is not subject to referendum and is in full force and effect.

Section 2.2. Representations by the Issuer. The Issuer represents to the other Parties as follows:

(a) It has the power and authority to enter into and perform its obligations set forth in this Agreement.

(b) It has duly authorized, executed, and delivered this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable in accordance with its terms.

(c) Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, or material contract or agreement by which it is bound or any legal requirement applicable to it.

(d) There is no action, proceeding or investigation pending for which it has received notice or, to the actual knowledge of the individual signing this Agreement on its behalf, threatened, which questions, directly or indirectly, the validity or enforceability of this Agreement or any action taken or to be taken pursuant to this Agreement.

(e) There does not exist any Event of Default by it or fact or circumstance which, with the giving of notice, the passage of time or both, could become an Event of Default by it.

Section 2.3. Representations by the Developer. The Developer represents to each of the other Parties as follows:

(a) It is a limited liability company duly organized and validly existing under the laws of the State of Ohio.

(b) It has the power and authority to enter into and perform its obligations set forth in this Agreement.

(c) It has duly authorized, executed, and delivered this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable in accordance with its terms.

(d) Neither the entry into nor the performance of and compliance with this Agreement has resulted or will result in any violation of, or a conflict with or a default under, any judgment, decree, order, material contract or agreement by which it is bound or any legal requirement applicable to it.

(e) There is no action, proceeding or investigation pending for which it has received notice or, to the actual knowledge of the individual signing this Agreement on its behalf, threatened, which questions, directly or indirectly, the validity or enforceability of this Agreement or any action taken or to be taken pursuant to this Agreement.

(f) There does not exist any Event of Default by it or fact or circumstance which, with the giving of notice, the passage of time or both, could become an Event of Default by it.

(END OF ARTICLE II)

**ARTICLE III**  
**COOPERATIVE ARRANGEMENTS; ISSUANCE OF THE BONDS;**  
**CONSTRUCTION OF THE PROJECT**

Section 3.1. Cooperative Arrangements. The Developer has heretofore requested the assistance of the Issuer in the financing of the Project. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement among the Parties, the City and the Issuer have determined to cooperate with each other in the financing of the Project, all in accordance with this Agreement. This Agreement is intended to and shall be an agreement among the Parties, to cooperate in the construction and financing of the Project pursuant to the TIF Act and the Issuer Act, and the agreements contained herein are intended to, and shall be construed as, agreements to further effect cooperative action and safeguard the respective interests of the Parties.

To the extent necessary, desirable, or appropriate to implement the intent of this Agreement, and in accordance with the Issuer Act, the Issuer undertakes to, and is authorized by the City to, exercise any power, perform any function, and render any service, on behalf of the City to design and construct the Project and finance the Project Costs from Bonds payable from Service Payments and the collection of the Service Payments, together with all powers necessary or incidental thereto, to the fullest extent that the City is authorized to exercise, perform, or render such power, function or service. Each power exercised, function performed, or service rendered by the Issuer hereunder, to the extent necessary to the implementation of this Agreement and the design and construction of the Project and financing of Project Costs in the manner set forth herein, and the collection and enforcement of Service Payments, is undertaken by the Issuer pursuant to Ohio Revised Code Sections 4582.25, 4582.31, 4582.43, and 4582.431.

Based upon the foregoing, and upon and subject to the terms and conditions of this Agreement, the Issuer will finance a portion of the Project Costs by issuing the Bonds and assigning the Service Payments to the Trustee as security therefor. The City approves of the issuance of the Bonds to the extent required by Ohio Revised Code Section 9.94. The Parties hereto agree that the Bonds will (a) have an optional call provision beginning no later than five (5) years after the issuance of the Bonds to permit redemption or refunding of the Bonds using any funds available and (b) bear interest at a rate not to exceed seven percent (7.00%) per year. In consideration of that undertaking by the Issuer, on or before each Payment Date each year so long as any Permitted Costs are outstanding, the City will transfer to the Trustee, on behalf of the Issuer, the Service Payments in the possession of the City as of each Payment Date. The City has no obligation to transfer to the Trustee any funds or revenues from any other source other than the moneys received by the City from the collection of the Service Payments. Service Payments paid to the Trustee may only be used for Permitted Costs as provided in the Trust Agreement. The form of Trust Agreement for the initial issuance of the Bonds is approved by the City. The Issuer shall not agree to any amendments to that form that (i) require the consent of the Holders or (ii) modify the distribution of funds from the Revenue Fund, without the written consent of the City.

The Issuer, on behalf of the City, will deliver or cause to be delivered, to each owner of the Site a bill for each installment of the Minimum PILOTs, and the Parties acknowledge and agree that owners of the Site shall pay the Minimum PILOTs directly to the Trustee. The Issuer shall be solely responsible for the calculation and collection of Minimum PILOTs in accordance with the

terms of the Declaration and Section 4.2 of this Agreement; provided, however, that the City agrees to reasonably cooperate with all such calculation and collection efforts. If necessary, the City shall undertake appropriate action in a timely manner to enable the Minimum PILOTs to be certified for collection by the County Treasurer.

The Issuer shall retain the Calculation Agent, who shall prepare and deliver to the Issuer, the Developer, the City, and the Trustee (who, working with the Calculation Agent, shall provide a copy to the Holders) a report in form and substance acceptable to the City and Issuer at least 30 days prior to each Payment Date, which report shall include, at a minimum, a description of any Bond Expenses due (other than scheduled Bond Expenses shown on Exhibit B), the amount of School Compensation due, the amount of Minimum PILOTs to be billed and collected (if any), the amount of Service Payments on deposit in the TIF Fund to be paid by the City to the Trustee on the next succeeding Payment Date, the amount of any Reimbursement Obligation due to the Developer, and the recommended application by the Trustee of amounts in the Revenue Fund established under the Trust Agreement. The Calculation Agent or the Issuer shall provide such documentation as the City may reasonably request to substantiate the Calculation Agent report. If the City objects to the Calculation Agent's report, the City, the Calculation Agent and the Issuer shall promptly meet to resolve any dispute or discrepancy, and the City and the Issuer shall each use their best efforts to resolve any objection. Prior to the resolution of such objection, the City may withhold Service Payments for payment of such portion in dispute; provided, however, that the City may not withhold Service Payments necessary to pay the Semi-Annual Minimum Amount. In addition, prior to resolution of such objection, the Issuer shall not expend any disputed portion of the Bond Expenses and shall require the Trustee to retain such amount in the accounts held by the Trustee for possible refund to the City. Notwithstanding the foregoing, any such objection shall not delay use of the Service Payments to pay debt charges on the Bonds, including principal, interest and premium, if any, or scheduled Bond Expenses.

Proceeds of the Bonds will be disbursed pursuant to the Trust Agreement and may only be applied to Project Costs, Issuance Costs, funding of debt charge reserves for the Bonds, Bond Expenses, redemption of Bonds and capitalized interest on the Bonds. All disbursements for Project Costs are subject to review and approval by the City prior to disbursement. Any Project Costs submitted for disbursement must be included in the Project budget attached as part of Exhibit A. The Developer agrees to furnish to the City copies of the documents and evidence required by the City for its review of disbursement requests. A copy of each executed "Disbursement Request," as defined in the Trust Agreement, with all attachments, shall be provided by the Developer to the City at the same time copies are provided to the Issuer and the Trustee. The Issuer will provide to the City copies of any Disbursement Requests and related materials in its possession upon request of the City. Receipt of a Disbursement Request does not constitute a representation or warranty by the City of the accuracy or completeness of such Disbursement Request.

Section 3.2. Undertaking the Project. The City, the Issuer, and the Developer agree to undertake the Project with all reasonable dispatch and in accordance with the following:

(a) City Approvals. The City will, pursuant to its normal practices and procedures, use best efforts to provide all approvals and permits necessary for the construction of the Project. The Parties acknowledge and agree that such approvals may be made at different times for separate portions of the Project.

(b) Construction of the Project and Deadlines. The Developer will be responsible for, and will construct or cause the construction of, the Project prior to December 31, 2026 in accordance in all material respects with the Plans and Specifications as approved by the City from time to time, all applicable laws and regulations, and this Agreement.

(c) Prevailing Wages, Wage Theft, and Other Requirements. The City, the Issuer, and the Developer acknowledge and agree that the construction contracts for the Project will be made in the manner, and on the terms and conditions, as required by law, and that the payment of prevailing wages pursuant to Chapter 4115 of the Ohio Revised Code shall be required for those elements of the Project which will be dedicated to the City. The Developer shall be responsible for compliance with these requirements for the Project; the Developer will be required to submit the appropriate documentation certifying prevailing wage to a prevailing wage coordinator for all elements of the Project. Upon completion of the Project, the prevailing wage coordinator will provide a copy of the certification to the City that prevailing wage rates were paid. If it is determined that prevailing wage rates were not paid by the Developer or any subcontractor with respect to the Project, it will be required that the Developer remedy all issues in order for the Developer to be eligible for (i) disbursements for Project Costs, or (ii) refunds or reimbursements of Minimum PILOTS.

Section 3.3. Dedication. The Developer shall dedicate, covenant, or provide public easements for the portions of the Project to be dedicated to the City. The City shall accept such dedication pursuant to the applicable requirements of the Bexley Code of Ordinances. The Developer and the Issuer shall enter into a lease arrangement for the Parking Garage (the “Parking Lease”) and an Operation and Management Agreement for the operations and management of the Parking Garage, each in form and content acceptable to the City. Without limiting the foregoing, the Parking Lease shall be for a minimum term of 99 years and the Parking Lease shall permit, and Operation and Management Agreement for the Parking Garage shall provide, that the Issuer and the manager under the Operation and Management Agreement shall operate the Parking Garage and at least 185 parking spaces therein as unreserved parking spaces open to all members of the public at all times (except during limited closures for repairs and maintenance) without charge. The Issuer shall not amend the Parking Lease or the Operation and Management Agreement without the City’s written consent.

Section 3.4. Revisions to Plans and Specifications. The Developer may revise the Plans and Specifications for the Project from time to time, provided that the Developer shall not make any revision that would (i) result in a change to the Plans and Specifications that requires the approval of the City without the written approval of the City or (ii) change the Project in a manner that results in the Project being an improvement that does not qualify for financing or construction under the Issuer Act, TIF Act, or TIF Ordinance.

Section 3.5. Qualification for TIF Exemption. The Parties agree that establishing and maintaining the exemptions granted by the TIF Ordinance are critical to the security and payment of the Bonds. The Parties will cooperate in the preparation, execution, and filing of all necessary applications and supporting documents to obtain from time to time the exemptions granted by the TIF Ordinance. The City shall file any such applications at the request of either Issuer or the Developer. In the event that the City and Developer agree that the City shall prepare and file any such applications, the Developer as the property owner will be responsible for notifying the City

when any such applications must be filed. In the event that the Developer files any such applications, the Developer shall provide the City and the Issuer with a copy of the application upon completion and a copy of the state's final determination within 30 days of Developer's receipt thereof.

Section 3.6. TIRC and ODOD Reporting. The Developer agrees to cooperate with and provide the City with such information available to the Developer and requested by the Department of Development in order to complete its annual Tax Incentive Review Council (TIRC) and Ohio Department of Development (ODOD) status reports as required under Ohio Revised Code Sections 5709.85 and 5709.40(I) including but not limited to, for the Private Project, estimates of the quantitative summary of employment and private investment. The Developer shall provide information responsive to any such request within thirty (30) days of receipt of such request.

(END OF ARTICLE III)

## **ARTICLE IV** **SERVICE PAYMENTS**

### **Section 4.1. TIF Fund; Assignment of Service Payments.**

(a) The City has established and will maintain the TIF Fund pursuant to the TIF Ordinance and the TIF Act on the books and records of the City. The City will deposit into the TIF Fund all Service Payments received by it.

(b) To the full extent permitted by law, the City absolutely and irrevocably assigns to the Issuer all of its right, title, and interest in and to the Service Payments received by the City and due and payable under the terms of this Agreement, agrees to pay and transfer the same to the Issuer, or the Trustee on their behalf as provided herein, and, to the extent permitted by law, grants to the Issuer a security interest in the TIF Fund to the extent of the Service Payments due and payable under the terms of this Agreement and acknowledges that, pursuant to the Trust Agreement, the Issuer will assign to the Trustee all right, title, and interest of the Issuer in and to the Service Payments and certain rights in this Agreement; provided, however, that the Issuer's security interest in the TIF Fund applies only to the extent of the Service Payments due and payable under the terms of this Agreement and all Surplus Service Payments shall become property of the City to use for public infrastructure improvements in accordance with the TIF Ordinance at the City's discretion, or property of the School District, if transferred to the School District pursuant to the School Compensation Agreement, and that the Issuer's security interest in the TIF Fund ceases upon full repayment of all Permitted Costs. The City authorizes the Issuer and the Trustee to file any uniform commercial code financing statements necessary to perfect and maintain the perfection of that security interest. The Issuer and the Developer each acknowledges that it has no right, title, or interest in or to any portion of the TIF Fund that is not Service Payments due and payable under the terms of this Agreement, or to any Service Payments once all Permitted Costs are paid in full. The Issuer further acknowledges that Minimum PILOTs, to the extent required, shall be paid directly to the Trustee.

(c) So long as this Agreement remains in full force and effect, the City agrees that it will not transfer, encumber, spend, use, commit, or pledge the Service Payments in any way other than pursuant to this Agreement without the written consent of the Issuer, the Trustee (at the direction of the Holders) and the Developer. The City represents and warrants that it has not previously transferred, spent, used, committed, or pledged the Service Payments. The Parties agree that once all Permitted Costs are paid in full, the City's obligation to remit Service Payments to the Trustee on behalf of the Issuer ceases, and the Developer and Issuer have no further rights to any Service Payments.

(d) So long as this Agreement remains in full force and effect, the City will not amend or repeal the TIF Ordinance in any way that would reduce the amount of Service Payments deposited into the TIF Fund or affect the appropriation of the Service Payments for payment pursuant to this Agreement without the written consent of the Issuer and the Developer, except as required by law.

(e) The City agrees, represents, and warrants that the Project constitutes a portion of the Public Infrastructure Improvements described in the TIF Ordinance and that the Project Costs

shown in the budget included in Exhibit A attached hereto are properly payable from Service Payments deposited in the TIF Fund.

(f) The Issuer agrees, represents, and covenants that the Service Payments remitted to the Issuer (or its Trustee) will only be used for Permitted Costs.

Section 4.2. Collection and Enforcement. The Issuer shall be solely responsible for all actions relating to or necessary for the calculation and collection of Minimum PILOTs; provided, however, the City agrees to reasonably cooperate with all such collection efforts, including by certifying to the County Auditor unpaid Minimum PILOTs. The City authorizes the Issuer (or the Trustee or the Trustee, on the Issuer's behalf) to proceed in the City's name and take any actions that the City may be authorized by law to take, to enforce the payment of the Service Payments and the collection and enforcement (including by foreclosure) thereof. The City acknowledges that the costs of any collection efforts are Permitted Costs.

Section 4.3. Appropriation by City. All of the Service Payments received or to be received by the City and paid to the Trustee on behalf of the Issuer hereunder have been appropriated pursuant to the Cooperative Agreement Ordinance to pay the City's obligations under this Agreement. Notwithstanding the foregoing, to the extent necessary, the City agrees to use its best efforts to cause City Council to appropriate those amounts to be received into the TIF Fund constituting Service Payments for payment to the Trustee.

Section 4.4. Obligations Unconditional. The obligation of the City to make the payments from the Service Payments described in this Agreement is absolute and unconditional, and the City shall make such payments without abatement, diminution, or deduction, regardless of any cause or circumstances whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Issuer, the Developer, or the Trustee, or anyone acting by or on behalf of the Issuer, the Developer, the Trustee, or any other person, or damage to or destruction of the Project. All of the obligations of the City under this Article IV are established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City within the meaning of Ohio Revised Code Section 2731.01 and shall be enforceable by mandamus.

Section 4.5. Obligations Limited. Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement are limited special obligations of the City payable solely from Service Payments actually received by the City. Those obligations are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit or taxing power of the City, and neither the Developer, the Issuer, the Trustee, nor any other person has any right to have taxes levied by the City for the payment of its obligations under this Agreement. Any payment of money deposited into the TIF Fund is subject to the expenditure restrictions and appropriation requirements of the Ohio Revised Code and the City's Charter.

The obligations of the Issuer under this Agreement are special obligations of the Issuer payable solely from Bond proceeds (with respect to Project Costs) and the Service Payments received from the City (and with respect to Permitted Costs). Those obligations are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a

debt or pledge of the faith and credit or taxing power of the Issuer, and neither the City, the Trustee, the Developer, nor any other person have any right to have taxes levied by the Issuer for the payment of its obligations under this Agreement.

(END OF ARTICLE IV)

## ARTICLE V

### **ADDITIONAL AGREEMENTS AND COVENANTS**

Section 5.1. Litigation Notice. Any Party must give the other Parties prompt notice of any action, suit, or proceeding brought or threatened by or against the disclosing Party at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which the disclosing Party has notice, which, if adversely determined, would materially impair the ability of the disclosing Party to perform its obligations under this Agreement.

Section 5.2. Continuing Disclosure. The Developer agrees to provide the Issuer such information, at the request of the Issuer, as is sufficient to enable the Issuer to comply with any continuing disclosure obligations relating to the Bonds.

The City agrees to provide to the Issuer upon written request of the Issuer for inclusion in its continuing disclosure reports for the Bonds, a certification of the amount of Service Payments received by the City for deposit into the TIF Fund and the amount of Service Payments paid by the City to Issuer, or to the Trustee on behalf of the Issuer, during the period of time designated in the Issuer's request for certification. Further, the City will provide notice to the Issuer of any action or inaction by the City or City Council that would prevent the City from transferring the Service Payments to the Trustee on behalf of the Issuer pursuant to this Agreement within ten business days after taking such action or the City's discovery of such inaction.

Section 5.3. Indemnification by the Developer. Except to the extent that the party seeking indemnity is found to be grossly negligent, to have engaged in willful misconduct, or engaged in criminal or unlawful activity, the Developer releases the Issuer, the City, and the Trustee, and their respective officers, directors, and employees, from and agrees that the Issuer, the City, and the Trustee, and their respective officers, directors, and employees, shall not be liable for and indemnifies the Issuer, the City, and the Trustee, and their respective officers, directors, and employees against, all liabilities, claims, damages, fines, penalties, losses, costs, and expenses, including reasonable out-of-pocket and incidental expenses and reasonable legal fees, imposed upon, incurred, or asserted against the Issuer, the City, and the Trustee, and their respective officers, directors, and employees, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, installation, and equipment, of the Project or any public infrastructure improvement for which the Developer has or will request and receive reimbursement from Service Payments, whether pursuant to this Agreement or any other document, agreement, or instrument executed in connection with this Agreement; (ii) any breach or default on the part of the Developer in the performance of any covenant, obligation, or agreement of the Developer under this Agreement, any contract for the construction of the Project or any public infrastructure improvement for which the Developer has or will request and receive reimbursement from Service Payments, or any other document, agreement, or instrument executed in connection with this Agreement, or arising from any act or failure to act by the Developer with respect to the Project or any public infrastructure improvement for which the Developer has or will request and receive reimbursement from the Service Payments; (iii) the authorization, issuance, sale, trading, redemption, or servicing of the Bonds, and the provision of any information or certification furnished in connection therewith concerning the Bonds, by the Developer including, without

limitation, any information furnished by the Developer for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Issuer or the City, and any other information or certification obtained from the Developer to assure the exclusion from gross income for federal income tax purposes of interest on the Bonds, if applicable; (iv) the Developer's failure to comply with any requirement of this Agreement or any other document, agreement, or instrument executed in connection with this Agreement; (v) any failure of compliance by the Developer with the provisions of the Ohio Revised Code Chapter 4115, the TIF Act, or any other applicable provision of the Ohio Revised Code; (vi) any action taken or omitted to be taken by the Issuer, the City, or the Trustee pursuant to the terms of this Agreement or any other document, agreement, or instrument executed in connection with this Agreement, or any action taken or omitted to be taken by the Issuer, the City, or the Trustee at the written request of or with the consent of the Developer; and (vii) any claim, action, or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), (v) or (vi) above.

The Developer agrees to indemnify and hold the Issuer, the City, and the Trustee, and their respective officers, directors, and employees, harmless from and against all liabilities, claims, damages, fines, penalties, losses, and all reasonable costs and expenses, including reasonable out-of-pocket and incidental expenses and reasonable attorneys' fees and expenses, arising out of any Environmental Laws, regulations, or ordinances, incurred by the Issuer, the City, or the Trustee as a result of the existence on, or release from, the Project or any public infrastructure improvement financed by the Service Payments or any work performed for the construction of the Project or any public infrastructure improvement financed by the Service Payments by the Developer or the Issuer or any of its agents, employees, independent contractors, invitees, licensees, successors, or assignees on any property adjacent to the Project or in the vicinity of the Project, of Hazardous Materials other than in accordance with applicable federal, state, and local law and regulation, provided, however, that with respect to any land subsequently dedicated to the City, the Developer and City agree that the foregoing indemnification by the Developer will apply only if the existence on, or release from, the parcels of any hazardous materials existed prior to or occurred during the acquisition, construction, installation, equipment, and improvement of any of the public infrastructure improvements, or occurred because of the intentional, willful, or negligent wrongful acts or omissions of Developer, its officers, employees, agents, subcontractors, independent contractors, invitees, or licensees.

The Developer further covenants and agrees for the benefit of the Issuer, the City, and the Trustee that neither the Developer, nor any of its agents, employees, independent contractors (other than the City), invitees, licensees, successors, assignees, or tenants will store, release, or dispose of, or permit the storage, release, or disposal of any Hazardous Materials at the Project or, during the period of the Developer's ownership and control thereof, any public infrastructure improvement for which the Developer has or will request and receive reimbursement from Service Payments or any property adjacent thereto or in the vicinity thereof at any time other than in accordance with applicable federal, state, and local law and regulation. In the event that any party to this Agreement receives a notification or clean up requirement under 42 U.S.C. §9601 et seq. or other federal, state, or local statute, ordinance, or regulation, relating to the Project, that party shall promptly notify the other parties to this Agreement of such receipt, together with a written statement of such party setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of such party's knowledge. On receipt by the Developer of any such notification or clean up requirement, the Developer shall either proceed with appropriate

diligence to comply with such notification or clean up requirement or shall commence and continue negotiation concerning or contest the liability of the Developer with respect to such notification or clean up requirement. The Developer agrees to indemnify and hold the Issuer, the City, and the Trustee and their respective officers, directors, and employees harmless from and against any and all liabilities, claims, damages, fines, penalties, losses, and all reasonable costs and expenses, including out-of-pocket and incidental expenses and attorneys' fees and expenses arising out of any violations of Environmental Laws, regulations, or ordinances, incurred by the Issuer, the City, and the Trustee and their respective officers, directors, and employees as a result of any breach of this covenant.

In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the Issuer, the City, or the Trustee, or any officer, director, or employee of any such entity, in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Developer, and the Developer upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Developer from any of its obligations under this Section 5.3 unless that failure materially prejudices the defense of the action or proceeding by the Developer and except that the Developer shall have no obligation to indemnify the City, the Issuer, or the Trustee as to any increase in cost that the Developer can reasonably show was due to the failure to promptly notify the Developer. An indemnified party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (i) the employment of such counsel has been specifically authorized by the Developer in writing, or (ii) the Developer has failed to assume the defense and to employ counsel reasonably acceptable to each indemnified party or (iii) the named parties to any such action (including any impleaded parties) include both an indemnified party and the Developer or more than one indemnified party, and such indemnified party shall have been advised by its counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Developer and other indemnified party, in which case, if the indemnified party notifies the Developer in writing that it elects to employ separate counsel at the Developer's expense, the Developer shall not have the right to assume the defense of such action on behalf of such indemnified party and the Developer shall be responsible for payment of the reasonable fees and expenses of such separate counsel. The party seeking indemnity agrees to fully cooperate with the Developer to the extent such cooperation does not prejudice the position of such indemnified party and lend the Developer such assistance as the Developer shall reasonably request in defense of any claim, demand, action, or proceeding. Neither the Developer nor any indemnified party shall be liable for any settlement made without its consent.

Nothing in this Agreement is meant to release, extinguish, or otherwise alter or interfere with any rights which the Issuer, the City, or the Trustee and their respective officers, directors, and employees may now or hereafter have against the Developer, or any other person for any environmental liabilities as a result of the Developer's former, present or future ownership, occupancy or use of or interest in, any real property included in or in the vicinity of the Project.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, agents, and employees of the Issuer, the City, and the Trustee, respectively, and their successors and assigns. That indemnification is intended to and

shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Agreement.

**Section 5.4. No Adverse Effect on Exclusion from Gross Income of Interest on Bonds.**

Each of the City and the Developer represent that it has taken or caused to be taken, and covenants that it will take or cause to be taken, all actions that may be required of it, alone or in conjunction with the Issuer or any other Party, for the interest on the Bonds issued as obligations the interest on which is exempt from federal income taxation to be and remain excluded from gross income for federal income tax purposes, and represent that it has not taken or permitted to be taken on its behalf, and covenants that it will not take or permit to be taken on its behalf, any actions that would adversely affect such exclusion under the provisions of the Internal Revenue Code of 1986, the regulations (whether proposed, temporary, or final) under that Code or the statutory predecessor of the Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures, and judicial determinations regarding any of the foregoing, all as, and to the extent applicable to, the Bonds.

**Section 5.5. Bond Closing.** The City and the Developer agree to provide any closing certificates and legal opinions that are reasonably requested by the Issuer in connection with closing the Bonds. The Issuer shall include reasonable out-of-pocket costs incurred by the City in providing any such legal opinion as part of the Issuance Costs and shall cause the Trustee to pay such amount to the City at Bond closing. Upon the closing of any refunding Bonds, the Developer, the applicable Issuer, or the legal counsel to the applicable Issuer shall promptly notify (which may be by electronic means such as email) the City of such closing(s) and shall promptly certify (which may be by electronic means such as email) the amounts that will be applied annually to the debt charges, the funding of any debt charge reserves, and the Bond Expenses associated with the refunding Bonds or any additional bonds, respectively. The Issuer shall also provide to the City any additional information concerning the Bonds that the City reasonably requests.

**Section 5.6. Developer to Maintain Its Existence; Developer Consents.** The Developer will do all things necessary to preserve and keep in full force and effect its existence, rights, and franchises so long as any of the Bonds remain outstanding. If the Developer does not preserve and keep in full force and effect its existence, or does not respond to requests to consent to or approve certain matters hereunder (including amendments hereto) within 30 days of delivery of a request for such consent or approval, the Developer shall be deemed to have approved the matter for which the consent or approval was requested, provided that such request to consent is in writing and contains the following phrase in bold lettering: **“Failure to respond to this request for consent within 30 days of receipt shall result in such request being deemed approved.”**

(END OF ARTICLE V)

## ARTICLE VI

### **EVENTS OF DEFAULT AND REMEDIES**

Section 6.1. Events of Default. Each of the following shall be an Event of Default:

(a) The City shall fail to deposit any Service Payments it receives into the TIF Fund or pay in full to the Trustee, on behalf of the Issuer, any Service Payments in the TIF Fund due and payable under the terms of this Agreement on or prior to the Payment Date on which those payments are due and payable.

(b) A Party fails to observe and perform any other agreement, term, or condition contained in this Agreement, and the continuation of such failure for a period of thirty days after notice thereof shall have been given to the Party by the Trustee or another Party, or for such longer period as the other Parties may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the Party institutes curative action within the applicable period and diligently pursues that action to completion.

(c) Any Party: (i) admits in writing its inability to pay its debts generally as they become due; (ii) has an order for relief entered in any case commenced by it under the federal bankruptcy laws, as now or hereafter shall be in effect; (iii) commences a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or has such a proceeding commenced against it and either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety days; (iv) makes an assignment for the benefit of creditors; or (v) has a receiver or trustee appointed for it or for the whole or any substantial part of its property.

(d) Any representation or warranty made by a Party herein or any statement in any report, certificate, financial statement, or other instrument furnished in connection with this Agreement or with the purchase of the Bonds shall at any time prove to have been false or misleading in any material respect when made or given.

Notwithstanding the foregoing, if, by reason of Force Majeure, a Party is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the Party will not be deemed in default during the continuance of such inability. However, the Party must promptly give notice to the Trustee and the other Parties of the existence of an event of Force Majeure and shall use its best efforts to mitigate the effects thereof; provided that the settlement of strikes or other industrial disturbances will be entirely within its discretion.

The term "Force Majeure" shall mean, without limitation, the following:

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States of America or of the State of Ohio, or otherwise, or any of their departments, agencies, political subdivisions or officials, or any civil or military authority, provided that such action was not proximately caused by the conduct of the Party; insurrections; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; fires;

hurricanes; tornados; outbreak of disease; pandemics; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

- (ii) any other cause, circumstance, or event not reasonably within the control of the Party.

The declaration of an Event of Default under subsection (c) above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation, or reorganization proceedings.

Section 6.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) Each Party or the Trustee may pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Agreement from the defaulting Party or to enforce the performance and observance of any other obligation or agreement of the defaulting Party under this Agreement. Neither the City nor the Issuer shall be liable for any indirect, special, punitive or consequential damages (including, without limitation, loss of profits), payment of attorneys' fees, or pre-judgment accrued interest.

(b) Each Party or the Trustee may have access to, inspect, examine, and make copies of the books, records, accounts, and financial data of the defaulting Party or the Trustee pertaining to the Project.

Any remedy pursued is subject to the limitations of Section 4.5. Any amounts collected as Service Payments and any other amounts collected pursuant to action taken under this Section must be deposited and applied in accordance with the provisions of the Trust Agreement.

Section 6.3. No Remedy Exclusive. No remedy conferred upon or reserved to a Party or the Trustee by this Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy is cumulative and is in addition to every other remedy given under this Agreement, now or hereafter existing at law, in equity, or by statute. No delay or omission to exercise any right or power accruing upon any default impairs that right or power or may be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a Party or the Trustee to exercise any remedy reserved to it in this Article after an Event of Default shall have occurred, it is not necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 6.4. No Waiver. No failure by a Party or the Trustee to insist upon the strict performance by a Party constitutes a waiver of its right to strict performance and no express waiver will be deemed to apply to any other existing or subsequent right to remedy the failure by a Party to observe or comply with any provision hereof.

Section 6.5. Notice of Default. A Party must notify the other Parties and the Trustee immediately if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition, or event which, with the giving of notice or passage of time or both, would become an Event of Default.

(END OF ARTICLE VI)

## **ARTICLE VII** **MISCELLANEOUS**

Section 7.1. Term of Agreement. This Agreement remains in full force and effect until the earlier of the date: (a) Bonds are no longer outstanding and all Permitted Costs due to the Issuer have been paid; or (b) all Service Payments have been collected. This Agreement shall not be terminated as a result of an Event of Default without the written approval of the Issuer.

Section 7.2. Notices. All notices, certificates, requests, directions, consents, or other communications hereunder (each, a "Notice") must be in writing and are deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or nationally recognized overnight delivery service and addressed to the appropriate Notice Address. A duplicate copy of each Notice must also be given to each other Party and the Trustee at the notice address provided by the Trustee in the Trust Agreement. A Party, by Notice given hereunder, may designate any further or different addresses to which subsequent Notices must be sent. If, because of the suspension of delivery of certified or registered mail and nationally recognized overnight delivery services or for any other reason, Notices are unable to be given by the required delivery methods, Notices may be given in a manner as in the judgment of the sending Party will most effectively approximate mailing or overnight delivery, and the giving of that Notice in that manner for all purposes of this Agreement will be deemed to be in compliance with the requirements of this Agreement. Except as otherwise provided herein, the mailing or sending of any Notice is deemed complete upon deposit of that Notice in the mail or with the overnight delivery service, and the giving of any Notice by any other means of delivery is deemed complete upon receipt of the Notice by the intended recipient; provided, however, that any notice to the Trustee shall not be deemed to be given until receipt by it.

"Notice Address" means:

- (a) As to Issuer: Columbus-Franklin County Finance Authority  
300 Spruce Street, Suite 220  
Columbus, Ohio 43215  
Attention: President
- (b) As to the City: City of Bexley  
2242 East Main Street  
Bexley, Ohio 43209  
Attention: Mayor
- (c) As to the Developer: CAG Bexley Apts, LLC  
150 East Broad Street  
Columbus, Ohio 43215  
Attention: Mark A. Damante
- (d) As to the Trustee: The Huntington National Bank  
525 Vine Street, 14 Floor, CN01  
Cincinnati, Ohio 45202  
Attention: Jacqueline M. Dever,

Vice President

Section 7.3. Extent of Obligations; No Personal Liability. All obligations of the Issuer and the City contained in this Agreement are effective to the extent authorized and permitted by applicable law. No obligation is an obligation of any present or future member, officer, agent, or employee of the Issuer, the City, or their respective legislative authorities in other than in their official capacity, and neither the members of those legislative authorities nor any official executing the Bonds is liable personally on the Bonds or subject to any personal liability or accountability by reason of the issuance thereof or by reason of the obligations of the Issuer or the City contained in this Agreement or any other agreements containing terms and conditions of the Bonds.

Section 7.4. No Agency/Partnership Relationship. The Parties each acknowledge and agree that in fulfilling its obligations under this Agreement, the Developer is not acting as an agent of the other Parties. This Agreement does not and may not be construed to create a partnership or joint venture between the Parties.

Section 7.5. Binding Effect. This Agreement inures to the benefit of and is binding in accordance with its terms upon the Issuer, the City, and the Developer, and their respective permitted successors and assigns. The Trustee is an express third-party beneficiary of this Agreement.

Section 7.6. Amendments and Supplements. This Agreement may not be amended except as permitted by the terms of the Trust Agreement. Any amendment, if permitted, must be by written instrument executed by the City, the Issuer and the Developer. Notwithstanding the foregoing, the City and Issuer may amend this Agreement if permitted under the Trust Agreement without the consent or approval of the Developer after completion of the Project if such amendment does not affect the Developer's rights or obligations hereunder, or if the Developer has not maintained its existence.

Section 7.7. Assignment. To secure payment of debt charges on the Bonds and other amounts due under the Trust Agreement, the Issuer will assign certain of its rights under and interest in this Agreement, the Service Payments and the portion of the TIF Fund consisting of Service Payments to the Trustee. The other Parties consent to those assignments. The Developer may, without the consent of the City or the Issuer, (i) assign or participate its rights under this Agreement to a lender or investors for the purpose of obtaining financing, as long as such an assignment provides that the Developer remains liable for all its obligations under this Agreement, or (ii) assign its rights and obligations under this Agreement to an entity that is at least 50% controlled by or under common control with the Developer, as long as such an assignment provides that the Developer remains liable for all its obligations under this Agreement. The Developer shall provide prompt written notice to the City and the Issuer after any assignment or participation. Notwithstanding the foregoing, any assignment pursuant to (ii) will not be effective until the assignee has provided the City and the Issuer with a copy of an assignment agreement executed by both the Developer and assignee. The City and the Issuer will cooperate with any reasonable assignment request by a lender, investor, the Developer, or entity controlled by or under common control with the Developer.

Except as otherwise provided in this Section, a party hereto may not assign its rights and obligations hereunder without the written consent of each other Party and the consent of the Trustee, at the direction of the Holders, provided that no Developer consent will be required if the Developer has not maintained its existence.

Section 7.8. Execution Counterparts. This Agreement may be executed in counterpart and in any number of counterparts, each of which are regarded as an original and all of which constitute but one and the same instrument. Counterparts or signatures executed, stored, or transmitted by electronic means (such as e-mailed .pdfs) shall be considered original counterparts or signatures for all purposes.

Section 7.9. Severability. If a court determines that any provision of or obligation imposed by this Agreement is invalid or unenforceable, that determination will not affect any other provision or obligation, all of which will be construed and enforced as if the invalid or unenforceable provision or obligation were not contained herein. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each provision or obligation will be deemed to be effective in the manner and to the full extent permitted by law.

Section 7.10. Limitation of Rights. With the exception of rights conferred expressly in this Agreement, this Agreement and all of its covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Parties and the Trustee, for the benefit of the Holders.

Section 7.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio and the City of Columbus.

(END OF ARTICLE VII)

IN WITNESS WHEREOF, the Issuer, the City, and the Developer have caused this Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

COLUMBUS-FRANKLIN COUNTY  
FINANCE AUTHORITY

By: \_\_\_\_\_  
Patricia Huddle, President

FISCAL OFFICER'S CERTIFICATE

The undersigned, Assistant Secretary-Treasurer of the Issuer under the aforesaid Agreement, hereby certifies that, while the Issuer has no obligation to make payments pursuant to the foregoing Agreement, any moneys required to meet the obligations of the Issuer during the year 2024 under the aforesaid Agreement have been lawfully appropriated by the Board of Directors of the Issuer for such purposes and are in the treasury of the Issuer 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, Ohio Revised Code.

Dated: \_\_\_\_\_, 2024

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Assistant Secretary-Treasurer  
Columbus-Franklin County Finance  
Authority

CITY OF BEXLEY, OHIO

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

Ben Kessler, Mayor,  
Pursuant to Ordinance No. 19-23

Approved as to form:

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Marc Fishel, Law Director

CITY FISCAL OFFICER'S CERTIFICATE

The City has no obligation to make payments pursuant to the foregoing Agreement except from the Service Payments to be collected for deposit into the Trinity Apartments Municipal Public Improvement Tax Increment Equivalent Fund pursuant to City Amended Ordinance No. 19-23. Section 2 of City Ordinance No. \_\_\_\_-24 (the Cooperative Agreement Ordinance) appropriated those funds for expenditure in accordance with the foregoing Agreement. Accordingly, as fiscal officer for the City of Bexley, I certify that funds sufficient to meet the obligations of the City under the foregoing Agreement have been lawfully appropriated for the purposes thereof and are available in the treasury of the City, and/or upon implementation of the processes under the TIF Act, are in the process of collection to the credit of an appropriate fund, free from any previous encumbrance. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: \_\_\_\_\_, 2024

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Matt McPeek, City Auditor  
City of Bexley, Ohio

**CAG BEXLEY APTS, LLC**, an Ohio limited  
liability company

By: \_\_\_\_\_  
Mark A. Damante, Vice President

Signature Page to TIF Cooperative Agreement

**Exhibit A**

**Project Description and Final Project Cost Budget**

| <b>Sources</b>  |           | <b>Bonds</b>         |           | <b>Private Funds</b>  |           | <b>Total</b>         |
|---|-----------|----------------------|-----------|-----------------------|-----------|----------------------|
| Revenue Bonds   | \$        | 15,000,000.00        | \$        | -                     | \$        | 15,000,000.00        |
| Original Issue Discount                                     |           | (234,750.00)         |           | -                     |           | (234,750.00)         |
| Developer Contribution                                      |           | -                    |           | 4,742,022.59          |           | 4,742,022.59         |
| <b>Total Sources of Funds</b>                               | <b>\$</b> | <b>14,765,250.00</b> | <b>\$</b> | <b>4,742,022.59</b>   | <b>\$</b> | <b>19,507,272.59</b> |
| <b>Uses</b>   |           |                      |           |                       |           |                      |
| <b>Total TIF Budget</b>                                     | <b>\$</b> | <b>12,821,588.44</b> | <b>\$</b> | <b>4,742,022.59</b>   | <b>\$</b> | <b>17,563,611.03</b> |
| Demolition Hard Costs                                       |           | 394,925.00           |           | -                     |           | 394,925.00           |
| Offsite Improvements Hard Costs                             |           | 273,600.00           |           | -                     |           | 273,600.00           |
| Site Utilities in support of Parking Garage                 |           | 1,537,796.00         |           | -                     |           | 1,537,796.00         |
| Site Work/Mass Excavation for Parking Garage                |           | 1,361,466.00         |           | -                     |           | 1,361,466.00         |
| Public Drive Asphalt Paving                                 |           | 61,355.00            |           | -                     |           | 61,355.00            |
| Professional Costs related to TIF                           |           | 50,000.00            |           | -                     |           | 50,000.00            |
| Parking Garage Hard Cost (includes GC Soft Cost Allocation) |           | 6,767,726.10         |           | 3,851,175.90          |           | 10,618,902.00        |
| Parking Garage Land Acquisition - Ground Lease to CFFA      |           | 1,384,296.53         |           | 519,301.56            |           | 1,903,598.09         |
| Total Project Soft Cost Allocation                          |           | 990,423.81           |           | 371,545.13            |           | 1,361,968.94         |
| Capitalized Interest (25 months)                            |           | 1,406,880.56         |           | -                     |           | 1,406,880.56         |
| Costs of Issuance   |           | 536,781.00           |           | -                     |           | 536,781.00           |
| <b>Total Uses of Funds</b>                                  | <b>\$</b> | <b>14,765,250.00</b> | <b>\$</b> | <b>4,742,022.59</b>   | <b>\$</b> | <b>19,507,272.59</b> |
| <b>Parking Analysis</b>                                     |           | <b>Public Spaces</b> |           | <b>Private Spaces</b> |           | <b>Total Spaces</b>  |
|   |           | 185.29               |           | 83.71                 |           | 269                  |

## Exhibit B

### Bond Semi-Annual Minimum Amount Schedule

| <b>Bondholder<br/>Payment Date</b> | <b>Maximum Annual<br/>Minimum Payment<br/>(Mandatory Redemption)</b> | <b>Projected Annual<br/>Minimum Payment<br/>(Turbo Redemption)</b> |
|------------------------------------|--|--|
| 12/01/26                           | \$ 453,500.00  | \$ 453,500.00  |
| 06/01/27                           | 498,500.00   | 498,500.00   |
| 12/01/27                           | 497,027.50   | 497,027.50   |
| 06/01/28                           | 500,555.00   | 500,555.00   |
| 12/01/28                           | 498,935.25   | 498,935.25   |
| 06/01/29                           | 502,315.50   | 502,315.50   |
| 12/01/29                           | 505,548.50   | 505,548.50   |
| 06/01/30                           | 523,634.25   | 523,634.25   |
| 12/01/30                           | 526,131.00   | 526,131.00   |
| 06/01/31                           | 528,480.50   | 528,480.50   |
| 12/01/31                           | 530,682.75   | 530,682.75   |
| 06/01/32                           | 527,737.75   | 527,737.75   |
| 12/01/32                           | 539,792.75   | 539,792.75   |
| 06/01/33                           | 536,406.00   | 534,639.00   |
| 12/01/33                           | 552,461.63   | 531,252.25   |
| 06/01/34                           | 549,022.50   | 526,098.50   |
| 12/01/34                           | 550,474.75   | 527,711.75   |
| 06/01/35                           | 546,772.75   | 522,410.75   |
| 12/01/35                           | 548,070.75   | 523,876.75   |
| 06/01/36                           | 564,214.50   | 538,428.50   |
| 12/01/36                           | 559,741.25   | 534,158.25   |
| 06/01/37                           | 565,268.00   | 538,121.00   |
| 12/01/37                           | 560,486.25   | 533,556.25   |
| 06/01/38                           | 560,704.50   | 532,224.50   |
| 12/01/38                           | 560,768.50   | 532,512.50   |
| 06/01/39                           | 575,678.25   | 545,886.25   |
| 12/01/39                           | 579,971.00   | 550,438.00   |
| 06/01/40                           | 578,955.25   | 547,928.25   |
| 12/01/40                           | 572,785.25   | 542,038.25   |
| 06/01/41                           | 576,615.25   | 544,381.25   |
| 12/01/41                           | 580,136.75   | 548,196.75   |
| 06/01/42                           | 593,349.75   | 559,950.75   |
| 12/01/42                           | 590,945.75   | 557,882.75   |
| 06/01/43                           | 593,387.50   | 558,900.50   |
| 12/01/43                           | 595,520.75   | 561,390.75   |
| 06/01/44                           | 587,345.50   | 551,819.50   |
| 12/01/44                           | 605,025.67   | 554,015.25   |
| 06/01/45                           | 611,190.50   | 559,149.50   |
| 12/01/45                           | 606,780.00   | 555,609.00   |
| 06/01/46                           | 607,207.25   | 555,154.25   |
| 12/01/46                           | 612,310.00   | 561,172.00   |
| 06/01/47                           | 606,926.00   | 554,981.00   |
| 12/01/47                           | 611,379.75   | 560,409.75   |
| 06/01/48                           | 625,346.75   | 573,629.75   |
| 12/01/48                           | 628,502.50   | 577,880.50   |
| 06/01/49                           | 631,171.50   | 579,922.50   |
| 12/01/49                           | 628,353.75   | 578,289.75   |
| 06/01/50                           | 625,211.50   | 574,595.50   |
| 12/01/50                           | 631,744.75   | 582,373.75   |
| 06/01/51                           | 652,629.00   | 602,796.00   |
| 12/01/51                           | 647,377.50   | 598,954.50   |
| 06/01/52                           | 651,801.50   | 603,051.50   |
| 12/01/52                           | 650,576.50   | 603,326.50   |
| 06/01/53                           | 648,864.75   | 601,392.75   |
| 12/01/53                           | 651,666.25   | 605,784.25   |
| 06/01/54                           | 648,818.75   | -  |
| 12/01/54                           | 650,484.50   | -  |
| 06/01/55                           | 651,501.25   | -  |
| 12/01/55                           | 646,869.00   | -  |
| <b>Totals</b>                      | <b>\$ 34,243,662.06</b>  | <b>\$ 30,059,131.75</b>  |