

## COMMUNITY REINVESTMENT AREA (CRA) AGREEMENT

THIS Agreement, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and among the **CITY OF TOLEDO** (hereinafter "**CITY**"), a Municipal Corporation of the State of Ohio, with a mailing address of One Government Center, Suite 2250, Toledo, Ohio 43604, and **TOLEDO COLONY APARTMENTS, LLC** (hereinafter "**OWNER**") having a mailing address of 150 E. Broad Street, 2<sup>nd</sup> Floor, Columbus, Ohio 43215.

### WITNESSETH:

**WHEREAS**, by Ordinance No. 63-19, passed on February 5, 2019, Toledo City Council (the "Ordinance") established the "**West Toledo Community Reinvestment Area**" pursuant to Ohio Revised Code Sections 3735.65 through 3735.70 and declared that these tax exemption incentives promote and expand conforming use in the designated area; and

**WHEREAS**, the Ordinance requires that a Compensation Agreement for payments in lieu of taxes be executed by the Owner with the Board of Education of the Toledo School District pursuant to Section 5709.82 of the Ohio Revised Code as a condition of the CRA exemption, and

**WHEREAS**, the Ordinance authorized the Mayor and other City officials to execute agreements necessary or appropriate for implementation of the West Toledo Community Reinvestment Area; and

**WHEREAS**, OWNER intends to construct a mixed-use development consisting approximately 262 apartments in multiple buildings with adjacent parking and a club house, restaurant and retail space, estimated to total **124,900 square feet**, upon ±8 acres of land located at **1901 and 2061 W. Central Ave., 2918-2951 Jermain Drive (14 lots), 2920-2835 Rathbun Dr. (3 lots) and 3860 Monroe Street, Toledo, Ohio 43606**; and

**WHEREAS**, OWNER has submitted a Community Reinvestment Area (CRA) application to the CITY pursuant to Sections 3735.65 through 3735.70; and

**WHEREAS**, the CITY's Real Estate Section and the CRA Housing Officer has investigated the proposal of OWNER delineated in the application and recommend the proposal; and

**WHEREAS**, the project site where the OWNER's Facility is to be located is in the Toledo City School District and the Board of Education of the school district was notified and has approved of this Agreement and has negotiated an Agreement with Owner; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, and the benefits to be derived by the parties from execution of this Agreement, the parties agree as follows:

### **1. Project Description.**

- 1.1. OWNER intends to construct a **79,600 sq. ft. building** (hereinafter "**Facility**") upon land located at **1902 and 2061 W. Central Ave, and 2918, 2921, 2922, 2928, 2929, 2931,**

**2932, 2937, 2938, 2941, 2943, 2945, 2948 and 2951 Jermain Drive, and 2825, 2831 and 2835 Rathbun Drive, and 3860 Monroe Street** in Toledo, Ohio, (hereinafter “**Property**”) as is more particularly described in **Exhibit “A”** attached hereto and made a part hereof. OWNER intends to invest approximately **\$30,000,000** for the construction of the Facility, the investment referred hereinafter as the “**Project**”.

- 1.2. OWNER will commence construction of the Project by no later than December 31, 2020, and will complete such construction by no later than December 31, 2022.
- 1.3. Estimated value of machinery, equipment, furniture, fixtures, vehicles, manufactured items, work in process and inventory at the completed facility will be **\$30,000,000** (see table below).

General Site Prep	
Exterior Shell/Rough-in/Roofing	
Furniture	
Mechanical/Electrical	
Windows/Doors	
Interior/Flooring/Walls	
Work In Process	
Finishing	

- 1.4. The number of new employee positions to be retained by OWNER as a result of this Agreement is Zero (0) with Zero (0) being full time employees, Zero (0) being part-time employees and Zero (0) being temporary employees.
- 1.5. The estimated dollar amount of payroll attributable to the retained positions set forth in paragraph 4 above is \$ 0.00, being \$ 0.00 for full time positions, \$ 0.00 for part-time positions and \$ 0.00 for temporary positions.
- 1.6. The estimated number of employee positions to be created by OWNER during the term of this Agreement is shown on **Exhibit “B”** attached hereto and made a part hereof. *(15 year projection, include payroll)*

**2. Property to be Exempted from Taxation.**

- 2.1. The real property to be exempted from taxation under this Agreement is identified as TD/Parcels **18-46091, 16-11721, 09-12554, 09-12594, 09-12557, 09-12561, 09-12601, 09-12607, 09-12564, 09-12611, 09-12571, 09-12621, 09-12614, 09-12624, 09-12617, 09-12517, 09-12624. 09-12531, 09-12527, 09-12524, 09-12534.**
- 2.2. One hundred percent (100%) of the assessed new building improvement valuation of the real property will be exempted from taxation under this Agreement for a period of fifteen (15) years. The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after December 31, 2023 or extend beyond December 31, 2038.

**3. Obligations, Default and Revocation.**

- 3.1. The CITY shall perform such acts as are reasonably necessary or appropriate to affect, claim, reserve and maintain exemptions from taxation granted under this Agreement

including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

- 3.2. If for any reason the CITY revokes the CRA designation, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless OWNER materially fails to fulfill its obligations under this Agreement.
- 3.3. OWNER shall provide for timely payment of the real property taxes not exempted under this Agreement and charged against the property, and shall file returns as required by law.
- 3.4. OWNER shall, on an annual basis and when requested by the CITY, provide any information reasonably required by the CITY to evaluate the applicant's compliance with this Agreement, including returns filed pursuant to Section 5711.02 of the Ohio Revised Code.
- 3.5. OWNER shall properly maintain and repair the property subject to the tax exemption.
- 3.6. OWNER's failure to fulfill its obligations under, or to comply with, its commitment under paragraphs 1.1 and 1.2 or any provision in sections 3, 4 or 5 of this Agreement shall be considered a material default of this Agreement and the exemptions from taxation granted under this Agreement, unless cured in a timely manner, may be rescinded as of the beginning of the year preceding the year in which the event of default occurs, which is the beginning of the tax year for which property tax payments would otherwise have been due.
- 3.7. Written notice shall be provided by the CITY to OWNER of any alleged material default under this Agreement. If OWNER fails to cure any default for which written notice has been provided by the CITY within thirty (30) days of the receipt of written notice at the address specified in this Agreement, the CITY may terminate the Agreement, unless OWNER demonstrates that such default could not with diligence be cured within the thirty (30) day period and an alternate time period is mutually agreed to in writing by CITY and OWNER. This paragraph does not apply in the event of an automatic termination under paragraph 4.2.3 of this Agreement.
- 3.8. OWNER shall be liable for the payment of all property taxes accruing from the effective date of the termination of this Agreement.

#### **4. Payment to Toledo City Schools**

- 4.1. Each year for the term of the tax exemption as provided in paragraph 2.2 of this Agreement, OWNER agrees to make payments to the Toledo City School District ("TCSD") in the amounts and on the dates as specified in the "School District Payment Agreement" attached as **Exhibit "C"**.
- 4.2. OWNER's failure to make any payment due to TCSD by a payment due date shall constitute an event of material default under this Agreement as of the date such payment was due and the following provisions shall apply.
  - 4.2.1. OWNER shall pay interest on the amount due to TCSD at an annualized rate of 10% for the total number of days Owner is in default.

**4.2.2.** OWNER shall pay to TCSD an additional amount equal to 10% of the past due amount as a late payment penalty.

**4.2.3.** If OWNER fails to make payment, including any interest and penalty amounts due, to TCSD within thirty (30) days of the CITY or TCSD providing OWNER with written notice of the default, this Agreement will automatically terminate, without the necessity of further formal action by the CITY, effective January 1 of the year preceding the year in which the event of default occurs. OWNER shall be liable for the payment of all property taxes accruing from the effective date of termination.

**4.3.** OWNER shall, within 30 days following each annual due date, submit proof of such payments to the City of Toledo, Real Estate Division of the Department of Development, One Government Center, Suite 2250, Toledo, Ohio 43604.

**4.4.** OWNER and CITY agree that the TCSD is a third party beneficiary of this Section 4.

**5. OWNER CERTIFICATIONS AND COVENANTS.**

**5.1.** OWNER certifies as of the date of this Agreement, covenants during the term of this Agreement and, as a continuing condition to receiving the Tax Exemption provided under this Agreement, Owner agrees to the following.

**5.1.1.** OWNER does not owe any delinquent tax to the state or a political subdivision of the state, or, if such delinquent taxes are owed, Owner is currently paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio, or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et. seq., or such a petition has been filed against Owner. For the purpose of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

**5.1.2.** OWNER does not owe any moneys to the state or a state agency for the administration or enforcement of the environmental laws of the state that has not been disclosed.

**5.1.3.** OWNER does not owe any other moneys to the state, a state agency, or a political subdivision of the state that are past due and that have not been disclosed.

**5.1.4.** Through its application for CRA benefits in accordance with Ohio Revised Code ("ORC") sections 3735.67 and 9.66, OWNER authorizes the state and/or CITY to inspect the financial statements of the applicant, including tax records and other similar information not open to the public.

**5.1.5.** OWNER shall timely pay all federal, state and local taxes, assessments and other required governmental obligations.

**5.1.6.** OWNER will not discriminate against or refuse to employ any person on account of the race, ancestry, religion, color, sex, age, national origin or disability of such person.

**5.1.7.** OWNER shall maintain minimum compensation levels for all employees in accordance with City Ordinance 577-00 and Toledo Municipal Code, Sections 187.37 through 187.40, known as the “Living Wage Ordinance”, to the full extent applicable to Owner.

**5.1.8.** Should Owner knowingly make a false statement regarding the certifications pursuant to paragraphs 5.1.1, 5.1.2 or 5.1.3, Owner shall be required to repay the benefits received under the Community Reinvestment Area program and may be ineligible for future economic development assistance from the state of Ohio, a state agency or a political subdivision in accordance with O.R.C section 9.66 (C) (1) and (2).

**6. ENTIRE AGREEMENT.**

This Agreement, together with the Exhibits referred to and attached hereto constitutes the sole agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting OWNER’s participation in the CRA program. CITY and OWNER and their respective employees and agents have made no representations or promises with respect to this Agreement except as herein expressly set forth.

**7. SEVERABILITY.**

In the event any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.

**8. GOVERNING LAW.**

This Agreement shall be governed and construed in accordance with the laws of the State of Ohio. Any litigation arising between the CITY and OWNER arising under or related to this Agreement shall occur, if in the state courts, in the Lucas County court having jurisdiction thereof, or if the federal courts, in the United States District Court for the Northern District of Ohio, Western Division.

**9. CAPTIONS.**

The captions contained in this Agreement are for convenience only and are not be construed as defining or limiting the scope of any provisions herein.

**10. ASSIGNMENT.**

This Agreement is not transferable or assignable without the express written approval of the CITY. This Agreement may be assignable by the CITY to new owners of the Facility only upon the new owner’s written acceptance of all the terms and conditions of the Agreement.

**11. NOTICES.**

Any notices or other communications required or permitted by this Agreement shall be in writing and shall be delivered personally or by a national courier service or by certified mail, postage prepaid, return receipt requested as follows:

To the **CITY**:

Department of Development  
City of Toledo  
One Government Center, Suite 2250  
Toledo, OH 43604  
Attention: Director

With Copy To:

Department of Law  
City of Toledo  
One Government Center, Suite 2250  
Toledo, OH 43604  
Attention: Director

To the **OWNER**

Toledo Colony Apartments, LLC  
150 East Broad Street, 2<sup>nd</sup> Floor  
Columbus, Ohio 43215  
Attention: Frank Kass

**[Signature Page Follows]**

West Toledo Community Reinvestment Area (Rev. 5-18-20)

**IN WITNESS WHEREOF**, the parties hereto intending to be legally bound, have each caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

**OWNER**

Owner: **TOLEDO COLONY APARTMENTS, LLC**

By: Franklin E. Kass Title: Authorized Officer

Date: \_\_\_\_\_

**THE CITY OF TOLEDO**

By: \_\_\_\_\_  
Wade Kapszukiewicz, Mayor

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

By: \_\_\_\_\_  
Department of Law

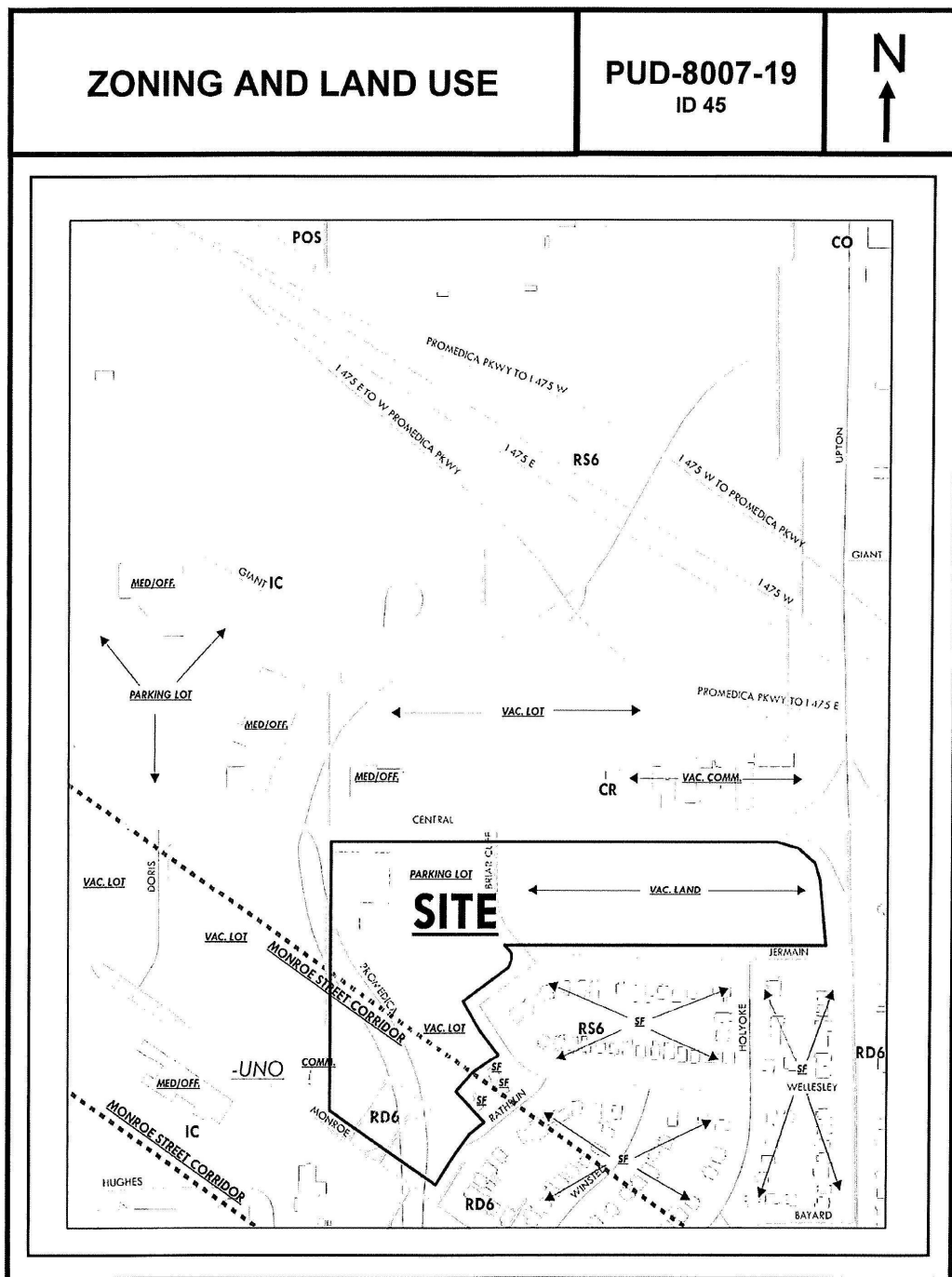
By: \_\_\_\_\_  
Department of Economic Development

EXHIBIT A

**LEGAL DESCRIPTION**

Property Address	Tax District & Parcel Number	Assessor Number
1901 W Central Avenue, Toledo	18-46091	04-227-001
2061 W Central Avenue, Toledo	16-11721	04-382-001
2951 Jermain Drive, Toledo	09-12624	04-239-005
2943 Jermain Drive, Toledo	09-12621	04-239-024
2945 Jermain Drive, Toledo	09-12617	04-239-006
2941 Jermain Drive, Toledo	09-12614	04-239-007
2937 Jermain Drive, Toledo	09-12611	04-239-008
2931 Jermain Drive, Toledo	09-12607	04-239-009
2929 Jermain Drive, Toledo	09-12601	04-239-010
2921 Jermain Drive, Toledo	09-12594	04-244-009
2948 Jermain Drive, Toledo	09-12517	04-240-019
2938 Jermain Drive, Toledo	09-12571	04-240-016
2932 Jermain Drive, Toledo	09-12564	04-240-015
2928 Jermain Drive, Toledo	09-12561	04-240-014
2922 Jermain Drive, Toledo	09-12557	04-240-013
2918 Jermain Drive, Toledo	09-12554	04-240-012
192835 Rathbun Drive, Toledo	09-12524	04-240-003
2831 Rathbun Drive, Toledo	09-12527	04-240-004
2825 Rathbun Drive, Toledo	09-12531	04-240-005
3860 Monroe Street, Toledo	09-12534	04-240-006





## EXHIBIT B EMPLOYMENT

### Toledo Colony Apartments, LLC

Tax Abatement Year	Employment Level	Projected Payroll All Employees	Projected Payroll New Employees Only
2022	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2023	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2024	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2025	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2026	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2027	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2028	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2029	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2030	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2031	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2032	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2033	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2034	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2035	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000
2036	45 FTE / 30 PT	\$ 1,400,000	\$ 1,400,000

**EXHIBIT C  
SCHOOL DISTRICT PAYMENT AGREEMENT**

**SCHOOL DISTRICT PAYMENT AGREEMENT**  
**Attachment to City of Toledo Economic Development Agreement for**  
**Enterprise Zones (EZ's), Community Reinvestment Areas (CRA's)**  
**And Tax Increment Financings (TIF's)**

This Agreement (the "AGREEMENT") is made and entered into this 26<sup>th</sup> day of May, 2020 by and between Toledo Colony Apartments, LLC, (the "COMPANY"), and the Toledo City School District (the "DISTRICT").

WHEREAS, pursuant to Sections 3735.671 & 5709.82 of the Ohio Revised Code and all applicable provisions of Ohio law, the City of Toledo (the "CITY") has proposed to enter into an Economic Development Agreement (to which this School District Payment Agreement will be attached heretofore as an Exhibit), under which the CITY approves a real and/or where applicable a personal property tax exemption of **100% for fifteen (15)** years for eligible new construction of non-residential property ("PROJECT") to be undertaken by the COMPANY as described in Exhibit A attached hereto; and

WHEREAS, to ensure that the DISTRICT will benefit from the PROJECT to be undertaken by the COMPANY, the CITY has requested and the COMPANY has agreed to make certain payments as discussed below to the DISTRICT; and

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

Section 1. The COMPANY hereby agrees to make **fifteen (15)** annual payments to the DISTRICT in an amount equal to **\$280,198.06**.

Payment of invoices (billed in arrears) shall be due on or before February 28<sup>th</sup> of each year.

The COMPANY shall provide to the DISTRICT a copy of any real property exemption form filed with the County Auditor promptly following the filing thereof. Copies of reports shall also be sent to the appropriate parties at the City of Toledo, Department of Development.

The first payment, calculated in January following the calendar year in which the parcel is first exempted by the Lucas County Auditor's Office, is due on or before February 28<sup>th</sup>. Any late payments under this Agreement shall bear interest at the rate of 10% per annum until such payments are made.

Section 2. This AGREEMENT shall inure to the benefit of and shall be binding in accordance with its terms upon the DISTRICT and the COMPANY and their respective permitted successors and assigns. This AGREEMENT may not be assigned by the COMPANY without the prior written consent of the DISTRICT, except to any successor entity as a result of a consolidation or merger, which consent will not be unreasonably withheld.

Section 3. This AGREEMENT as an attachment to the Enterprise Zone (EZ) and/or Community Reinvestment (CRA) and/or Tax Increment Financing Agreement required by the CITY sets forth the ENTIRE AGREEMENT and understanding between the parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, undertakings of every kind and nature between the parties with respect to the subject matter of this AGREEMENT. If the CITY does not approve the COMPANY's Tax Exemption Application, or the Project does not proceed, then the COMPANY will not be obligated to make the annual tax payments to the DISTRICT as set forth in Section 1.

Section 4. This AGREEMENT may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this Agreement may execute this AGREEMENT by signing any such counterpart.

**[Signature page follows.]**

IN WITNESSETH WHEREOF, the parties hereto have caused this AGREEMENT to be executed as of the date set forth.

COMPANY  
**Toledo Colony Apartments, LLC**

By: Franklin E. Kass

Name: Franklin E. Kass  
Title: Authorized Officer

Date: \_\_\_\_\_

DISTRICT  
**Toledo City School District**

DocuSigned by:  
By: Dr. Romules Durant May 26, 2020  
Title: ~~Superintendent~~

By: Ryan J. Stuchschulte 5-26-20  
Title: Treasurer

DocuSigned by:  
By: Bob Vasquez  
Title: ~~President~~ of the Board

Date: May 26, 2020