

RESOLUTION NO. 18 , 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE
AND EXECUTE AN AGREEMENT WITH TRADITIONS VC DEVELOPER, LLC
TO ACCOMMODATE SHORT-TERM COVERAGE FOR MINIMUM SERVICE
PAYMENTS IN THE VINTAGE CLUB-NORTH PROJECT**

WHEREAS, Council by Resolution No. 43, 2017, as amended by Resolution No. 5, 2018, authorized the City Manager to execute a Service Agreement governing the Vintage Club-North Project; and

WHEREAS, under the terms of such Service Agreement, certain properties within the Vintage Club-North Project area were pledged to secure Statutory Service Payments for Special Obligation Revenue Bonds, Series 2018, issued by the City to support public improvements necessary for the successful development of the Vintage Club-North Phase II Project; and

WHEREAS, due to unforeseen delays caused in part by the unprecedented pandemic and resulting market changes, the Project development has temporarily slowed down triggering Minimum Service Payment liability under the terms of the Service Agreement; and

WHEREAS, to accommodate Traditions VC Developer, LLC to improve cashflow and the use of capital to revitalize the Project, the Administration has proposed that the City enter into a Forbearance Agreement, a copy of which is attached hereto, to defer a portion of the Minimum Service Payments due from Traditions VC Developer, LLC, and to recover those payments in a more manageable installment plan over a period of three years.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The City Manager is authorized to execute the attached Forbearance Agreement, and any related necessary documents, to accommodate Traditions VC Developer, LLC in the continuing development of the Vintage Club-North Project. It is noted that the Forbearance Agreement is not forgiveness of the debt, nor waiving payment of the debt, but provides for the City to contribute on a short-term basis a portion of the Minimum Service Payments to sustain and revitalize the success of the Project. Consistent with the terms of the Forbearance Agreement, any contributions paid by the City shall be paid and recovered from Traditions VC Developer, LLC in the short-term.

SECTION 2. This Resolution shall be in full force and effect from and after its passage.

PASSED: June 1, 2022

ATTEST: Connie M. Gaylor
Connie M. Gaylor, Clerk of Council

LA Bissmeyer
~~Craig D. Margolis, Mayor~~ vice-
Lee Ann Bissmeyer mayor

APPROVED AS TO FORM:

Terrence M. Donnellon
Terrence M. Donnellon, Law Director

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FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into by and between the **City of Montgomery, Ohio**, an Ohio municipal corporation, 10101 Montgomery Road, Montgomery, Ohio 45242 (the "City") and **Traditions VC Developer, LLC**, an Ohio limited liability company, 4000 Executive Park Drive, Cincinnati, Ohio 45241 ("Traditions").

WHEREAS, the City with Traditions as Developer and Owner, and Hunting Hill, LLC, an Ohio limited liability company, as an Owner, entered into a Service Agreement dated March 21, 2018, pledging certain Statutory Service Payments, as defined within the Service Agreement, arising from real estate owned by Traditions and Hunting Hill, LLC to be developed in an area defined as Vintage Club Phase II within the Service Agreement; and

WHEREAS, the Statutory Service Payments pledged within the Service Agreement were intended to secure repayment of certain Special Obligation Revenue Bonds, Series 2018 (Vintage Club Phase II Project) ("Bonds"), issued by the City to support certain public improvements necessary for the successful development of the Vintage Club Phase II Project; and

WHEREAS, Hunting Hill, LLC has since sold its entire interest in the Vintage Club Phase II property and no longer has any obligations under the Service Agreement, which

obligations, according to the Service Agreement, are now assumed by subsequent Owners; and

WHEREAS, Traditions did pledge to pay Minimum Service Payments, as defined within the Service Agreement, if the amount of the Statutory Service Payments were insufficient during the term of the Service Agreement to meet the Annual Debt Service amounts for the Bonds and the required compensation due Sycamore Community School District; and

WHEREAS, certain outside economic factors have negatively influenced the progressive development of the project, including specifically the devastating impact of the COVID-19 pandemic, which outside economic factors have slowed the construction of Phase II, the result of which is Traditions is now exposed under the Service Agreement to the Minimum Service Payments to secure repayment of the Debt Service for the Bonds; and

WHEREAS, the City previously advanced One Hundred Forty-One Thousand Five Hundred Seventy-Nine Dollars (\$141,579) to fund the Minimum Service Payments due in calendar year 2021; and

WHEREAS, Traditions has asked the City for short-term assistance to share some of the Minimum Service Payment liability for calendar years 2022 and 2023, which period of time shall be considered the Forbearance Period; and

WHEREAS, the purpose of this Forbearance Agreement is to outline certain terms and conditions for Traditions to remain liable for the Minimum Service Payments in accordance with the Service Agreement, but to free up Traditions' assets to continue to develop the Vintage Club Phase II Project. Traditions has projected the project Private Improvements will achieve sustainable value in the near term so that Statutory Service Payments will equal the Minimum Service Payment amount and repayment of the Bond liability will occur without disruption.

NOW THEREFORE, based upon the above premises, and the terms and conditions as outlined herein, the City and Traditions agree as follows:

1. **Defined Terms.** All defined terms outlined herein shall have the same meaning as such defined terms appear in the Service Agreement unless otherwise noted or separately defined in this Forbearance Agreement.

2. **Previous Minimum Service Payment Contribution.** As noted herein, the City has advanced One Hundred Forty One Thousand Five Hundred Seventy Nine Dollars (\$141,579) to fund the Minimum Service Payments to pay a portion of the Minimum Service Payments due in calendar year 2021. With the first half settlement of delinquent taxes received in 2022, the City has recovered One Hundred Twenty Three Thousand Nine Hundred Twenty Two Dollars (\$123,922) of this amount leaving a balance advanced by the City of Seventeen Thousand Six Hundred Fifty Seven Dollars (\$17,657). This Seventeen Thousand Six Hundred Fifty Seven Dollars (\$17,657) will be added to the City's contribution to Minimum Service Payments as defined within and outlined in Paragraph 3 below to be repaid by Traditions to the City. The City agrees that the City will not impose nor collect a late payment penalty from Traditions upon this deferred Minimum Service Payment amount during the term of this Forbearance Agreement so long as Traditions remains current in its payments outlined within this Forbearance Agreement.

3. **Traditions Contribution during Forbearance Period.** Traditions agrees to the following schedule of payments ("Forbearance Payments") to meet in part the Minimum Service Payment liabilities during the Forbearance Period:

June 1, 2022	\$40,000
December 1, 2022	\$54,100
June 1, 2023	\$47,000
December 1, 2023	\$68,500

During the Forbearance Period outlined above, the City shall fund to the Trustee the difference between the Forbearance Payments paid by Traditions as outlined above and the Minimum Service Payment liability according to the schedule for debt Service Payments for the bonds as provided by the Service Agreement. The total amount of the monies paid by the City during this Forbearance Period shall be added to the sum as outlined in Paragraph 2 above, which combined shall be the Deferred Forbearance Liability.

4. **Deferred Forbearance Liability**. The sum of monies as advanced by the City to cover Minimum Service Payments as outlined in Paragraphs 2 and 3 above through December 31, 2023 shall be the Deferred Forbearance Liability. Commencing July 1, 2025, the total sum of the Deferred Forbearance Liability shall be repaid by Traditions to the City in Six (6) equal semi-annual installments payable July 1, 2025, January 1, 2026, July 1, 2026, January 1, 2027, July 1, 2027 and January 1, 2028. So long as Traditions remains current in the payment of the semi-annual installments of the Deferred Forbearance Liability, and so long as Traditions remains current according to the terms of the Service Agreement with Minimum Service Payments, the City will defer action to call upon the Letter of Credit and waive its rights under Section 3(D) of the Service Agreement to impose and collect a late payment charge from Traditions in the amount of Ten Percent (10%) per annum. Should Traditions default in any scheduled installment payment of the Deferred Forbearance Liability, or should Traditions default in the payment of the separate Minimum Service Payment liability under the Service Agreement, the Ten Percent (10%) late payment charge shall be imposed upon all monies then due and owing, and the City reserves its right to then declare Traditions as Developer to be in default of the Service Agreement and to exercise all rights according to the Service Agreement.

If Traditions should sell any portion of the undeveloped land within the Vintage Club II project area, specifically Auditor's parcel 603-0A23-0231, which land secures the payment of the Statutory Service Payments, any unpaid balance of the Deferred Forbearance Liability shall, at the City's option, be due and payable immediately

unless the Purchaser or Transferee, to the City's sole satisfaction, accepts and assumes the Deferred Forbearance Liability.

5. **Deferred Right to Recover Minimum Service Payment.** Under Section 3, Paragraph (C) of the Service Agreement, when the Statutory Service Payments exceed the Minimum Service Amount, the excess amount may be used in part to reimburse Traditions as Developer for any Minimum Service Payment Traditions has paid. While Traditions may recover the Minimum Service Payment, including the Deferred Forbearance Liability, under the terms of Section 3(C) of the Service Agreement, the parties agree that until such time as the accumulated excess Statutory Service Payments exceeds the amount of the Deferred Forbearance Liability to be paid by Traditions as provided herein, Traditions shall not be entitled to recover such Deferred Forbearance Liability as Minimum Service Payments paid by Traditions under the terms of the Service Agreement. Deferring this right of recovery will allow the City to properly accumulate excess Statutory Service Payments within the accounting fund for the Vintage Club Phase II project to support either further improvements in the project area or to accumulate funds to defease the Bonds as is the City's option according to the Service Agreement.

6. **Reaffirmation of Service Agreement.** This Forbearance Agreement is intended to provide temporary relief to Traditions as Developer and Owner under the Service Agreement, and is not intended in any way to relieve Traditions of its liability under the Service Agreement nor to extend the terms and conditions of the Service Agreement in any way. This Forbearance Agreement may be considered as a modification or amendment to the Service Agreement as permitted under Section 24 of the Agreement, and the parties agree that the City shall have right to record this Forbearance Agreement as an amendment to the Service Agreement as may be necessary to secure the City's rights to repayment of the Forbearance Deferred Payments. All other terms and conditions of the Service Agreement which have not been modified herein are hereby ratified and reaffirmed.

CITY OF MONTGOMERY, OHIO,
an Ohio municipal corporation

By: _____

Brian K. Riblet

Its: City Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2022, personally appeared before me, a Notary Public in and for the State of Ohio, City of Montgomery, Hamilton County, Ohio, by Brian K. Riblet, known to be the City Manager of said City and duly authorized in the premises, who acknowledged the signing and sealing of the said Forbearance Agreement for himself and on behalf of said City, to be his voluntary act and deed, and the voluntary act and deed of said City.

Notary Public

My commission expires: _____

TRADITIONS VC DEVELOPER, LLC,
an Ohio limited liability company

By: _____

Thomas H. Humes

Its: Managing Member

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this ____ day of _____, 2022, personally appeared before me, a Notary Public in and for the State of Ohio, Traditions VC Developer, LLC, an Ohio limited liability company, by Thomas H. Humes, known to be the Managing Member of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Forbearance Agreement for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

APPROVED AS TO FORM:

Terrence M. Donnellon,
Law Director