

Order Creating TIF District No. 2 and Approving Project Plan**ORDER**

AN ORDER APPROVING AND CREATING A NEW TAX INCREMENT FINANCING DISTRICT IN BERKELEY COUNTY, WEST VIRGINIA TO BE KNOWN AS “THE BERKELEY COUNTY DEVELOPMENT DISTRICT NO. 2 – SOUTH BERKELEY COUNTY”; APPROVING PROJECT PLAN NO. 2; ESTABLISHING A TAX INCREMENT FINANCING FUND; AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.

Berkeley County
 Anthony J. Palmucci, Clerk
 Instrument: 202300034421
 12/15/2023 @ 10:52:52 AM
 ORDER
 Book: 1461 @ Page: 41
 Pages Recorded: 15

WHEREAS, The County Commission of Berkeley County (the “County Commission”) is authorized by the West Virginia Tax Increment Financing Act, Chapter 7, Article 11B of the Code of West Virginia, 1931, as amended (the “Act”), to create development or redevelopment districts, approve project plans, issue tax increment financing obligations and take other actions necessary or desirable to facilitate the orderly development and economic stability of Berkeley County, West Virginia (the “County”), all as more fully set forth in the Act;

WHEREAS, the Berkeley County Development Authority, a West Virginia public corporation (the “Developer”), has requested that the County Commission (i) approve the creation and establishment of a development district in the County to be known and designated as “The Berkeley County Development District No. 2 – South Berkeley County” (the “TIF District”), the boundaries of which are described in **Exhibit A** attached hereto and made a part hereof; (ii) approve a project plan for the TIF District to be known and designated as Project Plan No. 2 (the “Project Plan”), as more particularly described in Section IIA of the Application (as hereinafter defined), an excerpt of which is attached hereto and made a part hereof as **Exhibit B**; and (iii) establish a tax increment financing fund (the “TIF Fund”) to permit the utilization of tax increment financing;

WHEREAS, the County Commission did, on September 7, 2023, following proper notice thereof, hold a public hearing with respect to the Tax Increment Financing Application relating to the creation of the TIF District and proposing the Project Plan (the “Application”) wherein interested parties were afforded a reasonable opportunity to express their views on the proposed creation of the TIF District and its proposed boundaries and the proposed approval of the Project Plan;

WHEREAS, the County Commission submitted the Application to the Director of the West Virginia Department of Economic Development for his review and approval, all in accordance with the applicable provisions of the Act;

WHEREAS, the Director has, by letter dated December 8, 2023, notified the County Commission that the West Virginia Department of Economic Development has reviewed the Application and has found the Application regarding both the TIF District and the Project Plan to be complete, which approval letter is attached hereto and incorporated herein as **Exhibit C**, and

has further approved the Project Plan permitting the County Commission to enter an order creating the TIF District, approving the Project Plan and establishing the TIF Fund;

WHEREAS, it is hereby found and determined that the Application meets the criteria set forth in the Act for creation of a development district, formulation of a project plan and establishment of a tax increment financing fund; and

WHEREAS, the County Commission has determined to enter an order that approves, certifies, and creates the TIF District, approves and certifies the Project Plan and establishes the TIF Fund.

NOW, THEREFORE, BE IT ORDERED BY THE COUNTY COMMISSION OF BERKELEY COUNTY AS FOLLOWS:

1. Justification for Approval of TIF District. It is hereby found and determined that the real property within the TIF District will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment therein or any combination thereof; that development or redevelopment thereof will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will discourage commerce, industry or manufacturing from moving their operations to another state, result in increased employment in the County or result in preservation or enhancement of the tax base of the County.

2. Justification for Approval of TIF Project. It is hereby found and determined that the real property within the TIF District will be benefitted by implementing the Project Plan, by eliminating or preventing the development or spread of slums or blighted, deteriorated, or deteriorating areas, discouraging the loss of commerce, industry, or employment, increasing employment therein or any combination thereof.

3. Approval and Creation of TIF District. The TIF District, to be known as “The Berkeley County Development District No. 2 – South Berkeley County” is hereby approved, certified, and created as of the date of adoption and entry of this Order. The TIF District shall have the boundaries set forth in **Exhibit A**.

4. Approval of Project Plan. The Project Plan, an excerpt of which is set forth in **Exhibit B**, is hereby expressly found to be economically feasible and is hereby approved and certified. The projects set forth in the Project Plan, or any portion of it subsequently deemed by the County Commission to be included, are hereby approved and declared to be eligible for funding in whole or in part, from tax increment financing obligations and from moneys remaining in the TIF Fund after there has first been paid all debt service, reserve fund deficiency and other payments payable in connection with any bonds, notes or other obligations payable from the TIF Fund, which the County Commission, in its discretion, may determine to issue from time to time in accordance with the provisions of the Act or on a pay-as-you-go basis from unencumbered monies on deposit in the TIF Fund from time to time.

5. Establishment of TIF Fund. The TIF Fund is hereby established as a separate fund of the County Commission into which all tax increment revenues and other revenues designated by the County Commission for the benefit of the TIF District shall be deposited and from which all TIF Project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the County Commission.

6. Allocation of Property Taxes. All ad valorem property taxes on real and tangible personal property (excluding personal trailers, personal boats, personal campers, personal motor homes, personal ATVs, and personal motorcycles) having a tax situs in the TIF District shall be assessed, collected and allocated in the following manner for so long as any tax increment financing obligations payable from the TIF Fund are outstanding and unpaid:

(a) For each tax year, the Berkeley County Assessor shall record in the land and personal property books both the Base Assessed Value and the Current Assessed Value of the real and tangible personal property having a tax situs in the TIF District, as such terms are defined in the Act. The Base Assessed Value shall be the value of all real and tangible personal property located within the TIF District as of July 1, 2022 (excluding personal trailers, personal boats, personal campers, personal motor homes, personal ATVs, and personal motorcycles).

(b) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the TIF District that are attributable to the lower of the Base Assessed Value or the Current Assessed Value of real and tangible personal property located in the TIF District shall be allocated to the levying bodies situate in the County (the County Commission and the Berkeley County Board of Education) in the same manner as applicable to the tax year commencing July 1, 2022.

(c) The tax increment revenues, if any, from real and tangible personal property in the TIF District (excluding personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles) shall be allocated and paid into the TIF Fund and shall be used to (i) pay the principal of and interest on outstanding tax increment financing bonds, notes or other obligations, including the principal of and interest on the tax increment financing obligations anticipated to be issued to finance all or a portion of the costs of the TIF Projects, funding any reserve fund deficiency and any other payments payable in connection with such bonds, notes or obligations, and (ii) pay or reimburse costs of the TIF Projects. Any levying body having the TIF District within its jurisdiction shall not receive any portion of the annual tax increment revenues except as otherwise provided in the Act.

(d) In no event shall the tax increment revenues include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in the Act.

7. Use of Proceeds of Tax Increment Financing Obligations. Proceeds from tax increment financing obligations anticipated to be issued under the Act and revenues available in the TIF Fund may only be used to pay for costs of development or redevelopment projects to foster economic development in the TIF District when such development or redevelopment project or projects would not reasonably be expected to occur without tax increment financing.

8. Need for Tax Increment Financing. The County Commission hereby expressly finds and states that the TIF Projects are not reasonably expected to occur without the use of tax increment financing.

9. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Order should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Order.

10. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only and shall not affect in any way the meaning or interpretation of any provision hereof.

11. Conflicting Provisions Repealed. All ordinances, resolutions, indentures or orders, or parts thereof, that conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed with respect to the subject matter of this Order.

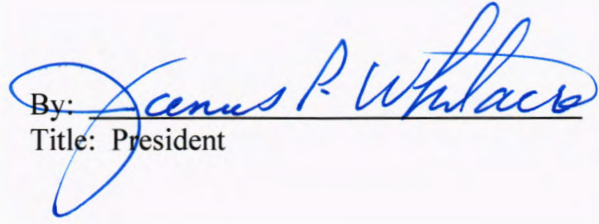
12. Covenant of Due Procedure, Etc. The County Commission covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption and entry of this Order do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the President, Clerk and members of the County Commission were at all times when any actions in connection with this Order occurred and are duly in office and duly qualified for such office.

13. Effective Date. This Order shall take effect immediately upon adoption.

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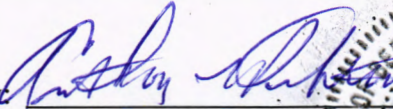
Adopted and entered this 14th day of December, 2023.

THE COUNTY COMMISSION OF BERKELEY
COUNTY

By: 
Title: President

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The County Commission of Berkeley County, does hereby certify that the foregoing Order was duly adopted and entered by the County Commission, at a regular meeting duly held, pursuant to proper notice thereof, on December 14, 2023, a quorum being present and acting throughout, and which Order has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this December 14, 2023.

By 
Title: County Clerk

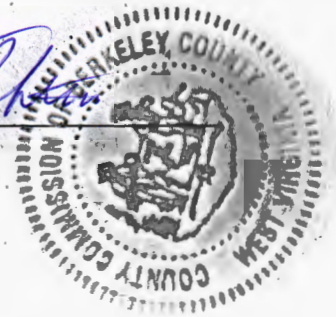


Exhibit A

TIF District Boundaries

(attached hereto)

Exhibit B

Excerpt of Project Plan

(attached hereto)

SECTION II. PROJECT INFORMATION

A. DETAILED DESCRIPTION OF PROJECT

Include a description of how the project fits with the overall development plans for the Development District or the overall development plans of the city, county, or region.

The TIF District

The County Commission of Berkeley County (the “County Commission”) proposes the creation of the “The Berkeley County Development District No. 2 – South Berkeley County” (the “TIF District”). The proposed TIF District is located in Berkeley County, West Virginia and includes contiguous real property located generally along Interstate 81. A map of the TIF District boundaries is provided in **Attachment 1**. The TIF District is being created by the County Commission for the purposes of facilitating the planning, design, acquisition, construction and equipping of capital improvements within the TIF District or on land not in the TIF District which contains infrastructure or other facilities which serve the TIF District. The proposed development which is contemplated for the TIF District is consistent with the several current plans of the County Commission.

The TIF Projects

The County Commission and BCDA propose to develop certain capital improvements within or which serve the TIF District. The TIF Projects include the design, permitting, acquisition, construction and equipping of site, infrastructure and other improvements that will facilitate industrial and/or commercial development within the TIF District (collectively, the “TIF Projects”), including, but not limited to, the following:

- Waterworks, sewerage, stormwater, telecommunications, cable, fiber optic, electric, natural gas and related infrastructure improvements specifically including, but not limited to, infrastructure to provide potable water on the West side of I-81;
- Construction of roads, sidewalks, street lighting, traffic signals and other roadway and streetscape improvements and related appurtenances;
- Acquisition of land within the TIF District or outside of the TIF District which contains or will contain infrastructure or other facilities which serve the TIF District in order to facilitate industrial and/or commercial development;
- Demolition, site preparation and excavation and other earthwork necessary for and incidental to the construction and installation of infrastructure and other improvements that will facilitate industrial and/or commercial development within the TIF District;
- Other related improvements, extensions, renovations and additions; and
- All professional service fees and consultant fees in connection with the foregoing, including but not limited to engineering and other design fees, legal fees, fees of property tax revenue consultants, property tax

consultants, trustees, continuing disclosure agents and all fees and costs incurred in connection with the preparation and approval of the Project Plan.

The TIF Projects may include demolition, site preparation and construction and installation of infrastructure improvements for individual businesses desiring to construct industrial and/or commercial facilities within the TIF District. The initial phases of the TIF Projects which are currently contemplated for the TIF District are more particularly indicated in **Attachment 2**. The proposed phases of the TIF Projects and the capital improvements and expenditures currently contemplated pursuant to such phases are presented by way of example only and the actual capital improvements and expenditures for each phase may differ substantially from those described herein so long as such improvements and expenditures are included within the description of the TIF Projects described herein.

The TIF Projects also include all professional services fees, together with costs incurred in preparation of the Project Plan, and related costs and reimbursement of costs of the TIF Projects incurred after the date of the West Virginia Department of Economic Development's approval of the Project Plan.

The County Commission reserves the right to enter into arrangements from time to time with other parties, including both other public bodies and private firms, for assistance in the undertaking of all or any portion of this Project Plan and the TIF Projects contemplated thereby.

Tax Increment Financing Obligations

To finance all or portions of the TIF Projects, the County Commission proposes to initially issue one or more series of tax increment revenue bonds or other obligations (the "TIF Obligations") in an estimated amount of \$20,000,000, with maturities not to exceed 30 years from the date of the creation of the TIF District. The County Commission intends to issue additional TIF Obligations in the future to pay additional costs of the TIF Projects to the extent such additional TIF Obligations are supported by tax increment revenues generated or to be generated in the TIF District. The County Commission proposes to issue TIF Obligations in a total amount not to exceed \$20,000,000. Such TIF Obligations may be issued from time to time in one or more series. Proceeds of the TIF Obligations are generally planned to be used to (i) finance costs of the TIF Projects, including architectural, engineering, legal and other professional fees and expenses; (ii) finance costs of creating the TIF District and obtaining approval of the TIF Projects; (iii) fund reserves for the TIF Obligations, as necessary; (iv) fund capitalized interest on the TIF Obligations, as necessary; and (v) pay costs of issuance of the TIF Obligations and related costs. To the extent that surplus tax increment funds are available, portions of the TIF Projects may be financed directly with such surplus. See **Section II.E** for more detailed Financing information and **Section II.G** for additional information on the proposed TIF Obligations.

Exhibit C

West Virginia Department of Economic Development

(attached hereto)

December 8, 2023

Mr. Jim Whitacre, President
County Commission of Berkeley County
400 W. Stephen Street
Suite 201
Martinsburg, WV 25401

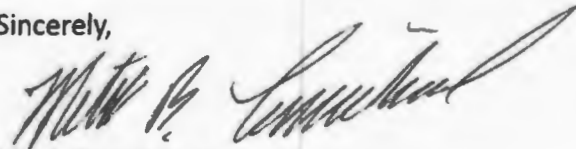
Dear Mr. Whitacre:

This correspondence serves as official notice that pursuant to WV Code §7-11B-7 and §7-11B-8 the West Virginia Department of Economic Development (WVDED) has reviewed the tax increment financing application for The Berkeley County Development District No. 2 - South Berkeley County and Project Plan No. 1.

The WVDED has found the application is complete and thereby approved per the project plans with bond financing not to exceed \$20,000,000. These funds will be used to finance development expenditures for the District, including the design, permitting, acquisition, construction, renovation, and equipping of site, infrastructure and other capital improvements, that will facilitate development within, or for the benefit of, the District as outlined in Section II of the application.

Thank you for your cooperation regarding this process. If you have any questions, please do not hesitate to contact Mr. Todd E. Hooker at (304) 558-2234.

Sincerely,



Mitch Carmichael

Secretary, WV Department of Economic Development

Cc: Jason Turner, Steptoe & Johnson PLLC

Jennifer Smith, Executive Director, Berkeley County Development Authority