

DATED: NOVEMBER 16, 2009

CLERK: MARY BETH BAILEY

MASSILLON CITY COUNCIL  
CITY OF MASSILLON, OHIO  
GLENN E. GAMBER, PRESIDENT

COUNCIL CHAMBERS

LEGISLATIVE DEPARTMENT

ORDINANCE NO. 135-2009

BY: THE COMMUNITY DEVELOPMENT COMMITTEE

**AN ORDINANCE DECLARING THE IMPROVEMENT OF CERTAIN REAL PROPERTY LOCATED IN THE CITY OF MASSILLON, OHIO TO BE A PUBLIC PURPOSE; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; DESIGNATING THE IMPROVEMENTS TO BE MADE THAT WILL DIRECTLY BENEFIT OR SERVE SUCH REAL PROPERTY; REQUIRING THE OWNER OF SUCH REAL PROPERTY TO MAKE ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SERVICE PAYMENTS; AND DECLARING AN EMERGENCY.**

**WHEREAS**, pursuant to Ohio Revised Code Sections 5709.40(B), 5709.42 and 5709.43 (the "TIF Statutes") the City of Massillon (the "City") may utilize municipal tax increment financing to declare the improvement to certain parcels of real property located within the municipal corporation to be a public purpose and exempt from taxation, require the owner of each parcel to make service payments in lieu of taxes, provide for the distribution of the applicable portion of such service payments to the City, local or exempted village school district, establish a municipal public improvement tax increment equivalent fund for the deposit of the remainder of such service payments and specify public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, those parcels for which improvements are declared to be a public purpose; and

**WHEREAS**, the parcels of real property identified and depicted in Exhibit A attached hereto are located in the City (collectively, the "Property"), and this City Council of the City (the "Council") has determined to declare the Improvement (as defined in Section 1 of this Ordinance) to the Property to be a public purpose; and

**WHEREAS**, this Council has determined that it is necessary and appropriate and in the best interest of the City to exempt from taxation one hundred percent (100%) of the Improvement to the Property as permitted and provided in Section 5709.40(B) of the Ohio Revised Code for up to thirty (30) years (the "TIF Exemption") and to simultaneously direct and require the current and future owner(s) of

parcels (each such owner individually, an "Owner," and collectively, the "Owners") comprising the Property to make annual Service Payments (as defined in Section 2 of this Ordinance) with respect to the Property in lieu of real property tax payments, in the same amount as they would have made real property tax payments except for the exemption provided by this Ordinance; provided that the TIF Exemption and the obligation to make Service Payments is subject and subordinate to any tax exemptions applicable to the Improvement approved by the City pursuant to Sections 3735.65 through 3735.70 or 5709.61 through 5709.69 of the Ohio Revised Code; and

**WHEREAS**, the City has determined that a portion of the Service Payments shall be paid directly to the Massillon City School District (the "School District") in an amount equal to the real property taxes that the School District would have been paid if the Improvement to the Property located in the School District had not been exempt from taxation pursuant to this Ordinance; and

**WHEREAS**, pursuant to Section 5709.43(A) of the Ohio Revised Code, this Council has determined to establish a municipal public improvement tax increment equivalent fund for the Property, in which there shall be deposited the remaining Service Payments distributed to the City; and

**WHEREAS**, this Council has determined to provide for the construction of the public infrastructure improvements described in Exhibit B attached hereto (the "Public Infrastructure Improvements"), which, once made, will directly benefit the Property; and

**WHEREAS**, notice of this proposed Ordinance has been delivered to the Boards of Education of the School District and the Stark County Area Vocational School District in accordance with and within the time periods prescribed in Sections 5709.40 and 5709.83 of the Ohio Revised Code;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MASSILLON, OHIO THAT:**

**SECTION 1. Authorization of TIF Exemption.** Pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.40(B), this Council hereby finds and determines that one hundred percent (100%) of the increase in assessed value of the Property subsequent to the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the "Improvement," as defined in Section 5709.40(A) of the Ohio Revised Code) is hereby declared to be a public purpose, and shall be exempt from taxation for a period commencing with the first tax year that begins after the effective date of this Ordinance and in which an Improvement to the Property first appears on the tax list and duplicate of real and public utility property and ending on the earlier of (a) thirty (30) years after such commencement, or (b) the date on which the City can no longer require Service Payments (as defined in Section 2 herein) in lieu of taxes, all in accordance with the requirements of the TIF Statutes.

**SECTION 2. Service Payments and Property Tax Rollback Payments.** Pursuant to Section 5709.42 of the Ohio Revised Code, the City hereby directs and requires the Owners of the Property to make annual Service Payments (as defined herein) in lieu of taxes with respect to the Improvement allocable thereto to the Stark County Treasurer on or before the final dates for payment of real property taxes. Each service payment in lieu of taxes, including any penalties and interest at the then current rate established under Sections 323.121(B)(1) and 5703.47 of the Ohio Revised Code (collectively, the "Service Payments") shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement if it were not exempt from taxation pursuant to Section 1 of this Ordinance. The Service Payments, and any other payments with respect to the Improvement that are received by the Stark County Treasurer in connection

with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the "Property Tax Rollback Payments"), shall be allocated and distributed in accordance with Section 4 of this Ordinance. This Council further hereby authorizes and directs appropriate officers of the City to make such arrangements as are necessary and proper for collection of the Service Payments from the Owners, including the preparation and filing of any necessary exemption applications.

If determined to be necessary and appropriate, the Mayor of the City (the "Mayor") and the City Auditor of the City (the "City Auditor"), or either of them individually, may execute on behalf of the City one or more Service Payment Agreements between the City and Owners providing for the payment and collection of the Service Payments, which agreement shall be in such form as is acceptable to such officials, approved by the Law Director of the City, and not substantially inconsistent with the terms of this Ordinance.

**SECTION 3. Creation of TIF Fund.** This Council hereby establishes pursuant to and in accordance with the provisions of Ohio Revised Code Section 5709.43, a Municipal Public Improvement Tax Increment Equivalent Fund (the "Shearer's Food TIF Fund"). The TIF Fund shall be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 4 of this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvement of the Property and so deposited pursuant to Section 5709.42 of the Ohio Revised Code shall be used solely for the purposes authorized in the TIF Statutes or this Ordinance. The TIF Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund shall be dissolved and any surplus funds remaining therein transferred to the City's General Fund, all in accordance with Section 5709.43 of the Ohio Revised Code.

**SECTION 4. Distribution of Funds.** Pursuant to the TIF Statutes, the Stark County Treasurer is requested to distribute the Service Payments and the Property Tax Rollback Payments as follows:

- (i) to the School District, an amount equal to the amounts that the School District would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to the Property located within the School District's boundaries if the Improvement had not been exempt from taxation pursuant to this Ordinance; and
- (ii) to the City, all remaining amounts for further deposit into the TIF Fund for payment of costs of the Public Infrastructure Improvements, including debt service on any securities issued to finance those costs.

**SECTION 5. Application for Real Property Tax Exemption and Remission.** This Council further hereby authorizes the Mayor or the City Auditor, or other appropriate officers of the City, to sign and execute all documents and make such arrangements as are necessary and proper for collection of said Service Payments from the Owners of Property, which are to be deposited into the TIF Fund.

**SECTION 6. Further Authorizations.** This Council further hereby authorizes and directs the Mayor and the City Auditor, or other appropriate officers of the City, to prepare and sign all agreements, and any amendments thereto such that the character of those changes is not substantially adverse to the City,

CERTIFICATE

The undersigned Clerk hereby certifies that the foregoing is a true copy of Ordinance No. 135-  
2009 duly adopted by the City Council of the City of Massillon, Ohio on December 21, 2009.

  
Clerk  
City of Massillon, Ohio

**EXHIBIT A**

**The Property**

**Property Owner:** Shearer's Food Inc

**Location:** Millenium Blvd SE

**Parcel Nos.:** 07-01739

## EXHIBIT B

### Description of Public Infrastructure Improvements

The Public Infrastructure Improvements include permanent improvements within the definition of "costs of permanent improvements" as defined in Ohio Revised Code Section 133.15(B), including, but not limited to:

(i) Street improvements and other public infrastructure improvements to Millennium Boulevard SE, Navarre Road SE, and State Route 21, including street repaving and reconstruction, sewer and drainage, bridge maintenance and replacement, rail crossings, and traffic signal maintenance and replacement;

(ii) The costs of financing such Public Infrastructure Improvements, which financing costs specifically include the debt service charges on securities issued to finance the Public Infrastructure Improvements; and

(iii) Legal, consulting, engineering, and other eligible costs related thereto.

All of the Public Infrastructure Improvements described above are hereby determined to be "public infrastructure improvements" (as defined in Ohio Revised Code Section 5709.40(A)(7)) and will directly benefit the real property described in Exhibit A.

RECEIPT OF THE DIRECTOR OF DEVELOPMENT FOR THE STATE OF OHIO  
FOR LEGISLATION DECLARING CERTAIN IMPROVEMENTS TO REAL PROPERTY  
TO BE EXEMPT FROM REAL PROPERTY TAXATION PURSUANT TO  
OHIO REVISED CODE SECTION 5709.40

I, Lisa Patt-McDaniel, the Director of Development of the Department of Development of the State of Ohio, hereby certify that a certified copy of Ordinance No. 135-2009, which was duly adopted by the City Council of the City of Massillon, Ohio (the "City") on December 21, 2009 and which declared the improvement of certain real property located within the City to be a public purpose and declaring a portion of such property to be exempt from real property taxation pursuant to Ohio Revised Code Section 5709.40, was filed in this office on \_\_\_\_\_, 2009.

WITNESS my hand and official seal at Columbus, Ohio on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Director of Development  
Department of Development  
State of Ohio

which shall be established conclusively by their signatures thereon, and to prepare and sign all instruments and to take all other actions as may be necessary and appropriate to implement this Ordinance.

**SECTION 7. Filings with Ohio Department of Development.** Pursuant to Ohio Revised Code Section 5709.40(I), the Clerk of Council is hereby directed to deliver a copy of this Ordinance to the Director of Development of the Department of Development of the State of Ohio (the "Director of Development") within fifteen (15) days after its adoption. Further, on or before March 31 of each year that the TIF Exemption set forth in Section 1 hereof remains in effect, the City Auditor or other authorized officer of the City shall prepare and submit to the Director of Development the status report required under Ohio Revised Code Section 5709.40(I).

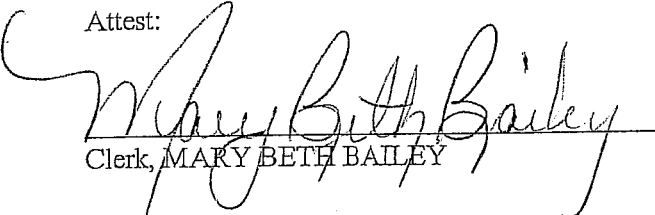
**SECTION 8. Tax Incentive Review Council.** The City hereby creates the City of Massillon Tax Incentive Review Council with the membership of that Council constituted in accordance with Ohio Revised Code Section 5709.85. That Council shall review annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other such matters as may properly come before that Council, all in accordance with Ohio Revised Code Section 5709.85.

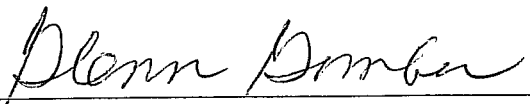
**SECTION 9. Open Meetings.** It is hereby found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were passed in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

Adopted in Council on this 5<sup>th</sup> day of December 2009.

Effective this 5<sup>th</sup> day of December 2009.

Attest:

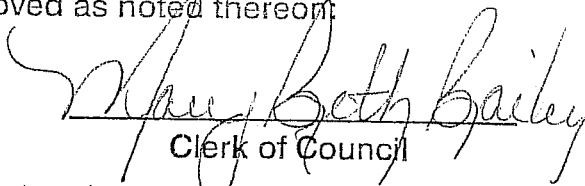
  
Clerk, MARY BETH BAILEY

  
President of Council, GLENN E. GAMBER

Approved:

  
Mayor, FRANCIS H. CICCHINELLI, JR.

I hereby certify that the foregoing ordinance is a true copy of the original, as passed by the Council of the City of Massillon, Ohio, and approved as noted thereon.

  
Clerk of Council

Date 12/31/09