

CITY OF CLAYTON, OHIO

ORDINANCE NO. O- 04 – 22 - 08

AUTHORIZING THE CREATION OF TWO INCENTIVE DISTRICTS IN CONNECTION WITH THE HUNTER’S PATH DEVELOPMENT WITHIN THE CITY OF CLAYTON, OHIO; DECLARING IMPROVEMENTS TO CERTAIN REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICTS TO BE A PUBLIC PURPOSE; DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BE MADE TO BENEFIT OR SERVE THE REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICTS; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AND PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(C), 5709.42, 5709.43, 5709.832 AND 5709.85, AND DECLARING AN EMERGENCY.

WHEREAS, Division (C) of Ohio Revised Code Section (“**R.C.**”) 5709.40 provides that this Council may, under certain circumstances, (i) create one or more incentive districts for parcels of real property located in the City of Clayton, Ohio (the “**City**”), (ii) declare as “improvements,” which term is defined in Division (A)(4) of R.C. 5709.40, to such parcels of real property located in such incentive districts to be a public purpose, thereby granting to those improvements an exemption from real property taxation, (iii) designate the public infrastructure improvements made, to be made, or in the process of being made that benefit or serve, or, once made, will benefit or serve parcels in such incentive districts, and (iv) require annual service payments in lieu of taxes to be used to finance the designated public infrastructure improvements within such incentive districts; and,

WHEREAS, pursuant to Division (D)(1) of R.C. 5709.40, such exemption may, with the approval of the board of education of the city, local, or exempted village school district within the territory, be for up to thirty (30) years and up to one hundred percent (100%) of the increase in the assessed value of any real property in such incentive districts that would first appear on the tax list and duplicate of real and public utility property with respect to such incentive district after the effective date of an ordinance adopted under R.C. 5709.40 were it not for the exemption granted by that ordinance (an “**Improvement**”); and,

WHEREAS, the real property described in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Property**”) is located in the City, with each parcel of the Property referred to herein as a “**Parcel**” (whether as presently appearing on Montgomery County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and,

WHEREAS, pursuant to Division (C) of R.C. 5709.40, this Council desires to create two incentive districts comprised of the Property (the “**Hunter’s Path Incentive District No. 1**” and “**Hunter’s Path Incentive District No. 2**”); and,

WHEREAS, as required by Division (A)(5)(f) of R.C. 5709.40, the City Engineer has certified to this Council that (i) the acreage of each of the two incentive districts is less than 300 acres in size, (ii) each incentive district is enclosed by a continuous boundary, and (iii) the existing public infrastructure is inadequate to meet the residential, commercial or industrial development needs of the incentive districts, as evidenced by the City’s written economic development plan, which is on file with the Clerk of the Council; and,

WHEREAS, pursuant to Division (D)(1) of R.C. 5709.40, this Council has determined to grant the TIF Exemption (as defined herein) from real estate taxation for all Improvements to the Property within the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2 for one hundred percent (100%) of such Improvements for thirty (30) years; and,

WHEREAS, this Council (i) has determined that it is necessary and appropriate and in the best interests of the City to provide for annual service payments in lieu of real property taxes with respect to the Property pursuant to R.C. 5709.42 and (ii) desires to facilitate the construction of the public infrastructure improvements described in **EXHIBIT B** attached hereto and incorporated herein by reference (the “**Public Infrastructure Improvements**”), which said Public Infrastructure Improvements, once made, will benefit or serve the Parcels (the “**Project**”); and,

WHEREAS, Hunters Path Project I, LLC or its designee (the “**Developer**”) proposes to develop the Property by constructing or causing to be constructed via a third-party home builder, within Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2, aggregating approximately 125 single-family residential units (the “**Development**”), which Development places additional demand on the Public Infrastructure Improvements; and,

WHEREAS, in connection with the construction of the Project, the City and the Developer desire to execute a tax increment financing agreement substantially in the form attached hereto and incorporated herein as **EXHIBIT C** (the “**TIF Agreement**”), which TIF Agreement provides for the construction, and for the financing, of the Project, as defined herein and in the TIF Agreement; and,

WHEREAS, as authorized by R.C. 5709.91 and as provided in the TIF Agreement, the City intends to require the owner or owners of each Parcel to make minimum service payments on or before the final dates for payment of real property taxes, in accordance with the TIF Agreement; and,

WHEREAS, notice of this proposed ordinance has been delivered to the Boards of Education of the Northmont City School District (“**Northmont City Schools**”) and the Miami Valley Career Technology Center (“**Miami Valley Career Tech**,” and together with Northmont City Schools, the “**School Districts**”) in accordance with and within the time periods prescribed in Division (D) of R.C. 5709.40 and R.C. 5709.83, respectively, and by resolution adopted by the board of education of the Northmont City Schools on February 14, 2022, Northmont City Schools has approved the TIF Exemption (as defined herein) on the condition that City and Northmont City Schools enter into the School District Compensation Agreement authorized herein; and,

WHEREAS, this Council has determined that annual service payments in lieu of taxes are to be paid to the School Districts pursuant to R.C. 5709.42 in amounts equal to, for years 1 through

10, twenty-five percent (25%) of the real property taxes that would have been payable to the School Districts if the Improvements had not been exempted from taxation, and, for years 11 through the end of the TIF Exemption period, one hundred percent (100%) of the real property taxes that would have been payable to the School Districts if the Improvements had not been exempted from taxation; and,

WHEREAS, this Council acknowledges that this ordinance is being adopted after prior notice, via first class mail, of public hearing provided not later than thirty (30) days to every real property owner whose property is located in the boundaries of the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, which notice included a map of the incentive districts, an overlay relating thereto, and information to property owners as to excluding their property from the incentive districts, as appropriate, all in accordance with Division (C)(2)(a) of R.C. 5709.40, and that the owner of the Property did affirmatively waive its right to a public hearing in accordance with such provisions; and,

WHEREAS, this Council acknowledges that it has received an affirmative statement from the owners of all the Parcels (i.e., 100% of the Property) located within the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2 (i) otherwise waiving the notice requirement set forth in Division (C)(2)(a) of R.C. 5709.40 with respect to all of the Property, (ii) affirming that the owners thereof have no intention of excluding any of the Property from the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, and (iii) requesting that this Council proceed with the enactment of this ordinance; and,

WHEREAS, on November 12, 2022, the City delivered notice of this proposed ordinance to the Board of Commissioners of the County of Montgomery (the "Board") in accordance with and within the time period prescribed in Division (E) of R.C. 5709.40; and,

WHEREAS, the Board did not object to the exemption contemplated by this ordinance within the time period specified in Division (E)(3) of R.C. 5709.40 and, notwithstanding the requirements for automatic compensation of renewal levies with an increase, replacement levies, or additional levies, as appropriate, under Division (F) of R.C. 5709.40, this Council has determined that no other compensation shall be provided to the Board related to the matter herein.

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Creation of Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2. Pursuant to Division (C) of R.C. 5709.40, this Council hereby creates the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, which consists of the Parcels specifically identified and depicted in Exhibit A attached hereto, and further declares that the Improvements to the Property located in the incentive districts are a public purpose. The life of each incentive district commences with the first tax year that begins after the effective date of this ordinance and in which an Improvement attributable to a new structure would first appear on the tax list and duplicate of real and public utility property for any Parcel within the applicable incentive district were it not for the exemption granted in this ordinance and ends on the earlier of (a) 30 years after such commencement or (b) the date on which the City can no longer require

service payments in lieu of taxes, all in accordance with the requirements of R.C. 5709.40 (the “Incentive District Life”).

Section 2. Authorization of TIF Exemption. Under Division (C) of R.C. 5709.40, this Council hereby exempts from taxation one hundred percent (100%) of the Improvement as a public purpose for a period of thirty (30) years (the “**TIF Exemption**”). The TIF Exemption with respect to all Property in the incentive districts shall commence on separate dates for each incentive district with the first day of the tax year following the effective date of this ordinance and for which an Improvement on any Parcel in the each respective incentive district would have first appeared on the tax list and duplicate of real and public utility property were it not for the exemption granted by this ordinance (the “**Commencement Date**”), and in all cases, the incentive districts and the TIF Exemption for the Property and Improvements located within each incentive district shall end with respect to all Property in such incentive district on the date that is the earlier of (a) thirty years after the Commencement Date for such incentive district or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvements are paid for, all in accordance with the requirements of R.C. 5709.40, R.C. 5709.42, and R.C. 5709.43.

Section 3. Service Payments and Property Tax Rollback Payments. As provided in R.C. 5709.42, this Council hereby directs and requires each owner of a Parcel within the respective incentive districts (each, an “**Owner**”) to make annual service payments in lieu of taxes with respect to the Improvement allocable to each such Owner’s Parcel to the County Treasurer of Montgomery County, Ohio (the “**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 R.C. 323.121 and R.C. 5703.47, will 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 subject to the TIF Exemption. Such service payments in lieu of taxes, penalties and interest, and any other payments with respect to each Improvement that are received by the County Treasurer in connection with the reduction required by R.C. 319.302, R.C. 321.24, R.C. 323.152 and R.C. 323.156, as the same may be amended from time-to-time, or any successor provisions, as the same may be amended from time-to-time (the “**Property Tax Rollback Payments**,” and together with the annual service payments in lieu of taxes and penalties and interest described above, the “**Service Payments**”), will be allocated and distributed in accordance with Section 5 of this ordinance.

Section 4. Creation of TIF Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. 5709.43, the Hunter’s Path Municipal Public Improvement Tax Increment Equivalent Fund (the “**TIF Fund**”), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. 5709.42. The City may use amounts deposited into the TIF Fund to pay any costs associated with the Public Infrastructure Improvements approved by the City, including, but not limited to, the “**costs of permanent improvements**” described in Division (B) of R.C. 133.15. The TIF Fund will be maintained in the custody of the City and will exist so long as such Service Payments and minimum service payments are collected and used for the purposes described in this Section 5. Then the TIF Fund is to be dissolved and any surplus funds remaining in the TIF Fund will be transferred to the City’s general fund, all as set forth under Division (D) of R.C. Section 5709.43.

Section 5. Distribution of Funds. At the same time and in the same manner as real property tax distributions, the County Treasurer shall distribute the Service Payments to the City to be deposited in the TIF Fund, and the City shall then distribute the Service Payments as follows:

FIRST, to each of Northmont City Schools and Miami Valley Career Tech, amounts equal to, in years one (1) through ten (10) of the TIF Exemption period, twenty-five percent (25%), and in years eleven (11) through thirty (30) of the TIF Exemption period, one hundred percent (100%), of the additional amount of Service Payments actually received by the City in such year, multiplied by a fraction, the numerator of which is each respective School District's effective real property tax rate for the classification of the Property and the denominator of which is the aggregate effective real property tax rate for the classification of the Property for all taxing districts within which the Property is located, as calculated and certified in the manner specified in Section 2 of the School District Compensation Agreement; and

SECOND, to be deposited into the TIF Fund and then distributed according to the terms and conditions of this Section 5 and the TIF Agreement.

The City shall then distribute Service Payments on deposit in the TIF Fund in accordance with the TIF Agreement to pay or reimburse the Developer or its designee for the costs of the Project constructed or caused by the Developer or its designee to be constructed according to the terms and conditions of the TIF Agreement. The Service Payments are hereby directed one hundred percent (100%) to general public infrastructure improvements, as they comprise the Public Infrastructure Improvements set forth herein. The TIF Fund is to 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 is to be dissolved and any surplus funds remaining therein are to be transferred to the City's General Fund, all in accordance with R.C. 5709.43.

Section 6. TIF Agreement and Further Authorizations. This Council hereby approves the TIF Agreement (which TIF Agreement shall provide for minimum service payments in accordance with R.C. 5709.91), with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and which shall be conclusively evidenced by the signing of the TIF Agreement by the City Manager, to which this Council further hereby authorizes execution on behalf of the City. This Council further authorizes and directs the City Manager or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments, as are necessary and appropriate to implement this ordinance and the TIF Agreement.

Section 7. Authorization of School Compensation Agreement. This Council further hereby approves the compensation agreement between the City and the Board of Education of Northmont City Schools in the form attached hereto as **EXHIBIT D** (the "**School District Compensation Agreement**"), with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the School District Compensation Agreement, and hereby authorizes and directs the City Manager, other appropriate officers of the City, or any of them, to execute same.

Section 8. Application for Real Property Tax Exemption and Remission. This Council hereby authorizes the City Manager or other appropriate officers of the City to prepare and sign any applications for real property tax exemption pursuant to R.C. 5709.911, the provisions of which govern the priority status of the exemptions provided under this ordinance.

Section 9. Tax Incentive Review Council. This Council hereby designates the Montgomery County Tax Incentive Review Council (the “TIRC”) as the tax incentive review council that shall review annually all exemptions from taxation resulting from this ordinance and any other matters as may properly come before the TIRC, in accordance with R.C. 5709.85.

Section 10. Nondiscriminatory Hiring Practices. In accordance with R.C. 5709.832, this Council hereby determines that no employer located within the incentive districts is to deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, or ancestry.

Section 11. Ohio Department of Development. Pursuant to Division (I) of R.C. 5709.40, the City Manager is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Department of Development (“ODOD”) within fifteen (15) days after its passage. On or before March 31 of each year that the TIF Exemption remains in effect, the City Manager or other authorized officer of this City shall prepare and submit, or cause to be prepared and submitted, to the Director of ODOD the status report required under Division (I) of R.C. 5709.40.

Section 12. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio’s Sunshine Laws, including R.C. 121.22.

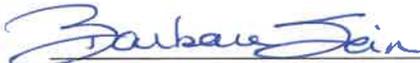
Section 13. Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this ordinance must be immediately effective so that the work on the Development can begin as quickly as possible, thus providing economic benefit to the City and its residents; wherefore this ordinance shall take effect and be in force from and immediately after its adoption.

ADOPTED BY COUNCIL ON APRIL 7, 2022.

AUTHENTICATION:

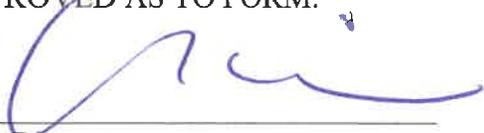


Mayor (Presiding Officer of Council)



Clerk of Council

APPROVED AS TO FORM:



Law Director

CERTIFICATION OF PUBLICATION

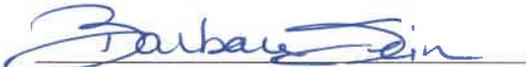
This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of Newspaper

Date of Publication

Brookville Star

April 13, 2022



CLERK

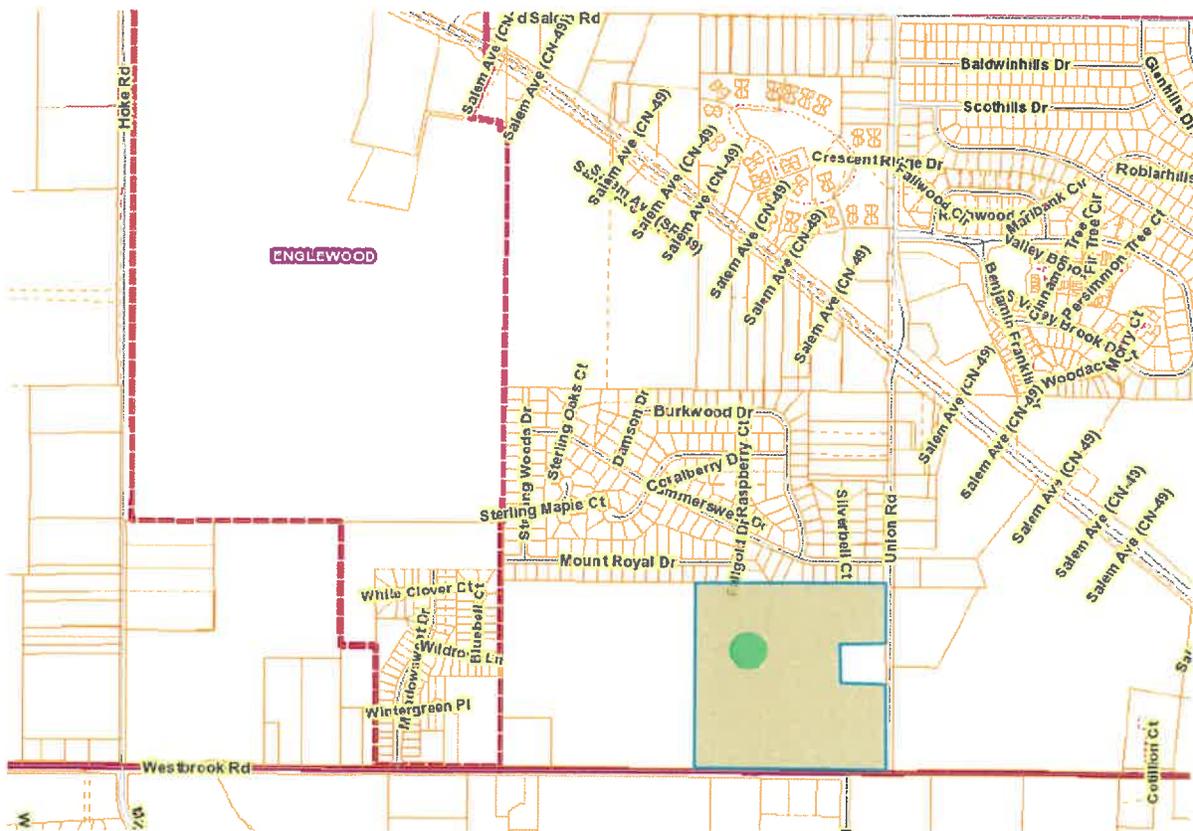
EXHIBIT A

Description of the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2

The Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2 to be exempt under the foregoing ordinance consists of the following area, each of which are not more than 300 acres in size enclosed by a continuous boundary, and situated in the City of Clayton, County of Montgomery, State of Ohio, that is identified by the County Auditor of Montgomery County, Ohio as having the following tax parcel identification numbers, as that real property may be subdivided, combined, and/or designated by different tax parcel numbers from time-to-time:

<u>Parcel No.</u>	<u>Owner Name</u>
M60-03207 0022	Clayton Land Company

For ease of reference, and for purposes of delineating the boundaries of the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, the following map is provided:



The specific boundaries of Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2 are as shown below:

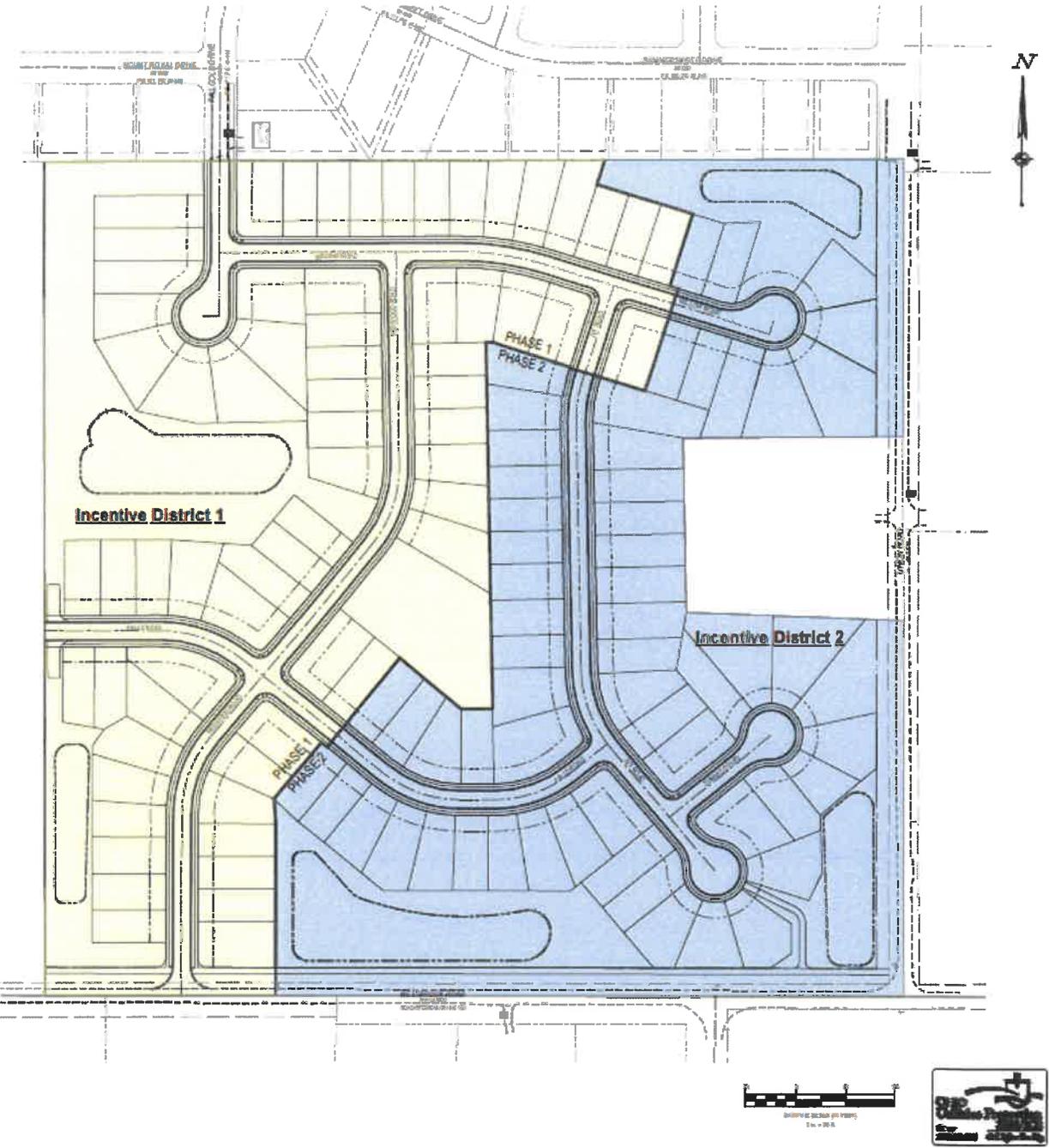


EXHIBIT B

Public Infrastructure Improvements

All of the Public Infrastructure Improvements described below are hereby determined to be “**public infrastructure improvements**” (as defined in Division (A)(8) of R.C. Section 5709.40) and are intended to directly benefit the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2 described in EXHIBIT A. The Public Infrastructure Improvements specifically include the costs of financing the Public Infrastructure Improvements, including the items of costs of permanent improvements described in Division (B) of R.C. 133.15, and incurred with respect to the Public Infrastructure Improvements, which said costs specifically include any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements and any debt service on, and other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the Public Infrastructure Improvements. The Public Infrastructure Improvements include, without limitation:

- **Roadways.** Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways, streets, bridges (both roadway and pedestrian), traffic calming devices, sidewalks and walkways, pathways, bikeways, medians and viaducts accessible to and serving the public, and providing lighting systems, signalization, and traffic controls, and all other appurtenances thereto, including the continued maintenance of those public roads and highways; and,
- **Water and Sewer Lines.** Construction, reconstruction or installation of utility improvements (including any underground utilities), storm and sanitary sewers (including necessary site grading therefore and including the continued maintenance of those storm and sanitary sewers), water lines (including the continued maintenance of those water lines), fire buildings and improvements, public water and fire protection systems (excluding any in-unit, private water and fire suppression systems), and all other appurtenances thereto; and,
- **Utilities.** Construction, reconstruction or installation of gas, electric, and communication service facilities, and all other appurtenances thereto, and including the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes; and,
- **Parks.** Construction or reconstruction of one or more public parks, including grading, trees, sod, shrubs, and other park plantings, park accessories, park structures, irrigation, lighting, flatwork, playgrounds, fountains, water fountains, water features, sports facilities, including, but not limited to, public tennis courts, sculptures, public art and related improvements, and all other appurtenances thereto; and,
- **Streetscape/Landscape Improvements.** Construction or installation of streetscape and landscape improvements including trees and shrubs, landscaping mounds and fencing, tree

grates, planting beds, signage, curbs, sidewalks, street and sidewalk lighting, trash receptacles, benches, newspaper racks, irrigation, burial of overhead utility lines and related improvements, and all other appurtenances thereto; and,

- **Public Parking Facilities.** Construction of one or more public parking facilities, including public surface parking and public parking structures and related improvements, and all other appurtenances thereto; and,
- **Demolition.** Demolition and excavation, including demolition and excavation on private property when determined to be necessary for economic development purposes; and,
- **Acquisition of Real Estate.** Acquisition of real estate or interests in real estate (including easements and rights-of-way) necessary to accomplish the foregoing improvements or in aid of industry, commerce, distribution or research; and,
- **Environmental remediation;** and,
- **Stormwater and Flood Remediation Projects.** Stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; and,
- **Ongoing Administrative Expenses.** Any on-going administrative expenses relating to the Public Infrastructure Improvements and maintaining the TIF Fund, including but not limited to engineering, architectural, legal, TIF administration, permitting and public infrastructure construction management, and other consulting and professional services; and,
- **Inspection/Governmental Fees.** All inspection fees and other governmental fees related to the foregoing; and,
- **Professional Services.** Engineering, consulting, legal, administrative, and other professional services associated with the planning, design, acquisition, construction and installation of the foregoing improvements and real estate.

TAX INCREMENT FINANCING AGREEMENT

THIS TAX INCREMENT FINANCING AGREEMENT (this “**Agreement**”) is made and entered into as of this [7th] day of April, 2022 (the “**Effective Date**”), by and between the **CITY OF CLAYTON, OHIO**, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “**City**”), and **HUNTERS PATH PROJECT I, LLC**, an Ohio limited liability company, or its designated affiliate (the “**Company**”, which together with the City may be referred to herein each as a “**Party**” or collectively as the “**Parties**”).

WITNESSETH:

WHEREAS, the Company, or an affiliate, has or will acquire certain real property located within the jurisdiction of the City, consisting of 39.47 +/- acres known on the Effective Date as Parcel Number M60-03207 0022, as more fully described in **EXHIBIT A**, attached hereto and incorporated herein (the “**Project Site**”), with each parcel of real property within the Project Site referred to herein as a “**Parcel**” (whether as presently appearing on the county tax duplicate or as subdivided or combined and appearing on future tax duplicates), and as identified in the records of the Office of the Auditor of Montgomery County, Ohio (the “**County Auditor**”); and,

WHEREAS, in order to successfully develop the Parcels, it is necessary to construct or to cause to be constructed certain public infrastructure improvements as described in **EXHIBIT B** attached hereto (the “**Public Infrastructure Improvements**”), that which the Parties agree as made, to be made, or in the process of being made benefit or serve, or, once made, will benefit or serve the Project Site; and,

WHEREAS, the Company proposes to develop the Project Site to allow a third party homebuilder to construct approximately 125 single family residential units, together with related site improvements (collectively, the “**Project**”); and,

WHEREAS, the City Council of the City (“**Council**”), by its Ordinance No. 2022-[08] adopted on [April 7], 2022 (the “**TIF Ordinance**”), has (i) has created the “**Hunter’s Path Incentive District No. 1**” and “**Hunter’s Path Incentive District No. 2**” (together, the “**Incentive Districts**” and each an “**Incentive District**”) and has declared that one hundred percent (100%) of the increase in the assessed value of each Parcel subsequent to the effective date of the TIF Ordinance (each such increase hereinafter referred to as an “**Improvement**,” as further defined in Division (A)(4) of Ohio Revised Code Section (“**R.C.**”) 5709.40 and the TIF Ordinance) is a public purpose and is exempt from taxation for a period commencing on separate dates for each Incentive District with the first day of the tax year following the effective date of the TIF Ordinance and for which an Improvement on any Parcel in the each respective Incentive District would have first appeared on the tax list and duplicate of real and public utility property were it not for the exemption granted by this ordinance (the “**Commencement Date**”) and with respect to all Property in such Incentive District on the date that is the earlier of (a) thirty years after the Commencement Date for such Incentive District or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvements are paid for, all in accordance with the requirements of R.C. 5709.40, R.C. 5709.42, and R.C. 5709.43. (the “**TIF Exemptions**”); and,

WHEREAS, the City has further determined in the TIF Ordinance that it is necessary and appropriate and in the best interest of the City to provide for the owner of each Parcel (referred to herein individually as an “**Owner**” and collectively as the “**Owners**”) to make annual service payments in lieu of taxes with respect to any Improvement allocable thereto (collectively for all Parcels, the “**Service Payments**”) to the Office of the Treasurer of Montgomery County, Ohio (the “**County Treasurer**”), which Service Payments will be used, in part, to pay the costs of the Public Infrastructure Improvements, all pursuant to and in accordance with R.C. 5709.40, R.C. 5709.42 R.C. 5709.43 and R.C. 5709.91 (collectively, the “**TIF Statutes**”), the TIF Ordinance, and this Agreement; and,

WHEREAS, the City has determined that a portion of the Service Payments are to be paid to the Boards of Education of the Northmont City School District (“**Northmont City Schools**”) and the Miami Valley Career Technology Center (“**Miami Valley Career Tech**,” and together with Northmont City Schools, the “**School Districts**”) pursuant to R.C. 5709.42 and pursuant to the TIF Ordinance and a School Compensation Agreement made between the City and Northmont City Schools (the “**School Compensation Agreement**”); and,

WHEREAS, pursuant to the TIF Ordinance, the Council has approved the terms of this Agreement and authorized its execution on behalf of the City; and,

WHEREAS, the Parties desire to enter into this Agreement on the terms and conditions hereinafter set forth to provide for the collection of and disbursement of the Service Payments and to facilitate the construction of the Public Infrastructure Improvements, which made, to be made, or in the process of being made benefit or serve, or, once made, will benefit or serve the Project Site.

NOW, THEREFORE, in consideration of the premises and covenants contained herein and to induce the Company to proceed with the construction of the Public Infrastructure Improvements, the Parties agree as follows:

Section 1. TIF Exemptions and Agreements Related Thereto.

(a) In connection with the construction of the Public Infrastructure Improvements, the City, through the TIF Ordinance, has granted the TIF Exemptions.

(b) The City shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain the exemptions from real property taxation granted under the TIF Ordinance and this Agreement, including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Section 2. Obligation to Make Service Payments and Minimum Service Payments.

(a) Service Payments. Each Owner shall make the Service Payments due during its period of ownership of each Parcel, all pursuant to and in accordance with the requirements of the TIF Statutes, the TIF Ordinance, and the provisions of Ohio law relating to real property tax collections, and any subsequent amendments or supplements thereto. Service Payments will be

made semiannually to the County Treasurer (or to the County Treasurer's designated agent for collection of the Service Payments) on or before the final dates for payment of real property taxes for the Parcels, until expiration of the TIF Exemptions. Any late payments will bear penalties and interest at the then-current rate established under R.C. 323.121 and R.C. 5703.47 or any successor provisions thereto, as the same may be amended from time-to-time. Service Payments will be made in accordance with the requirements of the TIF Statutes and the TIF Ordinance and, for each Parcel, will be in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel (after credit for any other payments received by the City under R.C. 319.302, R.C. 321.24, R.C. 323.152 and R.C. 323.156, or any successor provisions thereto, as the same may be amended from time-to-time, with respect to each Parcel, with such payments referred to herein as the "**Property Tax Rollback Payments**") if it were not exempt from taxation pursuant to the TIF Exemptions, including any penalties and interest. The Parties acknowledge and agree that a City public improvement tax increment equivalent fund is or will be created (the "**TIF Fund**"), into which the City will deposit all applicable Service Payments and Property Tax Rollback Payments made with respect to the Improvements to each Parcel that are payable to the City, together with any investment earnings on money in the TIF Fund.

(b) Minimum Service Payments. Each Owner, including the Company or its designee during its period of ownership, shall be obligated to make certain minimum service payments as calculated in accordance with one or more declarations to be recorded against the Parcels (the "**TIF Declaration**"), as determined in accordance with such TIF Declaration. Such obligation to make minimum service payments shall constitute a "minimum service payment obligation", as defined in R.C. 5709.91.

(c) TIF Declaration; Priority of Lien. Subsequent to the execution of this Agreement, and prior to or concurrent with the issuance of the Bonds, the Company or its designee, as Owner, shall record the TIF Declaration, which shall bind Owners of the Parcels, their successors and assigns to the applicable terms of the TIF Ordinance, the TIF Declaration and this Agreement, including, but not limited to, the obligation to make Service Payments and minimum service payments. The Company or its designee, as Owner, for itself and any and all future Owners, shall acknowledge and agree in the TIF Declaration that the provisions of R.C. 5709.91, which specify that the Service Payments and minimum service payments for each Parcel will be treated in the same manner as taxes for all purposes of the lien described in R.C. 323.11, including, but not limited to, the priority of the lien and the collection of Service Payments, will apply to this Agreement and to the Parcels and any Improvements thereon.

(d) Failure to Make Payments. Should any Owner fail to make any payment required hereunder, that Owner shall pay, in addition to the Service Payments and minimum service payments it is required to pay under the TIF Ordinance, the TIF Declaration and hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the City to enforce the provisions of this Agreement against that Owner.

Section 3. Establishment of a TIF Fund by the City; Distribution of Funds. The City has established or will establish the TIF Fund as a deposit fund to be held in the custody of the City for the sole purpose of receiving the Service Payments and minimum service payments made from

any Owner to the County Treasurer and thereafter payable to the City. Upon distribution of the Service Payments to the City (after compensation amounts have been paid to the School Districts and certain taxing authorities as set forth in Section 5 of this Agreement or otherwise required by law), those Service Payments are to be deposited to the TIF Fund. Minimum service payments received by the City are also to be deposited into the TIF Fund; provided, however, that except for the case where Service Payments intended to have been paid to the School Districts or certain other taxing authorities as set forth in Section 5 of this Agreement or otherwise required by law had been erroneously paid to the Company or for the payment of debt service charges on the Bonds (as defined below), no minimum service payments shall be used to make any payment of compensation to the School Districts. Amounts on deposit in the TIF Fund shall be used by the City, in part, to finance costs of the Public Infrastructure Improvements, including, without limitation, debt service charges, including payment of principal, interest, administrative fees and expenses, and any payments to fund or replenish any reserve funds, on any bonds issued to fund or refund the costs of the Public Infrastructure Improvements (and, in certain cases, debt service charges and administrative expenses payable in the event of an acceleration or prepayment) (collectively, the “**Debt Service**”) on certain bonds to be issued by the Dayton-Montgomery County Port Authority (the “**Port Authority**”) or another governmental issuer of revenue bonds (the “**Bonds**”) issued to pay or reimburse finance costs or costs in the manner and amounts described and permitted herein, or for any other lawful purpose as permitted herein.

Section 4. Exemption Applications, Maintenance and Notice. In accordance with R.C. 5715.27 and R.C. 5709.911, the Company or the City, at the Company’s request, shall file or cause to be filed an application prepared by the Company for an exemption from real property taxation (DTE Form 24 or its successor form) with the County Auditor for the Improvements. The Company and the City agree to cooperate with each other for this purpose, and to cooperate with the County Auditor, the Ohio Department of Taxation and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Ordinance and this Agreement.

Section 5. Payments to School Districts. As provided in the TIF Ordinance and the School Compensation Agreement, during years 1-10 of the TIF Exemptions, the City shall pay to each of the School Districts an amount equal to twenty-five percent (25%) of the additional amount of Service Payments actually received by the City in such year, multiplied by a fraction, the numerator of which is the applicable School District’s effective real property tax rate for the classification of the Parcels and the denominator of which is the aggregate effective real property tax rate for the classification of the Parcels for all taxing districts within which the Project Site is located, as calculated and certified in the manner specified in the School Compensation Agreement. In years 11-30, the City shall pay to each of the School Districts an amount equal to one hundred percent (100%) of the additional amount of Service Payments actually received by the City in such year, multiplied by a fraction, the numerator of which is the applicable School District’s effective real property tax rate for the classification of the Parcels and the denominator of which is the aggregate effective real property tax rate for the classification of the Parcels for all taxing districts within which the Project Site is located, as calculated and certified in the manner specified in the School Compensation Agreement.

Section 6. Reimbursements to the Company from TIF Fund. Subject to the distribution of funds pursuant to Section 3 hereof, the City shall use the TIF Fund to reimburse the Company or its designee for the cost to the Company or its designee of constructing or providing financial assistance for the Public Infrastructure Improvements in accordance with the applicable budget (with the costs collectively referred to herein as the “Costs”). The Costs include but are not necessarily limited to: (i) cash paid for Public Infrastructure Improvements; (ii) interest on cash paid by the Company or its designee at the Interest Rate as defined and set forth below; (iii) review and inspection fees incurred in connection with the construction of the Public Infrastructure Improvements; (iv) professional fees; (v) any and all fees and direct or indirect costs incurred in connection with the Company or its designee obtaining and maintaining a letter of credit or depositing funds into escrow related to the construction of the Public Infrastructure Improvements, whether incurred by the Company or its designee or by one or more other parties on behalf of the Company, including, but not limited to, any and all costs, fees or other charges attributable to the Company’s or its designee’s reimbursement of the letter of credit provider for any draws against the letter of credit or escrow account and any and all costs, fees or other charge relating thereto; and (vi) items of “costs of permanent improvements” set forth in Division (B) of R.C. 133.15(B) and incurred by the City and/or the Company or its designee directly or indirectly with respect to the Public Infrastructure Improvements and (vi) construction management and supervisory costs and fees.

From time to time after commencement of construction of the Public Infrastructure Improvements, the Company or its designee shall provide a certified statement to the City setting forth and providing reasonable evidence concerning Costs of the Public Infrastructure Improvements (each a “Certified Statement”, and collectively, the “Certified Statements”). Upon receipt of each Certified Statement, the City shall review the costs evidenced in the Certified Statement to determine whether each of the costs constitutes Costs of Public Infrastructure Improvements eligible to be reimbursed out of the TIF Fund under this Agreement (the “Reimbursement Amount”). Within fifteen (15) business days of the City’s receipt of each Certified Statement, the City shall certify to the Company or its designee the portion of the costs evidenced in the Certified Statement which has been approved by the City for reimbursement out of the TIF Fund pursuant to this Agreement.

Payments of the Costs to be paid from proceeds of the Bonds (the “Bond Proceeds”) shall be paid to the Company or its designee in accordance with any cooperative agreement made between the City and the Port Authority (or other third-party issuer) (the “Cooperative Agreement”). If Bond Proceeds are not available to pay the Reimbursement Amount, and until the Reimbursement Amount, plus the amount of interest on the outstanding Reimbursement Amount based on the Interest Rate as hereinafter defined has been paid in full, the City will pay to the Company or its designee, on the date which is thirty business (30) days after each semi-annual date on which the Warren County Auditor settles real property taxes with the City (each, a “Payment Date”) until the Costs have been paid in full on each Payment Date following the completion of that phase of the Public Infrastructure Improvements as described in Section 6 (after compensation amounts have been paid to the School Districts and certain taxing authorities as set forth in Section 5 of this Agreement or otherwise required by law), an amount equal to the lesser of (a) the outstanding Costs or (b) 100% the funds at that time on deposit in the TIF Fund.

Notwithstanding anything to the contrary in this Agreement, the City may pay to the Company or its designee, on any date, out of the TIF Fund or from any other lawful source, any

amount which the City shall determine, which amount shall be applied first to the payment of accrued interest on outstanding Costs at the Interest Rate as set forth below, and second to the payment of outstanding non-interest Costs. If the City elects to make such payment, nothing in this Agreement shall be construed as obligating the City to pay any interest which would have been due on the Costs so paid had they remained outstanding until a later date, and the City shall not be obligated to pay any such interest, and the Company (or its designee) shall have no right to receive payment of any such interest.

Interest on the unpaid portion of the Costs will accrue at the Interest Rate from the date on which the City certifies to the Company or its designee the portion of the costs evidenced in the Certified Statement which has been approved by the City for reimbursement out of the TIF Fund pursuant to this Agreement; provided, that if the City shall fail to certify such approved portion of the costs within fifteen (15) days of its receipt of a Certified Statement (as required under this Agreement) interest shall accrue from the date which is fifteen (15) days following the City's receipt of a Certified Statement. As used in this Agreement, "**Interest Rate**" means the following: (i) for the period beginning on the date of this Agreement and continuing until the date which is the fifteenth (15th) anniversary of the first day of the first tax year in which the City receives Service Payments, three and zero hundredths percent (3.00%) per annum; and (ii) for the period commencing on the date which is the fifteenth (15th) anniversary of the first day of the first tax year in which the City receives Service Payments and continuing until all Costs (including interest) have been repaid in full, four and zero hundredths percent (4.00%) per annum. Interest shall be calculated on the basis of a 360-day year consisting of twelve 30-day months.

For purposes of this Agreement, "costs" of the Public Infrastructure Improvements includable in the Costs include the items of "costs of permanent improvements" set forth in Section 133.15(B) of the Ohio Revised Code and incurred by the Company or its designee directly or indirectly with respect to the Public Infrastructure Improvements.

All payments to the Company or its designee hereunder on each Payment Date must be made pursuant to written instructions provided by the Company or its designee.

Notwithstanding any other provision of this Agreement, the City's payment obligations hereunder are limited to the monies in the TIF Fund and do not constitute an indebtedness of the City, the State of Ohio, or any other political subdivision thereof, within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Company does not have the right to have taxes or excises levied by the City, the State of Ohio, or any other political subdivision thereof for the payment of the Costs and accrued interest.

Section 8. Ohio Department of Transportation Fees. The Company or its designee hereby agrees to pay all administrative fees charged by the Ohio Department of Transportation ("ODOT") with respect to the Public Infrastructure Improvements.

Section 9. Representations of the Parties. The Company hereby represents that it has full power and authority to enter into this Agreement and carry out its terms. The City hereby represents that the TIF Ordinance was passed by the Council on [April 7], 2022 and remains in full force and effect, that this Agreement was authorized by the same, and that the City has full power and authority to enter into this Agreement, to carry out its terms and to perform its

obligations hereunder and thereunder. The City further represents and warrants that it shall not take action which would result in a reduction in the period of the TIF Exemptions, the percentage of the TIF Exemptions, or the amount of Service Payments and Property Tax Rollback Payments to be received and made available to pay the Costs of the Public Infrastructure Improvements unless such action shall be permitted by law and not inconsistent with the City's obligations under this Agreement.

Section 10. Provision of Information. The Company hereby agrees to (i) cooperate in all reasonable ways with, and provide necessary and reasonable information to, the designated tax incentive review council to enable that tax incentive review council to review and determine annually during the term of this Agreement the compliance of the Company with the terms of this Agreement; and (ii) to cooperate in all reasonable ways with, and provide necessary and reasonable information to the City to enable the City to submit the status report required by R.C. 5709.40(I) to the Director of the Ohio Department of Development on or before March 31 of each year. During the period of construction of the Project, the Company, and any assigns, agrees to provide to the City Finance District, within thirty (30) days of written request, payroll information regarding persons engaged in the construction of the Project.

Section 11. Nondiscriminatory Hiring Policy. The Company agrees to comply with the City's nondiscriminatory hiring policy adopted pursuant to R.C. 5709.832 to ensure that recipients of tax exemptions practice nondiscriminatory hiring in their operations. The City will provide a copy of that policy and any updates to that policy to the Company. In furtherance of that policy, the Company agrees that it will not deny any individual employment solely on the basis of race, religion, sex, disability, color, national origin or ancestry.

Section 12. Prevailing Wage. The Parties acknowledge and agree that the construction of Public Infrastructure Improvements owned or to be owned by the City or another "**public authority**" (as defined in Division (A) of R.C. 4115.03) are subject to the prevailing wage requirements of R.C. Chapter 4115, and all wages paid to laborers and mechanics employed to construct the Public Infrastructure Improvements must be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Infrastructure Improvements, which wages must be determined in accordance with the requirements of R.C. Chapter 4115. The Parties have or will comply, and the Company has or will require compliance by all the Company's contractors working on any Public Infrastructure Improvements owned or to be owned by the City or another public authority, with all applicable requirements of R.C. Chapter 4115, including, without limitation, (i) obtaining the determination required by R.C. Chapter 4115 of the prevailing rates of wages to be paid for all classes of work called for by the Public Infrastructure Improvements, (ii) obtaining the designation of a prevailing wage coordinator for the Public Infrastructure Improvements, and (iii) insuring that all subcontractors receive notification of changes in prevailing wage rates as required by R.C. Chapter 4115. Notwithstanding anything to the contrary above, the Parties recognize and acknowledge that ODOT retains sole responsibility for satisfying the prevailing wage requirements of R.C. Chapter 4115 for the construction of all ODOT-constructed improvements.

Section 13. Estoppel Certificate. Within thirty (30) days after a request from Company or any Owner of a Parcel, the City will execute and deliver to that Company or Owner or any proposed

purchaser, mortgagee or lessee of that Parcel, a certificate stating that, with respect to that Parcel, if the same is true: (i) this Agreement is in full force and effect; (ii) the requesting Company or Owner is not in default under any of the terms, covenants or conditions of this Agreement, or, if that Company or Owner is in default, specifying same; and (iii) such other matters as that Company or Owner reasonably requests.

Section 14. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents, or approvals given, required, or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient has previously notified the sender of in writing, and will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed to have been received when the return receipt is signed or refused. The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications must be sent. The present addresses of the Parties follow:

- (a) To the Company at: Hunters Path Project I, LLC
10100 Innovation Dr., Suite 410
Dayton, Ohio 45342
Attention: Mark Brady

- With a copy to: DDC Management, LLC
3601 Rigby Road, Suite 300
Miamisburg, Ohio 45342
Attention: Ryan Reed

- With a copy to: Thompson Hine LLP
Austin Landing I
10050 Innovation Drive, Suite 400
Dayton, Ohio 45342
Attention: Robert Curry

- (b) To the City at: P.O. Box 280
Clayton, Ohio 45315
Attention: City Manager
Phone: (937) 836-3500

- With a copy to: Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Attention: Price Finley
Phone: (614) 227-8897

Section 15. Successors; Assignment; Amendments; City Consents. This Agreement will be binding upon the Parties and their successors and assigns. Each Owner's obligations under this Agreement that are identified as obligations of the Owner (rather than obligations of the Company), including, without limitation, its obligation to make Service Payments with respect to each Parcel it owns, are absolute and unconditional covenants running with the land to be evidenced in the TIF Declaration and are enforceable by the City.

The Parties may only assign this Agreement with the consent of all Parties, which consent shall not be unreasonably withheld; provided, however, the Company may, without the consent of the City, assign its rights and obligations under this Agreement to any entity controlling, controlled by, or under common control with the Company and (i) in which the Company has at least fifty percent (50%) direct or indirect ownership; (ii) that has at least fifty percent (50%) direct or indirect ownership of the Company; or (iii) that shares at least fifty percent (50%) direct or indirect common ownership with the Company. Nothing in this Agreement prevents an Owner from transferring any or all of its interest in the Parcels to another person or entity. This Agreement may only be amended by written instrument executed by all Parties. Any consent of the City to be given under this Agreement may be given by the City Manager and must be given in writing.

Section 16. Extent of Covenants; No Personal Liability; Indemnification. All covenants, stipulations, obligations and agreements of the Parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. The obligations of the City may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity. No such covenant, stipulation, obligation, or agreement will be deemed a covenant, stipulation, obligation, or agreement of any present or future member, officer, agent, or employee of any of the Parties in their individual capacity, and neither the members of the Council nor any City official executing this Agreement, or any individual person executing this Agreement on behalf of the Company, will be liable personally by reason of the covenants, stipulations, obligations, or agreements of the Parties contained in this Agreement. The obligation to perform and observe the agreements contained herein on the part of the Company shall be binding and enforceable by the City against the Company with respect to (and only to) the Company's interest in its respective portion of the Parcels and the Improvements, or any parts thereof or any interest therein.

The Company, and any affiliates or assigns that assume the obligations of the Company under this Agreement, shall indemnify, defend and hold harmless the City and the City's agents, employees and public officials (each, an "Indemnified Party") from and against any and all suits, claims, damages, losses and expenses (including reasonable attorneys' fees) incurred by the City (collectively, the "Liabilities" and each, a "Liability"), arising or allegedly arising out of, or resulting from the Company's performance of its obligations under this Agreement, or any work with respect to the Public Infrastructure Improvements, including claims for bodily injury, personal injury or property damage and contract and legal disputes, but excluding any Liability attributable to the gross negligence or willful misconduct of an Indemnified Party.

In case any claim or demand is at any time made, or action or proceeding is brought, against the City in respect of which indemnity may be sought under this Agreement, an Indemnified Party shall promptly give notice of that action or proceeding to the Company, upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding with

counsel that is not, without the City's consent, counsel to the Company, and that is reasonably satisfactory to the City, with full power and authority to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified Party has the right to approve any obligations imposed upon it by compromise or settlement of any Liability or in which it otherwise has a material interest; and provided further, that failure of an Indemnified Party to give that notice shall not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company. At its own expense, an Indemnified Party may employ separate counsel and participate in the defense. The City agrees to fully cooperate with the Company and lend the Company such assistance as the Company shall reasonably request in defense of any claim, demand, action or proceeding at no cost to the Indemnified Party or the City. The Company shall not be liable for any settlement made without its consent.

The indemnities of this Section shall survive the termination of this Agreement.

Section 17. Events of Default and Remedies.

(a) Any one or more of the following constitutes an “**Event of Default**” under this Agreement:

(i) The Parties fail to perform or observe any material obligation punctually and as due under this Agreement, provided that if a Force Majeure (as such term is defined below) event causes the failure, the Parties may receive an additional period of time as is reasonably necessary to perform or observe the material obligation in light of the event if it notifies the other or others of the potential event and the extent of the delay promptly after becoming aware of the event;

(ii) The Parties make a representation or warranty in this Agreement that is materially false or misleading at the time it is made;

(iii) The Company files a petition for the appointment of a receiver or a trustee with respect to either of it or any of its property;

(iv) The Company makes a general assignment for the benefit of creditors;

(v) A court enters an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Company as debtor; or;

(vi) The Company files an insolvency proceeding with respect to itself or any proceeding with respect to itself for compromise, adjustment, or other relief under the laws of any country or state relating to the relief of debtors;

As used in this Section, “**Force Majeure**” means any event that is not within the control of a Party or its affiliates, employees, contractors, subcontractors, or material suppliers that delays performance of any obligation under this Agreement including, but not limited to, the following acts: acts of God; fires; epidemics; pandemics; landslides; floods; strikes; lockouts or other

industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or orders or restraints of any kind of the government of the United States or of the State (and in the case of a Force Majeure claim by the Parties or any departments, agencies, political subdivisions or officials that are not in response to a violation of law or regulations).

(b) General Right to Cure. In the event of any Event of Default in or breach of this Agreement, or any of its terms or conditions, by any Party, the defaulting Party will, upon written notice from the other(s), proceed, as soon as reasonably possible, to cure or remedy such Event of Default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such Event of Default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party will upon written notice from the other(s) commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach.

(c) Remedies. If a defaulting Party fails to cure any Event of Default pursuant to paragraph (b) of this Section, a Party may institute such proceedings against the defaulting Party as may be necessary or desirable in its opinion to cure and remedy such default or breach. Such remedies include, but are not limited to: (i) instituting proceedings to compel specific performance by the defaulting Party, (ii) suspending or terminating the obligations of the non-defaulting Party under this Agreement, provided the aggrieved Party must provide thirty (30) days' notice of any termination to the defaulting Party and provided further that the aggrieved Party must rescind the termination notice and not terminate the Agreement if the defaulting Party cures all Events of Default within a reasonable time thereafter, and (iii) any other rights and remedies available at law, in equity, or otherwise to collect all amounts then becoming due or to enforce the performance of any obligation under this Agreement. The obligations of the City may be enforced to the extent permitted by law by mandamus or any suit or proceeding in law or equity.

Section 18. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, said provision will be fully severable. This Agreement will be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible that is and will be legal, valid, and enforceable.

Section 19. Separate Counterparts; Captions. This Agreement may be executed by the Parties in one or more counterparts or duplicate signature pages, each of which when so executed and delivered will be an original, with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other

counterparts or duplicate signature pages to form a completely executed original instrument. Captions have been provided herein for the convenience of the reader and do not affect the construction of this Agreement.

Section 20. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the matters covered herein and supersedes prior agreements and understandings between the Parties.

Section 21. Governing Law and Choice of Forum. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes, and other matters in question between the City, its employees, contractors, subcontractors and agents, the Company, its employees, contractors, subcontractors and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Montgomery, State of Ohio.

Section 22. Additional Documents. The Parties and their respective successors, assigns, and transferees agree to execute any further agreements, documents, or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Agreement.

Section 23. Recordation. Following the execution of this Agreement by each of the Parties, the Company will cause a memorandum of this Agreement, which may be the TIF Declaration, summarizing its terms and conditions, to be recorded in the Montgomery County, Ohio real property records on each Parcel of the Property. During the term of this Agreement, the Company or its designee will cause all instruments of conveyance of interests in all or any portion of any Parcel to subsequent mortgagees, successors, lessees, assigns, or other transferees to be made expressly subject to this Agreement, which may be fulfilled by recording of the TIF Declaration; provided, however, that any failure by the Company or its designee to make any such instrument of conveyance expressly subject to this Agreement shall not affect the unconditional and binding nature of this Agreement on each such subsequent mortgagee, successor, lessee, or assign.

Section 24. Legal Fees. The Company or its designee shall pay all costs and expenses incurred by legal counsel to the City in connection with this Agreement that have not already been paid. Such payment shall be due within five (5) business days after complete execution and delivery of this Agreement. The Parties agree that, in the event that Bonds are issued, they can include such legal fees as a cost eligible for TIF reimbursements and that they are otherwise eligible for reimbursement as a Cost hereunder.

[Signature Page Follows.]

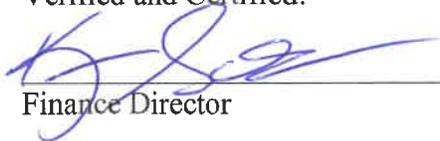
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers or representatives, as of the date hereinabove written.

CITY OF CLAYTON, OHIO

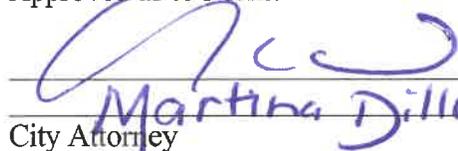
By: 
Its: City Manager

By Ordinance No. [08] passed [04-07-22]

Verified and Certified:


Finance Director

Approved as to Form:


Martina Dillon
City Attorney

HUNTERS PATH PROJECT I, LLC,
an Ohio limited liability company

By: EBS Residential Development Fund III, LLC,
an Ohio limited liability company,
its Sole Member

By: Eubel Brady & Suttman Asset
Management, Inc., a Delaware
corporation,
its Manager

By: _____
Mark Brady
Co-Chief Investment Officer

STATE OF Ohio,

COUNTY OF Montgomery, SS:

The foregoing instrument was signed and acknowledged before me this 12th day of April, 2022, by Amanda Zimmerlin, the City Manager of the City of Clayton, a municipal corporation of the State of Ohio, on behalf of the municipal corporation. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.



Barbara Seim
Notary Public State of Ohio
My Commission Expires
September 9, 2024

Notary Public

STATE OF Ohio,

COUNTY OF Montgomery, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of _____, 2022, by Mark Brady, Co-Chief Investment Officer of Eubel Brady & Suttman Management, Inc., a Delaware corporation, as Manager of EBS Residential Development Fund III, LLC, an Ohio limited liability company, as Sole Member of Hunters Path Project I, LLC, an Ohio limited liability company, on behalf of the company, who acknowledged that he or she did sign the foregoing instrument in the capacity indicated and that the same is his or her respective free act and deed individually and in such capacity. The notarial act certified hereby is an acknowledgement. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

Notary Public

This instrument prepared by:

Price Finley, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215-4291
Phone: (614) 227-8897

FISCAL OFFICER'S CERTIFICATE

As fiscal officer for the City of Clayton, Ohio, I hereby certify that funds sufficient to meet the obligations of the City in this Agreement (including specifically the funds required to meet the obligation of the City in the year 2022) have been lawfully appropriated for the purposes thereof and are available in the treasury, and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. The City has no obligation to make payments pursuant to this Agreement except from Service Payments, Property Tax Rollback Payments and minimum service payments to be collected for deposit into the TIF Fund, which Service Payments, Property Tax Rollback Payments and minimum service payments are in the process of collection. This certificate is given in compliance with R.C. 5705.41 *et seq.*

Dated: April 7, 2022



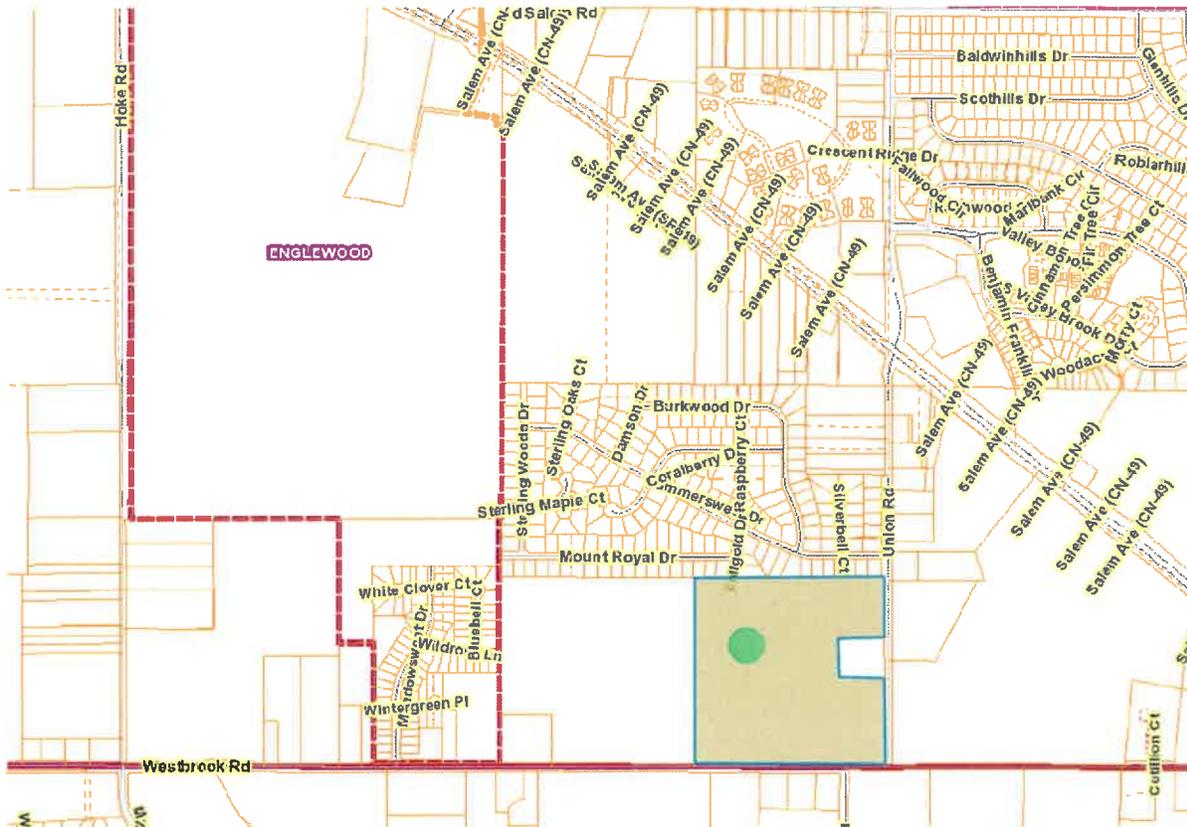
Finance Director
City of Clayton, Ohio

EXHIBIT A

Project Site Description

The Project Site is the real estate situated in the County of Montgomery and State of Ohio consisting of Parcel Number M60-03207 0022 (including any subsequent combinations and/or subdivisions of such current Parcel Number), as identified in the records of the County Auditor.

For ease of reference, the following map of the Project Site and adjoining property is provided:



The Project Site is characterized by the following legal description:

[TO BE INSERTED]

EXHIBIT B

Description of Public Infrastructure Improvements

All of the Public Infrastructure Improvements described below are hereby determined to be “**public infrastructure improvements**” (as defined in Division (A)(8) of R.C. Section 5709.40) and are intended to directly benefit the Project Site described in EXHIBIT A. The Public Infrastructure Improvements specifically include the costs of financing the Public Infrastructure Improvements, including the items of costs of permanent improvements described in Division (B) of R.C. 133.15, and incurred with respect to the Public Infrastructure Improvements, which said costs specifically include any reimbursement payments for the reimbursement of the costs of the Public Infrastructure Improvements and any debt service on, and other expenses relating to the issuance of, any bonds, notes, or other obligations issued to finance the Public Infrastructure Improvements. The Public Infrastructure Improvements include, without limitation:

- **Roadways.** Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways, streets, bridges (both roadway and pedestrian), traffic calming devices, sidewalks and walkways, pathways, bikeways, medians and viaducts accessible to and serving the public, and providing lighting systems, signalization, and traffic controls, and all other appurtenances thereto, including the continued maintenance of those public roads and highways; and,
- **Water and Sewer Lines.** Construction, reconstruction or installation of utility improvements (including any underground utilities), storm and sanitary sewers (including necessary site grading therefore and including the continued maintenance of those storm and sanitary sewers), water lines (including the continued maintenance of those water lines), fire buildings and improvements, public water and fire protection systems (excluding any in-unit, private water and fire suppression systems), and all other appurtenances thereto; and,
- **Utilities.** Construction, reconstruction or installation of gas, electric, and communication service facilities, and all other appurtenances thereto, and including the provision of gas or electric service facilities owned by nongovernmental entities when such improvements are determined to be necessary for economic development purposes; and,
- **Parks.** Construction or reconstruction of one or more public parks, including grading, trees, sod, shrubs, and other park plantings, park accessories, park structures, irrigation, lighting, flatwork, playgrounds, fountains, water fountains, water features, sports facilities, including, but not limited to, public tennis courts, sculptures, public art and related improvements, and all other appurtenances thereto; and,
- **Streetscape/Landscape Improvements.** Construction or installation of streetscape and landscape improvements including trees and shrubs, landscaping mounds and fencing, tree grates, planting beds, signage, curbs, sidewalks, street and sidewalk lighting, trash

receptacles, benches, newspaper racks, irrigation, burial of overhead utility lines and related improvements, and all other appurtenances thereto; and,

- **Public Parking Facilities.** Construction of one or more public parking facilities, including public surface parking and public parking structures and related improvements, and all other appurtenances thereto; and,
- **Demolition.** Demolition and excavation, including demolition and excavation on private property when determined to be necessary for economic development purposes; and,
- **Acquisition of Real Estate.** Acquisition of real estate or interests in real estate (including easements and rights-of-way) necessary to accomplish the foregoing improvements or in aid of industry, commerce, distribution or research; and,
- **Environmental remediation;** and,
- **Stormwater and Flood Remediation Projects.** Stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety, and welfare; and,
- **Ongoing Administrative Expenses.** Any on-going administrative expenses relating to the Public Infrastructure Improvements and maintaining the TIF revenue, including but not limited to engineering, architectural, legal, TIF administration, permitting and public infrastructure construction management, and other consulting and professional services; and,
- **Inspection/Governmental Fees.** All inspection fees and other governmental fees related to the foregoing; and,
- **Professional Services.** Engineering, consulting, legal, administrative, and other professional services associated with the planning, design, acquisition, construction and installation of the foregoing improvements and real estate.

**TAX INCENTIVE AGREEMENT
(HUNTER'S PATH)**

This **TAX INCENTIVE AGREEMENT** (the "Agreement") made and entered into as of the 14th day of March, 2022, between the **BOARD OF EDUCATION OF THE NORTHMONT CITY SCHOOL DISTRICT**, Montgomery County Ohio, a city school district and political subdivision of the State of Ohio (the "School District") and **THE CITY OF CLAYTON**, Montgomery County, Ohio, a political subdivision of the State of Ohio, (the "City").

WITNESSETH THAT:

WHEREAS, Sections 5709.40 et seq. of the Ohio Revised Code authorize municipal corporations such as the City to grant tax increment financing real property tax exemptions for improvements declared to be for a public purpose, which exemptions exempt from taxation the increase in the true value of the parcel of property after the effective date of the resolution granting such exemption; and

WHEREAS, Section 5709.42 of the Ohio Revised Code further authorizes a municipal corporation such as the City to require owners of improvements subject to a tax increment financing tax exemption to make an annual payment to the City in lieu of taxes ("Service Payments in Lieu of Taxes"), which payment is approximately equivalent to the amount of real property tax which would be payable on the increase in the true value of the parcel of property but for the exemption from taxation; and

WHEREAS, Section 5709.43 of the Ohio Revised Code further requires a municipal corporation, such as the City, receiving payments in lieu of taxes to create a public improvement tax increment equivalent fund for deposit of the entire amount of such payments, to be used to pay the costs of public infrastructure improvements benefiting the parcels subject to the tax increment financing tax exemption and, if provided, to make payments to school districts impacted by exemption from taxation; and

WHEREAS, on November 12, 2021, the City notified the School District of its intent to grant an exemption (the "TIF Exemption"), as authorized by Section 5709.40, Ohio Revised Code, for improvements to meet the needs of a certain area in the City, including a new single-family development and related improvements (the "Improvements") to certain real property located within the boundaries of the City and the School District, which real property is described in *Exhibit A* attached hereto and made a part hereof (the "Exempted Property"), and to apply Service Payments in Lieu of Taxes received by the City with respect to the Exempted Property to pay for or finance costs of improvements permitted under Section 5709.40, Ohio Revised Code in order to induce the property owners to develop the Exempted Property; and

WHEREAS, as part of the TIF Exemption, the City Council of the City intends to exempt the Improvements from real property taxation for one hundred percent (100%) of the assessed valuation of the Improvements for a period of thirty (30) years; and

WHEREAS, the Board of Education of the School District passed a resolution on March 14, 2022 (the "School District Resolution") approving the TIF Exemption on the condition that the

parties hereto enter into this Agreement, which School District Resolution is attached hereto as **Exhibit B**;

WHEREAS, the City has, pursuant to Ordinance No. 08 of the City Council of the City of Clayton adopted April 7, 2022 (the “City Ordinance”) granted the TIF Exemption and authorized the execution of this Agreement, which is attached hereto as **Exhibit C**; and

WHEREAS, Ohio Revised Code Sections 5709.40 and 5709.82 permit the City Council of the City and the Board of Education of the City School District to enter into this Agreement in order to compensate the School District for all or a portion of property taxes lost as a result of the TIF Exemption; and

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter described, the School District and the City covenant, agree and bind themselves as follows:

SECTION 1. Approval of the TIF Exemption; Compensation to School District while TIF Exemption in Effect.

(a) As provided in the School District Resolution, the School District approves the TIF Exemption for up to one hundred percent (100%) of the assessed valuation of the Improvements for a period of up to thirty (30) years as described in the City Ordinance.

(b) During the TIF Exemption period, the City agrees to pay to the School District, solely from the Service Payments in Lieu of Taxes received by the City from the owners of the Exempted Property, the following amounts (collectively referred to herein as the “TIF Compensation”):

(1) In years one (1) through ten (10) of the TIF Exemption period, twenty-five percent (25%) of the additional amount of Service Payments in Lieu of Taxes actually received by the City in such year, multiplied by a fraction, the numerator of which is the School District’s effective real property tax rate for the classification of the Exempted Property and the denominator of which is the aggregate effective real property tax rate for the classification of the Exempted Property for all taxing districts within which the Exempted Property is located, as calculated and certified in the manner specified in Section 2 hereof. The following is an example of the calculation to derive the compensation payment under this subparagraph (b)(1), which numbers are for illustration purposes only:

Service Payments in Lieu of Taxes Received: \$1,000,000

District’s effective rate real property tax millage: 57.5

Aggregate effective real property tax rate: 95.7

$$\$1,000,000 \times 57.5/95.7 \times 25\% = \$150,208.99$$

(2) In years eleven (11) through thirty (30) of the TIF Exemption period, one hundred percent (100%) of the additional amount of Service Payments in Lieu of Taxes

actually received by the City in such year, multiplied by a fraction, the numerator of which is the School District's effective real property tax rate for the classification of the Exempted Property and the denominator of which is the aggregate effective real property tax rate for the classification of the Exempted Property for all taxing districts within which the Exempted Property is located, as calculated and certified in the manner specified in Section 2 hereof. The following is an example of the calculation to derive the compensation payment under this subparagraph (b)(2), which numbers are for illustration purposes only:

Service Payments in Lieu of Taxes Received: \$1,000,000

District's effective rate real property tax millage: 57.5

Aggregate effective real property tax rate: 95.7

$$\$1,000,000 \times 57.5/95.7 = \$600,835.95$$

In short, in years one (1) through ten (10) of the TIF Exemption period, the School District will receive twenty-five percent (25%) of its normal share of the property tax revenue from the Exempted Property, and in years eleven (11) through thirty (30) of the TIF Exemption period, the School District will be made "whole" for any tax payments the School District would have been due from the Exempted Property including the Improvements but for the creation of the Exempted Property.

TIF Compensation due under this subsection (b) shall not include any amounts (or portions) attributable to the taxes identified under Section 5709.40(F) of the Ohio Revised Code. shall be payable solely from Service Payments in Lieu of Taxes received by the City and shall have priority over any other pledge of Service Payments in Lieu of Taxes by the City. Nothing in this Agreement shall be construed to pledge the full faith and credit of the City.

(c) In the event that any one or more property owners fail to remit a Service Payment in Lieu of Taxes on or before its due date as determined by applicable statutes, the City is not required to make a compensation payment to the School District for the amount not remitted, provided, however, that the City shall proceed to collect the amount not remitted and shall include that amount after collection in calculation of the next future TIF Compensation amount due to the School District.

(d) Under no circumstances shall the total TIF Compensation due under Section 1(b) exceed the amount of the millage attributable to the School District on the tax duplicate times the assessed value of the Improvements.

SECTION 2. Certification of TIF Compensation Amount.

(a) Within fifteen (15) days following receipt of settlement information from the Montgomery County Auditor for each half of each year during which the TIF Exemption will result in the School District's receipt of less than one hundred percent (100%) of the amount of real property taxes due with respect to the Exempted Property, the City shall provide such information to the Treasurer of the School District, and the Treasurer shall certify the TIF Compensation

amount to the Finance Director of the City; provided, however, failure of the Treasurer of the School District to make the certification of the TIF Compensation to the City in a timely manner shall not serve as a waiver or rejection of the School District's right to receive TIF Compensation, nor shall it be a default hereunder.

SECTION 3. Payment of TIF Compensation.

(a) Within fifteen (15) days after receipt of the Treasurer's certification described in Section 2 hereof, the City shall pay to the School District, the amount of the TIF Compensation.

SECTION 4. Resolution of Disputes.

(a) In the event the City disputes the amount of the TIF Compensation as certified by the Treasurer of the School District, the City shall certify, by April 1 and October 1, with respect to the first and second-half property tax settlements, the basis for the dispute and the amount that the City claims is the correct amount of TIF Compensation to be paid to the School District. Within 10 days thereafter, the Treasurer of the School District and the City Fiscal Officer or Administrator shall meet with the Montgomery County Auditor (the "County Auditor") to discuss and resolve the dispute. In the event the Treasurer of the School District and the City Fiscal Officer or Administrator are unable to mutually agree on the amount of TIF Compensation, the County Auditor shall determine and certify the amount of the TIF Compensation. The City shall then pay such amount within 15 days thereafter; provided that nothing contained in this Section 4 shall limit either the School District's or the City's ability, after payment and receipt of such TIF Compensation amount, to seek recovery of amounts deemed overpaid or underpaid.

SECTION 5. Application of Ohio Revised Code Section 5709.82.

The School District acknowledges and agrees that this Agreement provides for the only compensation to be received by the School District from the City in connection with the TIF Exemption, and the compensation provided for herein is in lieu of any other compensation that may be provided for in Section 5709.82 of the Ohio Revised Code.

SECTION 6. Notices.

(a) All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid addressed to the following addresses:

**Board of Education of the
Northmont City School District**
4001 Old Salem Rd
Englewood, OH 45322
Attn: Treasurer

City of Clayton
P.O. Box 280
Clayton, OH 45315
Attn: City Manager

SECTION 7. Duration of Agreement; Amendment.

(a) This Agreement shall become effective on the date that it is executed and delivered and shall remain in effect for such period as any Service Payments in Lieu of Taxes as a result of

the TIF Exemption are in effect. This Agreement may be amended only by mutual agreement of the School District and the City. No amendment to this Agreement shall be effective unless it is contained in a written document approved through legal process and signed on behalf of all parties hereto by duly authorized representatives.

SECTION 8. Waiver.

(a) In consideration of the payments to be made as described in the School District Resolution and in this Agreement, the School District waives any notice requirements of R.C. 5709.40 and R.C. 5709.83 with respect to the TIF Exemption and passage of the City Ordinance approving the TIF Exemption. No waiver by the School District of the performance of any terms or provision hereof shall constitute, or be construed as, a continuing waiver of performance of the same or any other term or provision hereof.

SECTION 9. Merger; Entire Agreement.

(a) This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter contained herein and merges and supersedes all prior discussion, agreements, and undertakings of every kind of nature between the parties with respect to the subject matter of this Agreement.

SECTION 10. Binding Nature.

(a) This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective permitted successors and assigns.

SECTION 11. Severability.

(a) Should any portion of this Agreement be declared by the courts to be unconstitutional, invalid or otherwise unlawful, such decision shall not affect the entire agreement but only that part declared to be unconstitutional, invalid or illegal and this Agreement shall be construed in all respects as if any invalid portions were omitted.

SECTION 12. Counterparts; Captions.

(a) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

SECTION 13. Filing of Agreement.

(a) The Fiscal Officer of the City of Clayton, Montgomery County, Ohio shall file an executed copy of this Agreement with both the County Auditor and the County Treasurer.

[Balance of Page Intentionally Left Blank – Signature Page Follows]

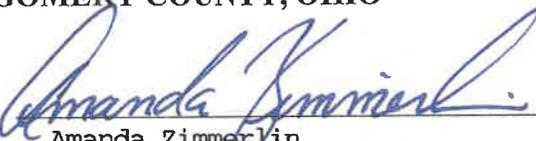
IN WITNESS WHEREOF, the School District and the City have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date affixed next to their signatures.

**BOARD OF EDUCATION OF THE
NORTHMONT CITY SCHOOL DISTRICT**

By: 
Name: Linda Blum
Title: President
Date: 3/14/22

By: 
Name: Marie Ann Ferraro
Title: Treasurer/CFO
Date: 3/14/22

**CITY OF CLAYTON,
MONTGOMERY COUNTY, OHIO**

By: 
Name: Amanda Zimmerlin
Title: City Manager
Date: April 7, 2022

**SECTION 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS**

The undersigned, Finance Director of the City of Clayton, Ohio (the "City"), hereby certifies in connection with the Tax Incentive Agreement between the City and the Northmont City School District, dated as of April 7, 2022, that:

The amount required to meet the contract, obligation, or expenditure for the attached during Fiscal Year 2022, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

IN WITNESS WHEREOF, I have hereunto set my hand this 7th day of April, 2022.



Finance Director

Dated: April 7, 2022

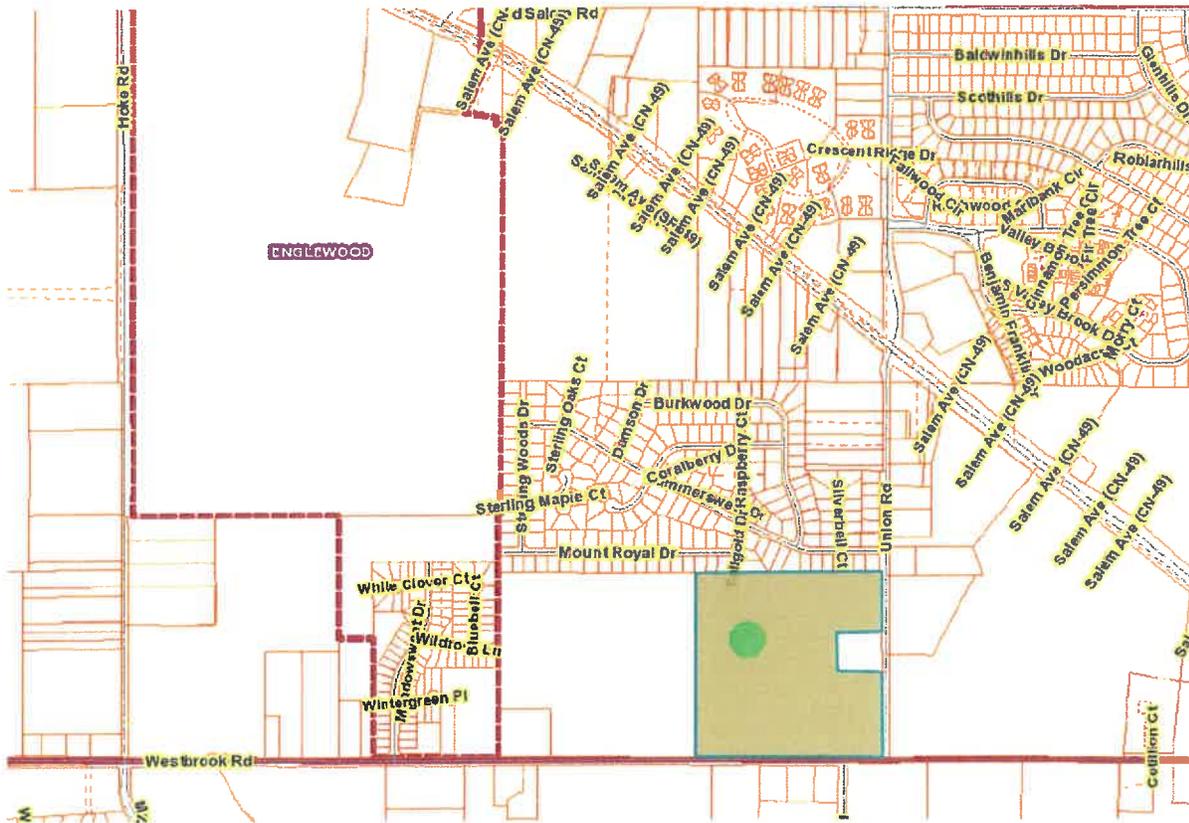
EXHIBIT A

Description of the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2

The Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2 to be exempt under the foregoing ordinance consists of the following area, each of which are not more than 300 acres in size enclosed by a continuous boundary, and situated in the City of Clayton, County of Montgomery, State of Ohio, that is identified by the County Auditor of Montgomery County, Ohio as having the following tax parcel identification numbers, as that real property may be subdivided, combined, and/or designated by different tax parcel numbers from time-to-time:

<u>Parcel No.</u>	<u>Owner Name</u>
M60-03207 0022	Clayton Land Company

For ease of reference, and for purposes of delineating the boundaries of the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, the following map is provided:



The specific boundaries of Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2 are as shown below:

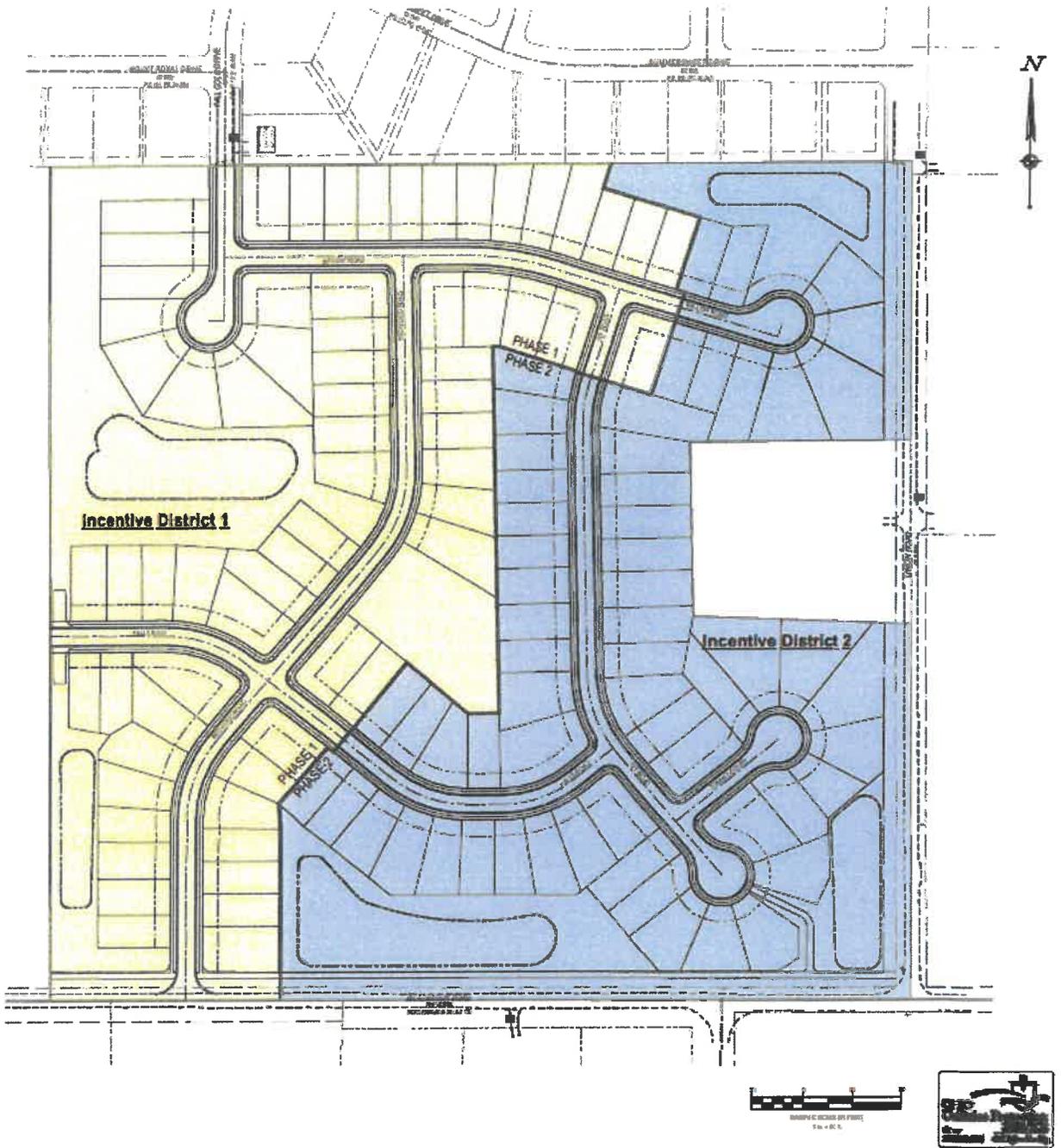


Exhibit B

The Board of Education of the Northmont City School District met in regular session on the 14th day of March, 2022, commencing at six o'clock p.m., at 4916 W. National Rd. Clayton OH 45315, with the following members present:

Linda Blum	Dr. Karl "Gerry" Espeleta
Thomas L. Walker, Sr.	Jane Woodie
Chris Pulos	

Mrs. Woodie moved the adoption of the following resolution:

NORTHMONT CITY SCHOOL DISTRICT BOARD OF EDUCATION

A RESOLUTION APPROVING THE PASSAGE BY THE COUNCIL OF THE CITY OF CLAYTON, OHIO OF AN ORDINANCE APPROVING A REAL PROPERTY TAX EXEMPTION PURSUANT TO DIVISION (C) OF OHIO REVISED CODE SECTION 5709.40 AND AUTHORIZING THE EXECUTION OF A COMPENSATION AGREEMENT RELATED THERETO.

WHEREAS, the City of Clayton, Ohio (the "City") has expressed to this Board of Education ("Board") its desire to grant pursuant to Division (C) of Ohio Revised Code Section ("R.C.") 5709.40 a one hundred percent (100%), thirty (30) year tax increment financing real property tax exemption (the "TIF Exemption") in connection with the construction of approximately 125 single-family residential units in multiple phases (the "Project") and the improvements (each improvement having the meaning as set forth in Division (A)(4) of R.C. 5709.40 and collectively referred to herein as the "Improvements") that the owners of the Project will make or cause to be made; and,

WHEREAS, this Board supports the economic growth of the City and the additional property tax revenue to this School District that will result from the development of the Project; and,

WHEREAS, the City has forwarded to this Board proposed documents for its review which include (i) the ordinance to be passed by the City (the "TIF Ordinance") and (ii) a compensation agreement to be executed between the City and this District pursuant to Division (D) of R.C. 5709.40 and R.C. 5709.82, a copy of which is attached hereto as EXHIBIT A (the "Compensation Agreement"); and,

WHEREAS, the City has proposed as a condition of the proposed TIF Exemption that this School District is to be paid amounts equal to, for years 1 through 10, twenty-five percent (25%) of the real property taxes that would have been payable to this School District if the Improvements had not been exempted from taxation, and, for years 11 through the end of the TIF Exemption period, one hundred percent (100%) of the real property taxes that would have been

payable to this School District if the Improvements had not been exempted from taxation under the TIF Ordinance, all as set forth in the Compensation Agreement; and,

WHEREAS, this Board desires to waive any notice requirements of R.C. 5709.40, R.C. 5709.82 and R.C. 5709.83 with respect to the passage by the City of the TIF Ordinance approving and granting the TIF Exemption.

NOW, THEREFORE, BE IT RESOLVED by the Board of Education of the Northmont City School District, Darke, Miami, and Montgomery Counties, State of Ohio, that:

Section 1. This Board, in consideration of the payments to be made as described in this resolution and in the Compensation Agreement, hereby (i) waives any notice requirements of R.C. 5709.40 and R.C. 5709.83 with respect to the TIF Exemption and passage of the TIF Ordinance approving the TIF Exemption, (ii) approves the TIF Exemption and the TIF Ordinance, and (iii) agrees that payment by the City to the School District of the compensation set forth in the Compensation Agreement is and will be the sole compensation received by this School District with respect to the TIF Exemption, including, without limitation, the requirements of R.C. 5709.82.

Section 2. The President and Treasurer of this Board and the Superintendent of this School District each are authorized and directed to execute and deliver the Compensation Agreement, substantially in the form on file with this Board, pursuant to Division (D) of R.C. 5709.40 and R.C. 5709.82, with such completions and changes therein that are not adverse to this School District and which shall be approved by the those officials, provided that the approval of such completions and changes and the character of those completions and changes as not being substantially adverse to this School District will be evidenced conclusively by the execution of the Compensation Agreement by those officials. The President and Treasurer of this Board and the Superintendent of this School District each are authorized and directed to execute and deliver any other agreements and to take all other actions and do all other things necessary and consistent with this resolution in order to accomplish the purposes of this resolution.

Section 3. The Treasurer is authorized and directed to promptly certify a copy of this resolution to the City. This Board acknowledges that the City will rely on this resolution when granting the TIF Exemption and approving the TIF Ordinance, and this Board agrees it will not repeal or modify this resolution without the prior written approval of the City.

Section 4. This Board hereby finds and determines that all formal actions of this Board and any of its committees concerning and relating to the adoption of this resolution were taken in an open meeting of this Board or its committees and that all deliberation of this Board and of any of its committees that resulted in those formal actions were in meeting open to the public, in compliance with law.

Section 5. This Resolution shall be in full force and effect from and immediately upon its adoption.

Mr. Pulos seconded the motion.

Upon roll call on the adoption of the Resolution, the vote was as follows:

Aye: Woodie, Pulos, Blum, Espeleta, Walker

Nay

Absent

TREASURER'S CERTIFICATION

The foregoing is a true and correct excerpt from the minutes of the regular meeting on March 14, 2022, of the Board of Education of the Northmont City School District, showing the adoption of the resolution hereinabove set forth.

Dated: 3/14/22

Marie Ann Ferraro
Marie Ann Ferraro, Treasurer, Board of Education
Northmont City School District, Ohio

CITY OF CLAYTON, OHIO

ORDINANCE NO. O- 04 – 22 - 08

AUTHORIZING THE CREATION OF TWO INCENTIVE DISTRICTS IN CONNECTION WITH THE HUNTER’S PATH DEVELOPMENT WITHIN THE CITY OF CLAYTON, OHIO; DECLARING IMPROVEMENTS TO CERTAIN REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICTS TO BE A PUBLIC PURPOSE; DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BE MADE TO BENEFIT OR SERVE THE REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICTS; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AND PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(C), 5709.42, 5709.43, 5709.832 AND 5709.85, AND DECLARING AN EMERGENCY.

WHEREAS, Division (C) of Ohio Revised Code Section (“**R.C.**”) 5709.40 provides that this Council may, under certain circumstances, (i) create one or more incentive districts for parcels of real property located in the City of Clayton, Ohio (the “**City**”), (ii) declare as “improvements,” which term is defined in Division (A)(4) of R.C. 5709.40, to such parcels of real property located in such incentive districts to be a public purpose, thereby granting to those improvements an exemption from real property taxation, (iii) designate the public infrastructure improvements made, to be made, or in the process of being made that benefit or serve, or, once made, will benefit or serve parcels in such incentive districts, and (iv) require annual service payments in lieu of taxes to be used to finance the designated public infrastructure improvements within such incentive districts; and,

WHEREAS, pursuant to Division (D)(1) of R.C. 5709.40, such exemption may, with the approval of the board of education of the city, local, or exempted village school district within the territory, be for up to thirty (30) years and up to one hundred percent (100%) of the increase in the assessed value of any real property in such incentive districts that would first appear on the tax list and duplicate of real and public utility property with respect to such incentive district after the effective date of an ordinance adopted under R.C. 5709.40 were it not for the exemption granted by that ordinance (an “**Improvement**”); and,

WHEREAS, the real property described in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Property**”) is located in the City, with each parcel of the Property referred to herein as a “**Parcel**” (whether as presently appearing on Montgomery County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and,

WHEREAS, pursuant to Division (C) of R.C. 5709.40, this Council desires to create two incentive districts comprised of the Property (the “**Hunter’s Path Incentive District No. 1**” and “**Hunter’s Path Incentive District No. 2**”); and,

WHEREAS, as required by Division (A)(5)(f) of R.C. 5709.40, the City Engineer has certified to this Council that (i) the acreage of each of the two incentive districts is less than 300 acres in size, (ii) each incentive district is enclosed by a continuous boundary, and (iii) the existing public infrastructure is inadequate to meet the residential, commercial or industrial development needs of the incentive districts, as evidenced by the City’s written economic development plan, which is on file with the Clerk of the Council; and,

WHEREAS, pursuant to Division (D)(1) of R.C. 5709.40, this Council has determined to grant the TIF Exemption (as defined herein) from real estate taxation for all Improvements to the Property within the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2 for one hundred percent (100%) of such Improvements for thirty (30) years; and,

WHEREAS, this Council (i) has determined that it is necessary and appropriate and in the best interests of the City to provide for annual service payments in lieu of real property taxes with respect to the Property pursuant to R.C. 5709.42 and (ii) desires to facilitate the construction of the public infrastructure improvements described in **EXHIBIT B** attached hereto and incorporated herein by reference (the “**Public Infrastructure Improvements**”), which said Public Infrastructure Improvements, once made, will benefit or serve the Parcels (the “**Project**”); and,

WHEREAS, Hunters Path Project I, LLC or its designee (the “**Developer**”) proposes to develop the Property by constructing or causing to be constructed via a third-party home builder, within Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2, aggregating approximately 125 single-family residential units (the “**Development**”), which Development places additional demand on the Public Infrastructure Improvements; and,

WHEREAS, in connection with the construction of the Project, the City and the Developer desire to execute a tax increment financing agreement substantially in the form attached hereto and incorporated herein as **EXHIBIT C** (the “**TIF Agreement**”), which TIF Agreement provides for the construction, and for the financing, of the Project, as defined herein and in the TIF Agreement; and,

WHEREAS, as authorized by R.C. 5709.91 and as provided in the TIF Agreement, the City intends to require the owner or owners of each Parcel to make minimum service payments on or before the final dates for payment of real property taxes, in accordance with the TIF Agreement; and,

WHEREAS, notice of this proposed ordinance has been delivered to the Boards of Education of the Northmont City School District (“**Northmont City Schools**”) and the Miami Valley Career Technology Center (“**Miami Valley Career Tech**,” and together with Northmont City Schools, the “**School Districts**”) in accordance with and within the time periods prescribed in Division (D) of R.C. 5709.40 and R.C. 5709.83, respectively, and by resolution adopted by the board of education of the Northmont City Schools on February 14, 2022, Northmont City Schools has approved the TIF Exemption (as defined herein) on the condition that City and Northmont City Schools enter into the School District Compensation Agreement authorized herein; and,

WHEREAS, this Council has determined that annual service payments in lieu of taxes are to be paid to the School Districts pursuant to R.C. 5709.42 in amounts equal to, for years 1 through

10, twenty-five percent (25%) of the real property taxes that would have been payable to the School Districts if the Improvements had not been exempted from taxation, and, for years 11 through the end of the TIF Exemption period, one hundred percent (100%) of the real property taxes that would have been payable to the School Districts if the Improvements had not been exempted from taxation; and,

WHEREAS, this Council acknowledges that this ordinance is being adopted after prior notice, via first class mail, of public hearing provided not later than thirty (30) days to every real property owner whose property is located in the boundaries of the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2, which notice included a map of the incentive districts, an overlay relating thereto, and information to property owners as to excluding their property from the incentive districts, as appropriate, all in accordance with Division (C)(2)(a) of R.C. 5709.40, and that the owner of the Property did affirmatively waive its right to a public hearing in accordance with such provisions; and,

WHEREAS, this Council acknowledges that it has received an affirmative statement from the owners of all the Parcels (i.e., 100% of the Property) located within the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2 (i) otherwise waiving the notice requirement set forth in Division (C)(2)(a) of R.C. 5709.40 with respect to all of the Property, (ii) affirming that the owners thereof have no intention of excluding any of the Property from the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2, and (iii) requesting that this Council proceed with the enactment of this ordinance; and,

WHEREAS, on November 12, 2022, the City delivered notice of this proposed ordinance to the Board of Commissioners of the County of Montgomery (the “**Board**”) in accordance with and within the time period prescribed in Division (E) of R.C. 5709.40; and,

WHEREAS, the Board did not object to the exemption contemplated by this ordinance within the time period specified in Division (E)(3) of R.C. 5709.40 and, notwithstanding the requirements for automatic compensation of renewal levies with an increase, replacement levies, or additional levies, as appropriate, under Division (F) of R.C. 5709.40, this Council has determined that no other compensation shall be provided to the Board related to the matter herein.

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Creation of Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2. Pursuant to Division (C) of R.C. 5709.40, this Council hereby creates the Hunter’s Path Incentive District No. 1 and Hunter’s Path Incentive District No. 2, which consists of the Parcels specifically identified and depicted in Exhibit A attached hereto, and further declares that the Improvements to the Property located in the incentive districts are a public purpose. The life of each incentive district commences with the first tax year that begins after the effective date of this ordinance and in which an Improvement attributable to a new structure would first appear on the tax list and duplicate of real and public utility property for any Parcel within the applicable incentive district were it not for the exemption granted in this ordinance and ends on the earlier of (a) 30 years after such commencement or (b) the date on which the City can no longer require

service payments in lieu of taxes, all in accordance with the requirements of R.C. 5709.40 (the “Incentive District Life”).

Section 2. Authorization of TIF Exemption. Under Division (C) of R.C. 5709.40, this Council hereby exempts from taxation one hundred percent (100%) of the Improvement as a public purpose for a period of thirty (30) years (the “**TIF Exemption**”). The TIF Exemption with respect to all Property in the incentive districts shall commence on separate dates for each incentive district with the first day of the tax year following the effective date of this ordinance and for which an Improvement on any Parcel in the each respective incentive district would have first appeared on the tax list and duplicate of real and public utility property were it not for the exemption granted by this ordinance (the “**Commencement Date**”), and in all cases, the incentive districts and the TIF Exemption for the Property and Improvements located within each incentive district shall end with respect to all Property in such incentive district on the date that is the earlier of (a) thirty years after the Commencement Date for such incentive district or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvements are paid for, all in accordance with the requirements of R.C. 5709.40, R.C. 5709.42, and R.C. 5709.43.

Section 3. Service Payments and Property Tax Rollback Payments. As provided in R.C. 5709.42, this Council hereby directs and requires each owner of a Parcel within the respective incentive districts (each, an “**Owner**”) to make annual service payments in lieu of taxes with respect to the Improvement allocable to each such Owner’s Parcel to the County Treasurer of Montgomery County, Ohio (the “**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 R.C. 323.121 and R.C. 5703.47, will 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 subject to the TIF Exemption. Such service payments in lieu of taxes, penalties and interest, and any other payments with respect to each Improvement that are received by the County Treasurer in connection with the reduction required by R.C. 319.302, R.C. 321.24, R.C. 323.152 and R.C. 323.156, as the same may be amended from time-to-time, or any successor provisions, as the same may be amended from time-to-time (the “**Property Tax Rollback Payments,**” and together with the annual service payments in lieu of taxes and penalties and interest described above, the “**Service Payments**”), will be allocated and distributed in accordance with Section 5 of this ordinance.

Section 4. Creation of TIF Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. 5709.43, the Hunter’s Path Municipal Public Improvement Tax Increment Equivalent Fund (the “**TIF Fund**”), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. 5709.42. The City may use amounts deposited into the TIF Fund to pay any costs associated with the Public Infrastructure Improvements approved by the City, including, but not limited to, the “**costs of permanent improvements**” described in Division (B) of R.C. 133.15. The TIF Fund will be maintained in the custody of the City and will exist so long as such Service Payments and minimum service payments are collected and used for the purposes described in this Section 5. Then the TIF Fund is to be dissolved and any surplus funds remaining in the TIF Fund will be transferred to the City’s general fund, all as set forth under Division (D) of R.C. Section 5709.43.

Section 5. Distribution of Funds. At the same time and in the same manner as real property tax distributions, the County Treasurer shall distribute the Service Payments to the City to be deposited in the TIF Fund, and the City shall then distribute the Service Payments as follows:

FIRST, to each of Northmont City Schools and Miami Valley Career Tech, amounts equal to, in years one (1) through ten (10) of the TIF Exemption period, twenty-five percent (25%), and in years eleven (11) through thirty (30) of the TIF Exemption period, one hundred percent (100%), of the additional amount of Service Payments actually received by the City in such year, multiplied by a fraction, the numerator of which is each respective School District's effective real property tax rate for the classification of the Property and the denominator of which is the aggregate effective real property tax rate for the classification of the Property for all taxing districts within which the Property is located, as calculated and certified in the manner specified in Section 2 of the School District Compensation Agreement; and

SECOND, to be deposited into the TIF Fund and then distributed according to the terms and conditions of this Section 5 and the TIF Agreement.

The City shall then distribute Service Payments on deposit in the TIF Fund in accordance with the TIF Agreement to pay or reimburse the Developer or its designee for the costs of the Project constructed or caused by the Developer or its designee to be constructed-according to the terms and conditions of the TIF Agreement. The Service Payments are hereby directed one hundred percent (100%) to general public infrastructure improvements, as they comprise the Public Infrastructure Improvements set forth herein. The TIF Fund is to 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 is to be dissolved and any surplus funds remaining therein are to be transferred to the City's General Fund, all in accordance with R.C. 5709.43.

Section 6. TIF Agreement and Further Authorizations. This Council hereby approves the TIF Agreement (which TIF Agreement shall provide for minimum service payments in accordance with R.C. 5709.91), with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and which shall be conclusively evidenced by the signing of the TIF Agreement by the City Manager, to which this Council further hereby authorizes execution on behalf of the City. This Council further authorizes and directs the City Manager or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments, as are necessary and appropriate to implement this ordinance and the TIF Agreement.

Section 7. Authorization of School Compensation Agreement. This Council further hereby approves the compensation agreement between the City and the Board of Education of Northmont City Schools in the form attached hereto as **EXHIBIT D** (the "**School District Compensation Agreement**"), with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the School District Compensation Agreement, and hereby authorizes and directs the City Manager, other appropriate officers of the City, or any of them, to execute same.

Section 8. Application for Real Property Tax Exemption and Remission. This Council hereby authorizes the City Manager or other appropriate officers of the City to prepare and sign any applications for real property tax exemption pursuant to R.C. 5709.911, the provisions of which govern the priority status of the exemptions provided under this ordinance.

Section 9. Tax Incentive Review Council. This Council hereby designates the Montgomery County Tax Incentive Review Council (the “TIRC”) as the tax incentive review council that shall review annually all exemptions from taxation resulting from this ordinance and any other matters as may properly come before the TIRC, in accordance with R.C. 5709.85.

Section 10. Nondiscriminatory Hiring Practices. In accordance with R.C. 5709.832, this Council hereby determines that no employer located within the incentive districts is to deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, or ancestry.

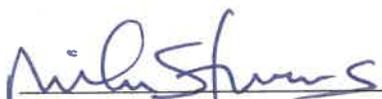
Section 11. Ohio Department of Development. Pursuant to Division (I) of R.C. 5709.40, the City Manager is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Department of Development (“ODOD”) within fifteen (15) days after its passage. On or before March 31 of each year that the TIF Exemption remains in effect, the City Manager or other authorized officer of this City shall prepare and submit, or cause to be prepared and submitted, to the Director of ODOD the status report required under Division (I) of R.C. 5709.40.

Section 12. Open Meetings. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio’s Sunshine Laws, including R.C. 121.22.

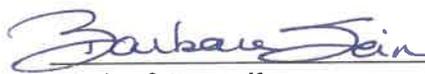
Section 13. Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this ordinance must be immediately effective so that the work on the Development can begin as quickly as possible, thus providing economic benefit to the City and its residents; wherefore this ordinance shall take effect and be in force from and immediately after its adoption.

ADOPTED BY COUNCIL ON APRIL 7, 2022.

AUTHENTICATION:

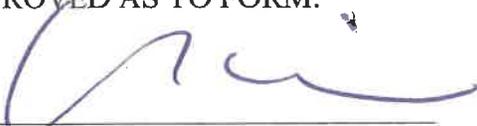


Mayor (Presiding Officer of Council)



Clerk of Council

APPROVED AS TO FORM:



Law Director

CERTIFICATION OF PUBLICATION

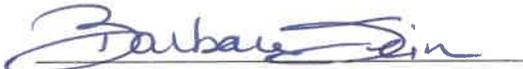
This shall certify that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of Newspaper

Date of Publication

Brookville Star

April 13, 2022



CLERK