

CITY OF CLAYTON, OHIO

ORDINANCE NO. O – 05 – 23 - 09

AN ORDINANCE FACILITATING THE FINANCING OF PUBLIC INFRASTRUCTURE IMPROVEMENTS FOR THE BENEFIT OF A PROJECT BEING UNDERTAKEN BY HUNTERS PATH PROJECT I, LLC, BY AUTHORIZING THE EXECUTION OF A COOPERATIVE AGREEMENT AND VARIOUS RELATED AGREEMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. O-04-22-08, passed by Council for the City of Clayton, Ohio (the “City”) on April 7, 2022, the City has entered into a Tax Increment Financing Agreement (the “TIF Agreement”) with Hunter’s Path Project I, LLC (the “Developer”) to facilitate the development of certain property through a single-family residential project (the “Development”) by providing funding for the costs of public infrastructure improvements (the “Project”) that directly benefit the Development; and

WHEREAS, the Developer, is pursuing the financing of the Project through the issuance by the Dayton-Montgomery County Port Authority (the “Port Authority”) of one or more series of revenue bonds (collectively, the “Bonds”) to be secured, in part, by service payments in lieu of taxes to be made pursuant to the TIF Agreement and minimum service payments, if any, to be made pursuant to agreements authorized by this Ordinance; and

WHEREAS, to facilitate the Development and the financing of the Project, the City and the Developer have proposed to enter into various related agreements; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interests of the City to provide for the execution of various agreements which will facilitate the Development and provide for the construction of the Project;

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

Section 1. Authorization of Various Agreements. The following agreements, each of which generally provide for the terms as described below, and each in the form presently on file with the Clerk of Council, are hereby approved and authorized with such changes therein not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager:

- (a) The Cooperative Agreement (the “Cooperative Agreement”) among the City, the Developer, the Port Authority, and The Huntington National Bank, as the trustee for the Bonds and as disbursing agent, which provides, among other things, for the payment of the service payments in lieu of taxes, in an amount equal to the amount of real property

taxes that would have been paid on the Development, any payment received by the Montgomery County Treasurer and distributed to the City in connection with the reduction required by Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, the Property Tax Rollback Payments, and any minimum service payments received by the City (collectively, the “Assigned Service Payments”) with respect to the Development to the disbursing agent to pay debt service charges on the Bonds and for the issuance of the Bonds by the Port Authority, and

(b) The Agreement (the “Tax Lien Sale Agreement”) between the City and the Montgomery County, Ohio Treasurer (the “County Treasurer”), relating to the sale by the County Treasurer of tax certificates for delinquent real property tax liens on the tax parcels comprising the Development.

The City Manager, for and in the name of this City, is hereby authorized to execute each of the foregoing agreements, provided further that the approval of changes to any such agreement by the City Manager, and their character as not being substantially adverse to the City, shall be evidenced conclusively by the execution thereof. This City Council further authorizes the City Manager, for and in the name of the City, to execute any amendments to any of the foregoing agreements, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

Section 2. Appropriations. There is hereby appropriated the Assigned Service Payments for further payment as described in the Cooperative Agreement and the TIF Agreement.

Section 3. Further Authorizations. This City Council further hereby authorizes and directs the City Manager, the Finance Director, the Clerk of Council or other appropriate officers of the City to prepare and sign all other agreements, documents and instruments and to take any other actions as may be appropriate to implement this Ordinance and to carry out the terms of the Cooperative Agreement.

Section 4. 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.

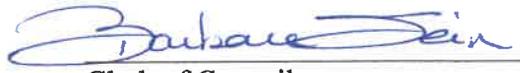
Section 5. Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare of the City, due to the benefits resulting from the implementation of the Development contemplated hereby, as well as the numerous benefits to the City’s overall economic health and competitiveness, and the critical timing and seasonality considerations associated with the Development’s construction; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

ADOPTED BY COUNCIL ON MAY 4, 2023.

AUTHENTICATION:

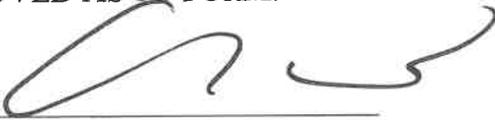


Mayor (Presiding Officer of Council)



Clerk of Council

APPROVED AS TO FORM:



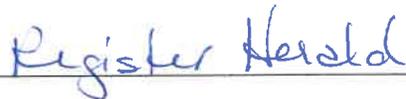
Law Director

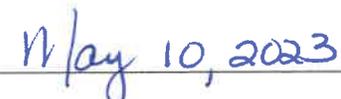
CERTIFICATION OF PUBLICATION

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







CLERK

TAX INCREMENT FINANCING AND
COOPERATIVE AGREEMENT

among

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

and

CITY OF CLAYTON, OHIO

and

HUNTERS PATH PROJECT I, LLC

And

Acknowledged by

THE HUNTINGTON NATIONAL BANK,
as Trustee

Dated as of
[April 1], 2023

THOMPSON HINE LLP
Bond Counsel

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TAX INCREMENT FINANCING AND COOPERATIVE AGREEMENT

THIS TAX INCREMENT FINANCING AND COOPERATIVE AGREEMENT (this “Cooperative Agreement”) made and entered into as of [April 1], 2023, among the DAYTON-MONTGOMERY COUNTY PORT AUTHORITY, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State (the “Authority” or the “Issuer”), the CITY OF CLAYTON, OHIO, a municipal corporation duly organized and validly existing under the laws of the State (the “City”), HUNTERS PATH PROJECT I, LLC, a limited liability company duly organized and validly existing under the laws of the State (the “Developer”), and acknowledged by THE HUNTINGTON NATIONAL BANK, as Trustee, a national banking association duly organized and validly existing under the laws of the United State of American and authorized to exercise corporate trust powers in the State (the “Trustee” or the “Disbursing Agent”), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals being used therein as defined in Article I hereof):

Recitals:

A. In order to successfully develop the TF Parcels, it is necessary to construct or to cause to be constructed certain public infrastructure improvements as described in TIF Agreement, as defined hereinafter (the “Public Infrastructure Improvements”).

B. The Developer proposes to develop the TIF Parcels to allow a third party homebuilder to construct approximately 125 single family residential units, together with related site improvements (collectively, the “Development”); and,

C. In order to provide for the Public Infrastructure Improvements necessary to permit development of the Development, the Developer and the City have entered into the TIF Agreement pursuant to which the Developer has agreed to construct certain Public Infrastructure Improvements to serve the Development.

D. The City and the Developer have now requested the Issuer to issue and sell the Series 2023 Bonds under the Trust Agreement to pay or reimburse the Developer for the costs of the Project.

E. To pay Debt Service Charges on the Series 2023 Bonds when due, the City has passed the TIF Ordinance and has agreed to assign to the Issuer the Assigned Service Payments.

F. To secure the payment of Debt Service Charges on the Series 2023 Bonds, the Issuer has pledged the Assigned Service Payments to the Trustee under the Trust Agreement.

NOW THEREFORE, in consideration of the premises and the mutual representations and agreements hereinafter contained, and subject to the terms and limitations of this Cooperative Agreement, the Cooperative Parties agree as follows (provided that any obligation of the Issuer created by or arising out of this Cooperative Agreement shall never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer, but shall be payable solely out of its

Pledged Revenues and any obligation of the City to make Assigned Service Payments hereunder shall never constitute a general debt of the City or give rise to any pecuniary liability of the City but shall be payable solely from the Assigned Service Payments):

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ARTICLE I

DEFINITIONS

Section 1.1. Definitions; Use of Defined Terms. In addition to the words and terms defined elsewhere in this Cooperative Agreement or by reference to another document, the words and terms set forth in the Master Definitions List attached as Appendix A hereto, unless the context or use clearly indicates another meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms defined therein.

Section 1.2. Interpretation. Any reference herein to the Issuer, the City or to a Legislative Authority or to any member or officer of either includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a Section or provision of the Constitution of the State or the Act, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision, if it constitutes in any way an impairment of the rights or obligations of the Issuer, the Holders, the Trustee, the Developer or the City under this Cooperative Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Cooperative Agreement; and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of the Series 2023 Bonds of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

Section 1.3. Captions and Headings. The captions and headings in this Cooperative Agreement are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Articles, Sections, subsections, paragraphs, subparagraphs or clauses hereof.

(End of Article I)

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.1. Representations of the Issuer. The Issuer represents that: (a) it is a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to such Issuer which would impair its ability to carry out its obligations contained in this Cooperative Agreement or the other Operative Documents to which it is a party; (c) it is legally empowered to enter into and perform the transactions contemplated by this Cooperative Agreement and the other Operative Documents to which it is a party; (d) the execution, delivery and performance of this Cooperative Agreement and the other Operative Documents to which it is a party do not and will not violate or conflict with any provision of law applicable to such Issuer, and do not, and will not, conflict with or result in a default under any agreement or instrument to which such Issuer is a party or by which it is bound which would have an adverse effect on such Issuer's ability to perform its obligations under any of the Operative Documents to which it is a party (other than such adverse effect which is not material); (e) its Legislative Authority has duly authorized the execution, delivery and performance of this Cooperative Agreement and the other Operative Documents to which it is a party; (f) this Cooperative Agreement and the other Operative Documents to which it is a party, when executed and delivered by such Issuer, will constitute the legal, valid and binding obligations of such Issuer, enforceable against it in accordance with the respective terms thereof, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally; (g) it has duly accomplished all conditions necessary to be accomplished by it prior to the issuance and delivery of the Series 2023 Bonds; and (h) it will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Cooperative Agreement and the other Operative Documents to which it is a party by any successor public body.

Section 2.2. Representations of the City. The City represents that: (a) it is a municipal corporation duly established under the laws of the State and its Charter; (b) it is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City which would impair its ability to perform its obligations contained in this Cooperative Agreement; (c) it is legally empowered to execute, deliver and perform this Cooperative Agreement and to enter into and carry out the transactions contemplated by this Cooperative Agreement; (d) the execution, delivery and performance of this Cooperative Agreement do not and will not violate or conflict with any provision of law applicable to the City, and do not, and will not, conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound which would have an adverse effect on the City's ability to perform its obligations under this Cooperative Agreement (other than such adverse effect which is not material); (e) its Legislative Authority has duly authorized the execution, delivery and performance of this Cooperative Agreement and the transactions contemplated herein and therein, and those transactions will enhance, aid and promote authorized purposes of the City; (f) this Cooperative Agreement, when executed and delivered by the City, will constitute the legal, valid and binding obligations of the City, enforceable against it in accordance with their respective

terms, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally; and (g) the TIF Ordinance has been duly adopted by the Legislative Authority of the City and is in full force and effect and not subject to repeal by referendum.

Section 2.3. Representations of the Developer. The Developer represents that: (a) it is a limited liability company duly organized and validly existing under the laws of the State; (b) it has full power and authority to execute, deliver and perform this Cooperative Agreement and the other Operative Documents to which it is a party and to enter into and perform the transactions contemplated by those documents; (c) the execution, delivery and performance of this Cooperative Agreement and the other Operative Documents to which it is a party do not violate any provision of law applicable to it or its Governing Documents, and do not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound which would have an adverse effect on its ability to perform its obligations under this Cooperative Agreement and any of the other Operative Documents to which it is a party (other than such adverse effect which is not material); (d) it has duly authorized the execution, delivery and performance of this Cooperative Agreement and the other Operative Documents to which it is a party; (e) this Cooperative Agreement and the other Operative Documents to which it is a party, when executed and delivered by it, will constitute its legal, valid and binding obligations, enforceable against it in accordance with their respective terms, except as enforceability may be limited by the application of bankruptcy, insolvency, reorganization, moratorium, liquidation, fraudulent conveyance and other similar laws and equitable principles now or hereafter in effect or enacted respecting creditors' rights or remedies generally; and (f) the provision of financial assistance to be made available under this Cooperative Agreement and the commitments therefor made by the Issuer and the City have induced it to undertake the transactions contemplated by this Cooperative Agreement and the other Operative Documents to which it is a party, which will create jobs and employment opportunities within the City. The Developer covenants and represents that (i) neither it nor any of its subsidiaries, affiliates, directors or officers are the target or subject of any sanctions enforced by the US Government, (including, the Office of Foreign Assets Control of the US Department of the Treasury ("OFAC")), the United Nations Security Council, the European Union, HM Treasury, or other relevant sanctions authority (collectively "Sanctions"); and (ii) neither it nor any of its subsidiaries, affiliates, directors or officers will use any payments made pursuant to this Cooperative Agreement (i) to fund or facilitate any activities of or business with any person who, at the time of such funding or facilitation, is the subject or target of Sanctions, (ii) to fund or facilitate any activities of or business with any country or territory that is the target or subject of Sanctions, or (iii) in any other manner that will result in a violation of Sanctions by any person.

Section 2.4. Covenant to Make Statutory Service Payments. Pursuant to the TIF Ordinance, the TIF Declarations and the TIF Agreement, during the period of the TIF Exemption, each of the Owners are required to make semiannual Statutory Service Payments with respect to the Improvements on its respective TIF Parcel pursuant to and in accordance with the requirements of the TIF Act, the TIF Ordinance, the TIF Declarations and this Cooperative Agreement. The Statutory Service Payments shall be made semiannually to the County Treasurer (or to his or her designated agent for collection of the Statutory Service Payments) on or before the date on which real property taxes would otherwise be due and payable for the Improvements. Each semiannual

Statutory Service Payment shall be in the same amount as the real property taxes that would have been charged and payable against the Improvements had the TIF Exemption not been granted. Any late Statutory Service Payments shall bear interest and shall be subject to penalties at the same rate and in the same amount and payable at the same time as delinquent taxes. The obligation of each Owner to make the Statutory Service Payments with respect to its respective TIF Parcel shall be a several, and not joint obligation, shall be unconditional, and shall not be terminated for any cause, and there shall be no right to suspend or set off such Statutory Service Payments for any cause, including without limitation any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Project, commercial frustration of purpose, or any failure by any other Cooperative Party to perform or observe any obligation, or covenant, whether express or implied, arising out of or in connection with this Cooperative Agreement or the other Operative Documents to which they are parties.

Section 2.5. Covenants Regarding Minimum Service Payments. Pursuant to the TIF Agreement and the TIF Declarations, until such time as the Bonds shall no longer be Outstanding, each of the Owners shall pay the Minimum Service Payments if any, with respect to its TIF Parcel when due and in accordance with the terms of this Cooperative Agreement, the TIF Agreement and the TIF Declarations. Upon consolidation or split of any TIF Parcel(s), the Minimum Service Payment obligation with respect to such TIF Parcel(s) shall be reallocated among such split or consolidated TIF Parcel(s) in accordance with the terms and conditions of the applicable TIF Declaration.

Section 2.6. TIF Declarations. At or prior the Closing, the Developer shall provide to the City and Issuer and executed and recorded TIF Declaration, signed by each Owner with respect to its TIF Parcel and recorded in the official records of the County, which TIF Declaration shall be in form and substance satisfactory to the City and the Issuer. Each TIF Declaration and the covenants contained therein (including without limitation the obligation of the Owner to make Minimum Service Payments, if applicable) shall be specifically enforceable by the City, the Trustee and the Issuer by mandatory injunction or any other remedy at law or in equity.

Section 2.7. Information to Tax Incentive Review Council. The TIF Declaration shall require each Owner, during the period of the TIF Exemption, to provide to the Tax Incentive Review Council and the City such information with respect to its TIF Parcel as shall be reasonably requested by the City's Tax Incentive Review Council or the City as may be necessary to allow the Tax Incentive Review Council to perform its review of the TIF Exemption in accordance with the TIF Act.

(End of Article II)

ARTICLE III

COOPERATIVE ARRANGEMENTS; CONSTRUCTION OF THE PROJECT; PROJECT ACCOUNT

Section 3.1. Cooperative Arrangements. For the reasons set forth in the Recitals to this Cooperative Agreement, the Cooperative Parties have determined to cooperate with one another in undertaking of the Project in accordance with the terms of this Cooperative Agreement and the other Operative Documents. The City and the Developer have requested the assistance of the Issuer in issuing the Series 2023 Bonds. This Cooperative Agreement is intended to and shall be an agreement among the Cooperative Parties to cooperate in the acquisition, construction, installation and equipping of port authority facilities pursuant to the Act.

Section 3.2. Issuance of the Bonds.

(a) Issuance of the Series 2023 Bonds. In order to provide funds to pay the costs of the Project, (i) the Issuer has issued the Series 2023 Bonds and has pledged the Assigned Service Payments to the payment of Debt Service Charges on the Series 2023 Bonds and (ii) the City has adopted the TIF Ordinance and assigned to the Issuer the Assigned Service Payments.

(b) Reserves and Administrative Expenses as Project Costs. The City and the Developer expressly acknowledges and agrees that the costs of providing for the funding of the Debt Service Reserve Requirement and the Administrative Expenses under the Trust Agreement shall be deemed to be Project Costs and payable by the Trustee with proceeds of the Series 2023 Bonds or otherwise with the Financing Payments as provided in the Trust Agreement.

(c) Signage. During the construction of the Project, the Issuer may furnish and post appropriate public signage on or about the Project satisfactory to the Issuer reflecting its role in financing the Project.

Section 3.3. Limitation on Obligations. Neither the Bonds, nor any obligation of the Issuer created by or arising out of this Cooperative Agreement or the other Operative Documents shall constitute a general debt of such Issuer or give rise to any pecuniary liability of the Issuer but shall be payable solely from the Pledged Revenues. The obligations of the Issuer and the City under this Cooperative Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The obligations of the Issuer and the City under this Cooperative Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of such Issuer or the City, and the Trustee and any Holder of the Bonds do not and shall not have any right to have taxes levied by either Issuer or the City for the payment of Debt Service Charges on any of the such Bonds or notes or any other obligation of the Issuer or the City hereunder.

(End of Article III)

ARTICLE IV

ASSIGNED SERVICE PAYMENTS

Section 4.1. Special Obligation; Assigned Service Payments. Anything in this Cooperative Agreement to the contrary notwithstanding, the obligation of the City under this Cooperative Agreement to pay the Required Transfer Amounts to the Issuer, or to the Trustee for the account of the Issuer, shall be a special obligation of the City and shall be required to be made only from the Assigned Service Payments in the City's Hunter's Path Municipal Public Improvement Tax Increment Equivalent Fund (the "TIF Fund"). The City has established and will maintain a separate accounting of the Assigned Service Payments within the TIF Fund and shall maintain it as such on the books and records of the City, and the City shall use, and cause the use of, the Assigned Service Payments only and exclusively for the purposes set forth in the TIF Ordinance, the TIF Agreement, the TIF Declarations and this Cooperative Agreement. The City recognizes and acknowledges that the Issuer and the Developer are undertaking their respective responsibilities, costs, and obligations in the development of the TIF Parcels in reliance on the determinations and authorizations made in the TIF Ordinance (in particular, but not limited to, the establishment and continued existence for the stated periods of the exemption from real property taxes pursuant to Ohio Revised Code Section 5709.41 and the provisions for application and use of the Assigned Service Payments) and on the undertakings of the City in this Cooperative Agreement and the TIF Agreement, each of the foregoing acknowledgements is made solely with respect to the matters that are within the City's control. The City shall not amend or repeal the TIF Ordinance except as approved by the Issuer, the Developer and the Trustee (with the consent of the Holders, if any) or as otherwise required by law; provided that any amendment or repeal not approved by the Issuer, the Developer and the Trustee shall not impair any obligation of the City hereunder or under the TIF Agreement.

Section 4.2. Allocation of Service Payments; Assigned Service Payments. Upon receipt of any Settlement Payments and any Property Tax Rollback Payments, the City shall apply such funds as follows:

1. The amount of the Settlement Payments equal to the School District Compensation shall be deposited in the TIF Fund to be applied to payments to be made to the School District; and
2. The City shall establish and maintain a separate accounting of, and deposit the remainder of the Settlement Payments into the TIF Fund for purposes of the distribution of the Required Transfer Amounts to the Trustee in accordance with this Cooperative Agreement for application in accordance with the terms of the Trust Agreement and this Cooperative Agreement.

Section 4.3. Application of Assigned Service Payments. It is understood by the parties hereto, and is a condition for the City's willingness to enter into this Cooperative Agreement, that except as otherwise consented to in writing by the City and the Issuer, the Trust Agreement shall require that the Required Transfer Amount be deposited into the Revenue Fund and applied, in the following order:

First, to the Rebate Fund, the amount required pursuant to Section 4(e) of the Trust Agreement.

Second, to the Interest Payment Account in the Bond Fund, the amount necessary to pay interest on the Bonds then due;

Third, to the Principal Payment Account in the Bond Fund, the amount necessary to pay principal and any premium on the Bonds then due whether at stated maturity or redemption;

Fourth, to the Administrative Expenses Account in the Bond Fund, an amount necessary to pay Administrative Expenses then due and payable or which will be due and payable prior to the next succeeding Payment Date;

Fifth, to the Debt Service Reserve Fund, the amount sufficient to restore the amount therein to the Debt Service Reserve Requirement for the Bonds.

Sixth, on December 15 of each year, commencing December 15, 202[4], to the extent that there are amounts remaining in the Revenue Fund after the payments described above, then such remaining amounts shall be used as follows: (i) first, the Trustee shall pay to each Owner the amount representing an Excess Minimum Service Payment due and payable to such Owner as certified by the Calculation Agent to the Trustee and in accordance with written instructions provided by such Owner to the Trustee (ii) [second, to the Stabilization Reserve Fund, an amount equal to the lesser of the amount of the remaining Assigned Service Payments in Revenue Fund or the amount required to make the total amount on deposit in the Stabilization Reserve Fund equal to \$[_____]] and (iii) third to the City for deposit in the TIF Fund for application in accordance with the TIF Ordinance and the TIF Agreement.

In making the foregoing transfers, the Trust Agreement shall provide that Statutory Service Payments shall be applied first and Minimum Service Payments shall be applied last.

Section 4.4. Debt Service Reserve Fund. The Authority shall establish under the Trust Agreement, to be held in trust by the Trustee, a Debt Service Reserve Fund. The Trustee shall use any amounts held in the Debt Service Reserve Fund to pay Debt Service on the applicable Bonds in the event of and to the extent that Assigned Service Payments received by the Trustee and available for payment of Debt Service are insufficient to do so. From and after the occurrence of an Event of Default under and as defined in the Trust Agreement (a "Bond Default"), amounts held in the Debt Service Reserve Fund may be used by the Trustee for any purpose authorized under the Trust Agreement upon and after the occurrence of a Bond Default. The Debt Service Reserve Fund shall be funded in accordance with the Trust Agreement at an amount equal to the applicable Debt Service Reserve Requirement, and shall be replenished as necessary from Pledged Revenues.

Anything herein or elsewhere to the contrary notwithstanding, the obligations of the City under this Section are not and shall not be secured by an obligation or pledge of any moneys raised

by taxation, and do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City; and the Authority, the Trustee and the Holders of the Bonds do not have and shall not have any right to have taxes levied by the City for the payment of the Required Transfer Amount, nor shall the City be obligated to make any payments in satisfaction of its obligations under this Cooperative Agreement from any source whatsoever other than from the Settlement Payments, any Minimum Service Payments to the extent received by the City and Property Tax Rollback Payments.

Section 4.5. Assignment. To the extent permitted by law, to secure its obligations hereunder, so long as the Bonds shall be Outstanding under the Trust Agreement or any amounts shall be due and owing under the Trust Agreement, or this Cooperative Agreement, the City absolutely and irrevocably assigns to the Issuer all of its right, title and interest in and to the Assigned Service Payments, and acknowledges that, pursuant to the Trust Agreement, the Issuer will assign to Trustee all right, title and interest of the Issuer in and to the Assigned Service Payments and may assign other property received or to be received by the Issuer from the City under this Cooperative Agreement. The Bonds are the revenue bonds of the Issuer and are not an obligation of the City.

Section 4.6. Administrator. The parties hereto hereby agree that [Incentive Review Group] shall act as the initial Administrator under this Cooperative Agreement, the Trust Agreement and the Administrative Services Agreement between the Administrator, the Trustee and the Issuer (the "Administration Agreement"). In the event that it shall be necessary to appoint a successor Administrator because of the resignation or removal of the Person then acting as the Administrator, the appointment of a successor Administrator by the Authority shall be subject to the approval of the City and the Developer, in accordance with this Section, and of any Holder of the Bonds if provided under the Trust Agreement. The Authority shall send out a request for proposals for the work to be performed by and the qualifications of the Administrator to make all determinations, calculations and allocations required or desirable to be made in order to implement the transactions contemplated by the Trust Agreement and this Cooperative Agreement. The City shall have the right to designate entities (and shall provide the addresses of such entities) who shall also receive any such request for proposals. The Authority shall share the results of such request for proposals with the Trustee and with the City (and any Holder if requested by the Holder) and shall consider the comments and concerns, if any, of the other, of any Holder and of the City in choosing the Administrator. Notwithstanding anything to the contrary herein, the City shall have the right to approve or reject any choice of Administrator made by the Authority; provided, that any such rejection shall identify the reasons therefor and any such rejection shall take effect only upon the appointment of a new Administrator pursuant to this Section. The Administrator shall perform those duties established by the Administration Agreement, this Cooperative Agreement, the Trust Agreement and the continuing disclosure agreement or other document of similar effect, if any, and shall provide a copy of each report required to be prepared under the Trust Agreement or the Administration Agreement to each of the parties hereto, any Holders and as required under the Trust Agreement by the date required under each respective Agreement. The City and the Developer each agrees that it shall cooperate with the Administrator in the performance by the Administrator of its duties under this Cooperative Agreement, the Trust Agreement and the Administration Agreement.

Section 4.7. Collection of Service Payments. The City shall, at no expense to the City, cooperate in good faith with the Issuer in the collection of the Assigned Service Payments and will accept a portion of the Service Payments in an amount at least equal to the Settlement Payments and Property Tax Rollback Payments then due on or before each Statutory Service Payment Date under and as defined in the TIF Agreement, and, upon the direction of the Administrator, the Authority or the Holder of any Note, if the Settlement Payments have not been received by the City on or before each April 15 and October 15, make inquiry of the County Treasurer as to the reason therefor and request or demand that such payments, to the extent received by the County Treasurer, be paid to the City, and take such other actions upon the direction of the Issuer, the Administrator, or the Holder of any Bond, including bringing a mandamus action to receive such amounts if not timely received. Upon the direction of the Administrator, the Issuer, or the Holder of any Bond, the City shall take all actions reasonably available to it (including requesting the County Treasurer to take actions available to it) to collect delinquent Statutory Service Payments and to cause any lien securing the delinquent Statutory Service Payments to be enforced, including through prompt and timely foreclosure proceedings pursuant to law, the TIF Declarations or the TIF Agreement. The City hereby authorizes the Issuer (or the Trustee on behalf of the Issuer) to take any actions that the City may be authorized by law to take, to enforce the payment of the Statutory Service Payments and the collection and enforcement (including by foreclosure) thereof; provided that the City reserves the right to take any such actions itself, concurrently with any assignee. The City and the Issuer shall cooperate in seeking an appropriate agreement from the County Treasurer, pertaining to the sale of tax lien certificates pertaining to the project as a result of delinquencies in real property tax or Statutory Service Payment payments.

Section 4.8. Collection of Minimum Service Payments. The Issuer and the City shall, at no expense to the City, retain the Calculation Agent to determine, by each August 15 the amount of Net Service Payments expected to be available for payment of Debt Service Charges for the following calendar year pursuant to this Cooperative Agreement and the Trust Agreement. If such Net Service Payments are projected to be less than the Debt Service Charges for the following calendar year (such shortfall being a “Service Payment Shortfall Amount”), the Calculation Agent shall certify a list of TIF Parcels to be assessed for a Service Payment Shortfall Amount pursuant to the respective TIF Declarations to the Issuer, the City, the Developer and the Trustee, subject to the credit for each TIF Parcel described below. Upon the City’s receipt of the Calculation Agent’s certification of any Deficiency Amount, the City shall prepare and file a written certification with the County Fiscal Officer requesting the County Fiscal Officer to list such Service Payment Shortfall Amount as a Minimum Service Payment on the respective TIF Parcel for collection on the Tax Collection Dates in accordance with the procedures set forth in Section 5709.91 of the Ohio Revised Code. The City shall file the written certification of any Minimum Service Payments on or before the second Monday in September following the receipt of the Calculation Agent’s certification of any Service Payment Shortfall Amount.

In preparing any necessary list of Minimum Service Payments for the TIF Parcels, the Calculation Agent shall credit the projected Net Service Payments from each TIF Parcel against that TIF Parcel’s Allocated Minimum Service Payments, such that any TIF Parcel with projected Net Service Payments for a given calendar year equal to or in excess of that TIF Parcel’s Allocated Minimum Service Payments for that year will be deemed to have fully satisfied its obligation to pay Minimum Service Payments for that year and will not be further assessed.

On December 1 of each year, commencing December 1, 202[5], the Calculation Agent shall determine whether there are Excess Moneys remaining in the Financing Payment Account following the transfers required by Section 5.05(c), (d) and (e) of the Trust Agreement. If Excess Moneys are in the Financing Payment Account, the Calculation Agent shall then determine whether the Excess Moneys represent Excess Minimum Service Payments by any Owner. If the Calculation Agent determined that an Excess Minimum Service Payment exists, then the Calculation Agent shall (a) certify to the Issuer, the Trustee and the City the amount of each Excess Minimum Service Payment, the applicable TIF Parcel related to the Excess Minimum Service Payment and the Owner of such TIF Parcel and (b) direct the Trustee to pay Excess Moneys representing an Excess Minimum Service Payment to the applicable Owner on the December 15th following such certification.

The TIF Declaration shall provide that the obligation of an Owner to make Minimum Service Payments with respect to its TIF Parcel shall be unconditional, and shall not be terminated for any cause, and there shall be no right to suspend or set off such Minimum Service Payments for any cause, including without limitation any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Improvements, commercial frustration of purpose, or any failure by the City or the Issuer to perform or observe any obligation, or covenant, whether express or implied, arising out of or in connection with this Cooperative Agreement or the other Operative Documents to which they are parties.

The Issuer and the Developer hereby acknowledge and agree that the City and the Trustee may conclusively rely upon the calculations certified by the Calculation Agent under this Section 4.8 without further direction from the Issuer and the Developer and the Trustee and the City shall not have a separate duty or obligation to verify such calculations.

Section 4.9. Payment of Assigned Service Payments. The City, promptly upon receipt of Settlement Payments and Property Tax Rollback Payments, shall deposit the Settlement Payments and any Property Tax Rollback Payments in the TIF Fund and maintain a separate accounting of said payments. The Administrator, as part of its Administrator's Semiannual Reports, will determine as of the fifteenth day of April and October of each year commencing [April 15, 2024]: (i) the total amount of Minimum Service Payments then held by the Trustee; (ii) the total [Assigned Service Payments] received by the City; (iii) the School Compensation due; and (iv) the Required Transfer Amount to be transferred by the City on the next Required Transfer Date. The Administrator shall, not later than April 15 and October 15 of each calendar year, commencing [April 15, 2024], deliver a copy of the Administrator's Semiannual Report to the City concurrently with delivery to the Issuer, the Trustee and any Holders. Not later than the later to occur of (i) the Required Transfer Date, and (ii) the date that is the fifteenth business day after the City's receipt of the [Semi-Annual Apportionment of Tax Report] from the County Auditor, the City shall deliver the Required Transfer Amount to the Trustee for the account of the Authority and for deposit in the Revenue Fund held under the Trust Agreement. Notwithstanding anything to the contrary contained in this Section, with respect to total payments of Required Transfer Amounts made by the City in any calendar year, the City shall in no event, but at no expense to the City, be required to transfer as Required Transfer Amounts an aggregate amount greater than the amount of Assigned Service Payments actually received by the City in such calendar year less the School Compensation actually made by the City in such calendar year. Notwithstanding

anything in this Cooperative Agreement to the contrary, the City may prepay, from legally available sources other than Service Payments, at any time (but shall have no obligation to prepay) all or any part of the Assigned Service Payments. Such prepayments shall not in any way alter or suspend the obligations of the City under this Cooperative Agreement and shall not alter the obligations of the City to pay the Required Transfer Amounts and deliver the Required Transfer Amounts required under this Cooperative Agreement. Except to the extent expressly permitted hereby, any other delivery of moneys shall not operate to abate or postpone the Required Transfer Amounts otherwise becoming due or to alter or suspend any other obligations of the City under this Cooperative Agreement.

Section 4.10. Obligations Unconditional. The obligation of the City to pay the Required Transfer Amount to or for the account of the Authority solely from the Settlement Payments, Minimum Service Payments received by the City, if any, and any Property Tax Rollback Payments shall be absolute and unconditional, and the City shall make such payments without abatement, diminution or deduction regardless of any cause or circumstance whatsoever including, without limitation, any defense, set-off, recoupment or counterclaim which the City may have or assert against the Authority, the Trustee or any other person or entity.

All of the Settlement Payments and Property Tax Rollback Payments received or to be received by the City shall be deemed to have been appropriated to the extent necessary to pay the City's obligations hereunder. During the years when this Cooperative Agreement is in effect, the City shall take all further actions as may be necessary or desirable in order to appropriate the City-Received Payments at such times as will enable the City to satisfy its obligations under this Cooperative Agreement. The City has no obligation to use or apply to the payment of the Required Transfer Amounts any funds or revenues from any source other than the moneys received by the City as Settlement Payments, Minimum Service Payments and Property Tax Rollback Payments. Nothing herein, however, shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Cooperative Agreement.

Section 4.11. School Compensation Payments. The City shall promptly pay or cause the School Compensation to be paid to the School District. Anything herein to the contrary notwithstanding, the obligations of the City hereunder with respect thereto shall be special obligations of the City payable solely from the Settlement Payments deposited into the TIF Fund for that purpose pursuant to this Cooperative Agreement, and those obligations are not and shall not be secured by an obligation or pledge of any moneys from any source whatsoever other than from the Settlement Payments. Upon the City's execution and delivery of this Cooperative Agreement, all moneys from the Settlement Payments required to be used to pay those School Compensation shall be deemed to have been appropriated to pay that obligation with respect to School Compensation. During the years when this Cooperative Agreement is in effect, the City shall take such further actions as may be necessary or desirable to appropriate the moneys received as Settlement Payments at such times as will enable the City to make the School Compensation required under the School Agreement. Neither the Trustee nor the Issuer shall have any obligation whatsoever with respect to any payment to be made to the School District pursuant to the School Agreement.

Section 4.12. Enforcement of Obligations of City and Issuer. The obligation of the City to provide to the Issuer and pay to the Trustee the Assigned Service Payments is a continuing obligation pursuant to Ohio Revised Code Section 5705.44. All of the obligations of the Issuer and the City under this Cooperative Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust, or station upon the City and the Issuer, respectively, within the meaning of Section 2731.01 of the Ohio Revised Code and shall be enforceable by mandamus.

Section 4.13. Redemption of Bonds. The Issuer has the exclusive right to effect redemption of all or part of the then Outstanding Bonds that it has issued on any available redemption date on which such redemption may be made under the applicable provisions of the Bonds and the Trust Agreement.

(End of Article IV)

ARTICLE V

ADDITIONAL AGREEMENTS AND COVENANTS

Section 5.1. Right of Inspection. The Issuer, the City, and the Trustee, and their respective agents, shall have the right during normal business hours to inspect the Project during the construction thereof upon reasonable advance notice to the Developer.

Section 5.2. Indemnification by the Developer and Owners. The Developer hereby releases, and the TIF Declaration shall provide that each Owner releases, the Issuer, the Trustee, and the City, and their respective officers, directors and employees (the “Indemnified Parties”), from and agrees that the Indemnified Parties, shall not be liable for and indemnifies the Indemnified Parties against, all liabilities, claims, damages, fines, penalties, losses, costs and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred or asserted against the Indemnified Parties on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, installation, equipment, improvement, maintenance, operation and use of the Project or the Development; (ii) any breach or default on the part of the Developer in the performance of any covenant, obligation or agreement of the Developer under this Agreement, the TIF Agreement, any contract for the construction of the Project, or other Operative Document, or arising from any act or failure to act by the Developer or any of the agents, contractors, servants, employees or licensees; (iii) the authorization, issuance, sale, trading, redemption or servicing of the Bonds, and the provision of any information or certification furnished in connection therewith concerning the Bonds or the Project, by the Developer including, without limitation, any information furnished by the Developer for, and included in, or used as a basis for preparation of, any certifications, information statements or reports furnished by the Port Authority, the Trustee, or the City, and any other information or certification obtained from the Developer to assure the exclusion from gross income for federal income tax purposes of interest on the Bonds; (iv) the Developer’s failure to comply with any requirement of the City’s Charter, this Agreement or any other Operative Document; (v) any failure of compliance with the provisions of the Ohio Revised Code Chapter 4115, the Act, or any other applicable provision of the Ohio Revised Code; (vi) any action taken or omitted to be taken by the Indemnified Parties pursuant to the terms of this Agreement, the TIF Agreement, the Bonds, the Trust Agreement, the TIF Declarations, the TIF Ordinance, any other Operative Document or any other related instrument or document, or any action taken or omitted to be taken by the Indemnified Parties at the written request of or with the consent of the Developer; and (vii) any and all costs reasonably related to and reasonably incurred by the City in connection with the City’s efforts or the efforts of any other Person to obtain from the State of Ohio and the County Auditor any Property Tax Rollback Payments; (viii) any and all costs reasonably related to and reasonably incurred by the Village in connection with the Village’s efforts to collect delinquent Service Payments and Minimum Service Payments; and (ix) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) above.

The Developer agrees to indemnify and hold the Indemnified Parties, harmless from and against all actual liabilities, claims, damages, fines, penalties, losses, and all reasonable out-of-pocket costs and expenses, including out-of-pocket and incidental expenses and attorneys’ fees

and expenses, arising out of any Environmental Laws, regulations or ordinances, incurred by the Indemnified Parties as a result of the existence on, or release from, the Project, the Development Site, or any other contiguous lands owned by the Developer or its related entities, of Hazardous Materials which in any way result from any act of omission or commission of the Developer, or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees or tenants, or arising out of any federal state or local environmental laws, regulations or ordinances.

The Developer further covenants and agrees, for the benefit of the Indemnified Parties, that neither the Developer, nor any of its agents, employees, independent contractors, invitees, licensees, successors, assignees or tenants will store, release or dispose of, or permit the storage, release or disposal of any Hazardous Substances at the Project or at the Development at any time from and after the effective date of this Agreement other than in accordance with applicable federal, state and local law and regulation. In the event that any party to this Agreement receives a notification or clean up requirement under 42 U.S.C. §9601 *et seq.* or other federal, state or local statute, ordinance or regulation, relating to the Project, or the Development, that party shall promptly notify the other parties to this Agreement and the Trustee of such receipt, together with a written statement of such party setting forth the details thereof and any action with respect thereto taken or proposed to be taken, to the extent of such party's knowledge. On receipt by the Developer of any such notification or clean up requirement, the Developer shall either proceed with appropriate diligence to comply with such notification or clean up requirement or shall commence and continue negotiation concerning or contest the liability of the Developer with respect to such notification or clean up requirement. The Developer agrees to indemnify and hold the Indemnified Parties harmless from and against any and all liabilities, claims, damages, fines, penalties, losses, and all costs and expenses, including out-of-pocket and incidental expenses and attorneys' fees and expenses arising out of any Environmental Laws, regulations or ordinances, incurred by the Indemnified Parties as a result of any breach of this covenant or as a result of the presence of Hazardous Materials at the Project or the Development.

In case any claim or demand is at any time made, or action or proceeding is brought, against or otherwise involving the Indemnified Parties, in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Developer, and the Developer upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Developer from any of its obligations under this Section 5.2 unless that failure materially prejudices the defense of the action or proceeding by the Developer. An Indemnified Party may employ separate counsel and participate in the defense, but the fees and expenses of such counsel shall be paid by the indemnified party unless (i) the employment of such counsel has been specifically authorized by the Developer in writing, or (ii) the Developer has failed to assume the defense and to employ counsel or (iii) the named parties to any such action (including any impleaded parties) include both an Indemnified Party and the Developer or more than one Indemnified Party, and such Indemnified Party shall have been advised by its counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the Developer and other Indemnified Party, in which case, if the Indemnified Party notifies the Developer in writing that it elects to employ separate counsel at the Developer's expense, the Developer shall not have the right to assume the defense of such action on behalf of such Indemnified Party and the Developer shall be responsible for payment of the fees and

expenses of such separate counsel. The party seeking indemnity agrees to fully cooperate with the Developer to the extent such cooperation does not prejudice the position of such Indemnified Party and lend the Developer such assistance as the Developer shall reasonably request in defense of any claim, demand, action or proceeding. Neither the Developer nor any Indemnified Party shall be liable for any settlement made without its consent.

Nothing in this Agreement is meant to release, extinguish or otherwise alter or interfere with any rights which the Indemnified Parties may now or hereafter have against the Developer, or any other person for any environmental liabilities as a result of the Developer's former, present or future ownership, occupancy or use of or interest in, any real property included in or in the vicinity of the Project.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, agents and employees of the Issuer, the City, and the Trustee, respectively, and their successors and assigns. That indemnification is intended to and shall be enforceable thereby to the full extent permitted by law and shall survive the termination of this Agreement and repayment of the Bonds.

Section 5.3. Developer, Port Authority, and City Not to Adversely Affect Exclusion from Gross Income of Interest on Bonds. The City, the Issuer, and the Developer each hereby represent that they have taken and caused to be taken, and covenant that they will take and cause to be taken, all actions that may be required of them, within their respective control, alone or in conjunction with each other, for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and represent that they have not taken or permitted to be taken on their behalf, and covenant that they will not take or permit to be taken on their behalf, any actions that would adversely affect such exclusion under the provisions of the Code; provided that compliance with such covenant shall not require the Issuer or the City to expend their own funds, whether to pay any amount as part of a closing agreement with the Internal Revenue Service, or otherwise, for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, other than any moneys available under the Trust Agreement for such purposes.

Section 5.4. Litigation Notice. Each of the Cooperative Parties shall give to the others prompt notice of any action, suit or proceeding, whether legal or administrative, by or against any of the Cooperative Parties at law or in equity, or before any governmental instrumentality or agency, or of any of the same which is threatened in writing, of which such Cooperative Party has notice, which, if adversely determined, would materially impair the right or ability of a Cooperative Party to carry out its obligations contemplated under the Operative Documents in connection with the Project.

Section 5.5. Maintain Existence. The Developer shall do all things necessary to preserve and keep in full force and effect its existence, rights and franchises. In particular, the Developer agrees that it shall not (a) sell, transfer or otherwise dispose of all, or substantially all, of its assets other than in connection with the sale or transfer of lots within the TIF Site to [Arbor Homes] or another residential homebuilder, or to the Apartment Purchaser or other residential developer, in connection with the construction of the Development; (b) consolidate with or merge into any other entity that is not an Affiliate of the Developer; or (c) permit one or more other entities that are not

Affiliates of the Developer to consolidate with or merge into it; provided, however, that the Developer may without violating the agreement contained in this Section 5.5, consolidate with or merge into another limited liability company, partnership or corporation, or permit one or more other limited liability companies, partnerships or corporations to consolidate or merge into it, or sell or otherwise transfer to another limited liability company, partnership or corporation all or substantially all of its assets as an entirety and thereafter dissolve, provided that if the surviving, resulting or transferee limited liability company, partnership or corporation, as the case may be, is other than the Developer, such surviving, resulting or transferee limited liability company, partnership or corporation assumes in writing all of the Developer's obligations under the Operative Documents, has a net worth, determined in accordance with generally accepted accounting principles consistently applied, at least equal to that of the Developer prior to dissolution, sale, consolidation or merger, and provided further that such consolidation, merger, sale or transfer does not violate or result in the violation of any provision of any document to which the Developer is a party.

(End of Article V)

ARTICLE VI

PROVISIONS RELATING TO TRUSTEE

Section 6.1. Duties of Trustee. For purposes of performing its duties under this Cooperative Agreement, the Trustee agrees to perform its duties in accordance with the terms and provisions of this Cooperative Agreement and the Trust Agreement. The Trustee shall be afforded the same rights and protections hereunder as accorded to it under the Trust Agreement.

Section 6.2. Liability of Trustee. Neither Trustee nor any of their respective officers, directors, employees, attorneys, designees or agents shall be liable to any of the other Cooperative Parties for any action taken or omitted to be taken by it unless resulting from its gross negligence or willful misconduct. Except as expressly provided for in this Cooperative Agreement, the Trustee shall not be responsible in any manner to any or all of the other Cooperative Parties for the effectiveness, enforceability, genuineness, validity, or the due execution of any of the Operative Documents or for any representation, warranty, document, certificate, report, opinion or statement herein or made or furnished under or in connection therewith, or be under any obligation to any or all of the other Cooperative Parties to ascertain or to inquire as to the performance or observance of any of the terms, covenants, or conditions of any of the Operative Documents on the part of any party thereto. Nothing in this Cooperative Agreement is intended to derogate from or otherwise modify the duties of the Trustee with respect to the Bonds issued under the Trust Agreement or under the Trust Agreement when acting in its capacity as the Trustee.

Section 6.3. Reliance by Trustee. The Trustee and its respective officers, directors, employees, attorneys, designees and agents shall be entitled to rely and shall be fully protected in relying upon any writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telex or teletype message, statement, order or other document or conversation, believed by it or them to be genuine and correct and to have been signed, sent, or made by the proper person, and with respect to legal matters, upon an opinion of legal counsel selected by the Trustee, and with respect to accounting and financial matters, upon an independent accountant or financial expert selected by the Trustee. The Trustee shall not be obligated to risk its own funds or otherwise incur any financial liability in the performance of any of its obligations under this Cooperative Agreement and the other Operative Documents or in the exercise of its powers, if in its reasonable judgment repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(End of Article VI)

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. Events of Default. Each of the following shall be an Event of Default:

(a) The City shall fail to pay and deliver to the Trustee any Assigned Service Payment when due hereunder and in accordance with this Cooperative Agreement and such failure continues for five (5) calendar days after written notice from the Trustee.

(b) A Cooperative Party shall fail to observe and perform any agreement, term or condition contained in this Cooperative Agreement to be performed by it, and such failure continues for a period of thirty (30) days after notice thereof shall have been given to the defaulting Cooperative Party by the Issuer, the Trustee or any of the other non-defaulting Cooperative Parties, or for such longer period as the non-defaulting Cooperative Parties may agree to in writing; provided, that if the failure is other than the payment of money and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the defaulting Cooperative Party institutes curative action within the applicable period and diligently pursues that action to completion; provided, further, that such cure must be completed within 180 days of the date of delivery of such notice of failure.

(c) The City or the Developer shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under federal bankruptcy laws, as in effect from time to time; (iii) file a petition in bankruptcy or a petition to take advantage of any insolvency act; (iv) make an assignment for the benefit of creditors; or (v) consent to the appointment of a receiver for itself or of the whole or any substantial part of its property or has a receiver or trustee appointed for it or for the whole or any substantial part of its property.

(d) Any representation or warranty made by a Cooperative Party in this Cooperative Agreement shall have been false or misleading in any material respect when made or given.

Except for any obligation to pay moneys when due hereunder, notwithstanding the foregoing, if, by reason of Force Majeure, any Cooperative Party is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the defaulting Cooperative Party shall not be deemed in default during the continuance of such inability. However, the defaulting Cooperative Party shall promptly give notice to the others of the existence of an event of Force Majeure and shall use its best efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within the discretion of the affected Cooperative Party.

The declaration of an Event of Default under subsection (c), above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Section 7.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

(a) If the City is the defaulting party, the other Cooperative Parties may have access to, inspect, examine and make copies of the books, records, accounts and financial data of the City pertaining to the Service Payments.

(b) Any non-defaulting Cooperative Parties may pursue all remedies now or hereafter existing under this Cooperative Agreement or at law or in equity to enforce the terms of this Cooperative Agreement and to collect all amounts then due and thereafter to become due and owed to them under hereunder.

Notwithstanding the foregoing, the Trustee shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it at no cost or expense to the Trustee.

Nothing in this Cooperative Agreement shall limit or restrict the access that any Cooperative Party has to any rights, recourse and remedies available under any other Operative Document to which it is a party and following an event of default under any such Operative Document, the non-defaulting Cooperative Party shall have access to all rights, recourse and remedies against the defaulting Cooperative Party available to the non-defaulting Cooperative Party under such Operative Document.

Section 7.3. No Remedy Exclusive. No remedy conferred upon or reserved to a non-defaulting Cooperative Party by this Cooperative Agreement or under any of the other Operative Documents is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Cooperative Agreement, or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle a non-defaulting Cooperative Party to exercise any remedy reserved to it in this Cooperative Agreement, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made herein.

Section 7.4. Agreement to Pay Legal Fees and Expenses. If an Event of Default should occur and the Issuer, the City, or the Trustee should incur expenses, including without limitation reasonable attorneys' fees and expenses, in connection with the enforcement of this Cooperative Agreement, the Developer shall reimburse the Issuer, the City or the Trustee, as the case may be, for the reasonable expenses so incurred upon demand; provided that such amount has not been reimbursed as Administrative Expenses herein. If any such expenses are not so reimbursed, the amount thereof, together with interest thereon from the date of demand for payment at the [Interest Rate for Advances], to the extent permitted by law, shall constitute indebtedness of the Developer and in any action brought to collect that indebtedness or to enforce this Cooperative Agreement, the party to whom the indebtedness is owed shall be entitled to seek the recovery of those expenses in such action, except as limited by law or judicial order or decision entered in such proceedings.

Section 7.5. No Waiver. No failure by a Cooperative Party to insist upon the strict performance by another Cooperative Parties of any provision of this Cooperative Agreement shall constitute a waiver of its right to strict performance and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure such Cooperative Party to observe or comply with any provision hereof.

Section 7.6. Notice of Default. Each Cooperative Party shall notify the other Cooperative Parties promptly if it becomes aware of the occurrence of any Event of Default hereunder or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

(End of Article VII)

ARTICLE VIII

MISCELLANEOUS

Section 8.1. Term of Agreement. This Cooperative Agreement shall be and remain in full force and effect from the date hereof until no Bonds shall remain Outstanding (except for the obligations imposed under Section 5.2 and Section 7.4 hereof, which shall survive the expiration or termination of this Cooperative Agreement). Upon termination of this Cooperative Agreement, the Cooperative Parties will take such action as shall be required of them to release any liens on the Project by reason of the payment or defeasance of the Bonds.

Section 8.2. Notices. All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, or delivered by overnight courier service, and addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate, request or other communication given hereunder to any Cooperative Party shall also be given to the other Cooperative Parties. The Cooperative Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent. If, because of the suspension of delivery of certified or registered mail or for any other reason, notice, certificates or requests or other communications are unable to be given by the required class of mail or courier service, any notice required to be mailed or delivered by courier service by the provisions of this Cooperative Agreement shall be given in such other manner shall most effectively approximate mailing thereof or delivery by courier service, and the giving of that notice in that manner for all purposes of this Cooperative Agreement shall be deemed to be in compliance with the requirement for delivery under this Section. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

Section 8.3. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Cooperative Parties contained in this Cooperative Agreement and the other Operative Documents shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future officer, official, employee or agent of the Issuer or the City or their respective Legislative Authorities in other than its official capacity, and neither the members of any Legislative Authorities nor any official executing the Operative Documents or Bond shall be liable personally on the Operative Documents or such Bonds or be subject to any personal liability or accountability by reason of the issuance thereof or by reason of the covenants, obligations or agreements of the Issuer or the City contained in this Cooperative Agreement or in the other Operative Documents.

Section 8.4. Binding Effect. This Cooperative Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Cooperative Parties and their respective permitted successors and assigns; provided that while any of the Bonds remains Outstanding, the interests in and obligations of any party to pay, pledge or assign any of the Pledged Revenues may not be assigned by such party (except to the extent contemplated in this Cooperative Agreement).

This Cooperative Agreement may be enforced only by the parties, their assignees and others who may, by law, stand in their respective places.

Section 8.5. Amendments and Supplements. Except as otherwise expressly provided in this Cooperative Agreement or the other Operative Documents, subsequent to the issuance of the Bonds and while the Bonds remain Outstanding, no provision of this Cooperative Agreement or the other Operative Documents relating to the payment of the Assigned Service Payments or other security for the Bonds may be effectively amended, changed, modified, altered or terminated, except in accordance with Article X of the Trust Agreement, as though such article was fully incorporated herein and applicable to amendments hereunder and/or amendments under the applicable Operative Document. In no event shall any amendment or modification to this Cooperative Agreement be effective unless signed by all of the Cooperative Parties.

Section 8.6. Execution Counterparts. This Cooperative Agreement may be executed in counterpart and in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 8.7. Severability. If any provision of this Cooperative Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 8.8. Limitation of Rights. With the exception of rights conferred expressly in this Cooperative Agreement, nothing expressed or mentioned in or to be implied from this Cooperative Agreement is intended or shall be construed to give to any Person other than the Cooperative Parties and the Holders any legal or equitable right, remedy, power or claim under or with respect to this Cooperative Agreement or any covenants, agreements, conditions and provisions contained herein. This Cooperative Agreement and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the Cooperative Parties and the Holders, as provided herein.

Section 8.9. Governing Law. This Cooperative Agreement shall be construed, interpreted, and the rights of the parties determined in accordance with the laws of the State and in the courts of the City or in the case of federal jurisdiction, in the United States District Court of Ohio, [Northern District, Eastern Division].

Section 8.10. Public Records. The parties acknowledge that all records and books, whether written or computer, generated pursuant to this Cooperative Agreement may be public records for purposes of Ohio Revised Code Section 149.43 unless otherwise exempted in accordance with State or federal law.

(End of Article VIII)

IN WITNESS WHEREOF, the Cooperative Parties have caused this Cooperative Agreement to be duly executed in their respective names, all as of the date first hereinbefore written.

DAYTON-MONTGOMERY COUNTY PORT
AUTHORITY

By _____
Joseph M. Geraghty, Executive Director

CITY OF CLAYTON, OHIO

Approved as to form:

By _____
[Name], City Manager

City Attorney
City of Clayton, Ohio

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

Acknowledged by:

THE HUNTINGTON NATIONAL BANK,
as Trustee

By _____
Authorized Signer

FISCAL OFFICER’S CERTIFICATE

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

The undersigned, Secretary of the Dayton-Montgomery County Port Authority (the “Authority”), hereby certifies that the moneys required to meet the obligations of the Issuer during the year 2023 under the Agreement have been lawfully appropriated by the Legislative Authority of the Issuer for such purposes and are in the treasury of the Issuer or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Fiscal Officer
Dayton-Montgomery County Port Authority

Dated: April __, 2023

FISCAL OFFICER'S CERTIFICATE

CITY OF CLAYTON, OHIO

The undersigned, Fiscal Officer of the City (the "City"), hereby certifies that the moneys required to meet the obligations of the City during the year 2023 under the Agreement have been lawfully appropriated by the Legislative Authority of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Director of Finance
City of Clayton, Ohio

Dated: April __, 2023

EXHIBIT A

Scheduled Debt Service Charges

Interest Payment Date	Principal	Interest	Issuer Fee	Trustee Fee	Administrator Fee	Total Debt Service Charge
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EXHIBIT B

Description of TIF Parcels

Appendix A

Master List of Definitions

“Account” means any account within any Fund created in and maintained under the Trust Agreement.

“Act” means Sections 4582.21 to 4582.59, inclusive, Ohio Revised Code, as enacted and amended from time to time pursuant, in part, to Section 13 and Section 16 of Article VIII of the Ohio Constitution.

“Additional Bonds” means any other Series of Bonds issued as Bonds in accordance with Section 2.05 of the Trust Agreement and authorized by the City and the Issuer pursuant to the Trust Agreement.

“Additional Bonds TIF Report” means such term as defined in Section 2.05(e) of the Trust Agreement.

“Administrative Expenses” includes means the fees and reasonable expenses or charges of the Trustee, the Administrator, and the Issuer, and any Registrar, Paying Agent, Authenticating Agent or other agent retained by the Issuer or the Trustee to perform any duty required of it by the Trust Agreement, the Cooperative Agreement, the TIF Agreement or the TIF Declarations (including, without limitation, any duties with respect to calculation of the Minimum Service Payments or the School Compensation), the annual fee charged by a Rating Service, if any, the fees and reasonable expenses of the Issuer and the City, and the costs of legal opinions, amounts required to enforce or administer any provisions of the Cooperative Agreement or the TIF Declarations, including but not limited to the fees and expenses of the Administrator, and any amounts other than Debt Service Charges required to be paid in connection with the Bonds pursuant to the Cooperative Agreement or the Trust Agreement.

“Administrative Expenses Account” means the account of the Bond Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Administrator” means the organization appointed from time to time as Administrator pursuant to the Cooperative Agreement and the Trust Agreement to undertake the duties of the Administrator under the Trust Agreement and the Administration Agreement, including any successors or assigns, and being initially [Incentive Review Group].

“Administrator’s Semiannual Report” means the report of the Administrator due on or before each Administrator’s Semiannual Report Date, which report shall establish the amount of the deposit to each account within the Revenue Fund, any Aggregate Service Payment Shortfall, establishing the amount of Minimum Service Payments (calculated in accordance with the TIF Agreement and the TIF Declarations) payable with respect to each such Interest Payment Date, all required payments and transfers pursuant to the Trust Agreement and the balance of all accounts

and funds held under the Trust Agreement and as more fully described in the Administration Agreement.

“Administrator’s Semiannual Report Date” means April 15 and October 15 of each year, commencing [April 15, 2024].

“Administration Agreement” means the Administration Agreement made between the Issuer and the Administrator, dated as of [_____], 2023, as may be amended or supplemented.

“Affiliate” means, with respect to a specified Person, any other Person which directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with, such Person (“control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise).

“Aggregate Service Payment Shortfall Amount” means, for any given Calculation Date, the total sum of the Service Payment Shortfalls respect to all Deficient Parcels with a Service Payment Shortfall Amount as of the applicable Calculation Date.

“Allocated Minimum Service Payment Amount” means the amounts as shown on Exhibit B to the applicable TIF Declaration, for each applicable year, under the column “Allocated Minimum Service Payment Amount”.

“Assigned Service Payments” means the Settlement Payments, the Property Tax Rollback Payments, and any Minimum Service Payments.

“Authenticating Agent” means the Trustee and the Registrar for the Bonds and any other bank, trust company or other Person designated as an Authenticating Agent for the Bonds by or in accordance with Section 6.13 of the Trust Agreement, each of which shall be a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934, as amended.

“Authorized Denominations” means the denomination of \$100,000 or any integral multiple of \$5,000 in excess thereof.

“Authorized Officer” or **“Authorized Officers”** means (i) as to the City, any person or persons specifically authorized by an ordinance of the Council to take on behalf of the City the action intended, and if there is no such specific authorization, shall mean the Fiscal Officer, or such other officers who succeed to the powers and duties of that office by operation of law, (ii) as to the Issuer, any person or persons specifically authorized by a resolution of the Board to take on behalf of the Issuer the action intended, and if there is no such specific authorization, shall mean the Fiscal Officer, or such other officers who succeed to the powers and duties of that office by operation of law and (iii) as to the Developer, any person or persons specifically authorized by the Developer to take on behalf of the Developer the action intended, and if there is no such specific authorization, shall mean the authorized member, or such other officers who succeed to the powers and duties of that office by operation of law.

“Beneficial Owner” means, with respect to the Bonds, a Person owning a Beneficial Ownership Interest therein, as evidenced to the satisfaction of the Trustee.

“Beneficial Ownership Interest” means the beneficial right to receive payments and notices with respect to the Bonds which are held by the Depository under a book entry system.

“Board” means the Board of Directors of the Issuer.

“Bond Fund” means the Bond Fund created in Section 5.01 of the Trust Agreement.

“Bond Legislation” means [_____].

“Bonds” means, collectively, the Series 2023 Bonds and any Additional Bonds issued under the Trust Agreement.

“Book entry form” or **“book entry system”** means a form or system, as applicable, under which (i) the ownership of beneficial interests in the Bonds, including the principal and redemption price thereof, and interest due thereon, may be transferred only through a book entry and (ii) physical Bond certificates in fully registered form are registered only in the name of a Depository or its nominee as holder of the Bonds, with the physical Bond certificates “immobilized” in the custody of the Depository. The book entry system is maintained by and is the responsibility of the Depository and not the Issuer, the Trustee or any Paying Agent. The book entry is the record that identifies, and records the transfer of the interest of, the owners of beneficial (book entry) interests in the Bonds.

“Business Day” means any day other than (a) a Saturday or a Sunday, (b) a day on which the Trustee is required or is authorized to close or is not prohibited from closing, by law (including without limitation, executive orders) and is closed, (c) any day on which the Federal Reserve Bank of Cleveland is closed, or (d) a day on which the Depository is closed.

“Calculation Agent” means the Administrator, as Calculation Agent under the Administration Agreement.

“Calculation Date” means each August 15 of each year the Bonds are outstanding, commencing [August 15, 2024].

“Capitalized Interest Account” means the Capitalized Interest Account of the Project Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Certificate of Award” means the certificate authorized by the Bond Legislation, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as the Bond Legislation provides may or shall be set forth or determined therein.

“Chair” means the Chair of the Board of the Issuer.

“City” means the City of Clayton, Ohio.

“Clerk” means the Clerk of Council of the City.

“Closing Date” means the date on which the Series 2023 Bonds are delivered to the Original Purchaser thereof and payment therefor is made to the Issuer.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether proposed, temporary or final) under that Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Completion Date” means as to the Project, the date on which the Issuer, the City and the Developer shall have approved the final certificate of completion with respect to that Project in accordance with the Cooperative Agreement.

“Constitution” means the Constitution of the State, as the same may be amended from time to time.

“Construction Account” means the Construction Account of the Project Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Cooperative Agreement” means the Tax Increment Financing and Cooperative Agreement, dated as of [April 1], 2023 by and among the Developer, the City and the Issuer, and acknowledged by the Trustee, as the same may be amended or supplemented from time to time.

“Cooperative Parties” means the City, the Issuer, the Developer and the Trustee.

“Cost of Issuance Account” means the Cost of Issuance Account of the Project Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Cost Certificate” means a “Certified Statement” as such term as defined in the TIF Agreement.

“Costs” means costs of the Project payable from the Project Fund pursuant to Section 5.03 of the Trust Agreement.

“Council” means the Council of the City.

“County” means Montgomery County, Ohio.

“County Fiscal Officer” means the Montgomery County Auditor.

“County Treasurer” means the Montgomery County Treasurer.

“Debt Service Charges” means, for any period or payable at any time, the principal of, premium, if any, interest, fees and any expenses due and owing on the Bonds, including Administrative Expenses, for that period or payable at that time whether due at maturity or on an Interest Payment Date or a Principal Payment Date or upon redemption or acceleration.

“Debt Service Reserve Fund” means the Debt Service Reserve Fund designated as such and created in Section 5.01 of the Trust Agreement

“Debt Service Reserve Requirement” means, initially \$[_____].

“Defeasance Account” means the Defeasance Account of the Bond Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Deficiency Amount” means, for each Interest Payment Date, the amount as determined by the Calculation Agent pursuant to Section 2.6 of the Cooperative Agreement.

“Deficient Parcel” means, as of any given Calculation Date, a TIF Parcel which is projected to produce Net Service Payments less than the Allocated Minimum Service Payment Amount for that TIF Parcel.

“Depository” means The Depository Trust Company (a limited purpose trust company), New York, New York, until any successor Depository shall have become such pursuant to the applicable provisions of the Trust Agreement and, thereafter, “Depository” shall mean the successor Depository. Any Depository shall be a securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book entry system to record ownership of beneficial interests in Bonds or Debt Service Charges, and to effect transfers of Bonds, in a book entry form.

“Developer” means Hunters Path Project I, LLC, an Ohio limited liability company, and its permitted successors and assigns.

“Development” means the approximately 125 single family residential units, together with related site improvements, to be constructed on the TIF Parcels.

“Direct Obligations” means direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of the principal of and interest on which is fully and unconditionally guaranteed by the United States of America, provided that the full faith and credit of the United States of America must be pledged to any such direct obligations or guarantee.

“Eligible Investments” means, to the extent permitted by the Issuer’s investment policies, any of the following, including:

- (a) Direct Obligations.
- (b) Obligations of any of the following federal agencies, which obligations represent full faith and credit of the United States of America: the Federal Farm Credit Bank (“FFCB”), the Federal Home Loan Bank (“FHLB”), the Federal Home Loan Mortgage Corporation (“FHLMC”), the Federal National Mortgage Association (“FNMA”), the Government National Mortgage Association (“GNMA”), or the Student Loan Marketing Association (“SLMA”) with remaining maturities not exceeding 3 years.
- (c) Deposit accounts, including demand deposits, time deposits, other deposit products, trust funds, trust accounts, interest bearing deposits, overnight bank deposits,

interest bearing money market accounts, bankers' acceptances, collateralized or uncollateralized certificates of deposit (including those placed by a third party pursuant to a separate agreement between the Issuer and the Trustee) or bearer deposit notes, including those of the Trustee or any bank affiliated with the Trustee, and with a reported capital and surplus of not less than \$2,000,000,000 and which are either (i) insured by the Federal Deposit Insurance Corporation ("FDIC") or (ii) in such bank or financial institution that has, at the time of purchase of the Eligible Investment, unsecured, uninsured and unguaranteed short-term debt rates in the highest rating category by a Rating Agency.

- (d) Any repurchase agreement with a local bank that is a member of the FDIC or which bank is rated on the date of purchase "A" or above by Moody's and S&P or a State of Ohio registered broker who is a primary dealer on the Federal Reserve reporting dealer list, provided the repurchase agreement is fully collateralized by obligations described in paragraphs (a) or (b) above having a market value (determined daily) at least equal to 104% (105% if securities used as collateral are FNMA) of the amount invested in the repurchase agreement plus accrued interest, provided that (i) the collateral is in the possession of the Trustee or its agent, or the Issuer or its agent, as the case may be, and free and clear of all liens or rights of any third party, and in which the Trustee or the Issuer, as the case may be, has a first perfected security interest, (ii) the repurchase agreement shall be for a term not longer than 30 days, and (iii) the Issuer shall receive a legal opinion that the repurchase agreement complies with State law and the Issuer's investment policies. If the market value of the securities held as collateral falls below 104% (105% if securities used as collateral are FNMA) of the amount invested in the repurchase agreement, then additional cash and/or acceptable securities must be transferred.
- (e) Shares of so-called "money market mutual funds", including those for which the Trustee or any affiliate of the Trustee acts as investment advisor, custodian, transfer agent or otherwise and receives and retains a fee for services provided to such funds

In determining whether the rating assigned by Moody's or S&P to an investment complies with the rating categories provided in this definition, the rating category shall be determined without regard to any numerical or plus or minus modifier, unless otherwise expressly provided in this definition.

"Environmental Laws" means all applicable federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment or governing use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Materials and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto, including, without limitation, CERCLA and Chapter 3734 of the Ohio Revised Code.

"Event of Default" means any of the events described in Section 7.01 of the Trust Agreement.

“Excess Minimum Service Payments” means, for each Owner, the amount determined by the Calculation Agent to be the amount paid by such Owner as a Minimum Service Payment that exceeded the amount required to be paid by such Owner to provide the funds necessary to pay the Debt Service Charges for such Year.

“Excess Moneys” means, with respect to each Year, any moneys on deposit in the Financing Payment Account after the payment of all Debt Service Charges due on December 1 of such Year.

“Executive” means the Executive Director of the Issuer or Chair of the Legislative Authority or Vice Chair of the Legislative Authority if the Chairman is unavailable or, if those positions are vacant or their incumbents are unavailable, absent or incapacitated, any officer of the Issuer.

“Extraordinary Services” and **“Extraordinary Expenses”** mean all services rendered and all reasonable expenses (including reasonable counsel fees and expenses) properly incurred under the Trust Agreement by the Trustee, the Registrar and any Authenticating Agent and Paying Agent other than Ordinary Services and Ordinary Expenses, including, after the occurrence of a default or an Event of Default, nonministerial services and reasonable counsel and other advisory fees incurred by the Trustee.

“Financing Payments” means the sum of the Assigned Service Payments received either by the City or the Trustee for deposit into the Revenue Fund.

“Fiscal Officer” means, (i) with respect to the City, the Director of Finance or any duly authorized acting Director of Finance of the City, and (ii) with respect to the Issuer, the Assistant Secretary and Fiscal Officer or any Assistant Secretary or Assistant Fiscal Officer, in such person’s capacity as fiscal officer of the Issuer.

“Fund” means any of the funds created by or referred to in Section 5.01 of the Trust Agreement.

“Governing Documents” means, as to a corporation, the articles of incorporation and code of regulations or bylaws of such corporation, as to a limited liability company, the articles of organization and operating agreement of such limited liability company, and as to a statutory trust, the trust agreement and other organization documents relating to such statutory trust.

“Hazardous Materials” means, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§1801, et seq.), RCRA, or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Holder” or **“Holder of a Bond”** means the Person in whose name a Bond is registered on the Register.

“Improvements” means such term as defined in the TIF Ordinance.

“Interest Payment Account” means the account of the Bond Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Interest Payment Date” or **“Interest Payment Dates”** means as to the Series 2023 Bonds, June 1 and December 1 of each year during which the Series 2023 Bonds are outstanding, commencing June 1, 2023.

“Issuer” means the Dayton-Montgomery County Port Authority, a port authority and political subdivision and body corporate and politic duly organized and validly existing under the laws of the State.

“Issuer Annual Fee” means an annual administrative fee of the Issuer equal to 0.125% of the principal amount of the Outstanding Bonds and payable to the Issuer in equal semi-annual installments on June 1 and December 1 of each year, commencing December 1, 2023.

“Legislative Authority” means, with respect to the Issuer, the Board, and with respect to the City, the Council.

“Mandatory Redemption Dates” means, as to any of the Series 2023 Bonds which are Term Bonds, the dates on which such Term Bonds are to be redeemed through the application of Mandatory Sinking Fund Requirements.

“Mandatory Sinking Fund Requirements” means the amount of the principal of the Series 2023 Bonds which are Term Bonds that is required to be paid, plus interest accrued to the redemption date, on any Mandatory Redemption Date.

“Minimum Service Payments” means any Minimum Service Payments levied on any TIF Parcel pursuant to the procedures set forth in the Cooperative Agreement and the TIF Declarations.

“Moody’s” means Moody’s Investors Services, Inc., New York, New York, or any successor corporation.

“Net Service Payments” means the Settlement Payments and the Property Tax Rollback Payments, less the School Compensation.

“Notice Address” means

as to the Issuer: Dayton-Montgomery County Port Authority
8 North Main Street
Dayton, Ohio 45402
Attention: Executive Director

With a copy to: Thompson Hine LLP
10050 Innovation Drive, Suite 400
Dayton, OH 45342
Attention: Arik Sherk

as to the Trustee,
Registrar and Paying Agent: The Huntington National Bank
525 Vine Street, 14 Floor
Cincinnati, Ohio 45202
Attention: Cheri Scott-Geraci, Vice President

as to the Developer: 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: Jon Bills

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

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

With a copy to: Bricker Graydon LLP
100 South Third Street
Columbus, Ohio 43215-4291
Attention: Price Finley

as to the Administrator: [Incentive Review Group]

and with regard to the Original Purchaser, the address designated in the Purchase Agreement for provision of notices.

“Operative Documents” means, collectively, the Cooperative Agreement, the Trust Agreement, the TIF Agreement, the TIF Declarations, the Purchase Agreement, the Tax Regulatory Agreement and any agreement, instrument or document delivered thereunder.

“Ordinary Services” or **“Ordinary Expenses”** means those services normally rendered, and those expenses (including counsel’s fees and expenses) normally incurred, by a trustee, registrar, authenticating agent, or paying agent, as applicable, under instruments similar to the Trust Agreement.

“Original Purchaser” means [_____].

“Outstanding Bonds,” “Bonds outstanding” or **“outstanding”** as applied to Bonds, means, as of the applicable date, all Bonds that have been authenticated and delivered, or are being delivered, by the Trustee, under the Trust Agreement, except:

(a) Bonds canceled upon surrender, exchange or transfer, or canceled because of payment or redemption on or prior to that date;

(b) Bonds, or the portion thereof, for the payment, redemption or purchase for cancellation of which sufficient money shall have been deposited and credited with the Trustee or any Paying Agents on or prior to that date for that purpose (whether upon or prior to the maturity or redemption date of those Bonds); provided that if any of those Bonds are to be redeemed prior to their maturity, notice of that redemption shall have been given or arrangements satisfactory to the Trustee shall have been made for giving notice of that redemption, or waiver by the affected Holders of that notice satisfactory in form to the Trustee shall have been filed with the Trustee;

(c) Bonds, or the portion thereof, which are deemed to have been paid and discharged pursuant to the provisions of the Trust Agreement; and

(d) Bonds in lieu of which others have been authenticated under Section 3.07 of the Trust Agreement.

For purposes of any consent or other action to be taken by the Holders of a specified percentage of the aggregate principal amount of all Bonds or Bonds of any series, Bonds held by or for the account of the Issuer shall be excluded.

“Owner” means any owner of a TIF Parcel.

“Paying Agent” means the Trustee and any bank or trust company designated as a Paying Agent by or in accordance with Section 6.12 of the Trust Agreement.

“Payment Date” means June 1 and December 1 of each year.

“Percentage of Shortfall” means, with respect to any Deficient Parcel, the Service Payment Shortfall Amount for such Deficient Parcel, divided by the Aggregate Service Payment Shortfall Amount.

“Person” or words importing persons means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

“Placement Agent” means Piper Sandler & Co.

“Pledged Revenues” means (a) the Assigned Service Payments, including any Minimum Service Payments, (b) proceeds received by the Issuer from condemnation or insurance claims and proceeds from the enforcement of the Completion Guaranty or rights under the Cooperative Agreement, (c) any moneys and investments in the Special Funds, (d) any other moneys intended to be used and hereafter pledged for Debt Service Charges, including proceeds of the Bonds, and (e) all income and profit from the investment of the foregoing moneys.

“Predecessor Bond” of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of the definition, any Bond authenticated and delivered under Section 3.07 of the Trust Agreement in lieu of a lost, stolen or destroyed Bond shall be deemed to evidence, except as otherwise provided in Section 3.07 of the Trust Agreement, the same debt as the lost, stolen or destroyed Bond.

“Principal Payment Account” means the account of the Bond Fund designated as such and created in Section 5.01 of the Trust Agreement.

“Principal Payment Date” means any date on which the principal of outstanding Bonds is payable, whether at maturity or upon redemption.

“Project” means the Public Infrastructure Improvements for which a Cost Certificate has been approved by the City.

“Project Fund” means the Project Fund created in Section 5.01 of the Trust Agreement.

“Property Tax Rollback Payments” means, with respect to the TIF Parcels, any payment received by the County Treasurer and distributed to the City in connection with the reduction required by Ohio Revised Code Sections 319.302, 321.24, 323.152 and 323.156, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time.

“Public Infrastructure Improvements” means such term as defined in the TIF Ordinance and the TIF Agreement.

“Purchase Agreement” means the Bond [Placement/Purchase] Agreement dated [_____], 2023 between the Issuer and the [Placement Agent] relating to the sale and purchase of the Bonds issued hereunder.

“Rating Service” means either Moody’s or S&P, or any successor to either, or if any shall be dissolved or no longer assigning credit ratings to long term debt, then any other nationally recognized entity assigning credit ratings to long term debt designated by the Issuer.’

“Rebate Fund” means the Rebate Fund created in Section 5.01 of the Trust Agreement.

“Register” means the books kept and maintained by the Registrar for registration and transfer of Bonds pursuant to Section 3.06 of the Trust Agreement.

“Registrar” means the Trustee, until a successor Registrar shall have become such pursuant to applicable provisions of the Trust Agreement. Any Registrar designated under the Trust Agreement shall be a transfer agent registered in accordance with Section 17A(c) of the Securities Exchange Act of 1934, as amended.

“Regular Record Date” means the first day of the calendar month in which an Interest Payment Date occurs.

“Required Transfer Amount” means the Assigned Service Payments required to be transferred by the City to the Trustee for the account of the Issuer semiannually on each Required Transfer Date.

“Required Transfer Date” means May 15 and November 15 of each year, commencing May 15, 2024.

“S&P” means S&P Global Ratings, Inc., New York, New York, or any successor organization.

“Series 2023 Bonds” means the \$[] Dayton-Montgomery County Port Authority Tax Increment Financing Revenue Bonds, Series 2023 (The Hunters Path Project) issued pursuant to the Bond Legislation and the Trust Agreement.

“School Agreement” means the Tax Incentive Agreement made between the City and the Board of Education of the Northmont City Schools dated as of March 14, 2022.

“School Compensation” means the portion of the Service Payments received by the City equal to an amount equal to the taxes that would have been payable to the Northmont City Schools and Miami Valley Career Tech if the Improvements had not been exempted from taxation by the TIF Ordinance multiplied by (a) 25.00 % in years one through ten (1-10) of the TIF Exemption period for that Parcel and (b) 100% in years eleven through thirty (11-30) of the TIF Exemption period for that Parcel, all in accordance with the School Agreement.

“School District” means, collectively, Northmont City Schools and Miami Valley Career Tech.

“Service Payments” means collectively, the Statutory Service Payments and the Minimum Service Payments.

“Service Payment Shortfall Amount” means, for any given Calculation Date, the amount by which the Net Service Payments expected to be produced by a TIF Parcel is less than the applicable Allocated Minimum Service Payment Amount for that TIF Parcel.

“Settlement Payments” means the Statutory Service Payments, less any fees charged with respect thereto by the County Treasurer, actually received by the City.

“Special Funds” means, collectively, (a) the Project Fund (including the Capitalized Interest Account, the Costs of Issuance Account and the Construction Account therein established in the Trust Agreement), (b) the Bond Fund, and (c) any other fund or account permitted by,

established under or identified in the Trust Agreement or any Supplemental Trust Agreement or the Bond Legislation as a fund specifically pledged to the payment of Debt Service Charges.

“Special Record Date” means, with respect to any Bond, the date established by the Trustee in connection with the payment of overdue interest on that Bond pursuant to Section 3.05 of the Trust Agreement.

“State” means the State of Ohio.

“Statutory Service Payments” means service payments in lieu of taxes, in an amount equal to the amount of real property taxes that would have been paid on the Improvements.

“Statutory Service Payment Date” means each of (i) the earlier of the final date for payment of the first semi-annual installment of real property taxes, or February 1, in each year, and (ii) on the earlier of such final date for payment of the second semi-annual installment of real property taxes, or August 1, in each year.

“Supplemental Trust Agreement” means any Trust Agreement supplemental to the Trust Agreement entered into between the Issuer and the Trustee in accordance with Article X of the Trust Agreement.

“Tax Collection Date” means the tax payment date established by the County Fiscal Officer for the payment of semiannual real property taxes in the County.

“Tax Regulatory Agreement” means the Tax Regulatory Agreement dated as of [April 1], 2023 between the Issuer and the Trustee, as the same may be amended or supplemented from time to time.

“Term Bonds” means those Bonds designated as such and subject to mandatory sinking fund redemption as provided in Article IV of the Trust Agreement.

“Term Maturity Date” means such date or dates on which Bonds which are Term Bonds, if any, mature at their stated maturities.

“TIF Act” means Ohio Revised Code Sections 5709.40, 5709.42, 5709.43 and 5709.91.

“TIF Agreement” means the Tax Increment Financing Agreement dated as of April 7, 2022 between the City and the Developer, as amended or supplemented from time to time.

“TIF Declarations” [_____].

“TIF Exemption” means the exemption of the TIF Parcels from real property taxes granted under the TIF Ordinances and the TIF Act in accordance with the Cooperative Agreement.

“TIF Ordinance” means Ordinance No. O-04-22-08 passed April 7, 2022.

“TIF Parcels” means such term as defined in the TIF Ordinance.

“True Value” means the true value (presently identified as “Market Total Value” in the records of the County Fiscal Officer) based on an appraisal by the County Fiscal Officer of the applicable TIF Parcel, as determined by the County Fiscal Officer.

“Trust Agreement” means the Trust Agreement dated as of [April 1, 2023] between the Issuer and the Trustee, as amended or supplemented from time to time.

“Trustee” means The Huntington National Bank, and its successors or assigns.

“Unassigned Issuer’s Rights” means all of the rights of the Issuer to receive Administrative Expenses, additional payments under any lease of or mortgage on the Project, the right to be held harmless, indemnified and reimbursed for reasonable attorney fees and expenses under the Cooperative Agreement or the Trust Agreement and any other agreement made pursuant to the Cooperative Agreement or the Trust Agreement or in furtherance of the Project, the right to consent to amendments of the Cooperative Agreement or the Trust Agreement and any agreements, mortgage, lease, assignment or note made pursuant to the Cooperative Agreement or the Trust Agreement or in furtherance of the Project, and any other Unassigned Issuer’s Rights as may be set forth in any of the foregoing or in the Trust Agreement.

“Year” means the calendar year, unless otherwise specified.