

EXHIBIT A
ORDINANCE 07-2024

TAX INCREMENT FINANCE REIMBURSEMENT AGREEMENT
(SPRINGDALE COMMERCE PARK PROJECT)

This Tax Increment Financing Agreement (the “Agreement”), made and entered into as of this day of February __, 2024 (the “Effective Date”), by and between the CITY OF SPRINGDALE, OHIO (the “City”), a municipal corporation organized and existing under the constitution and the laws of the State of Ohio, and SPRINGDALE COMMERCE PARK OWNER, LLC, a Delaware limited liability company (the “Owner”). Capitalized terms used herein and not otherwise defined shall have the meanings set forth for such terms in the Cooperative Agreement (itself defined *infra*).

WITNESSETH:

WHEREAS, the City Council of the City (the “City Council”), by its Ordinance No. 35-2018, passed June 20, 2018, attached as Exhibit A (as amended, the “TIF Ordinance”), has declared the improvement of certain parcels of real property located within the City as identified in the TIF Ordinance (each individually, as now or hereafter configured, a “Parcel” and collectively the “Parcels” or the “Springdale Commerce Park TIF Site”) to be a public purpose and exempt from taxation, has required the owner of each Parcel to make service payments in lieu of taxes (collectively for all Parcels, the “Service Payments”) to the Hamilton County Treasurer, has provided for the distribution of the applicable portion of the Service Payments to the Boards of Education of the Princeton City School District and the Great Oaks Institute of Technology and Career Development pursuant to a tax incentive agreement or agreements (the “School Compensation Agreement”), has established the Springdale Commerce Park TIF Site Public Improvement Tax Increment Equivalent Fund as specified in the TIF Ordinance (the “TIF Fund”) for the deposit of the remainder of such Service Payments, and has specified public infrastructure improvements made or to be made that benefit or serve the Parcels, all pursuant to and in accordance with Sections 5709.40, 5709.42, and 5709.43 of the Ohio Revised Code (the “ORC”); and

WHEREAS, the Port of Greater Cincinnati Development Authority (the “Port Authority”), the City, the Owner, and Strategic Capital Partners, LLC, have entered into a Cooperative Agreement dated as of August 15, 2018 (the “Cooperative Agreement”), pursuant to which a portion of the Service Payments payable by the owner of the Phase 1 TIF Parcels shall be used to debt service and related costs of the Port Authority’s Development Revenue Bonds (Southwest Ohio Regional Bond Fund) Series 2018D (Springdale Commerce Park Project) (the “Bonds”); and

WHEREAS, the Service Payments payable by the owner of the Phase 2 TIF Parcels (the “Phase 2 Service Payments”) are not pledged, assigned, or otherwise obligated toward the payment of the Bonds under the Cooperative Agreement or any other instrument; and

WHEREAS, pursuant to the Cooperative Agreement and a Construction Manager At-Risk Agreement dated as of October 1, 2018, by and between the Owner and the Port Authority, the Owner was responsible for the construction of the Public Improvements benefitting the Springdale Commerce Park TIF Site; and

WHEREAS, for purposes of constructing the Public Improvements, the Owner incurred costs which were not reimbursed from proceeds of the Bonds; and

WHEREAS, an entity under the control of, or common control with, the Owner, Springdale Commerce Park 1-4 Owner, LLC (the “Landlord”) is in the process of leasing commercial space within the Phase 2 Project and has negotiated lease terms with Enable Injections, Inc., a Delaware corporation, or an affiliate thereof (“Enable Injections”) pursuant to which Enable Injections intends to lease approximately 90,000 Sq. Ft. of the Phase 2 Project for its operations (the “Lease”); and

WHEREAS, the City intends to reimburse the Owner for unreimbursed costs of the Public Improvements in the amount of eight hundred fifty thousand dollars (\$850,000) (the “Reimbursement”) in order to allow the Landlord to provide Enable Injections with a larger tenant improvement allowance under the Lease, thus allowing Enable Injections to establish operations within the City; and

WHEREAS, the City has determined that it is in the best interests of the City to make the foregoing Reimbursement so as to allow for the Landlord to provide a larger tenant improvement allowance to Enable Injections for the purpose of effecting their establishment of operations in the City; and

WHEREAS, City Council authorized the execution and delivery of this Agreement by Ordinance No. __-2024, passed February 7, 2024;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties hereto agree to the foregoing and as follows:

Section 1. Public Improvements. The Owner has completed the Public Improvements contemplated under the Cooperative Agreement and in the process of doing so has incurred costs of the construction of such Public Improvements that were not reimbursed from the proceeds of the Bonds. Such unreimbursed costs are set forth in Exhibit B attached hereto and made a part hereof. The Owner has provided the City materials evidencing the payment of the costs of such Public Improvement by the Owner or its affiliates with funds other than proceeds of the Bonds.

Section 2. Available Service Payments; Payment of Reimbursement. The TIF Fund has been maintained in the custody of the City and has received all distributions of Phase 2 Service Payments required to be made to the City pursuant to the TIF Ordinance. Phase 2 Service Payments deposited in the TIF Fund have been used to pay the Princeton City School District and the Great Oaks Institute of Technology and Career Development any amounts due and payable pursuant to the School Compensation Agreement. As of the Effective Date, Phase 2 Service Payments in an amount equal to, or in excess of, the Reimbursement remain on deposit in the TIF Fund (the “Available Amounts”).

Within sixty (60) days of (i) receipt by the City of a fully executed copy of the Lease, and (ii) issuance by the appropriate department of the City, in the ordinary course of business, of a building permit authorizing tenant improvements within the portion of the Phase 2 Project to be occupied by Enable Injections (or if no permits are required, submission of reasonable evidence to the City that construction has commenced on such tenant improvements), the City will disburse to

the Landlord, as the designee of the Owner hereunder, Available Amounts in an amount equal to the Reimbursement to reimburse the Owner for previously incurred costs to acquire and construct the Public Improvements (the “Reimbursement Obligation”). The Owner hereby acknowledges that any such distribution of the Reimbursement to Landlord shall satisfy the City’s obligation hereunder to reimburse the Owner for the unreimbursed costs of Public Improvements.

Upon distribution in full of the Reimbursement to the Landlord, any additional amounts on deposit and thereafter deposited in the TIF Fund may be used by the City for any lawful purpose, subject to the TIF Ordinance.

Section 3. Reimbursement Obligation. This Agreement evidences the City’s obligation to disburse the Reimbursement in accordance with the terms of this Agreement. The Reimbursement is a special obligation of the City, payable solely from and secured only by money deposited in the TIF Fund, and payable without the necessity of additional appropriation of money in the TIF Fund for such payment.

The Reimbursement shall be only paid by the City from Available Amounts. Until the Reimbursement is paid in full, the City Council shall not amend, modify or repeal the TIF Ordinance in any way, or take any other legislative action that would affect the amount of Service Payments deposited into the TIF Fund except as approved by the Owner in writing or required by law. Until the Reimbursement is paid in full, the City shall not transfer, encumber, spend or use any Available Amounts on deposit in the TIF Fund if transfer, encumbrance, expenditure, or use would reduce the amount of Available Amounts on deposit in the TIF Fund below the amount of the Reimbursement, unless this Agreement is amended as provided herein. Without limiting the availability of enforcement by mandamus of other obligations of the City under this Agreement, all of the obligations of the City under Section 2 and Section 3 are established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Ohio Revised Code Section 2731.01, and are enforceable by mandamus.

No payment obligations of the City under this Agreement shall constitute an indebtedness of the City within the provisions and limitations of the laws and the Constitution of the State of Ohio, and the Owner has no right to have taxes or excises levied by the City for the payment of the Reimbursement Obligation.

Section 4. Representations of the Owner. The Owner hereby represents and warrants to the City that the Owner will cause the Landlord to provide Enable Injections with a tenant improvement allowance, separate from the tenant improvement allowance provided by Landlord from its own funds under the Lease, equal to the amount of the Reimbursement distributed to Landlord pursuant to Section 2 hereof (the “Special Allowance”). Owner further represents and warrants that it will require the Landlord to disburse to Enable Injections such Special Allowance within thirty (30) days of Landlord’s receipt thereof.

Section 5. Successors; Assignment; Amendments; City Consents. This Agreement is binding upon the parties hereto and their successors and assigns. A party may only assign this Agreement with the written consent of the other party. Nothing in this Agreement prevents the Owner from transferring any or all of its interest in a Parcel to another person or entity. This Agreement may only be amended by written instrument executed by all parties to this Agreement.

Unless otherwise provided in this Agreement, any consent or approval of the City to be given under this Agreement may be given by the City Administrator or the Mayor of the City and must be given in writing.

Section 6. Extent of Covenants; No Personal Liability. All obligations of the parties contained in this Agreement are effective and enforceable to the extent authorized and permitted by applicable law. No such obligation is an obligation of any present or future member of the City Council or any officer, agent or employee of either party in that person's individual capacity, and neither the members of the City Council, nor any individual person executing this agreement on behalf of the City or the Owner, will be liable personally by reason of the obligations of the City or the Owner contained in this Agreement.

Section 7. Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient has previously notified the sender of in writing, and will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed to have been received when the return receipt is signed or refused. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications must be sent. The present addresses of the parties follow:

- (a) To Owner: Springdale Commerce Park Owner, LLC
8900 Keystone Crossing, Suite 100
Indianapolis, Indiana 46240
Attn: John Cumming

- (b) To the City at: City of Springdale
11700 Springfield Pike
Springdale, Ohio 45246
Attn: City Administrator

Section 8. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, that provision is fully severable. This Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible that is and will be legal, valid and enforceable.

Section 9. Separate Counterparts. This Agreement may be executed by the parties in one or more counterparts or duplicate signature pages, each of which when so executed and delivered is an original, with the same force and effect as if all required signatures were contained

in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Signatures transmitted by facsimile or electronic means are deemed original signatures.

Section 10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the matters covered herein and supersedes prior agreements and understandings between the parties. The parties hereto acknowledge and agree that this Agreement is the product of an extensive and thorough, arm's length negotiation and that each party has been given the opportunity to independently review the Agreement with legal counsel, and that each party has the requisite experience and sophistication to negotiate, understand, interpret and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement may not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction must be utilized.

Section 11. Term. The term of this Agreement commences as of the date of this Agreement and terminates upon payment in full of the Reimbursement Obligation in accordance with Section 2 hereof, and the payment by the Landlord of the Special Allowance to Enable Injections in accordance with Section 4 hereof.

Section 12. No Agency Relationship. The City and Owner each acknowledge and agree that in fulfilling its obligations under this Agreement, Owner is not acting as an agent of the City.

Section 13. Governing Law and Choice of Forum. This Agreement is governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its employees, contractors, subcontractors and agents, and the Owner, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Hamilton County, Ohio.

Section 14. Exhibits. The following Exhibits are attached to this Agreement:

- (i) Exhibit A: TIF Ordinance
- (ii) Exhibit B: Unreimbursed Public Improvement Costs

(Signatures on next page)

IN WITNESS WHEREOF, the City has caused this Tax Increment Financing Agreement (Springdale Commerce Park Project) to be executed in its name by its duly authorized officers, as of the date first set forth above.

CITY OF SPRINGDALE, OHIO

By: _____
Lawrence C. Hawkins, III, Mayor

Approved as to form:

Joseph J. Braun, Law Director

FISCAL OFFICER'S CERTIFICATE

The City has no obligation to make payments pursuant to the foregoing Agreement except from Phase 2 Service Payments to be collected for deposit into the TIF Fund. That money has been pledged and appropriated for expenditure in accordance with the foregoing Agreement. Accordingly, as fiscal officer for the City of Springdale, Ohio, I hereby certify that funds sufficient to meet the obligations of the City under the foregoing Agreement, but in an amount not greater than those Phase 2 Service Payments actually received by the City, have been lawfully appropriated for the purposes thereof and are available in the treasury of the City, and/or upon implementation of the processes under Sections 5709.40, 5709.42, and 5709.43 of the Ohio Revised Code, are in the process of collection to the credit of an appropriate fund, free from any previous encumbrance. This Certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

Dated: February ____, 2024

Katie Smiddy, Finance Officer/Tax Commissioner
City of Springdale, Ohio

IN WITNESS WHEREOF, the Owner has caused this Tax Increment Financing Agreement (Springdale Commerce Park Project) to be executed in its names by its duly authorized officer, as of the date first set forth above.

SPRINGDALE COMMERCE PARK
OWNER, LLC

By: _____

Name: _____

Title: Manager

EXHIBIT A
TIF ORDINANCE

[to be attached]

EXHIBIT B
UNREIMBURSED PUBLIC IMPROVEMENT COSTS

Public Roadway Improvements	\$850,000.00
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