City of PIQUA

PIQUA CITY COMMISSION SPECIAL MEETING
MONDAY, OCTOBER 21, 2024
5:00 PM
COMMISSION CHAMBER - 2ND FLOOR
201 WEST WATER STREET
PIQUA, OHIO 45356

CALL TO ORDER

ROLL CALL

MOTION TO APPROVE BUSINESS AGENDA

1) Rules of Conduct for City Commission Meetings

NEW BUSINESS

1) **Ordinance No. O-17-24**
An ordinance approving and authorizing the execution of a First Amendment to the Development Agreement between the City and Basis Piqua, LLC

2) **Ordinance No. O-18-24**
An ordinance authorizing the City Manager and Finance Director to enter into a loan agreement on behalf of the City with the Dayton-Montgomery County Port Authority and deliver a related Special Obligation Non-Tax Revenue Note of the City in the maximum principal amount of not-to-exceed $2,500,000 for the purpose of paying all or a portion of the costs of the acquisition of real property by the City for the purpose of economic development, authorizing the execution of any additional documents related thereto, which may include a Cooperation Agreement and a Tax Agreement or Certificate; and authorizing other actions related thereto and connection therewith

3) **Resolution No. R-121-24**
A resolution authorizing the sale of real estate

ADJOURNMENT

PROCEDURAL RULES AND RULES OF CONDUCT FOR CITY COMMISSION MEETINGS

BUSINESS AGENDA

1. Commission meetings shall be called to order by the mayor or presiding officer of the meeting. The clerk shall call the roll of the Commissioners.

2. The mayor or presiding officer shall thereafter lead the Commission in the Pledge of Allegiance.

3. Upon roll call being completed, the Business Meeting of the Commission shall commence.

4. The Commission shall, if necessary, add or remove items to the Business Agenda and approve the agenda once it is established.

5. After approval of the agenda, the Commission shall vote on approval of the minutes of prior meetings.

6. After the establishment of the agenda, the Commission shall permit public comment by the citizens of Piqua as required by Section 4 of the Piqua Charter on any approved agenda item. Any person providing public comment shall provide his or her name and street address prior to making any comments.

7. Any non-citizen may also participate in public comment if an ordinance or resolution made part of the agenda affects his or her business located within the city of Piqua or utility service they receive within the city of Piqua. Any non-citizen shall state his or her name and either what business he or she operates that is being affected by an ordinance or resolution, or what property address inside the city limits that he or she is receiving utility service.

8. Any person providing public comment may speak once for up to a total of five minutes on each resolution and ordinance made part of the agenda. No person shall be permitted to comment twice on an agenda item.

9. Once public comment is completed, the Commission shall immediately begin debate and deliberate on each agenda item. No public comments from the public shall be permitted during the debate and/or deliberation of ordinances and resolutions by the commission.

10. After deliberation on ordinances and resolutions, votes on ordinances shall be recorded by roll call and votes on resolutions may be recorded by voice vote; if a commissioner wishes to have a roll call vote on a resolution, any commissioner may request the clerk to call the roll to record the vote. The Clerk of Commission shall record the vote tally for each ordinance and resolution.

11. During the Business Agenda, only city employees including department heads and guests of department heads to discuss matters affecting the city, the Piqua Chamber Director, the Main Street Piqua Director, may make presentations during the Business Agenda part of the meeting.

12. At the completion of the Business Agenda, the mayor may or may not permit commissioners to address the community for the good of the city. Afterwards, the commissioners shall call the business meeting of the commission to a close and city staff may be excused.

NON-AGENDA PUBLIC COMMENT

13. Non-agenda public comment sessions may, upon the discretion of the Commission, commence after the regular business meeting of the commission adjourns.

14. Any non-agenda public comment shall not begin after 9 p.m. and shall not continue after 9 p.m.

15. Comments by the public shall be addressed to the Commission and mayor and shall be limited to a five-minute period per person. Under no circumstances should the Commission or mayor interrupt any person's five-minute time period unless the individual violates the Rules of Conduct or the individual commenting requests interactive dialogue. Interactive dialogue shall not extend the five-minute period. No person may speak more than one time during any non-agenda public comment session.

16. All comments shall be related to city business or activities.

17. The Clerk of Commission shall not be under any obligation to keep minutes of the non-agenda public comment session.

18. Public comment shall be only afforded to persons who live within the City of Piqua city limits, own property within the city, or own a business within the city limits.

19. Any person providing public comment shall provide his or her name and street address prior to making any comments.

RULES OF CONDUCT

Recognizing that the city has a compelling and significant interest in conducting its meetings in an efficient manner, the following Rules of Conduct shall be enforced during the Commission Business Meeting and the Non-Agenda Public Comment session:

1. Obscene comments, physically threatening remarks, and disruptive conduct are prohibited;

2. Profanity that is disruptive is prohibited;

3. Racist and hate-filled epithets are prohibited;

4. Loud and boisterous conduct or comments are prohibited;

5. Cheering, jeering or clapping, unless for ceremonial purposes as determined by the mayor, are prohibited;

6. Signs and noisemakers are prohibited;

7. All persons shall remain seated during commission meetings unless they are leaving the Commission Chambers or are addressing the Commission from the podium;

8. Any person desiring to make a public comment shall complete a public comment request card provided by the Clerk of Commission and shall deposit the card in the public comment request box. The box will be monitored throughout public comment sessions and cards will be given to the mayor or presiding officer by the commission's designee during public comment sessions;

9. The mayor shall call the persons requesting to make public comment during the appropriate public comment periods;

10. When called by the mayor to address the Commission, the individual called shall address the Commission from the commission podium unless the person so called has a medical

condition that prevents the individual from doing so; in such case, the mayor will make every attempt to accommodate the individual so his or her comments are heard by the public;

11. If during the non-agenda public comment session, the public comment cards have not all been called prior to the end of the meeting, the individuals not called will be placed at the top of the list for presenting comments at the next scheduled meeting;
12. If during the non-agenda public comment session, the public comment cards have been exhausted and the meeting has not been concluded, individuals who have not spoken may request to do so until the conclusion of the meeting.

Any individual violating a commission rule shall be warned by the mayor or presiding officer of the violation, and if such individual does not cease the activity so warned, he or she shall be asked to leave city hall. If an individual refuses to comply with the mayor or presiding officer's directive to leave city hall, the individual may be charged criminally for his or her conduct.

City of PIQUA

COMMISSION AGENDA STAFF REPORT

MEETING DATE	October 21, 2024
REPORT TITLE	**Ordinance No. O-17-24** An ordinance approving and authorizing the execution of a First Amendment to the Development Agreement between the City and Basis Piqua, LLC
SUBMITTED BY	Chris Schmiesing, Director Economic Development
AGENDA CLASSIFICATION	Ordinance
BACKGROUND	This item pertains to the Development Agreement that facilitates the redevelopment of the property located along Scott Drive at the northwest corner of the intersection of USR 36 and I-75. This ordinance will amend the October 20, 2023 - Development Agreement previously authorized by the City Commission. The amendment recognizes previously unknown details of the deal structure and negotiated terms and incorporates the appropriate text and references into the agreement to finalize the document. Upon closing on the purchase of the property, the developer is prepared to immediately begin work on the construction of the planned site improvements. This will allow for construction of the Olive Garden and Chipotle planned for this location to begin next spring and the Hampton Inn construction to begin later next year.
BUDGET/FINANCIAL IMPACT (Project costs and funding sources)	Budgeted $: 0 Expenditure $: 0 Source of Funds: Bond Narrative: The sale of the property will result in the city being reimbursed the amount originally paid to purchase the property, the cost of the funds borrowed to finance the purchase, and the cost incidental to holding the property.
ATTACHMENTS	1. First Amendment to Development Agreement

ORDINANCE NO. O-17-24

ORDINANCE NO. O-17-24

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION OF A FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT BETWEEN THE CITY AND BASIS PIQUA, LLC

WHEREAS, pursuant to the authorization in Ordinance No. O-10-23, passed by this Commission on September 5, 2023, the City of Piqua, Ohio (the "City") entered into a Development Agreement dated as of October 20, 2023 (the "Original Agreement"), with Basis Piqua, LLC (the "Developer," and together with the City, the "Parties") relating to the redevelopment of certain real property within the corporate boundaries of the City; and

WHEREAS, since the date of the Original Agreement, facts and circumstances have changed to the extent that the Parties desire to execute and deliver a first amendment to the Original Agreement (the "Amendment") the form of which is attached hereto as Exhibit A and incorporated herein.

NOW, THEREFORE, BE IT ORDAINED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring that:

SEC. 1. **Amendment to Original Agreement:** The form of the Amendment between the City and Basis Piqua, LLC, attached hereto as Exhibit A is hereby approved and authorized with changes and completions thereto that are not inconsistent with this ordinance, not substantially adverse to the City, and approved by the City Manager and the Law Director. The City Manager, for and in the name of the City, is hereby authorized to execute and deliver the Amendment in substantially that form along with any changes or completions thereto, provided that the approval of such changes and completions thereto by the City Manager, and the character of those changes and completions as not being substantially adverse to the City, will be evidenced conclusively by the City Manager's execution thereof.

SEC. 2. **Further Authorizations:** This Commission further authorizes and directs the City Manager, the Finance Director, the Law Director, the Clerk of Commission or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this ordinance and the Amendment.

SEC. 3. **Open Meetings:** This Commission finds and determines that all formal actions of this Commission and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Commission and any of its committees, and that all deliberations of this Commission and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

SEC. 4. **Effective Date:** This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

____
KRIS LEE, MAYOR

PASSED: ______________________________

ATTEST: ______________________________
CLERK OF COMMISSION

The Motion to adopt the foregoing Ordinance was offered by None, seconded by None, and on roll call the following vote ensued:

Mayor Kris Lee	__________
Commissioner Jim Vetter	__________
Commissioner Paul Simmons	__________
Commissioner Thomas Hohman	__________
Commissioner Frank DeBrosse	__________

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

by and between

CITY OF PIQUA, OHIO

and

BASIS PIQUA, LLC

relating to

COMMERCIAL REDEVELOPMENT

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dated as of

[October] ___, 2024

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (hereinafter called the "Amended Agreement") dated as of the ___ day of [October], 2024, by and between the CITY OF PIQUA, OHIO (the "City") and BASIS PIQUA, LLC (the "Developer", and, together with the City, the "Parties", and each of the Parties individually referenced to herein as a "Party"), under the circumstances summarized in the following recitals (the capitalized terms not defined in the main text of this Amended Agreement being used herein as defined in the Original Agreement, as hereinafter defined):

RECITALS

WHEREAS, the Parties entered into that certain Commercial Development Agreement dated as of October 20, 2023 (the "Original Agreement," and together with the Amended Agreement, the "Agreement" or "TIF Agreement"), relating to the acquisition and development of the Redevelopment Property;

WHEREAS, since the date of the Original Agreement, facts and circumstances have changed to the extent that the Parties desire to execute and deliver this Amended Agreement; and

WHEREAS, the Parties have authorized the execution and delivery of, and the performance of all duties called for on their parts by this Amended Agreement, and in evidence thereof have joined in the execution hereof;

NOW THEREFORE, to give effect to the intentions of the Parties to amend and supplement the Original Agreement, the following amendments and supplements are hereby made to the Original Agreement:

Section 1. Amendment to Section 2. Section 2.3(b) of the Original Agreement is hereby repealed and replaced in its entirety with the following:

Termination. Upon satisfaction of the obligations of the Developer related to the Redevelopment Property to make the TIF Payments and the full defeasance or repayment of bonds secured to be issued in accordance with the terms hereof and secured by a pledge of the City's non-tax revenues (the "Bonds"), the City will, upon the request of the Developer, or its successors in interest, execute an instrument in recordable form evidencing the termination of the Declaration with respect to the Redevelopment Property and releasing the covenants running with the land as set forth in the Declaration with respect to that owner's portion.

Section 2. Amendment to term TIF Bonds. All references to "TIF Bonds" in the Original Agreement are hereby replaced with the term "Bonds," in accordance with the provisions of revised Section 2.3(b).

Section 3. Amendment to Section 4. Section 4.1 of the Original Agreement is hereby repealed and replaced in its entirety with the following:

General; Acquisition and Transfer. The Developer agrees that it will use its best efforts and proceed in good faith and with all reasonable dispatch to design, finance and construct, or cause to be designed, financed and constructed, the Redevelopment Project and to perform any and all of its duties and obligations relating to the Redevelopment Project in a manner consistent with this Agreement, subject to market conditions as they may exist from time to time during the term of this Agreement. The Developer agrees to use its best efforts and proceed in good faith to secure commitments from commercial tenants or other users for the Redevelopment Project by November 30, 2024. The City agrees to cooperate with the Developer and use its best efforts and proceed in good faith to assist the Developer in securing such commitments.

Following the Effective Date, but before October 31, 2023, the Parties will enter into an assignment and assumption agreement relating to the Purchase Agreement whereby the right to purchase the Redevelopment Property shall be assigned to the City or the Piqua Improvement Corporation (the "PIC"), at the City's election (the "Assignment Agreement"). The City shall acquire, or cause to be acquired by the PIC, the Redevelopment Property in accordance with the terms of the Purchase Agreement on or before October 31, 2023 (the date of acquisition by the City or PIC shall be referred to as the "Initial Closing Date"). As will be described more fully in the Assignment Agreement, at the Initial Closing the City shall reimburse the Developer for the value of the deposits made by Developer currently held in accordance with the Purchase Agreement. Following the Initial Closing Date and before the transfer of the Redevelopment Property to the Developer, the City shall not cause or permit within its power, without the prior written consent of the Developer, any lien or encumbrance of any kind to attach to the Redevelopment Property.

The City shall transfer, or cause to be transferred, the Redevelopment Property to the Developer, by Limited Warranty Deed free and clear of any liens or encumbrances caused by the City except for those agreed to in writing by the Developer, on December 31, 2024, or such earlier time as the parties may agree (the "Repurchase Date"). Upon the Repurchase Date, the City shall be due, from net proceeds of the Bonds,: (1) the purchase price required to effect the purchase of the Redevelopment Property by the City at the Initial Closing, (2) reasonable costs incurred by the City, including but not limited to legal fees, municipal advisory fees, real estate taxes, interest carrying costs, and insurance, and any other costs or expenses incurred by the City in acquisition financing of the Redevelopment Property, and other reasonable costs incidental to the City's ownership of the Redevelopment Property during its period of ownership, and (3) costs incurred in connection with effecting the repurchase from the City by the Developer of the Redevelopment Property (collectively, the "Repurchase Price"), collectively in an amount expected not to exceed $[2,145,000][Note: an amount to be determined at or prior to the time of the pricing or sale of the BOnds]. In the event that the net proceeds of the Bonds are insufficient to repay the Repurchase Price on the Repurchase Date, the City shall be entitled to be paid in accordance with the terms of Section 5.1 hereof.

Contemporaneously with the transfer of the Redevelopment Property to the Developer, the Developer shall record a Restrictive Covenant that will prohibit, for a certain period of time to be agreed upon by the Parties, the use of the Redevelopment Property as a gas station or truck stop and prohibit the Redevelopment Property from being used as any type of marijuana dispensary; vehicle sales and rental; vehicle services; self service storage; or an adult entertainment facility, including but not limited to nude or partially nude dance clubs, adult bookstores and theaters, and commercial establishments selling adult sexual items such as sexual aids, adult toys lingerie or other adult oriented business. The Restrictive Covenant shall be in a customary form mutually satisfactory to the Parties.

Section 4. Amendment to Section 5. Section 5.1 of the Original Agreement is hereby repealed and replaced in its entirety with the following:

Issuance of Bonds; Reimbursement for Public Infrastructure Improvement Costs.

Following (x) the Initial Closing and (y) the receipt of tenant commitments by the Developer for the Redevelopment Property (which such commitments shall be communicated to the City promptly upon receipt), the City Commission shall consider, or through the cooperation with the Developer and with an Ohio port authority (the "Port Authority"), organized and established pursuant to Chapter 4582 of the Ohio Revised Code, the Port Authority shall consider, such legislation as will be required to pass the Bonds ("Bond Legislation"). The Bond Legislation shall stipulate, among other things, that (1) the Repurchase Price shall be a reimbursable expense payable from the proceeds of the Bonds, (2) the Costs associated with the construction and installation of the Public Infrastructure Improvements by the City, including but not limited to any costs of demolition, shall be a reimbursable expense payable from the proceeds of Bonds, and (3) that the TIF Exemption shall be for a term of 30 years at a rate of 100% exemption of Improvements (as such term is defined in ORC 5709.40), as provided in the TIF Ordinance.

Subject to further legislative action taken by the City Commission, the City intends to cause the Port Authority to issue the Bonds as tax-exempt revenue bonds secured by a pledge of non-tax revenues of the City in such maximum aggregate principal amount necessary to generate approximately $1,700,000 in net project fund deposit, or such other amount as may be required to defray the costs listed above, with an expected final maturity date of December 1, 2054. The Bonds are expected to be issued in cooperation with the Port Authority pursuant to a cooperative agreement which will, among other things, pledge non-tax revenues as security for repayment of the Bonds. The proceeds of the Bonds will be deposited with a bond trustee for further disposition in accordance with the terms of a trust indenture securing the Bonds and this Agreement.

While the debt service due on the Bonds will be secured by a pledge of the non-tax revenues of the City, the Bonds will be sized such that estimated TIF Payments will be equal to no less than 125% of the debt service and administrative expenses for the Bonds. All TIF Payments received annually by the City that are in excess of the amount equal to debt service and administrative expenses for the Bonds shall be transferred, paid, and disposed (on an annual basis in accordance with the attached TIF Declaration) to the City for payment of any amount of the Repurchase Price not already paid to the City and such other costs as are permitted under the TIF Ordinance, Ohio Revised Code Section 5709.40 and "costs of permanent improvements" set forth in Ohio Revised Code Section 133.15(B).

Section 5. Amendment to Exhibit C Exhibit C to the Original Agreement is hereby repealed in its entirety and replaced with the attached Attachment I hereto.

Section 6. Miscellaneous Provisions. All other provisions of the Original Agreement, as they were as of October 20, 2023, are hereby restated in their entirety and incorporated by reference herein. This Amended Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original, with the same effect as if the signatures thereto and hereto were the same instrument. Deliver of this Amended Agreement by facsimile or email in portable document format (.pdf) or other electronic transmission by any party hereto shall represent a valid and binding execution and delivery of this Amended Agreement by such party. This Amended Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

[*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to Development Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF PIQUA, OHIO

By:___________________________________

Printed: ______________________________

Title: ________________________________

Approved as to Form and Correctness:

By: _________________________________

Printed: ______________________________

Title: ________________________________

STATE OF OHIO)
)
COUNTY OF MIAMI)

On this ___ day of __________________, 2024, before me a Notary Public personally appeared ____________________________, the authorized representative of the City of Piqua, Ohio, and acknowledged the execution of this foregoing instrument, and that the same is his voluntary act and deed on behalf of the City of Piqua, Ohio and the voluntary act and deed of the City of Piqua, Ohio.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid

____
Notary Public

BASIS PIQUA, LLC, an Ohio limited liability company

By:________________________________

Printed: _____________________________

Title: ______________________________

STATE OF OHIO)
)
COUNTY OF)

On this ___ day of _________________, 2024, before me a Notary Public personally appeared ___________________________ of Basis Piqua, LLC, an Ohio limited liability company, and acknowledged the execution of this foregoing instrument, and that the same is his voluntary act and deed on behalf of Basis Piqua, LLC and the voluntary act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the date and year aforesaid

____
Notary Public

ATTACHMENT I

EXHIBIT C

FORM OF DEVELOPER DECLARATION OF COVENANTS
TAX INCREMENT FINANCING DECLARATION OF COVENANTS

FORM OF TIF DECLARATION

DECLARATION OF COVENANTS
AND IMPOSITION OF CONTINUING PRIORITY LIEN
(Revised Code Section 5709.91 Tax Lien)

This **DECLARATION OF COVENANTS AND IMPOSITION OF CONTINUING PRIORITY LIEN** (this "Declaration") is made by **BASIS PIQUA, LLC**, an Ohio limited liability company (the "Declarant"), which, for good and valuable consideration, the receipt of which is hereby acknowledged, including, without limitation, the undertaking by the **CITY OF PIQUA, OHIO** (the "City"), to provide financing to pay or reimburse the Declarant for costs of the public infrastructure improvements made by or paid for by the Declarant in the pursuant to and as further described in the Development Agreement by and between the Declarant and the City dated as of October 20, 2023 and as amended (the "TIF Agreement"), makes the covenants set forth herein and encumbers certain real property situated in the City described in Exhibit A attached to this Declaration and made a part hereof (the "Parcel").

TOGETHER WITH any of the following items either now or in the future located on, affixed to, used in the operation of, or otherwise benefiting the land (or any part of the land) described above: all buildings, structures and improvements; all fixtures used in the operation of the real estate; all easements, rights-of-way, licenses, privileges and other appurtenances; and all proceeds thereof (collectively, the "Property").

The City acknowledges that the Declarant or its successors or assigns may from time to time subject the Property to one or more mortgages that secure the debt or other obligations of the Declarant.

The City and the Declarant agree that it is necessary and appropriate and in the best interests of the City and the Declarant to provide for the owner of the Property (the "Owner," and if there are multiple owners of the Parcel, each an "Owner" and, collectively, the "Owners") to make the payments described in this Declaration. The Declarant is the current Owner of the Parcel identified above.

The Declarant and the City further covenant as follows

Statutory Service Payments. Each Owner will make the service payments in lieu of taxes (the "Statutory Service Payments") for the portion of the Property that it owns attributable to its period of ownership (including, without limitation, any unpaid amounts at the time the Owner acquired the Property) pursuant to and in accordance with the requirements of Ohio Revised Code ("ORC") Sections 5709.40(B), 5709.42, and 5709.43 (the "TIF Act") and City Ordinance No. O-10-23, passed by City Commission on September 5, 2023 (the "TIF Ordinance").

The Statutory Service Payments will be made in accordance with the requirements of the TIF Act and the TIF Ordinance and will be in the same amount as the real-property taxes that would have been charged and payable against the improvements to the Parcel (after credit for any other payments received by the City under ORC Sections 319.302, 321.24, 323.152, and 323.156, or any successor provisions thereto, as the same may be amended from time to time (the "Property Tax Rollback Payments") had the exemption granted by the TIF Ordinance not been granted, including any penalties and interest.

The Statutory Service Payments must be made semiannually to the Treasurer of Miami County, Ohio (or to such county treasurer's 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 Parcel. Any late payments will bear penalties and interest at the then current rate established under ORC Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

Minimum Payments in Lieu of Taxes (Minimum PILOTs). Pursuant to ORC Section 5709.91, with respect to its period of ownership of the Property (including, without limitation, any unpaid amounts at the time each Owner acquired the Property), each Owner shall pay to the City, as minimum payments in lieu of taxes, its designated amount as set forth in Schedule A attached hereto, plus any costs incurred to enforce the collection of such amounts (the "Minimum PILOTs") with respect to each Parcel consisting of the Property or such lesser amount allocated to each portion of the Property (and each Owner) upon split of tax Parcels as set forth below. The Minimum PILOT due for each Parcel in a calendar year is payable in two equal installments in the amounts and commencing on the date as shown on Schedule A; the first is due on no later than May 15th of each year (with respect to the January 31 Property Tax Payment Date shown on Schedule A), and the second is due no later than November 15th of each year (with respect to the July 31 Property Tax Payment Date shown on Schedule A) (each, a "Payment Date").

Beginning in January of 2027, and each year thereafter, the City, or a calculation agent on behalf of the City, will determine whether Minimum PILOTs will be necessary in the subsequent tax year, due to the expected Statutory Service Payments being less than the Minimum PILOTs due. If it is estimated that the Statutory Service Payments will be less than the Minimum PILOTs, each Owner will begin to escrow their estimated base and improved value real property taxes, Statutory Service Payments and anticipated Minimum PILOTs due in the subsequent tax year with the City, via a payment schedule provided by the calculation agent. The monthly escrow payments will be due on the first day of each month beginning August of the calculation year through January for the first-half real property tax bill and February through July for the second-half real property tax bill.

No Minimum PILOTs shall be due for any Parcel if the Statutory Service Payments for all Parcels received by or on behalf of the City (the "Scheduled Service Payments") exceed the scheduled Minimum PILOTs for all Parcels as shown on Schedule A. If any Minimum PILOTs are due, the City will calculate the amount of the Minimum PILOTs owed with each Owner receiving a credit against the annual Minimum PILOTs due for its Parcel in an amount equal to the Scheduled Service Payments received with respect to such Parcel less any penalties or interest paid due to late payment of the Service Payments. In addition, if the Scheduled Service Payments for one or more other Parcels exceed the Minimum PILOTs for those Parcels, the excess shall be allocated among the Parcels for which the Scheduled Service Payments are less than the Minimum PILOTs pro rata based on the respective amount that the Scheduled Service Payments for a Parcel are less than the Minimum PILOTs for that Parcel. The Owner and the City each acknowledge and agree that any real-property tax exemption applicable to the Property other than the TIF exemption will reduce the amount of set-off available since it will reduce the amount of Scheduled Service Payments. If the City receives both Minimum PILOTs and Service Payments made by the Owner for the same Parcel with respect to the same period of time (first or second half tax payment date) and the amount of Minimum PILOTs does not reflect a credit in an amount equal to the Scheduled Service Payments with respect to that Parcel, the City shall refund to the Owner the Minimum PILOTs (without interest thereon) received by the City, to the extent of the Scheduled Service Payments received with respect to that Parcel less any penalties or interest paid, provided that the Owner has no overdue Service Payments, Minimum PILOTs, or other payments due hereunder or under the TIF Agreement. The TIF Agreement shall not be amended in any way that reduces the amount of Scheduled Service Payments made available for any such refund. The City will use its best efforts to deliver or cause to be delivered to each Owner a bill for each installment of the Minimum PILOT no later than thirty (30) days before each Payment Date. However, any failure to deliver a bill will not relieve the Owner of its responsibility to timely pay the Minimum PILOT installment then due. Bills must be sent to each Owner at its tax mailing address as shown on the real-property tax duplicate.

If any Parcel is split into multiple tax Parcels, the Owner prior to the Parcel split may allocate the Minimum PILOTs for that Parcel among the resultant parcels; provided however, that the Owner must submit its proposed allocation of Minimum PILOTs to the City for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. If the Owner does not propose an allocation, or if the City does not approve the Owner's proposed allocation, by the 35th day preceding the next Payment Date occurring after the tax Parcels split, Minimum PILOTs shall be allocated by the City based on the relative assessed values of the resultant tax Parcels as determined by the Miami County Auditor or, if such assessed values are not complete or are not available, the City's reasonable estimate of those relative assessed values. Absent manifest error, any allocation and determination of Minimum PILOTs performed in accordance with this Section will be final and binding on all Owners of the Parcels. The Owner and the City shall cause any allocation created pursuant to this Section to be filed as a recorded amendment to this Declaration with the Miami County Recorder within 30 days of such allocation, and the Owner shall cooperate with the City to cause any such recordation to occur.

No Action to Cause Taxation as Residential Property; No Other Exemptions. Unless otherwise agreed by the City in writing, the Owner will not take any action that will cause the Property to be classified as a "Parcel(s) that is used or to be used for residential purposes" as described in ORC Section 5709.40(B) or claim or assert in any administrative or legal proceeding (including, without limitation, by filing or amending an exemption application) that any portion of the Property is exempt from real-property taxation under any authority other than the TIF Ordinance (including, without limitation, the relevant portions of the TIF Act), ORC Sections 3735.65 et seq., or ORC Sections 5709.61 et seq.

Binding Nature of Obligations. Each Owner's obligations under this Declaration, including without limitation its obligation to make Statutory Service Payments and Minimum

PILOTs, are absolute and unconditional covenants running with the land and are binding and enforceable by the City. Except as provided in this Declaration, the Owner shall make all Statutory Service Payments and Minimum PILOTs without abatement, diminution or deduction, regardless of any cause or circumstances whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim which the Owner may have or assert against the City or anyone acting by or on behalf of the City, or damage to or destruction of the Property.

1. Declarant, on behalf of itself and each subsequent Owner, agrees that each of its covenants contained in this Declaration, including without limitation, the obligation to make Statutory Service Payments and Minimum PILOTs, is a covenant running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against the Property and the Owner, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. During the term of this Declaration, each Owner will cause all instruments of conveyance of interests in all or any portion of the Property to subsequent mortgagees, successors, lessees, assigns or other transferees to be made expressly subject to this Declaration.

2. Declarant, on behalf of itself and each subsequent Owner, further agrees that (i) all covenants herein, including without limitation its obligation to make Statutory Service Payments and Minimum PILOTs, whether or not these covenants are included by the Declarant in any deed to its successors and assigns, are binding upon each subsequent Owner and are enforceable by the City, and (ii) any future Owner of the Property, or any successors or assigns of the Declarant or such Owner, will be treated as an Owner for all purposes of this Declaration.

3. Subject to Section 13, the Declarant, on behalf of itself and each subsequent Owner, further agrees that its covenants herein, including without limitation its obligation to make Statutory Service Payments and Minimum PILOTs, will remain in effect so long as the Statutory Service Payments and Minimum PILOTs can be collected pursuant to the TIF Act, the TIF Ordinance, or this Declaration unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the Miami County Recorder.

4. Declarant, on behalf of itself and each subsequent Owner, further agrees that the covenants herein, including without limitation its obligation to make Statutory Service Payments and Minimum PILOTs, have priority over any other lien or encumbrance on the Property, except for Permitted Encumbrances (as are defined in Section 11), and the Declarant will cause any and all holders of mortgages or other liens existing on the Property as of the time of recording of this Declaration to subordinate such mortgage or lien to this Declaration. The City and the Owner acknowledge that the provisions of ORC Section 5709.91, which specify that the Statutory Service Payments and the Minimum PILOTs will be treated in the same manner as taxes for all purposes of the lien described in ORC Section

323.11 including, but not limited to, the priority of the lien and the collection of Statutory Service Payments and Minimum PILOTs, applies to the Property.

At the City's option and at its request, the Owner hereby agrees to provide such title evidence with respect to the Property, at no cost to the City, as is necessary to demonstrate to the City's satisfaction that this Declaration is prior and superior to any other liens, encumbrances or other title exceptions, except for Permitted Encumbrances (as defined in Section 11). The parties hereto agree for themselves and their respective successors, assigns and transferees, to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Declaration to the extent permitted by this Declaration and in compliance with all laws and ordinances controlling this Declaration.

Exemption Applications. The City and the Declarant will cooperate in the preparation, execution and filing of all applications for real-property tax exemption together with other required documents and information with the appropriate officials of the State of Ohio and Miami County as required to effect and maintain during the term of this Declaration the exemption from real-property taxation as provided by the TIF Ordinance. The City agrees to cooperate and to execute those further documents and provide that further information as are reasonably required in connection therewith. The Owner will continuously use due diligence and employ commercially reasonable efforts to keep the exemption under the TIF Ordinance in force, not permitting the same to lapse or be suspended or revoked for any reason within the Owner's control.

The Owner shall not file an application for real-property tax exemption as to any Parcels under any provision of law other than pursuant to the TIF Ordinance without the express prior written consent of the City. In the event that the Owner fails to timely file any application for real-property tax exemption required by ORC Section 5709.911, the Declarant's and the Owner's execution of this Declaration, and any subsequent Owner's acceptance of the conveyance of any of the Property, shall be deemed to constitute the Owner's written consent to an application filed by the City in accordance with ORC Section 5709.911. In the event that, subsequent to allowance of the exemption under the TIF Ordinance, the same is at any time revoked or suspended or the obligation to make Statutory Service Payments becomes unenforceable pursuant to ORC Section 5709.911(D), then the Owner will nevertheless continue to make Minimum PILOTs.

Maintenance of TIF by City. The City will not, so long as this Declaration remains effective, and without the consent of the Owner:

(a) claim or assert in any administrative or legal proceeding that the Owner is required to make service payments in lieu of taxes under any authority other than the TIF Ordinance (including, without limitation, the relevant portions of the TIF Act);

(b) transfer, encumber, spend, use, commit or pledge the Statutory Service Payments in any way other than pursuant to the TIF Agreement; or

(c) amend, repeal, supplement, or supersede the TIF Ordinance in any way that would reduce the amount of Statutory Service Payments deposited into the TIF Fund or affect the appropriation of the Scheduled Service Payments pursuant to the TIF Agreement.

Default; Remedies. The following are events of default under this Declaration (with respect to Owners, the following are events of default only with respect to the defaulting Owner):

(a) The failure of the Owner to pay on its due date any Service Payment or Minimum PILOT, or any installment thereof, including any applicable late payment charges, which failure continues for more than thirty (30) days following delivery of a written notice of default thereof by the City;

(b) The failure of the Owner to perform or observe any other covenant made by it in this Declaration, which failure continues for more than thirty (30) days following delivery of a written notice of default thereof by the City;

(c) The failure by the City to observe its covenants set forth in Section 6;

(d) The filing by the Owner of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(e) The making by the Owner of a general assignment for the benefit of creditors;

(f) The entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Owner as debtor; or

(g) The filing by the Owner of an insolvency proceeding with respect to itself or any proceeding with respect to the Owner for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

The provisions of this Declaration may be enforced, alone or together, to the fullest extent permitted by law, against the defaulting party by the City or the Owner. As the remedy at law for the breach of any of the terms of this Declaration may be inadequate, each enforcing party has a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. The waiver of any default by a party does not constitute a waiver by all parties or a waiver of other defaults. All rights and remedies granted herein are cumulative, non-exclusive and in addition to any and all rights and remedies that the City or the Owner may have or may be given by reason of any law, statute, or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of such party's right to exercise such remedy thereafter.

In addition to its other remedies, if an Event of Default under Section 7(a) occurs, the City may assess as part of the Minimum PILOT then due a penalty equal to 10% of the overdue amount. That penalty may be assessed at any time on or after occurrence of an Event of Default. In addition, the City may charge as part of the Minimum PILOT installment interest on the overdue amount at a maximum rate of ten percent (10%) per year, calculated on the basis of a 365 or 366 day year, as applicable, and actual days elapsed. Interest may be compounded semi-annually. The City may certify any overdue Minimum PILOT installment, including penalties and interest, to the Miami County Auditor for collection on real-property tax bills. Any Minimum PILOT installment so certified may be subject to additional penalties and interest imposed by the Miami County Treasurer if real property tax bills containing such Minimum PILOT installments are not paid when due. Any amounts actually recovered by the City due to the payment in full of delinquent Minimum PILOTs, and any interest and penalties imposed by the Miami County Treasurer associated with such delinquent Minimum PILOTs, shall be credited against the penalty due under this paragraph.

It is the further intention and agreement of the Declarant, as owner of fee title to the Property and on behalf of all future Owners, that this Declaration constitutes and be deemed to be a lien encumbering and running with the Property to secure the obligations of the Owner to make Statutory Service Payments and Minimum PILOTs (and, if applicable, pay interest and penalties) and perform other obligations under this Declaration, and is intended to have the same lien rights as real estate taxes and the same priority, and the Owner will not contest those lien rights or priority. In furtherance of the foregoing, any of the City or the Bond trustee, if any, may, upon the Owner's default of its obligations, and without limiting any other right or remedy otherwise available to the City or the Bond trustee, if any, foreclose upon that lien pursuant to the procedures and requirements of Ohio law relating to mortgages, liens, or delinquent real estate taxes, and the Owner will not contest the validity of any such lien or procedures, or any claim by the City that the Minimum PILOTs constitute "minimum service payment obligations" for purposes of ORC Section 5709.91. In the event that a Parcel is subject to a tax lien foreclosure action initiated by a party other than the City that would foreclose the lien created by this Declaration, the City may declare immediately due and payable all Minimum PILOTs due in the then current year or any future year for that Parcel. The City shall rescind any such declaration of acceleration at the request of the Owner or any mortgagee of the Property at such time as the lien created by this Declaration is no longer subject to such foreclosure action. Except as provided in this paragraph, the annual obligation to make Minimum PILOTs is not subject to acceleration.

Operation and Maintenance of Improvements. The Owner will, at its sole cost and expense, operate, manage, maintain and repair all improvements to each Parcel it owns according to standards that generally prevail in connection with the operation of first-class commercial buildings.

Insurance. The Owner will, at all times, maintain or cause to be maintained insurance coverage for the Property in an amount equal to the lesser of the full replacement cost of the Property or the maximum insurable value of the Property. The City and the Bond trustee, if any, shall be named as additional insureds and loss payees on such policies. The Owner shall provide, from time to time, such evidence as the City or a Bond trustee, if any, reasonably request to demonstrate that the required insurance is in effect.

In case of any damage to or destruction of any part of the Property with an estimated value of at least $1,000,000, the Owner will promptly give or cause to be given written notice thereof to the City generally describing the nature and extent of such damage or destruction. The Owner shall have the option to use the net proceeds of any property insurance to repair or restore the

Property as nearly as possible to the value, condition, and character thereof existing immediately prior to such damage or destruction, with such changes or alterations as the Owner may deem desirable or appropriate for proper operation of the Property and as are permitted by applicable law. If the Owner does not elect to repair or restore the Property as provided in the previous sentence, any net proceeds shall first be paid in accordance with the loan and other agreements between Owner and mortgagees of the Property and, second, net proceeds shall be paid to the City to prepay any amounts due to the City hereunder (other than Minimum PILOTs). The City will equitably reduce the annual Minimum PILOTs for the Parcels as a result of any such pre-payment. The Owner shall be entitled to retain any remaining net proceeds after the foregoing distributions.

Eminent Domain. If title to or the temporary use of the Property or any part thereof shall be taken under the exercise of the power of eminent domain, the Owner must promptly give or cause to be given written notice thereof to the City describing the nature and extent of such taking. Owner shall not be entitled to any abatement or diminution of any payments due to the City hereunder except as a result of prepayments of Minimum PILOTs as provided in this Section. In case of a partial taking, Owner shall repair and/or restore to the extent reasonably possible the Property. Any net proceeds received from any award made with regards to the Property in such eminent domain proceedings shall be paid first in accordance with the loan and other agreements between Owner and mortgagees of the Property, and second, if not applied to restoration, net proceeds shall be paid to the City for the payment amounts due to the City hereunder (other than Minimum PILOTs). The City will equitably reduce the annual Minimum PILOTs for the Parcels as a result of any such pre-payment. The Owner shall be entitled to retain any remaining net proceeds after the foregoing distributions. The Owner may recover from the taking authority for the value of its interest in the Property so taken and any diminution of the remainder value, but neither such action shall prevent the City or the Bond trustee, if any, from seeking separate compensation from such taking authority for the value of its interest in the Property so taken.

Taxes, Assessments and Liens. The Owner will pay, when due: (i) all taxes, assessments, and levies of every type or nature levied or assessed against the Property as and when they are due and payable, and (ii) any other claim, lien, or encumbrance against the Property prior to or on parity with the lien of this Declaration, other than the Permitted Encumbrances. The Owner may contest (or fully bond to the reasonable satisfaction of the City) the amount or the payment of any such tax, assessment, levy, claim, lien or encumbrance in good faith by an appropriate proceeding so long as during the pendency of such proceeding the Property is not sold to satisfy such tax, assessment, levy, claim, lien or encumbrance.

For purposes of this Declaration, the term "Permitted Encumbrances" means: (a) all legal highways; (b) any covenants, restrictions and easements of record set forth on Exhibit B hereto; (c) all zoning and building laws, ordinances, and regulations; and (d) all real estate taxes and assessments not yet due and payable.

If the Owner fails to pay, when due, any claim, lien, or encumbrance that is prior to or on parity with this Declaration, other than the Permitted Encumbrances, or any tax, assessment, or levy, and if any such failure or condition is not cured (or bond, title insurance, or other security provided to protect the priority of this Declaration) within 30 days after written notice from or on behalf of the City to the Owner (except that no notice or cure period is required if the action is necessary to protect the security of this Declaration), then the City, at its option, may pay the claim, lien, encumbrance, tax, assessment, or levy and any penalty or interest on the same. The Owner must pay to the City within 10 days after written demand, all sums of money advanced by the City under the provisions of this paragraph, together with interest on each advance at the rate of ten percent per year. All such advances and interest on the same will be added to the next Minimum PILOT installment due and are secured by this Declaration.

Notices. Any notice required or permitted to be given to the Owner or the City is deemed given if mailed by certified or registered United States mail, postage prepaid, addressed to the applicable party at its address first set forth above in this Declaration. Each of the Owner and the City may, from time to time, change its notice address by giving written notice to the other party at that party's then current notice address, in accordance with the provisions of this Section.

Duration of Declaration; Termination. This Declaration is effective on the date that it is executed by all parties hereto. This Declaration terminates as to the Parcels upon the occurrence of all of the following: (i) receipt by the City of all amounts due under the TIF Agreement (including by receipt by the City of Statutory Service Payments or from Minimum PILOTs paid directly to the City) and (ii) payment of all refunds due pursuant to Section 2. This Declaration will survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon the termination of this Declaration as to any Parcel and upon the request of the Owner, the City will execute and deliver to the Owner those documents and instruments as the Owner reasonably requests to evidence the termination.

Reporting Requirements. During each year that the tax exemption granted pursuant to the TIF Ordinance remains in effect, the Owner agrees to use reasonable efforts to provide within thirty (30) days following notice from the City, the information regarding the Owner or its Parcels that the City is required to provide in any reports required by the Director of the Ohio Department of Development in accordance with the TIF Act or that the City must prepare for the tax incentive review council in accordance with ORC Section 5709.85.

Severability. Any provision of this Declaration that is determined by a court of competent jurisdiction to be prohibited or unenforceable is ineffective only to the extent of the prohibition or unenforceability, without invalidating the remaining provisions.

Estoppel Certificate. The City covenants that within fifteen days of receiving a written request from the Owner it will deliver to the Owner an estoppel certificate certifying the status of the obligations secured hereby, in such reasonable detail as the Owner may request.

Interpretation. Any reference to a section or provision of the Constitution of the State of Ohio, or a section, provision or chapter of the ORC includes the section, provision or chapter as modified, revised, supplemented or superseded from time to time; *provided*, that no amendment, modification, revision, supplement or superseding section, provision or chapter will be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of any party under this Declaration. No presumption will apply in favor of any party in the interpretation of this Declaration or in the resolution of any ambiguity of any provision hereof. 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 Declaration; and the term "hereafter" means after, and the term "heretofore" means before, the date of execution and delivery of this Declaration. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Declaration, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Declaration.

Governing Law. This Declaration is made under the laws of the State of Ohio and the City of Piqua and is for all purposes governed by and construed in accordance with the laws of the State of Ohio and the City. All claims, counterclaims, disputes, and other matters in question among the parties, their respective agents, and employees arising out of or relating to this Declaration or its breach must be filed and decided in a court of competent jurisdiction within Miami County, Ohio.

Counterparts; Captions. This Declaration may be executed in counterpart, and in several counterparts, each of which is an original and all of which constitute one and the same Declaration. Captions have been provided herein for convenience only and do not affect the construction or interpretation of this Declaration.

This Instrument prepared by:
Emmett M. Kelly, Esq.
Frost Brown Todd LLP
10 West Broad Street, Suite 2300
Columbus, Ohio 43215-3484

EXECUTED this _____ day of __________, 2024.

DECLARANT:

BASIS PIQUA LLC, an Ohio limited liability company

By: ______________________________________

Its: ______________________________________

STATE OF OHIO)
) ss
COUNTY OF ___________)

The foregoing instrument was acknowledged before me this ____ day of ____________, 2024, by _____________, __________ of Basis Piqua LLC, an Ohio limited liability company, on behalf of said company. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

____
Notary Public

ACCEPTED AND AGREED:

CITY OF PIQUA, OHIO,
an Ohio municipal corporation

By: ________________________________

STATE OF OHIO)
) ss
COUNTY OF MIAMI)

The foregoing instrument was acknowledged before me this ____ day of ____________, 2024, by _______________, the ______________ of the City of Piqua, Ohio, an Ohio municipal corporation, on behalf of the City. The notarial act certified hereby is an acknowledgment. No oath or affirmation was administered to the signer with regard to the notarial act certified to hereby.

____
Notary Public

Approved as to form:

____

13940710.3

City of PIQUA

COMMISSION AGENDA STAFF REPORT

MEETING DATE	October 21, 2024	
REPORT TITLE	**Ordinance No. O-18-24** An ordinance authorizing the City Manager and Finance Director to enter into a loan agreement on behalf of the City with the Dayton-Montgomery County Port Authority and deliver a related Special Obligation Non-Tax Revenue Note of the City in the maximum principal amount of not-to-exceed $2,500,000 for the purpose of paying all or a portion of the costs of the acquisition of real property by the City for the purpose of economic development, authorizing the execution of any additional documents related thereto, which may include a Cooperation Agreement and a Tax Agreement or Certificate; and authorizing other actions related thereto and connection therewith	
SUBMITTED BY	Chris Schmiesing, Director Economic Development	
AGENDA CLASSIFICATION	Ordinance	
BACKGROUND	This item pertains to the Tax Increment Financing (TIF) that facilitates the redevelopment of the property located along Scott Drive at the northwest corner of the intersection of USR 36 and I-75. This ordinance will authorize the issuance of a Tax-Exempt Development Revenue Bond to support the Tax Increment Financing structure previously authorized by the City Commission. The ordinance recognizes previously unknown details of the deal structure and negotiated terms and provides the appropriate supporting documentation and references necessary to move forward with the Tax Increment Financing for this project. The issuance of the bond will prompt the developer to close on the purchase of the property and the City to receive payment of the repurchase price.	
BUDGET/FINANCIAL IMPACT (Project costs and funding sources)	Budgeted $:	0
	Expenditure $:	0
	Source of Funds:	Bond
	Narrative:	The Bond proceeds will be received by the City to reimburse the amount originally paid to purchase the property, including the cost to finance the purchase and hold the property. The Payments In Lieu of Taxes

		(PIOLTs) generated by the TIF designation will pay the debt service on the Bond.
ATTACHMENTS	1. Piqua - Basis Piqua - 2024 DMCPA Bonds- Cooperative Agreement - 4875-1222-1169.1 2. DMCPA_Piqua_Term Sheet_Executed	

ORDINANCE NO. O-18-24

ORDINANCE NO. O-18-24

AN ORDINANCE AUTHORIZING THE CITY MANAGER AND FINANCE DIRECTOR TO ENTER INTO A LOAN AGREEMENT ON BEHALF OF THE CITY WITH THE DAYTON-MONTGOMERY COUNTY PORT AUTHORITY AND DELIVER A RELATED SPECIAL OBLIGATION NON-TAX REVENUE NOTE OF THE CITY IN THE MAXIMUM PRINCIPAL AMOUNT OF NOT-TO-EXCEED $2,500,000 FOR THE PURPOSE OF PAYING ALL OR A PORTION OF THE COSTS OF THE ACQUISITION OF REAL PROPERTY BY THE CITY FOR THE PURPOSE OF ECONOMIC DEVELOPMENT, AUTHORIZING THE EXECUTION OF ANY ADDITIONAL DOCUMENTS RELATED THERETO, WHICH MAY INCLUDE A COOPERATION AGREEMENT AND A TAX AGREEMENT OR CERTIFICATE; AND AUTHORIZING OTHER ACTIONS RELATED THERETO AND CONNECTION THEREWITH

WHEREAS, the City of Piqua, Ohio (the “City”), has herein before acquired certain property within the City (the “Project Site”) for the purpose of economic redevelopment (the “Project”); and

WHEREAS, pursuant to Ordinance O-11-23 (the “Prior Ordinance”), the City has previously issued certain Special Obligation Non-tax Revenue Bonds in the amount of $2,365,000 (the “Existing Bonds”) secured by a pledge of the City’s “Non-tax Revenues”, as such term is defined hereinafter; and

WHEREAS, the City has entered into a Development Agreement, as amended, with Basis Piqua, LLC (the “Developer”) concerning the acquisition of the Project Site by City and the purchase and the development of the Site by the Developer; and

WHEREAS, the Commission of the City (the “Commission”) has determined to provide for the financing of the portion of the costs of the Project in order to refund a portion of the Existing Bonds by the City from the proceeds of the sale of the Note (as defined below) to the Dayton-Montgomery County Port Authority (the “Authority”); and

WHEREAS, to provide proceeds for its purchase of the Note, the Authority will issue and sell its Tax-Exempt Development Revenue Bonds (Southwest Ohio Regional Bond Fund) Series 2024A (City of Piqua Project) (the “Bonds”) and the proceeds of such bonds shall be used to pay the costs of issuance and other costs related to the issuance of such bonds, and a portion shall be used to refund a portion of the Existing Bonds.

NOW, THEREFORE, BE IT ORDAINED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring that:

SEC. 1: In addition to the words and terms elsewhere defined in this ordinance, unless the context or use clearly indicates another or different meaning or intent:

“Act” means, collectively, Section 3, Article XVIII of the Ohio Constitution, Chapter 133 of the Ohio Revised Code and the Charter of the City.

“Additional Obligations” means any additional notes, bonds or other obligations of the City which may be subsequently issued and payable solely from the Nontax Revenues on parity with the Note, including Additional Obligations in anticipation of which notes have been issued. In no event shall general obligation notes or bonds of the City be treated as Additional Obligations.

“Closing Date” means the date of the execution and delivery of the Loan Agreement.

“Financing Costs” shall have the meaning given in Section 133.01 of the Ohio Revised Code.

“Loan Agreement” means the Loan Agreement between the City and the Original Purchaser, as it may be drafted in accordance with this Ordinance and the Term Sheet, which Term Sheet is on file with the City Manager and Finance Director, and such Loan Agreement shall be executed by the City Manager and Finance Director, all in accordance with the terms and conditions of the Term Sheet and this Ordinance in particular with Section Five herein.

“Nontax Revenues” means, as used herein, all moneys of the City which are not moneys raised by taxation, to the extent available for such purposes, including, but not limited to the following: (a) grants from the United States of America and the State of Ohio; (b) payments in lieu of taxes now or hereafter authorized by State statute; (c) fines and forfeitures which are deposited in the City’s General Fund; (d) fees deposited in the City’s General Fund from properly imposed licenses and permits; (e) investment earnings on the City’s General Fund and which are credited to the City’s General Fund; (f) investment earnings of other funds of the City that are credited to the City’s General Fund; (g) proceeds from the sale of assets which are deposited in the City’s General Fund; (h) rental income which is deposited in the City’s General Fund; (i) proceeds from the sale of any portion of the Redevelopment Property; and (j) any other legally available funds that are not raised by taxation, as determined by the City.

“Original Purchaser” means the Authority.

“Term Sheet” means the Term Sheet, dated October 8, 2024, by and among the City, the Authority and the Developer, on file with the City Manager, which Term Sheet is hereby authorized and approved by this Commission as signed and executed by the City Manager.

The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs, or clauses hereof. Reference to a Section means a section of this ordinance unless otherwise indicated.

SEC. 2: This Commission determines that it is necessary and in the best interest of the City to issue a special obligation nontax revenue note of this City in the maximum principal amount not to exceed $2,500,000 (the “Note”) for the purpose of paying a portion of the costs of the Project, as well as costs of issuance relating to the Note and the Bonds. The Note shall be issued pursuant to the Act, this Ordinance, the Term Sheet and the Loan Agreement. The Note does not constitute a general obligation debt or a pledge of the full faith or credit or property taxing power of the City.

The aggregate principal amount of the Note shall not exceed the maximum principal amount specified in Section Two.

The proceeds from the sale of the Note received by the City pursuant to the Loan Agreement are appropriated and shall be used for the purposes for which the Note is being issued.

SEC. 3: The Note shall be dated as of the Closing Date. The aggregate principal amount of the Note outstanding shall bear interest at the rate or rates set forth in the Note, provided that the interest rate on the Note shall not exceed 8.0% absent an "Event of Default" under the Loan Agreement. The principal balance of the Note shall be paid by the City on the dates, and shall mature on the maturity date set forth in the Note. The Note may be prepaid, or shall be subject to mandatory prepayment, as set forth in the Loan Agreement or the Note, which prepayment provisions, if any, shall mirror and be subject to the optional redemption or mandatory redemption for the Bonds.

SEC. 4: The City Manager and the Finance Director are hereby authorized to execute the Note. The Note shall express upon its face the purpose, in summary terms, for which it is issued and that it is issued pursuant to the Act, this Ordinance and the Loan Agreement.

SEC. 5: The Note is hereby awarded and sold to the Original Purchaser at a purchase price of par plus accrued interest thereon, if any, upon the terms provided for herein, in the Loan Agreement and in the Note. The Original Purchaser shall pay the purchase price of the Note in full on the Closing Date.

The City Manager and the Finance Director are hereby authorized to execute the Note and the Loan Agreement between the City and the Original Purchaser, in such forms as are not inconsistent with this Ordinance, the Term Sheet and that are approved by the City Manager and Finance Director on behalf of the City, all of which shall be conclusively evidenced by the signing of the Note and the Loan Agreement.

The Mayor, the City Manager, the Finance Director and other City officials, as appropriate, are each authorized and directed to sign any other agreements, documents, instruments and certificates, and to take such actions, as are necessary or appropriate to consummate the transactions contemplated by this Ordinance, which may include, without limitation, a cooperative agreement between the City and the Authority relating to the issuance of the Bonds or the Project, and an agreement or certificate between the City and the Authority with respect to tax matters relating to the issuances of the Bonds or the Project. Any actions of the Mayor, the City Manager, the Finance Director, or other City officials, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Note or the transactions contemplated by the Loan Agreement are hereby ratified and confirmed.

SEC. 6: The Note is a special obligation of the City. The principal of and interest on the Note is payable by the City from the City's Nontax Revenues. Payments due under the Note are hereby secured by a pledge of the Nontax Revenues.

There is hereby created by the City a separate fund named the Nontax Revenue Note Fund into which Nontax Revenues shall be deposited in accordance with the following provisions.

The City hereby covenants and agrees that so long as Note is outstanding, it will appropriate and maintain sufficient Nontax Revenues each year to make each payment due under this Section and to pay principal and interest on the Note when due; provided, however, the payments due hereunder and under the Note are payable solely from Nontax Revenues, which Nontax Revenues are hereby selected by the City as moneys that are not raised by taxation. The Note is not secured by an obligation or pledge of any moneys raised by taxation. The Note does not and shall not represent or constitute a debt or pledge of the faith or credit or taxing power of the City, and the owners of the Note have no right to have taxes levied by the City for the payment of principal and interest on the Note.

Nothing herein shall be construed as requiring the City to use or apply to the payment of principal and interest on the Note any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or Note.

The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Note and under all proceedings of this Commission pertaining thereto. The City represents that (i) it is, and upon delivery of the Note covenants that it will be, duly authorized by the Constitution and laws of the State including particularly and without limitation the Act and its Charter, to issue the Note and to provide the security for payment of the debt service charges in the manner and to the extent set forth herein and in the Note; (ii) all actions on its part for the issuance of the Note have been or will be taken duly and effectively; and (iii) the Note will be valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to this Ordinance and the Note is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employee resulting from an office, trust or station within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

All books and documents in the City's possession relating to the Nontax Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the owners of the Note as the owners may from time to time designate.

If the City shall pay or cause to be fully paid and discharged the Note in accordance with the Loan Agreement, the covenants, agreements and other obligations of the City hereunder and in the Loan Agreement and the Note shall be discharged and satisfied. The City shall be considered to have caused a portion of the Note to be fully paid and discharged if the City has placed in escrow, and pledged for the payment of debt charges on such portion of the Note, money or direct or guaranteed obligations of the United States, or a combination of those obligations, determined by an independent firm experienced in making such determinations to be sufficient, with the interest or other investment income accruing on those direct or guaranteed obligations, for the full payment of debt charges on that portion of the Note. For purposes of this Section, "direct obligations of or obligations guaranteed as to payment by the United States" includes rights to receive payment or portions of payments of the principal of or interest or other investment income on those obligations, and other obligations fully secured as to payment by those obligations and the interest or other investment income on those obligations.

All of the agreements, covenants and duties under this Ordinance are hereby established as duties specifically enjoined by law or resulting from an office, trust or station upon this City within the meaning of Section 2731.01 of the Revised Code.

SEC. 7: The City shall have the right from time to time to issue Additional Obligations on parity with the Note, as provided by the Act and by an ordinance passed by this Commission authorizing the issuance of those Additional Obligations.

Before any Additional Obligations which are payable from Nontax Revenues are issued, the City shall have reasonably determined that the aggregate amount of Nontax Revenues received during the fiscal year immediately preceding the issuance of those Additional Obligations is at least equal to one hundred fifty percent (150%) of the largest amount required to be paid in any succeeding calendar year to meet the payment of principal of and interest on the Note and any Additional Obligations to be outstanding immediately after the issuance of such Additional Obligations. For bond anticipation notes, the principal and interest on the Additional Obligations anticipated by the notes shall be used in calculating compliance with this provision.

Junior lien or other subordinate obligations payable solely from the Nontax Revenues, and any general obligations of the City which are also payable from Nontax Revenues, may be issued without limitation.

SEC. 8: The expenditure of the amounts necessary to pay any Financing Costs in connection with the Note, if any and to the extent not paid by the Original Purchaser in accordance with the Loan Agreement, is authorized and approved, and the City Manager and the Finance Director are authorized to provide for the payment of any such amounts and costs from the proceeds of the Note to the extent available and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

SEC. 9: This Commission determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Note in order to make it a legal, valid and binding special obligation of the City have been performed and have been met, or will at the time of delivery of the Note have been performed and have been met, in regular and due form as required by law; that the Nontax Revenues of the City are pledged for the timely payment of certain portions of the debt charges on the Note; that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Note; and that the Note is being authorized and issued pursuant to the Act, this Ordinance, the Loan Agreement and other authorizing provisions of law.

SEC. 10: This Commission finds and determines that all formal actions of this Commission and any of its committees concerning and relating to the passage of this ordinance were taken in an open meeting of this Commission and any of its committees, and that all deliberations of this Commission and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law including Section 121.22 of the Ohio Revised Code.

SEC. 11: This Ordinance shall take effect and be in force from and after the earliest period allowed by law.

____
KRIS LEE, MAYOR

PASSED: ______________________________

ATTEST: ______________________________
CLERK OF COMMISSION

The Motion to adopt the foregoing Ordinance was offered by None, seconded by None, and on roll call the following vote ensued:

Mayor Kris Lee	__________
Commissioner Jim Vetter	__________
Commissioner Paul Simmons	__________
Commissioner Thomas Hohman	__________
Commissioner Frank DeBrosse	__________

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (the "Cooperative Agreement") dated as of November [__], 2024, is entered into by and between the CITY OF PIQUA, OHIO (the "Contracting Party"), a body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "State"), constituting a "contracting subdivision" as that term is defined in Section 4582.21(K), Ohio Revised Code, and the DAYTON-MONTGOMERY COUNTY PORT AUTHORITY (the "Port Authority"), a body corporate and politic duly organized and validly existing under the laws of the State, under the circumstances described below.

RECITALS:

WHEREAS, the Contracting Party has requested the Port Authority, in accordance with Ohio Revised Code Sections 4582.21 through 4582.71 and Article VIII, Section 13 of the Constitution of the State (together, the "Act") to provide financing for the purpose of paying a portion of the costs of acquiring real property located in the jurisdiction of the Contracting Party for the purpose of economic development (the "Project"), by issuing a series of the Port Authority's Development Revenue Bonds (the "Bonds") in an aggregate principal amount not to exceed $2,300,000 and loaning the proceeds from the sale of the Bonds to the Contracting Party pursuant to a Loan Agreement between the Port Authority and the Contracting Party (the "Loan Agreement");

WHEREAS, the Port Authority has determined that the Project constitutes "port authority facilities," as defined in Section 4582.21 of the Ohio Revised Code, and is in furtherance of the Port Authority's "authorized purposes," as defined in Section 4582.21(B) of the Ohio Revised Code, and the Port Authority is willing to (i) construct and otherwise improve the Project, (ii) issue, sell and deliver the Bonds, and (iii) execute the Loan Agreement in consideration of payment by the Contracting Party of financing payments under the Loan Agreement sufficient to pay debt charges on the Bonds and other valuable consideration (collectively, the "Transaction");

WHEREAS, pursuant to Section 4582.43 of the Ohio Revised Code, a port authority may cooperate with any governmental agency or combination of governmental agencies in the acquisition or construction of port authority facilities and shall enter into such agreements with the governmental agency as may be appropriate, with a view to effective cooperative action and safeguarding of the respective interests of the parties thereto; and

WHEREAS, pursuant to Section 4582.431(B) of the Ohio Revised Code, a port authority may enter into an agreement with a contracting subdivision, whereby the port authority undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, on behalf of the contracting subdivision, which the contracting subdivision is authorized to exercise, perform or render; and

WHEREAS, it is determined and declared that the Project and the Transaction are necessary and for the best interests of the citizens, residents, and inhabitants of the jurisdictions served by the Contracting Party and the Port Authority, and that the Contracting Party will cooperate with the Port Authority in taking action hereunder to provide for and promote the public health, safety, and general welfare of the people of the jurisdictions served by the Contracting Party and the Port Authority; and

WHEREAS, the Project and this Cooperative Agreement will better provide for the health and welfare of the people of the State by enhancing the availability, efficiency and economy of port authority facilities and the services rendered thereby; and

WHEREAS, the Contracting Party has duly adopted a resolution or ordinance authorizing the execution of this Cooperative Agreement by the Contracting Party, but only with respect to the Transaction as provided for herein; and

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and receipt of other good and valuable consideration, the Contracting Party and the Port Authority hereby agree as follows:

Section 1. The Contracting Party authorizes the Port Authority to (i) exercise within the Contracting Party all of the powers possessed by the Port Authority under Chapter 4582 of the Ohio Revised Code, and (ii) exercise any power, perform any function and render any service, on behalf of the Contracting Party, together with all powers necessary or incidental thereto, to the fullest extent that the Contracting Party is authorized under the applicable laws of the State and its ordinances, to exercise, perform or render such power, function or service, in each case, for the purpose of accomplishing the Transaction, including, without limitation, the construction and otherwise improving of the Project, the issuance, sale and delivery of the Bonds, and the loaning of the proceeds from the sale of the Bonds to the Contracting Party pursuant to the Loan Agreement, together with the taking of such other actions and the execution and delivery of such other instruments as may be necessary or convenient in order to accomplish the purposes of this Cooperative Agreement. Each power exercised, function performed or service rendered by the Port Authority hereunder, to the extent, if any, necessary to the implementation of this Cooperative Agreement and the Transaction and construction and otherwise improving of the Project in the manner set forth herein, are undertaken by the Port Authority on behalf of the Contracting Party, pursuant to the Chapter 4582 of the Ohio Revised Code.

The Contracting Party specifically approves the Transaction and authorizes the Port Authority to act on behalf of the Contracting Party in carrying out all of the foregoing actions, and the Port Authority hereby accepts the appointment of it to act on behalf of the Contracting Party in such capacity. The Contracting Party's aforementioned approval is limited solely to the Transaction in substantially the form described in this Cooperative Agreement, and the Port Authority shall have no authority to act on behalf of the Contracting Party in connection with any other matter other than the Transaction.

Section 2. This Cooperative Agreement shall in all respects be governed by and construed and enforced in accordance with the laws of the State, without reference to principles of conflicts of laws.

Section 3. This Cooperative Agreement shall be binding upon and inure to the benefit of the Port Authority and the Contracting Party and their respective successors and permitted assigns. No party may assign this Cooperative Agreement or any of its rights or obligations hereunder in whole or in part without the prior written consent of each of the other parties.

Section 4. In case any section or provision of this Cooperative Agreement, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is determined to be illegal or invalid, that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or actions, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein; the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof; and each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 5. This Cooperative Agreement may be signed 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. It shall not be necessary in proving this Cooperative Agreement to produce or account for more than one of those counterparts.

[Signature page follows]

IN WITNESS WHEREOF, the Port Authority and the Contracting Party have each caused this Cooperative Agreement to be executed in its respective name as of the day and year first above written.

DAYTON-MONTGOMERY COUNTY
PORT AUTHORITY

____
Joseph M. Geraghty, Executive Director

CITY OF PIQUA, OHIO

____
L. Paul Oberdorfer, City Manager

As authorized by Ordinance [_________]

PORT AUTHORITY Dayton/Montgomery County

Dayton-Montgomery County Port Authority

Proposes to finance public infrastructure improvements in connection with the

Scott Drive Redevelopment Project

Piqua, Ohio

Preliminary Financing Term Sheet

October 8, 2024

The following preliminary term sheet is for discussion purposes only and is not meant to be a commitment by the Dayton-Montgomery County Port Authority or the City of Piqua, Ohio. This transaction is subject to further due diligence, rating agency review and negotiations by all parties. This preliminary term sheet and related information is confidential and proprietary.

I. DESCRIPTION OF THE PROJECT

Below is the Preliminary Financing Term Sheet (the "Term Sheet") outlining the terms of the financing being proposed by the Dayton-Montgomery County Port Authority (the "Port" or "Port Authority"). Basis Piqua, LLC (the "Developer") has proposed to redevelop approximately 4.1 acres of the property located adjacent to I-75 at 902 Scott Drive in Piqua, Ohio (the "Project Site"). The Developer plans to construct, or caused to be constructed, a Hilton Garden Inn, Olive Garden restaurant and Chipotle restaurant (the "Project") on the Project Site and previously acquired by the City of Piqua (the "City") in furtherance of economic development. Construction of the Project is expected to begin in Q4 of 2024 and is estimated to be completed in Q4 of 2025. The City has requested the Port Authority to issue bonds from its Southwest Ohio Regional Bond Fund (the "Bonds" or "Port Bonds") to finance a portion of the City's costs associated with its prior acquisition of the Project Site. The Port Authority would provide a loan of the net proceeds of the Bonds to the City, for use by the City to refinance a portion of its outstanding bond anticipation notes issued to acquire the Project Site (the "City Project"). The City shall provide a pledge of its non-tax revenues to secure a payment of debt service on the loan from the Port Authority, which debt service shall be equal to debt service and administrative expenses for the Bonds until maturity and full payment of the Bonds.

The City previously passed Ordinance No. O-10-23 creating an ORC 5709.40(B) TIF (the "TIF Ordinance") which includes the Project Site (the "TIF Area") whereby the City will be reimbursed for the costs of the public improvements, including, but not limited to land acquisition, on and off-site water mains and sanitary sewer improvements. The TIF Ordinance provides a 30-year, 100% exemption for the TIF Area and further provides for service payments to be owed in lieu of the exempted real property taxes ("Service Payments") for 30 years. The hotel parcel will be subject to an abatement of 40% through a community reinvestment area, so an adjustment of the projected Service Payments will be taken into account in the sizing of the Bonds. The Bonds will be sized such that estimated Service Payments will be equal to no less than 125% of the debt service and administrative expenses for the Bonds. In no event shall the Service Payments be pledged by the City to pay debt service on the Bonds, nor will the City Pledge be conditioned upon collection of such Service Payments or any Minimum Payments.

II. FINANCING STRUCTURE

City Project - Sources of Funds:

Port Bonds	$ 2,150,000
Total Sources of Funds	**$ 2,150,000**

City Project - Uses of Funds:

Proceeds for City Project	$ 1,736,125
Primary Reserve at 10%	215,000
Estimated Costs of Issuance	198,875
Total Uses of Funds	**$ 2,150,000**

III. TERMS OF THE PORT BONDS

Issuer: Dayton-Montgomery County Port Authority

Contracting Party: City of Piqua

Project Developer: Basis Piqua, LLC (the "Developer")

Estimated Closing Date: November 21, 2024

Rating on the Port Bonds: Anticipated to be A- by S&P Global Ratings

Term of Port Bonds: Approximately 30 years with a final maturity on November 15, 2054

Tax-Status: Anticipated to be tax-exempt, subject to bond counsel analysis and opinion.

Interest Rate: Estimated to be 5.00%, fixed, subject to market conditions at the time of the sale. The rate will not be set until Port Bonds are sold and will fluctuate with market conditions.

Primary Reserve: 10% of the par amount of the Port Bonds to be funded with bond proceeds. As long as no payment defaults exist, all earnings will be applied to scheduled semi-annual debt service payments. Investment of the Port Bond proceeds will be directed by the Port according to the eligible investments permitted and described in the Bond Indenture. The Primary Reserve may be applied to the final principal payment due at maturity of the Port Bonds.

Annual Administrative Fees: The Port annual administrative fee is .60% of the outstanding principal amount of the Bonds.

The Trustee annual fee is .06% of the outstanding principal amount of the Bonds, or $1,250, whichever is greater.

Security for the Port Bonds:

1) City non-tax revenue pledge for Bonds debt service as described below.

2) The Primary Reserve as described above.

City Pledge: The City shall provide a pledge of its non-tax revenues to secure a payment of debt service on the loan from the Port Authority, which debt service shall be equal to debt service and administrative expenses for the Bonds until maturity and full payment of the Bonds (the "City Pledge"). On an annual basis, the City shall take all measures necessary to appropriate Non-tax revenues to satisfy the City Pledge requirements. The City shall make payment to the Bond Trustee in an amount equal to the Bond debt service charges (including administrative expenses) no later than April 15 and October 15, beginning in calendar year 2025.

On an annual basis, the City will provide to the Port, audited financial statements and a Certificate of Available Resources for the applicable annual Bond debt service and administrative expenses.

Optional Redemption: Port Bonds will be callable at par in whole or in part on any business day subject to a 10-year par call.

IV. Closing Conditions and Requirements

The City and/or Developer will provide the following information as requested by the Port prior to closing of the Port Bonds:

Environmental: An acceptable Phase I and/or Phase II environmental on the Project Site. A reliance letter will be provided to the Port.

Insurance: An acceptable level of General Liability Insurance for the Project Site and Property & Casualty insurance for the Project. The Port will require to be named as the insured or an additional insured on the insurance certificates.

Title Policy: Acceptable title search of the Project Site.

Survey: An ALTA survey of the Project Site.

Financial Statements: Acceptable financial statements of the City.

V. COMMITMENT FEE DEPOSIT

By signing below, the signees agree to the terms and conditions outlined herein and the Developer agrees to pay a Commitment Fee deposit of $25,000 to the Port Authority and a $2,500 non-refundable Application Fee. The Commitment Fee will be returned to the Developer or credited to the cost of issuance at closing of the Port Bonds financing.

If, before the closing date, there are any substantial changes to the City Project, the Port reserves the right to amend the terms of this Term Sheet. The Port will not be responsible for any financing costs or breakup fees if the transaction does not close for any reason.

The City and Developer has the right to terminate its participation in this term sheet prior to the closing date. However, in the event of termination by the City or Developer for any reason, the City and/or Developer will be obligated for any reasonably incurred legal fees, Port Authority fees and financial advisory fees not covered by the Commitment Fee Deposit.

VI. APPROVAL AND ACCEPTANCE

This transaction is subject to certain approvals by the Port, City of Piqua, Basis Piqua, LLC, delivery of required legal opinions, due diligence, final documentation, sale of the Port Bonds and closing of all other required funding for the City Project.

Please indicate your acceptance of the terms herein by signing below.

________________________ 10-10-24
~~Jerry Royce, Member~~ RYAN LUCAS, MANAGER Date
Basis Piqua, LLC

________________________ __________
L. Paul Oberdorfer, City Manager Date
City of Piqua

________________________ __________
Joseph M. Geraghty, Executive Director Date
Dayton-Montgomery County Port Authority

V. COMMITMENT FEE DEPOSIT

By signing below, the signees agree to the terms and conditions outlined herein and the Developer agrees to pay a Commitment Fee deposit of $25,000 to the Port Authority and a $2,500 non-refundable Application Fee. The Commitment Fee will be returned to the Developer or credited to the cost of issuance at closing of the Port Bonds financing.

If, before the closing date, there are any substantial changes to the City Project, the Port reserves the right to amend the terms of this Term Sheet. The Port will not be responsible for any financing costs or breakup fees if the transaction does not close for any reason.

The City and Developer has the right to terminate its participation in this term sheet prior to the closing date. However, in the event of termination by the City or Developer for any reason, the City and/or Developer will be obligated for any reasonably incurred legal fees, Port Authority fees and financial advisory fees not covered by the Commitment Fee Deposit.

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This transaction is subject to certain approvals by the Port, City of Piqua, Basis Piqua, LLC, delivery of required legal opinions, due diligence, final documentation, sale of the Port Bonds and closing of all other required funding for the City Project.

Please indicate your acceptance of the terms herein by signing below.

______________________________ ______________
Jerry Royce, Member Date
Basis Piqua, LLC

______________________________ 10/11/2024
L. Paul Oberdorfer, City Manager Date
City of Piqua

Joseph M. Geraghty 10-15-2024
Joseph M. Geraghty, Executive Director Date
Dayton-Montgomery County Port Authority

City of PIQUA

COMMISSION AGENDA STAFF REPORT

MEETING DATE	October 21, 2024	
REPORT TITLE	**Resolution No. R-121-24** A resolution authorizing the sale of real estate	
SUBMITTED BY	Chris Schmiesing, Director Economic Development	
AGENDA CLASSIFICATION	Resolution	
BACKGROUND	This item authorizes Piqua Improvement Corporation to facilitate the purchase and conveyance of the subject parcel to enable redevelopment of the property.	
BUDGET/FINANCIAL IMPACT (Project costs and funding sources)	Budgeted $:	0
	Expenditure $:	0
	Source of Funds:	Bond
	Narrative:	The terms of the agreement require Piqua Improvement Corporation to remit the sales proceeds to the City of Piqua.
ATTACHMENTS	1. PIC sale agreement with Piqua for Scott Drive property	

RESOLUTION NO. R-121-24

RESOLUTION NO. R-121-24

A RESOLUTION AUTHORIZING THE SALE OF REAL ESTATE

WHEREAS, the City of Piqua Code of Ordinances Section 34.36 describes the conditions to be satisfied for the sale of real estate belonging to the City of Piqua; and

WHEREAS, the Prospective Purchaser, Basis Piqua, LLC, desires to purchase Parcels N44-072956, N44-101818, and N44-101816; and

WHEREAS, the Piqua Improvement Corporation and the City intend to enter into an agreement to facilitate the purchase and conveyance of the subject parcel; and

WHEREAS, in the sound judgment of the City Manager, the conveyance of the city-owned property in the manner described in the Agreement to Purchase included herewith as "Exhibit A" is in the best interest of the City.

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring that:

SEC. 1: The City Manager is hereby authorized to execute the contracts necessary to facilitate the purchase and conveyance of the city-owned Parcels N44-072956, N44-101818, and N44-101816 in the manner described in "Exhibit A" included herewith.

SEC. 2: This resolution shall take effect and be in force from and after the earliest period allowed by law.

____

KRIS LEE, MAYOR

PASSED: ____________________________

ATTEST: ____________________________

CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by None, seconded by None, and on roll call the following vote ensued:

Mayor Kris Lee ____________

Commissioner Jim Vetter ____________

Commissioner Paul Simmons ______________
Commissioner Thomas Hohman ______________
Commissioner Frank DeBrosse ______________

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT (this "**Agreement**") is made this _____ day of November, 2024, by and between: The City of Piqua, an Ohio Municipal Corporation, 201 W. Water St., Piqua, OH 45356 ("Seller") and the Piqua Improvement Corporation**,** ("Purchaser").

W I T N E S S E T H:

WHEREAS, Purchaser desires to purchase and the Seller desires to sell the Property (as defined herein) upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

ARTICLE ONE
Purchase and Sale

1.1 Sale of the Property. Seller agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, upon the terms and conditions hereinafter set forth, certain real estate described in Exhibit A. attached ("subject property"), together with any and all the improvements, rights, privileges, easements and appurtenances thereto belonging, in their current condition, (hereinafter collectively referred to as "the Premises"), but subject to all applicable zoning laws, legal highways, and building setback lines, easements, restrictions and reservations of record.

1.2 **Purchase Price**. The purchase price for the Property shall be the amount of the net proceeds from BASIS PIQUA, LLC for the intended sale of the "subject property". Said sale to BASIS PIQUA, LLC is scheduled to close on or around November 20, 2024, (the "Purchase Price"). The initial transfer of the property to Purchaser shall be completed with a promissory note to the City of Piqua in the amount of expected proceeds from the above-referenced sale and said note shall be due and payable upon the closing with Basis Piqua, LLC.

ARTICLE TWO
Condition and Title

2.1. **Condition of Property**. The Property is to be sold in its "As-Is" condition with limited warranty or representations as outlined in Section 5.1 below.

2.2. **Deed**. Upon payment in full of the purchase price specified above, Seller shall convey the Premises to Purchaser in fee simple by a good, sufficient, transferable and recordable general warranty deed, with full release of dower if dower rights exist in the Premises. Said deed shall warrant the Premises to be free and clear of all liens and encumbrances not excepted in the "Evidence of Title" section of this Agreement. Purchaser further agrees to sell said property to BASIS PIQUA, LLC for the purchase price agreed upon in the development agreement between the City of Piqua and BASIS PIQUA, LLC. dated October 20, 2023 and any amendments thereafter.

2.3. **Evidence of Title**. Seller shall deliver to Purchaser a Certificate of Title show that Seller has good and merchantable title to the Premises in fee simple, free and clear of all liens and encumbrances whatsoever except: (a) those created or assumed by Purchaser; (b) those specifically set forth in this Agreement; (c) real estate taxes and assessments that constitute a lien but are not then due; (d) zoning ordinances; (e) legal highways; and (f) building setback lines, covenants, easements, conditions, restrictions and reservations of record.

2.4. **Defects in Title**. If the title to all or any part of the Premises is defective or unmerchantable, or if any part of the Premises is subject to liens, encumbrances, easements, conditions or restrictions other than those excepted herein, Seller shall have a reasonable time, not to exceed thirty (30) days after written notice thereof, within which to remedy or remove any such defect, lien, encumbrance, easement, condition or restriction.

It is agreed by the parties hereto that merchantability shall be determined in accordance with the Standards of Title Examination adopted by the Ohio State Bar Association and that any matter that comes within the scope of said Standards shall not constitute a valid objection to the title provided Seller complies with the requirements of said Standards.

2.5. Seller's Contingencies. Seller's obligation to consummate the transaction contemplated under this Agreement is expressly conditioned and contingent upon all representations and warranties of Purchaser set forth in this Agreement, hereof being true and accurate in all material respects, and every covenant and agreement of Purchaser set forth in this Agreement having been materially performed or fulfilled. Purchaser shall accept the Restrictive Covenants set forth in the deed as contemplated in the development agreement between the City of Piqua and BASIS PIQUA, LLC.

2.6 Purchaser's Contingencies. This Agreement and Purchaser's obligation to close the sale transaction contemplated herein is specifically contingent upon Purchaser's satisfaction of each of the following contingencies (the "Contingencies"), any or all of which may be waived (by Purchaser in writing to Seller) on or prior to the end of the Contingency Period provided below and herein.

a. **Title.** The delivery of a certificate of Title as set forth in section 2.3. .

In the event that any of the results of the above-described matters are not satisfactory to Purchaser, in Purchaser's sole discretion, then Purchaser may by written notice given to Seller within the Contingency Period notify Seller of the termination of this Agreement, whereupon this Agreement shall become null and void and of no further force or effect. If Purchaser fails to terminate the Agreement as aforesaid on or prior to the end of the Contingency Period, such failure shall be deemed a satisfaction of the applicable conditions set forth above and notice of Purchaser's intent to continue this Agreement and waive the applicable Contingencies. Seller acknowledges that Purchaser shall be causing various inspections and reports to be made of the Property, at Purchaser's sole cost and expense and the expenses so incurred by Purchaser during the Contingency Period along with the indemnities and other consideration given by Purchaser hereunder, shall constitute due and adequate consideration by Purchaser under this Agreement.

ARTICLE THREE
The Closing

3.1. Time and Place. Settlement of the transaction contemplated by this Agreement shall be held on or before November 20, 2024 (the "**Closing**"), or as soon as practicable thereafter, at a time and location mutually agreeable to Seller and Purchaser.

3.2 Settlement.

At the Closing, Purchaser shall pay to Seller the balance of the Purchase Price due, and Seller shall then:

(a) deliver to Purchaser a General Warranty Deed subject to the Restrictive Covenants set forth in CITY OF PIQUA, OHIO and BASIS PIQUA, LLC agreement executed October 20, 2023 and any amendments thereto, conveying title to the Premises acceptable to Purchaser in accordance with Section 2.2;

(b) furnish Purchaser assurance that all taxes which are or will be due, following the last date of payment remitted, are considered a lien against said Premises and are to be paid, prorated to the date of transfer of title to Purchaser, calculated using the "short" proration method;

(c) execute an affidavit to be supplied by Purchaser that there are no liens upon the Premises nor outstanding orders or unpaid bills for goods, labor or materials, including utilities, which may become a lien upon the Premises;

(d) pay any federal and state title conveyance fee and any other transfer taxes or other taxes on the conveyance; and

(e) execute and deliver to Purchaser any other document required to effect the transfer of legal title to Purchaser pursuant to the terms of this Agreement and/or requests of the title company as approved by Seller's counsel.

3.3 **Delivery of Possession**. Actual sole and exclusive physical possession of the Premises shall be given to Purchaser at Closing, unoccupied and free of any leases, claims to or rights of possession by delivery of the Deed.

ARTICLE FOUR
Apportionment and Allocation of Expenses

4.1 **Real Estate Taxes**. Taxes shall not be prorated. Purchaser assumes the real estate taxes for the tax period ending December 31, 2024.

4.2 **Taxes and Other Costs.** Purchaser waives title insurance. The city of Piqua shall pay all closing costs.

ARTICLE FIVE
Representations and Warranties; Covenants

5.1. **Seller's Representations and Warranties.** Seller represents and warrants to Purchaser that:

(a) Seller has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby, and when executed and delivered, this Agreement will constitute the legal, valid, and binding obligations of Seller, and will not be in conflict with, or cause a default under, any contract or other agreement to which Seller is a party.

(b) No authorization or consent that has not been obtained is required to permit Seller to execute and deliver this Agreement and the Transfer Documents and to consummate the transactions contemplated herein.

(c) There is no pending, or to the knowledge of Seller, threatened litigation, condemnation or other proceeding affecting the ownership or use of the Premises.

(d) There are no undisclosed or unrecorded contracts affecting the Premises or Seller's right, title and interest therein that would be binding upon Purchaser or which would run with the Land. At the time of Closing, there will be no outstanding contracts made by Seller for any improvements on the Premises, other than those consented to in writing by Purchaser.

(e) There are no liabilities of Seller, contingent or otherwise, including, without limitation, any tax liability, that have not been disclosed to Purchaser that are reasonably likely to affect Purchaser's estate in the Premises.

5.2. **<u>Purchaser's Representations, Warranties and Reversion</u>**. Purchaser represents to Seller that Purchaser has the full power to execute and deliver this Agreement and to consummate the transactions contemplated herein, and when executed and delivered, this Agreement will constitute the legal, valid, and binding obligations of Purchaser.

ARTICLE SIX
Miscellaneous

6.1. **Notices**. Any notices or other communications between the parties hereto (collectively, "notices") shall be in writing and shall be deemed to have been properly given if delivered by hand or sent by United States registered or certified mail, postage prepaid, addressed to the party for whom intended at the addresses of the parties set forth in the opening paragraph of this Agreement. All notices hereunder delivered by hand shall be deemed effective when given, and all notices hereunder sent by mail shall be deemed effective when duly deposited in any United States post office.

6.2. **Reversion**. Purchaser and seller agree that the subject property **shall revert back** to the City of Piqua if said property is not conveyed by Purchaser to BASIS PIQUA, LLC. within thirty (30) days from the transfer of the subject parcel to Purchaser. Said reversion shall be stated in the deed executed by the Seller to Purchaser; and any note signed by Purchaser will be cancelled upon the reversion of property to the City of Piqua.

6.3. **Entire Agreement; Amendment; Waiver**. This Agreement, together with the Deed, represents the entire agreement and understanding of the parties with respect to the subject matter hereof, and any prior agreement or understandings, whether written or oral, are merged into this Agreement. This Agreement may not be terminated, modified or amended, or any provision hereof waived, in whole or in part, except by a writing signed by the parties

6.4. **Binding Effect.** This Agreement shall be governed solely by and construed in accordance with the laws of the State of Ohio and shall bind and shall inure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and assigns.

6.5. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original and all of which when taken together shall constitute one and the same Agreement.

6.6. Survival. The terms, covenants, and conditions set forth herein shall survive closing.

6.7. Default and Remedies. If either party defaults in any respect on any material obligations under this Agreement, the non-defaulting party may elect to be released from all obligations under this Agreement by canceling this. The non-defaulting party may thereafter proceed against the party in default upon any claim or remedy which the non-defaulting party may have at law or in equity.

In the event that the non-defaulting party elects not to cancel this Agreement, the non-defaulting party may proceed against the party in default for specific performance of this Agreement or any of its terms, in addition to any other claim or remedy which the non-defaulting party may have at law or in equity. In the event that either party pursues specific performance of this Agreement, the pursuit of such remedy shall not constitute a waiver of such party's right to cancel this Agreement at any time and proceed against the defaulting party as otherwise provided herein, or at law or in equity.

6.8. General Provisions. Time is of the essence of all of the terms and conditions of this Agreement. This Agreement shall be governed by the laws of the State of Ohio and shall not be assignable by either party without the written consent of the other.

6.9. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no representations, oral or written, which have not been incorporated herein. All warranties, representations and covenants herein contained shall survive the delivery of the deed executed and delivered pursuant hereto. If such deed and this Agreement are in any respect inconsistent, the provisions of this Agreement shall control.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first above written.

SELLER:

____

Paul Oberdorfer,
City Manager, City of Piqua, Ohio

PURCHASER:

____

Jeanie Bates, President of The Piqua Improvement Corporation

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EXHIBIT A

Exhibit A consists of the following parcels identified from the records of the Auditor of Miami County, Ohio and the City of Piqua as of October 18, 2024:

N44-072956, N44-101818, and N44-101816

Exhibit A is also described by reference to the area outlined and highlighted on the following map: