

**ORDINANCE NO. 21-114**

**AN ORDINANCE APPROVING A SERVICE PAYMENT AGREEMENT WITH COOKE BUILDING, LLC ESTABLISHING THAT COOKE BUILDING, LLC SHALL PAY SERVICE PAYMENTS GENERATED FROM THE DEVELOPMENT OF THE HOGREFE-COOKE PROJECT; AUTHORIZING AND DIRECTING THE CITY MANAGER TO EXECUTE THE SERVICE PAYMENT AGREEMENT; AND DECLARING THAT THIS ORDINANCE SHALL TAKE IMMEDIATE EFFECT IN ACCORDANCE WITH SECTION 14 OF THE CITY CHARTER.**

**WHEREAS**, Cooke Building, LLC (the “Developer”) is pursuing the development of several parcels of land as a mixed-use development (the “Development”) and upon completion the Development would significantly increase the assessed valuation of the parcels listed in Exhibit A to the Cooke Building TIF Ordinance (“TIF Site”); and

**WHEREAS**, Sections 5709.41, 5709.42 and 5709.43 of the Ohio Revised Code provide that the City Commission may declare improvements to parcels of real property located in the City to be a public purpose, thereby exempting those improvements from real property taxation for a period of time; specify improvements, as that term is defined in Revised Code Section 5709.41, to be made to benefit the parcels; provide for the making of service payments in lieu of taxes by the owners thereof; provide for payments to the School District; and establish a tax increment equivalent fund into which such service payments shall be deposited; and

**WHEREAS**, Section 5709.42 of the Ohio Revised Code further authorizes a municipality to require owners of improvements subject to TIF Exemptions to make an annual service payment to the municipality in lieu of taxes (a “Service Payment”), which Service Payment is approximately equivalent to the amount of real property tax that would be payable on the increase in the true value of the parcel of property but for the TIF Exemptions; and

**WHEREAS**, in companion legislation, this City Commission will consider declaring improvements to specific parcels area to be a public purpose, which parcels will be exempted from real estate taxes on the increase in assessed value, and will consider establishing a Tax Increment Equivalent Fund, referred to as the TIF Ordinance; and

**WHEREAS**, the Developer desires to agree, for itself and for each of its successors and assigns as Owners of all or any portion of any of the real property comprising the Project, to pay Service Payments in an amount equal to the amount of real property taxes that would have been paid with respect to the real property comprising the TIF Site had an exemption not been granted by the City and to pay minimum service payments in the event the true value of the TIF Site does not meet certain valuation thresholds; and

**WHEREAS**, the City, the Schools, and the Developer desire that the statutory service payments generated from the Development be distributed in

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accordance with the terms of the Service Payment Agreement to the benefit of the City, the Schools, and the redevelopment of the impacted parcels; and

**WHEREAS**, this Ordinance should be passed as an emergency measure under suspension of the rules in accordance with Section 14 of the City Charter in order to execute the Service Payment Agreement for the immediate preservation of the public peace, property, health and safety; and

**WHEREAS**, in that it is deemed necessary in order to provide for the immediate preservation of the public peace, property, health, and safety of the City of Sandusky, Ohio, and its citizens, and to provide for the efficient daily operation of the Municipal Departments of the City of Sandusky, Ohio, the City Commission of the City of Sandusky, Ohio, finds that an emergency exists regarding the aforesaid, and that it is advisable that this **Ordinance** be declared an emergency measure which will take immediate effect in accordance with Section 14 of the City Charter; and NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF SANDUSKY, OHIO, THAT:

Section 1. This City Commission hereby approves the Service Payment Agreement, a copy of which is on file in the office of the Clerk of the City Commission and attached to this Ordinance, marked Exhibit "1", and specifically incorporated as if fully rewritten herein, together with any revisions or additions as are approved by the Law Director as not being substantially adverse to the City and consistent with the objectives and requirements in carrying out the terms of this Ordinance.

Section 2. This City Commission authorizes and directs the City Manager to execute the Service Payment Agreement relating to the payment of statutory service payments generated from the Project.

Section 3. If any section, phrase, sentence, or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 4. This City Commission finds and determines that all formal actions of this City Commission concerning and relating to the passage of this Ordinance were taken in an open meeting of this City Commission and that all deliberations of this City Commission and of any of its committees that resulted in

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those formal actions were in meetings open to the public in compliance with the law.

Section 5. That for the reasons set forth in the preamble hereto, this Ordinance is hereby declared to be an emergency measure which shall take immediate effect in accordance with Section 14 of the City Charter after its adoption and due authentication by the President and the Clerk of the City Commission of the City of Sandusky, Ohio.



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RICHARD R. BRADY  
PRESIDENT OF THE CITY COMMISSION



ATTEST:

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MCKENZIE E. SPRIGGS  
CLERK OF THE CITY COMMISSION

Passed: July 12, 2021

## SERVICE PAYMENT AGREEMENT

**THIS SERVICE PAYMENT AGREEMENT** (the “Agreement”) is made and entered into as of the \_\_\_\_\_ day of July, 2021, by and among the **CITY OF SANDUSKY, OHIO**, a municipal corporation organized and existing under the constitution and the laws of the State of Ohio and its Charter (the “City”), and **COOKE BUILDING LLC** an Ohio limited liability company (the “Developer”).

### WITNESSETH:

WHEREAS, the Developer is pursuing the development of several parcels of land as a mixed-use development (the “Development”), consisting of an approximately 0.0219-acre site currently identified as 154 – 162 Columbus Ave and as Parcel IDs 56-00527.000, 56-00528.000 and 56-00528.001 and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “TIF Site”); and

WHEREAS, the TIF Site is located within the municipal corporate boundaries of the City, the territorial boundaries of the County of Erie, Ohio (the “County”); and

WHEREAS, upon completion, the Development would significantly increase the assessed valuation of the TIF Site; and

WHEREAS, the Developer, in its capacity as owner of the fee simple interest in the TIF Site, may in the future convey all or any portion of or interest in any of the real property comprising the TIF Site to subsequent owners of all or any portion of or interest in any of the real property comprising the TIF Site (singularly an “Owner” and collectively the “Owners”); and

WHEREAS, pursuant to Ohio Revised Code (“O.R.C.”) Sections 5709.41 through 5709.43 (together with related provisions of the Ohio Revised Code, the “TIF Act”), and Ordinance No. [\_\_\_\_] passed by the Commission of the City (the “Commission”) on July 12, 2021, a copy of which is attached as Exhibit B attached hereto and incorporated herein by this reference (the “TIF Ordinance”), the City has, among other actions: (1) declared 100% of the improvement to the real property (the “Improvement”) included in the TIF Site to be a public purpose and exempt from real property taxation for the Exemption Period (as defined herein) (the “TIF Exemption”); (2) provided for service payments in lieu of taxes (the “Service Payments”), as an obligation running with the land for the Exemption Period (as defined herein) payable with respect to the real property comprising the TIF Site; (3) authorized the use of the Service Payments for such uses by the City as permitted under Ohio law, including, without limitation, payment of the costs of any improvements for urban redevelopment purposes and other purposes described in the TIF Ordinance related to the TIF Site as authorized in O.R.C. Section 5709.41; and (4) determined to enter into this Agreement with the Developer, as initial Owner of the entire TIF Site during the term of construction of the Development, to provide for, among other things, the payment of the Service Payments by the Owners with respect to the TIF Site; and

WHEREAS, pursuant to the TIF Act, the TIF Ordinance, and this Agreement, the Developer desires to agree, for itself and for each of its successors and assigns as Owners of all or any portion of any of the real property comprising the TIF Site, to pay Service Payments in an amount equal to the amount of real property taxes that would have been paid with respect to the real property comprising the TIF Site had the TIF Exemption not been granted by the City under the TIF Act and the TIF Ordinance and applied for and allowed thereunder and in certain circumstances, to pay minimum service payments in the event the true value of the TIF Site does not meet certain valuation thresholds; and

WHEREAS, the parties have entered into a Development Agreement dated July [\_\_\_], 2021 (“Development Agreement”) which, among other things, lays out the agreed upon plan and schedule of development, including restrictions on use of the Development Site; and

WHEREAS, the obligation of the City to provide the statutory service payments generated from the Project (the “Project TIF Revenue”) for the Development in accordance with this Agreement is contingent upon the satisfaction of all of the contingencies with respect to the Development contained in the Development Agreement entered into between parties.

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

**SECTION 1. TAX EXEMPTION; PRIORITY OF EXEMPTIONS.** In accordance with O.R.C. Section 5709.41, and subject to the terms of the Development Agreement, the parties hereby agree that the TIF Exemption is a 100% exemption from real property taxation for the Improvement for a period commencing with the effective date of the TIF Ordinance and ending on the earlier of (i) 30 years after such exemption commenced or (ii) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes (the “Exemption Period”). Each Owner shall make Service Payments in an amount equal to the real property taxes that would have been payable with respect to the Improvement owned by that Owner had an exemption with respect to such Improvement not been applied for by the Owner and allowed under O.R.C. Section 5709.41. Each Service Payment to be made under this Agreement will be made on a semi-annual basis in an amount equal to one-half of the annual property tax amount that would have been payable had the TIF Exemption not been granted. The Service Payments shall be due and payable on each January 15 and July 15 or such other date as the Treasurer of Erie County, Ohio (the “County Treasurer”) determines property taxes are due (such date being hereinafter referred to as a “Service Payment Date”) until expiration or termination of the TIF Exemption.

**SECTION 2. OBLIGATION TO MAKE SERVICE PAYMENTS.** In the event that any Service Payment or any installment thereof, is not paid when due by any Owner on any Service Payment Date, to the extent that the County does not impose a late fee or delinquency charge, the City may impose and collect a late payment charge, payable to the City, in the amount of the charges for late payment of real property taxes, including penalty and interest, which would have been paid pursuant to O.R.C. Section 323.121 on the delinquent amount.

It is intended and agreed that the covenants provided in this Agreement shall be covenants running with the land and that they shall, 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 whether or not this Agreement remains in effect. It is further intended and agreed that this Agreement and the Development Agreement and the covenants therein shall remain in effect for the full period of the TIF Exemption permitted in accordance with the requirements of the Development Agreement, the TIF Act, and the TIF Ordinance enacted pursuant thereto. Each Owner shall only be responsible for making Service Payments that become due and payable during the period of that Owner’s ownership of all or any portion of the TIF Site and only with respect to the portion of the TIF Site owned by the Owner. Upon satisfaction of each Owner’s obligations under this Agreement and termination of the obligations of the Owners to make the Service Payments, the City shall, upon the request of an Owner, execute an instrument in recordable form evidencing such termination and releasing the covenants running with the land set forth in the deed. The parties acknowledge that the provisions of O.R.C. Section 5709.91, which specify that the Service Payments shall be treated in the same manner as taxes for all purposes of the lien described in O.R.C. Section 323.11, including but not limited to, the priority of the lien and the collection of Service Payments, shall apply to this Agreement. The City and each Owner shall perform

such acts as are reasonably necessary or appropriate to effect, claim, preserve and maintain the exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

Except with respect to the agreed upon Minimum Service Payments described in Section 3 of this Agreement, no Owner shall, under any circumstances, be required to pay both real property taxes with respect to any portion of an Improvement and Service Payments for any tax year with respect to that portion of an Improvement, whether pursuant to O.R.C. Section 5709.42, the TIF Ordinance, this Agreement or any other applicable law.

### SECTION 3. MINIMUM VALUATION; MINIMUM SERVICE PAYMENTS

The parties intend that during the term of this Agreement the true value of commercial use real property land and improvements constituting the TIF Site, including the true value of such real property exempted from real property taxes by any tax increment financing exemption applicable to such real property, but excluding the true value of such real property exempted from real property taxes by tax abatement, use exemptions, or other real property exemptions, applicable to such real property, all as determined in the official tax records of the Auditor of the County (the Taxable Value). In addition, the parties intend, and the Owner hereby agrees, that it shall in each year of the TIF Exemption pay a minimum service payment (the "Minimum Service Payment") in the amount necessary in that year in the amount set forth below.

The Owner shall make, in addition to the Service Payments, a Minimum Service Payment on each Service Payment date. Minimum Service Payments shall be payable on each Service Payment Date at the same time as Service Payments are payable in accordance with Section 2 of this Agreement. Minimum Service Payments due hereunder shall constitute minimum service payment obligations under the TIF Act. Each Minimum Service Payment shall be in an amount equal to the amount necessary such that, the Minimum Service Payment, plus the Service Payment, due in each year shall be no less than \$200,000.

It is intended and agreed, and it shall be so provided by each Owner in any future deed conveying the TIF Site or any part of the TIF Site, that the covenants and agreements provided in this Section 3 shall be covenants running with the land and that they, in any event and without regard to technical classification or designation, legal or otherwise, shall be binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by, the City, whether or not such provision is included by the Owner in any succeeding deed to subsequent Owners. It is further intended and agreed that the covenants and agreements provided in this Section 3 shall remain effective only during the term of this Agreement.

### SECTION 4. ADDITIONAL OBLIGATIONS.

A. Should any Owner default hereunder, such Owner shall pay in addition to the Service Payments and Minimum Service Payments such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) incurred by the City to enforce the provisions of this Agreement.

B. Within five (5) business days following the effective date of this Agreement, or the Developer's acquisition of title to the TIF Site, whichever occurs later, the Developer shall, at its sole cost and expense, cause this Agreement to be recorded in the real property records of the County, it being understood and agreed that the lien of this Agreement shall, in accordance with O.R.C. Sections 323.11 and 5709.91, be prior to any mortgage, assignment, lease or other conveyance of any part of or interest in the TIF Site, and prior to any security instrument encumbering all or any part of or interest in the Improvement;

provided, however, that nothing contained in this Agreement shall be construed to permit acceleration of the Service Payments and Minimum Service Payments beyond the current year that such Service Payments and Minimum Service Payments are due.

C. The obligation to perform and observe the agreements on the Owners' parts contained herein shall be binding and enforceable against each and every Owner by the County Treasurer, and shall also, to the extent permitted by law, be enforceable by the City.

D. The obligation of the City to provide the Project TIF Revenue for the Development in accordance with this Agreement is contingent upon the satisfaction of all of the contingencies with respect to the Development contained in the Development Agreement entered into between parties as more particularly provided therein.

**SECTION 5. BINDING NATURE OF OBLIGATIONS; SECURITY FOR PAYMENT.** Anything herein to the contrary notwithstanding, upon the effective date of this Agreement, the Owners' obligation hereunder to pay Service Payments and Minimum Service Payments and to perform and observe any other agreements on their part contained herein, shall be absolute and unconditional and shall be covenants running with the land and shall be binding and enforceable by the City against the Owners, but only to the extent of the respective Owners' obligations and only with respect to its or their interest in the TIF Site and the Improvement, or any part thereof or any interest therein. Each Owner's obligation to pay the Service Payments and Minimum Service Payments shall be secured by a lien on its interest in the TIF Site and the Improvement, as provided by law and described in Section 12. Notwithstanding any provision of this Agreement to the contrary, Developer's and each Owner's liability under this Agreement shall be limited its right, title and interest in the Development. In no event shall Developer, any other Owner, or any of their respective employees, officers, managers, directors, partners, beneficiaries, members, joint venturers, shareholders, owners or affiliates be personally liable for any obligations hereunder.

**SECTION 6. PAYMENT OF TAXES; CONTESTS.** Each Owner shall pay, cause, or require to be paid, as the same become due, all taxes, assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the TIF Site (except as otherwise provided herein) or any personal property or fixtures installed or brought therein or thereon (including, without limiting the generality of the foregoing, and by way of example, any taxes levied against an Owner with respect to the receipts, income or profits from leasing or subleasing space within the Improvement, which, if not paid, may become or be made a lien on all or any portion of the TIF Site).

Notwithstanding the foregoing, and pursuant to the Development Agreement, the Developer or any individual Owner may, at their own expense and in good faith, contest the amount of any property taxes. Developer intends to consider the effect of changes in property values for all affected parties when participating in valuation challenges related to the TIF Site, as either a complainant or a counter-complainant.

**SECTION 7. NOTICES.** All notices, designations, certificates, requests or other communications under this Agreement shall be sufficiently given and shall be deemed given on receipt when personally delivered, or 48 hours after being mailed by registered or certified mail, postage prepaid: if to the City, at 240 Columbus Avenue, Sandusky, OH 44870 Attention: City Manager, with a copy to the Law Director at 240 Columbus Avenue, Sandusky, OH 44870, if to the Developer, at c/o Wickens Herza Panza, Attn: John D. Frankel, 35765 Chester Road, Avon, Ohio 44011, with copies to the Owners, at their address or addresses of record on file in the office of the County Auditor of Erie County, Ohio. The City, the Developer, and any individual Owner may, by notice given under this Agreement, designate any further or different

addresses to which subsequent notices, designations, certificates, requests or other communications shall be sent, and shall provide copies of all such communications to any of the others to all of the others.

SECTION 8. EXEMPTION APPLICATIONS. Promptly upon the execution of this Agreement, the City shall file the required DTE form (or any other applicable or required forms) to evidence the City's application for exemption from real property taxation with respect to the TIF Site pursuant to O.R.C. Section 5709.911(A)(1). The City, the Developer, and any individual Owner shall cooperate with each other, and execute such further documents and provide such further information as are reasonably required in connection with the filing and processing of such applications. The parties hereto intend that such exemption from real property taxation will apply initially on the date on which the TIF Ordinance is effective and shall use due diligence and commercially reasonable efforts to that end. The Developer and any individual Owner shall continuously use due diligence and employ commercially reasonable efforts to keep such exemptions in force, not permitting the same to lapse or be suspended or revoked for any reason within the Developer's or any individual Owner's control.

SECTION 9. EFFECTIVE DATE; DURATION OF AGREEMENT. This Agreement shall become effective only after its execution and delivery by the parties. Unless sooner terminated pursuant to the terms hereof, this Agreement shall expire at the end of the Exemption Period or the termination of the Development Agreement, whichever occurs first. Upon expiration or termination of this Agreement, the City will cause this Agreement to be cancelled of record at the cost of the Owners.

SECTION 10. APPLICATION OF SERVICE PAYMENTS. The Service Payments and Minimum Service Payments shall be made by or on behalf of the Owners to the County Treasurer on or before the applicable Service Payment Dates. Upon receipt of the Service Payments and Minimum Service Payments from the County Treasurer, the City shall deposit the Service Payments and Minimum Service Payments in the TIF Fund established by or designated in the TIF Ordinance; provided, that all such amounts received by the City shall be allocated for the purposes set forth in the TIF Ordinance, including, without limitation (i) payment of the costs of any improvements for urban redevelopment purposes or other purposes provided in the TIF Ordinance related to the TIF Site as authorized in O.R.C. Section 5709.41; or (ii) other authorized uses by the City as permitted under Ohio law.

SECTION 11. REIMBURSEMENT OF DEVELOPER. The City shall pay to the Developer in accordance with the terms of this Agreement and the Development Agreement with respect to the Development for which a written requisition substantially in the form attached as Exhibit C (a "Written Requisition") is submitted to the City, a maximum of \$140,000 per year for the actual costs of such Development, including, but not limited to, the items of "costs of permanent improvements" contained in O.R.C. Section 133.15 (with the costs of the Development collectively referred to herein as the "Costs"). Any City fees not paid by the Developer will be payable out of the TIF Fund before any reimbursement of Developer provided below. Except as otherwise provided herein, the City shall pay \$140,000 of the Project TIF Revenue on deposit in the TIF Fund to or as directed by the Developer within forty-five (45) days of receipt by the City (each, a "Payment Date") until all eligible Costs have been paid in full or the maximum reimbursement of \$4,200,000 has been paid. All payments to the Developer hereunder on each Payment Date shall be made pursuant to written instructions provided by the Developer.

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

At any time of which there exists a Developer default of the Development Agreement, the City, at its option, may, but shall not be obligated to, by written notice to the Developer, cease disbursements of the

proceeds from the TIF Fund until such Developer default has been cured. Furthermore, in the event of a Developer default that extends beyond the applicable cure period in the Development Agreement the City shall have those remedies identified in the Development Agreement.

SECTION 12. DEFAULTS AND REMEDIES. The following shall be events of default under this Agreement:

- (a) the failure of the Developer or any individual Owner to pay no later than the thirtieth calendar day following its due date any Service Payment, Minimum Service Payment, or any installment thereof, due by the Developer or any individual Owner, including any applicable late payment charges;
- (b) the failure of the Developer or any individual Owner to perform or observe any other covenant made by it in or pursuant to this Agreement, which failure shall continue for more than 30 days following written notice thereof by the City.
- (c) the failure by the City to provide the Project TIF Revenue to the Developer or its designee within forty-five (45) days following the deposit of such Project TIF Revenue by the City into the TIF Fund; provided, however, that the Developer has complied with the cost certification requirements of Section 10 hereof.
- (d) the failure of the City to perform or observe any other covenant made by it in or pursuant to this Agreement, which failure shall continue for more than 30 days following written notice thereof by the Developer.

Upon the occurrence and continuation of any event of default, in addition to other rights of enforcement granted hereunder, the City or the Developer shall be entitled to exercise any and all remedies available to it hereunder, including the remedies described in Section 12, or under applicable law. Waiver by the City or the Developer of any event of default shall not be deemed to extend to any subsequent or other event of default under this Agreement. The City and the Developer acknowledge and agree that the timely payment of Project TIF Revenue to the Developer is a material term of this Agreement.

SECTION 13. ENFORCEMENT; FORECLOSURE OF LIEN. The provisions of this Agreement with respect to the obligations of the Developer or any individual Owner may be enforced to the fullest extent permitted by law, by (i) the City, and (ii) the County Treasurer. It is the intention and agreement of the Developer, as an Owner, that this Agreement shall constitute and be deemed to be a lien encumbering and running with the real property comprising the TIF Site to secure the obligations of the Developer and any individual Owners to make Service Payments and make Minimum Service Payments (and, if applicable, pay interest and penalties), which Service Payments and Minimum Service Payments are intended to have the same lien rights as real estate taxes and the same priority in accordance with O.R.C. Sections 323.11 and 5709.91. In furtherance of the foregoing, it is the intention of the Developer, as an Owner, that the City may, upon the occurrence of an event of default set forth in Section 12 hereof, and without limiting any other right or remedy otherwise available to the City, take all such steps as may be legally available to it to foreclose upon such lien pursuant to the procedures and requirements of Ohio law relating to either delinquent real estate taxes or mortgage liens; provided, that nothing contained in this Agreement shall be deemed to authorize any acceleration of Service Payments or Minimum Service Payments due in future years. The provisions of this Agreement shall encumber and run with the real property comprising the TIF Site.

SECTION 14. COUNTERPARTS; CAPTIONS. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and

the same Agreement. Captions have been provided herein for the convenience of the reader and shall not affect the construction of this Agreement.

SECTION 15. SEVERABILITY. In case any section or provision of this Agreement, or any covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, or any application thereof, is held to be illegal or invalid for any reason, or is inoperable at any time, that illegality, invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Agreement or any other covenant, agreement, stipulation, obligation, act or action, or part thereof, made, assumed, entered into or taken under this Agreement, all of which shall be construed and enforced at the time as if the illegal, invalid or inoperable portion were not contained therein.

All illegality, invalidity or inoperability shall not affect any legal, valid and operable section, provision, covenant, agreement, stipulation, obligation, act, action, part or application, all of which shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law from time to time.

SECTION 16. GOVERNING LAW AND CHOICE OF FORUM. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees; the Developer, its employees, contractors, subcontractors and agents; and any individual Owner, its employees, contractors, subcontractors and agents arising out of or relating to this Agreement or its breach will be decided in a state court of competent jurisdiction within the State of Ohio.

SECTION 17. ENTIRE AGREEMENT. This document (with its exhibits) contains the entire agreement between the parties and supersedes any prior discussions, representations, warranties, or agreements between them respecting the subject matter. No changes or amendments shall be made or be binding unless made in writing and signed by each of the parties.

SECTION 18. NO CITY EXPENDITURES IN YEAR OF EXECUTION. Nothing contained in this Agreement shall be construed to require the City to expend funds in connection with the performance of this Agreement in fiscal year 2021.

SECTION 19. ADDITIONAL DOCUMENTS; AMENDMENT. 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 Agreement in compliance with all laws and ordinances controlling this Agreement. Any amendment to this Agreement must be in writing and signed by or on behalf of all parties or their respective permitted successors, assigns, and transferees.

SECTION 20. ASSIGNMENTS. This Agreement shall be binding on the parties hereto and their respective successors and assigns. Except as otherwise discussed below, this Agreement may not be assigned by any party hereto without the written consent of the other party, not to be unreasonably withheld.

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**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed in their respective names by themselves or their duly authorized officers, as applicable, all as of the date hereinbefore written.

**CITY OF SANDUSKY, OHIO**

\_\_\_\_\_  
Eric Wobser, City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Brendan Heil, Director of Law

**COOKE BUILDING LLC**

By:

\_\_\_\_\_

Its:

\_\_\_\_\_

STATE OF OHIO )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 202\_\_, personally appeared before me, a Notary Public in and for the State of Ohio, City of Sandusky, Ohio, by \_\_\_\_\_, known to be the \_\_\_\_\_ of said City, who acknowledged that he is duly authorized to execute this Agreement and who acknowledged the signing and sealing of the said Agreement on behalf of said City to be a voluntary act and deed, and the voluntary act and deed of said 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

My commission expires: \_\_\_\_\_

[NOTARY SEAL]

STATE OF OHIO )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 202\_\_, personally appeared before me, a Notary Public in and for the State of Ohio, by \_\_\_\_\_, \_\_\_\_\_ of COOKE BUILDING LLC, who acknowledged that he is duly authorized to execute this Agreement and who acknowledged the signing and sealing of the said Agreement on behalf of COOKE BUILDING LLC to be a voluntary act and deed, and the voluntary act and deed of COOKE BUILDING LLC. 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

My commission expires: \_\_\_\_\_

[NOTARY SEAL]

This instrument prepared by:  
Robert McCarthy, Esq.  
Bricker & Eckler LLP  
100 South Third Street  
Columbus, Ohio 43215

**EXHIBIT A**

**Legal Description of the TIF Site**

Permanent Parcel Nos: 56-00527.000, 56-00528.000 and 56-00528.001

**EXHIBIT B**

**City TIF Ordinance**

**EXHIBIT C**

**FORM OF WRITTEN REQUISITION**

No.\_\_\_\_

(For Cost of Work)

To: City of Sandusky, Ohio

Attention: \_\_\_\_\_, \_\_\_\_\_

Subject: Written Requisition for Costs of Development pursuant to the terms of the Service Agreement dated \_\_\_\_\_, 2021 (the "Agreement"), by and between the City of Sandusky, Ohio, and COOKE BUILDING LLC (the "*Developer*").

You are hereby requested to approve the amount of \$\_\_\_\_\_ as Cost of the Development for the purposes set forth in Item I attached hereto. Unless otherwise defined herein, all capitalized terms set forth but not defined in this Written Requisition have the respective meanings assigned to them in the Agreement.

The undersigned authorized representative of the Developer does hereby certify on behalf of the Developer that:

I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents relating to the matters covered by this Written Requisition;

The disbursement herein requested is for an obligation properly incurred, is a proper charge as a Cost of the Development (as defined in the Agreement), and has not been the basis of any previous reimbursement request;

The Developer is in material compliance with all provisions and requirements of the Agreement and the Development Agreement;

The reimbursement requested hereby does not include any amount which is being retained under any holdbacks or retainages provided for in any applicable agreement;

The Developer has, or the appropriate parties on the Developer's behalf has, asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to the Development or any part thereof which warranties have vested in the Developer;

The Developer certifies that (i) there is not any attested account claim from any subcontractor, material supplier or laborer who has performed labor or work or has furnished materials for the Development for which reimbursement is requested pursuant to this Written Requisition; or (ii) has provided security discharging any known attested account claims.

EXECUTED this day of \_\_\_\_\_, 202\_.

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title:

ITEM I

Requisition No. \_\_\_\_\_ for the Development

Pay to \_\_\_\_\_

Amount \$ \_\_\_\_\_

For Account of:

Account Number:

Wiring Instructions:

For the purpose of reimbursing the following payments previously paid by the Developer for the Costs of the Development:

Name of Vendor	Service Rendered	Time Period	Cost of Service Rendered
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1.

2.