

## DEVELOPMENT AND TAX INCREMENT FINANCING AGREEMENT

This Development Agreement (the “Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2025 (“Effective Date”), by and between **CITY OF NEW FRANKLIN, OHIO**, a municipal corporation organized and existing under the laws of the State of Ohio with a principal address of 5611 Manchester Road, New Franklin, OH 44319 (“City”) and **ADKINS PLX HOLDINGS, LLC**, an Ohio limited liability company, with a principal address of 4602 Dusty’s Circle, New Franklin, OH 44319 (“Developer” and sometimes collectively with the City, referenced herein as the “Parties” or, either individually as a “Party”).

### *Recitals*

WHEREAS, Developer is the owner of certain real property located within the City, consisting of approximately 162 acres of land, located at 294 W Turkeyfoot Lake Road, Akron, Ohio 44319, and identified in the Summit County Records as Permanent Parcel Number 2601990 (the “Property”); and

WHEREAS, Developer intends to develop a portion of the Property, consisting of 45.559 acres of Permanent Parcel Number 2601990 into The Water 9 on Turkeyfoot Lake Subdivision, (the “Development Property”), which is more fully described on **Exhibit A**; and

WHEREAS, the Development Property is intended to be a residential development consisting of 77 single-family detached homes and 35 single-family attached townhouses, generally consistent with the Preliminary Subdivision Plan approved by the City’s Planning Commission on November 14, 2024, which is attached hereto as **Exhibit B**, (the “Project”); and

WHEREAS, as part of the Project, Developer is expected to construct certain public infrastructure improvements to serve the Development Property, including, but not limited to, streets, curbs, gutters, sidewalks, streetlighting, streetscaping, water, sanitary sewer and stormwater improvements, which are more fully set forth on the attached **Exhibit C-1** as to the proposed Phase 1 stage of the Project (the “Phase 1 Public Improvements”) and **Exhibit C-2** as to the proposed Phase 2 stage of the Project (the “Phase 2 Public Improvements, and collectively with the Phase 1 Public Improvements, the “Public Improvements”); and

WHEREAS, the City desires to assist in the development of the Project and has adopted Ordinance No. 2025-\_\_\_\_ (“The Water 9 on Turkeyfoot Lake Incentive District #1 TIF Ordinance”) and Ordinance No. 2025-\_\_\_\_ (“The Water 9 on Turkeyfoot Lake Incentive District #2 TIF Ordinance”) and, together with The Water 9 on Turkeyfoot Lake Incentive District #1 TIF Ordinance, the “TIF Ordinances”) pursuant to Section 5709.40 of the Ohio Revised Code whereby the City has established two (2) tax increment financing incentive districts (collectively, the “Incentive Districts”) that will exempt real property taxes on 100% of the increased value of the Development Property (the “Improvements”) resulting from the Project on the Development Property and require the Developer and all subsequent owners of all, or any portion of, the Development Property (each, a “Subsequent Owner”) to pay a service payment in lieu of taxes pursuant to Section 5709.42 of the Ohio Revised Code (“Service Payments”), equivalent to the amount of real property taxes exempted, with a portion of said Service Payments being subsequently used by the City to reimburse Developer for a portion of the costs of the Public Improvements, for a period of up to thirty (30) years after the date the first Improvement is realized on the Development Property, or for a period of time necessary to reimburse Developer for said portion of the costs of the Public Improvements, whichever is less, as set forth in this Agreement (the “TIF Financing”); and

WHEREAS, in exchange for the TIF Financing being provided by the City, Developer intends to construct the Public Improvements and to further undertake the Project upon the terms and conditions set forth in this Agreement; and

WHEREAS, it is further necessary for the City and Developer to enter into a compensation agreement (“Compensation Agreement”) with the Board of Education of the Coventry Local School District (“School District”) whereby the City will pay annually to the School District 55% of what the School District would have received if the Improvements had not been exempted from taxation pursuant to the TIF Ordinances during the term of the exemptions; and

WHEREAS, as provided for in the Compensation Agreement, the School District has waived, or will waive, all necessary notice requirements provided for in Sections 5709.40, 5709.82, 5709.83 and 5715.27 of the Ohio Revised Code; and

WHEREAS, pursuant to Section 5709.40(D)(2), the Portage Lakes Joint Vocational School (“Vocational School District”) shall be compensated at the same rate and upon the same terms as the School District pursuant to the Compensation Agreement; and

WHEREAS, the Parties desire to enter into this Agreement to more fully set forth the aforementioned rights, responsibilities and obligations of each Party regarding the agreements and arrangements set forth above, for the mutual benefit of the Parties; and

WHEREAS, the Council of the City has authorized the Mayor to execute this Agreement pursuant to Ordinance No. 2025-\_\_\_\_\_.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises and covenants set forth herein, the City and Developer agree as follows:

**ARTICLE I**  
**DEVELOPMENT OF THE DEVELOPMENT PROPERTY**

1.1 Construction of the Project. Developer will construct the Project on and throughout the Development Property, including the Public Improvements, as each are defined above. The Project shall conform to the development standards of the City, the City’s Planning Commission’s approvals, including any conditions thereto, any reasonable requirements of the City Engineer, and shall be constructed and maintained in a commercially reasonable matter. The City agrees to reasonably cooperate with the planning and construction of the Project, including, but not limited to, timely issuance of all required permits and other approvals for the Project, provided that the same are properly applied for by Developer, and are within the purview of the City.

1.2 Zoning Approvals and Entitlements; Plat. Developer shall submit all applications for all necessary zoning, land use, site plan, architectural design and utility approvals and entitlements from the City necessary to undertake the Project prior to construction of the Project to which the same applies. The City shall reasonably cooperate, to the extent the same is within the purview of the City, in the review, approval and acceptance of such final plat and the review and issue any necessary zoning, land use, site plan, architectural design and utility approvals and entitlements necessary for Developer to undertake the Project. As of the execution of this Agreement, the City’s Planning Commission has approved the Preliminary Plan for the Project, which is attached hereto as **Exhibit B**. Prior to undertaking the Project, Developer shall prepare and submit a final plat of the Project subdividing the Development Property consistent with the approved Preliminary Plan, setting forth the location of the Public Improvements, and

providing for any necessary dedicated right of ways. Developer shall also satisfy any precursor requirements necessary for the approval of the final plat of the Project.

1.3 Authorization, Cooperation, Dedication, and Maintenance of Public Improvements.

(a) Developer shall be solely responsible for the cost of design and construction of all Public Improvements. The City hereby authorizes the design and construction of the Public Improvements by Developer or its representatives for and on behalf of the City, provided, however, that Developer shall enter into and comply with, prior to the construction of the Public Improvements, a separate private developer performance and maintenance agreement with the City setting forth the terms and conditions for the construction, dedication, acceptance and bonding of the portion of the Public Improvements to be dedicated to the City by Developer, and further provided that Developer shall also enter into any separate agreements with the County of Summit, Ohio (the "County") to which the sanitary sewer portion of the Public Improvements will be dedicated by Developer concerning the construction, dedication and bonding of the same. The Developer shall further enter into any separate agreements necessary for the transfer of the water lines to Aqua Ohio, Inc., an Ohio corporation ("Aqua Ohio") upon construction. The City agrees to provide timely and reasonable cooperation in connection with the design and construction of the Public Improvements as requested in writing by the Developer, provided that the same are installed consistent with the terms of the aforementioned private developer performance and maintenance agreement, including, without limitation, completing inspections, providing reasonable approvals, and granting permits, to the extent the same are within the purview of the City.

(b) The Public Improvements shall be constructed in accordance with construction plans approved by the City prior to the commencement of construction for the portions of the Public Improvements that will be dedicated to the City. For the portions of the Public Improvements that will be dedicated to the County or transferred to Aqua Ohio, those portions of the Public Improvements shall be constructed in accordance with the construction plans approved by that entity prior to commencement of construction. Developer shall submit proposed construction plans to the City for Public Improvements, and the City shall either provide written approval of the plans, or written comments detailing any needed changes, which will necessitate revision and resubmission of the construction plans by the Developer. Pursuant to the City's Subdivision Regulations, such construction plans for the Public Improvement shall be in final form at the time of the approval of the final plat for the Project.

(c) The City agrees that it shall accept the portions of the Public Improvements to-be dedicated to the City, when and as constructed and dedicated by Developer, provided that the Public Improvements have been constructed in accordance with the applicable City standards, the aforementioned private developer performance and maintenance agreement, the construction plans approved by the City, and the reasonable satisfaction of the City Engineer, and further provided that Developer provides to the City lien releases from all contractors providing labor and material to construct the Public Improvements. The City shall have no obligation to accept any Public Improvements constructed below, or not in compliance with, appropriate City standards and/or not in conformity with the private developer performance and maintenance agreement and the construction plans approved by the City. The City will reasonably cooperate, to the extent necessary and feasible, with Developer's dedication of the portions of the Public Improvements that will be dedicated to the County or transferred to Aqua Ohio; provided, however, that such cooperation shall be at no cost or expense to the City.

(d) Following the dedication of the Public Improvements, the City will maintain, operate, repair, and replace as necessary the portions of the Public Improvements dedicated to the City in a commercially reasonable manner after dedication to the City. Prior to acceptance of the portions of the Public Improvements dedicated to the City, Developer shall post a maintenance bond in an amount determined by the City, in City's sole discretion, for the initial maintenance of the same, the requirements

of which shall be more fully set forth in the private developer performance and maintenance agreement. The City shall have no obligation to accept the sanitary sewer portion of the Public Improvements that will be dedicated to the County, the water line portion of the Public Improvements that will be transferred to Aqua Ohio, or the on-site stormwater improvements that will be owned and maintained by the Developer and Subsequent Owners of the Development Property, including any homeowners association formed by the Developer or Subsequent Owners.

(e) Prevailing Wages. Developer and the City acknowledge and agree that the Public Improvements are subject to the prevailing wage requirements of R.C. Chapter 4115, and all wages paid to laborers and mechanics employed on the development of the Public Improvements that are dedicated to a public authority shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Improvements, which wages shall be determined in accordance with the requirements of R.C. Chapter 4115. Developer shall comply, and Developer shall require compliance by all contractors developing the Public Improvements, with all applicable requirements of R.C. Chapter 4115 including, without limitation, (i) obtaining from the Ohio Department of Industrial Compliance its determination of the prevailing rates of wages to be paid for all classes of work required for the construction of the Public Improvements; and (ii) ensuring that all subcontractors receive notification of changes in prevailing wage rates as required by R.C. Chapter 4115. The City will designate and appoint a prevailing wage coordinator for the Public Improvements.

(f) Environmental Matters. The Developer shall comply with all environmental laws and regulations of Summit Soil and Water, the Ohio Environmental Protection Agency, the Ohio Department of Natural Resources, and the US Environmental Protection Agency in undertaking the Project, and shall have all necessary permits and approvals from said agencies prior to commencing the Project.

1.4 Certain Limitations. For the avoidance of doubt, the terms of this Agreement and the Compensation Agreement shall only apply to the completion of the Public Improvements. In the event any additional public improvements outside the Public Improvements specifically enumerated in this Agreement are constructed within the Incentive Districts by Developer or any other third party (each, an “Additional Project”), no portion of the Service Payments, as defined below, provided for in this Agreement may be used to fund, finance, reimburse, or otherwise pay the cost of such Additional Project, and any such Additional Project shall require the negotiation and execution of a separate Development Agreement and Compensation Agreement with the City if the Developer or other third Party wishes to use the Service Payments for the Additional Project. Notwithstanding the foregoing, nothing contained herein shall limit the Developer’s ability to use Service Payments generated from additional development of land within the Incentive District beyond the scope of the Project to fund, finance, reimburse or otherwise pay the cost of the Public Improvements provided for in this Agreement.

## **ARTICLE II**

### **TIF FINANCING OF PUBLIC IMPROVEMENTS**

2.1 TIF Exemption. The City has adopted the TIF Ordinances creating two (2) separate Incentive Districts for the Project. In connection with the construction of the Public Improvements by Developer, the City, through the TIF Ordinances and Section 5709.40(C) of the Ohio Revised Code, has established the Incentive Districts to be concurrent with the boundaries of the Development Property, and has granted an exemption of 100% of the Improvements, and any parcels to be subdivided therefrom, resulting from any development of the Development Property occurring after the adoption of the TIF Ordinances for the life of the Incentive Districts. The life of the Incentive Districts commences with the first tax year that begins after the effective date of the TIF Ordinances in which any Improvement attributable to a new structure would first appear on the tax list and duplicate of real and public utility

property for any portion of the Development Property within that Incentive District were it not for the exemption granted by the City, and ends on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require Service Payments in lieu of taxes because the use of the Service Payments set forth in Section 2.5 and 2.6 has been fulfilled (the “Exemption Period”).

2.2 Service Payments. As provided in Section 5709.42 of the Ohio Revised Code, Developer, and all Subsequent Owners are required under this Agreement and under the TIF Ordinances to make annual Service Payments (the “Service Payments”) in lieu of taxes to the Summit County Treasurer on or before the final dates for payment of real property taxes. Each such payment (including any interest and penalties) shall be charged and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvements if not exempt from real property taxation. Any late payments shall be subject to penalty and bear interest at the then-current rates established under R.C. Sections 323.121 and 5703.47, as may be amended from time to time, or any successor provisions, as the same may be amended from time to time. Neither Developer nor any Subsequent Owner shall, under any circumstances, be required with respect to any tax year both to pay Service Payments with respect to an Improvement and to reimburse local taxing authorities for the amount of real property taxes that would have been payable had the Improvement not been exempted from taxation pursuant to the TIF Ordinance.

2.3 Application for Exemption; Maintenance of Exemption. In accordance with R.C. Sections 5715.27 and 5709.911, the Developer shall file a completed application for an exemption from real property taxation (DTE Form 24 or its successor form) with the Summit County Fiscal Officer for each Incentive District. The City and Developer agree to reasonably cooperate with each other for this purpose, and to reasonably cooperate with the Summit County Fiscal Officer, the Ohio Department of Taxation, and other public officials and governmental agencies in the performance by the public officials and governmental agencies of their duties in connection with the TIF Ordinance and this Agreement.

Developer and the City shall each perform such acts as are reasonably necessary or appropriate to effect, claim, reserve and maintain the exemptions from real property taxation granted under the TIF Ordinances and this Agreement, including, without limitation, joining in the execution of all reasonable documentation and providing any necessary certificates required in connection with such exemptions. Additionally, Developer shall cooperate with the City in providing the necessary information for the City to comply with its annual reporting obligations as the same pertain to the TIF Financing set forth in this Agreement.

2.4 Redevelopment Tax Equivalent Fund. Pursuant to the TIF Ordinances, the City will establish The Water 9 on Turkeyfoot Lake Incentive District #1 Tax Increment Equivalent Fund and The Water 9 on Turkeyfoot Lake Incentive District #2 Tax Increment Equivalent Fund (collectively, the “TIF Fund”) as redevelopment tax equivalent funds under Section 5709.43 of the Ohio Revised Code. The TIF Fund shall be maintained in the sole custody of the City. The TIF Fund shall receive all Service Payments, and any other payments with respect to each Improvement that are received by the Summit County Fiscal Officer in connection with the reduction required by ORC Sections 319.302, 321.24, 323.152 and 323.156, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time (the “Property Tax Rollback Payments”, which, for purposes of collection into and distribution from the TIF Fund, shall be included in the “Service Payments”) as provided for in the TIF Ordinances and distributed by the Summit County Fiscal Officer to the City pursuant to Section 5709.43 of the Ohio Revised Code.

The TIF Fund shall remain in existence so long as Service Payments are collected and used for the purposes described in this Agreement and the TIF Ordinances. Then, the TIF Fund shall be dissolved in accordance with Section 5709.43 of the Ohio Revised Code. Further, except as otherwise provided in

this Agreement or the TIF Ordinances, moneys deposited in the TIF Fund shall be used as described in Section 2.5 of this Agreement.

2.5 Use of Service Payments Deposited into the TIF Fund.

(a) The Parties agree that the Service Payments deposited into the TIF Fund shall be used exclusively as described by this Section 2.5.

(b) Reserved.

(c) Pursuant to the Compensation Agreement, a copy of which is attached hereto as **Exhibit D**, and the TIF Ordinances, and in accordance with Section 5709.43 of the Ohio Revised Code, the Service Payments deposited into the TIF Fund shall be used on a semi-annual basis for the following purposes, in the following order of priority:

(i) First, with respect to each year of the Exemption Period, to the School District and the Vocational School District, a portion of the Service Payments received by the City which equals 55% of what the School District and Joint Vocational School District would have received if the Improvements had not been exempted from taxation by the TIF Ordinances, as set forth more fully the Compensation Agreement;

(ii) Second, with respect to each year of the Exemption Period, to the City, a portion of the Service Payments received by the City which equals 55% of what the City would have received if the Improvements had not been exempted from taxation by this Ordinance (the "City Payments"), provided that the City Payments shall be used solely as authorized by Section 5709.40 of the Ohio Revised Code;

(iii) Third, with respect to each year of the Exemption Period, to the Developer, the remaining Service Payments received by the City after payment of the School District Payments and the City Payments (the "Developer Payments"), provided that all such Developer Payments shall be used solely to pay or reimburse costs of the Public Improvements, including the principal and interest on the advancement of such costs by the Developer or any loan or other financing acquired by the Developer in connection with the Public Improvements;

Prior to the distribution of funds provided for in this Sections 2.5(c)(i) to (iii), the School District, Joint Vocational School District, and City shall each receive from the Service Payments deposited into the TIF Fund 100% of the amount collected from any new or renewal levy that is approved by the voters for the benefit of each entity after the date of the adoption of the TIF Ordinances that is in excess of the amount attributable to the corresponding levy at the time of adoption of the TIF Ordinances.

(d) Notwithstanding any other provision of this Agreement, the City's payment obligations under this Agreement shall be limited to the monies actually on deposit or payable to 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.

(e) Should Developer opt to use the Service Payments allocable to it to finance the design and construction of any of the Public Improvements or to reimburse itself for the advancement of any such costs, the City shall reasonably cooperate with Developer in procuring such financing, including executing any agreements or other documents associated with such financing, including (without limitation) cooperative agreements with a port authority if it issues debt with such financing, the assignment of the right to receive the service payments, and the entry of direct-payment arrangements for the City to make debt service payments directly out of the TIF Fund to a trustee or lender. Furthermore, as part of such

financing, the City shall reasonably cooperate to levy minimum service payments pursuant to Section 5709.91 of the Ohio Revised Code, and the filing of any declaration associated with the same.

2.6 Reimbursement from Service Payments; Cap on Reimbursement. The City shall use a portion of the Service Payments deposited into the TIF Fund to reimburse Developer for the costs of designing and constructing the Public Improvements (the “Costs of Public Improvements”). The Costs of Public Improvements shall include any and all costs Developer incurred in order to construct the Public Improvements, including the items of “costs of permanent improvements” set forth in R.C. Section 133.15(B), and as identified on Exhibit E, attached hereto. Such costs include but are not necessarily limited to: (i) cash paid; (ii) interest on any costs paid, back to the date such costs were paid, in an amount not to exceed 8%, unless such costs are financed by Developer, at which point, interest will be paid at the actual interest rate of such financing, which shall not exceed 8% if the bonds issued in such financing are purchased by the Developer, otherwise, interest will be paid at the actual rate of such financing; (iii) review and inspection fees incurred in connection with the construction of the Public Improvements; (iv) other reasonable financing costs approved by the City in writing; (v) professional fees; and (vi) manager, construction management and supervisory fees.

The City and Developer agree that the reimbursement pursuant to this Section 2.6 is offered by the City to Developer in consideration of Developer’s investment in the Public Improvements. In addition, those portions of the Costs of Public Improvements that have not been reimbursed as provided in this Agreement shall accrue interest at the set forth in the previous paragraph until such Costs of Public Improvements have been reimbursed.

From time to time after Developer substantially completes portions of the Public Improvements, Developer shall provide a certified statement to the City setting forth and providing reasonable evidence concerning Costs of Public Improvements substantially in the form attached hereto as Exhibit F and incorporated herein by this reference (each a “Certified Statement,” and collectively, the “Certified Statements”). At least twice each year, subsequent to submission of the first Certified Statement by Developer, contingent upon the City having received funds in the TIF Fund, the City shall pay to Developer, within thirty (30) business days following the City’s receipt of a Certified Statement, the lesser of (i) the Costs of Public Improvements, or part of the Costs of Public Improvements, as shown in the Certified Statements, or (ii) the funds available pursuant to Sections 2.4 and 2.5 of this Agreement for payment of Costs of Public Improvements at that time in the TIF Fund. The City and Developer agree that all Service Payments received into the TIF Fund shall be paid in the order of priority set forth in Section 2.5 of this Agreement.

Should insufficient funds available pursuant to Section 2.5 of this Agreement to pay the Costs of Public Improvements exist in the TIF Fund at the time of submission of a Certified Statement to reimburse Developer for the Costs of Public Improvements, then the City shall maintain a record of such unpaid amounts, and the City shall pay to Developer such amounts within 30 business days after such funds exist in the TIF Fund (after the payment of items of higher priority as outlined in Section 2.5(c) above), provided that such payment shall not exceed the available balance in the TIF Fund. Unpaid amounts shall bear Interest as described above. Interest accrued but not paid following the date of any payment to Developer out of the TIF Fund shall be added to the principal balance of unpaid amounts as of that date. The City shall submit an accounting or record of all amounts paid to Developer out of the TIF Fund along with each payment to Developer, including payments made by the City within 30 business days of the receipt of a Certified Statement and payments made by the City within 30 business days of funds being deposited into the TIF Fund with respect to any unpaid amounts. Funds paid to Developer by the City in accordance with this Agreement shall be applied first by Developer for interest components of the Costs of Public Improvements prior to being used by Developer for non-interest components of the Costs of Public

Improvements. In no event shall the City be liable to Developer in any manner for any unpaid Costs of Public Improvements that are unpaid as a result of insufficient funds in the TIF Fund.

Section 2.7 Priority of Lien. The provisions of Section 5709.91 of the Ohio Revised Code, which specify that Service Payments will be treated in the same manner as taxes for all purposes of the lien described in R.C. Section 323.11, including, but not limited to, the priority of the lien and the collection of Service Payments, apply to this Agreement and to the Development Property.

### **ARTICLE III** **REPRESENTATIONS AND WARRANTIES**

3.1 Representations and Warranties of the City. The City hereby represents and warrants as of the date of delivery of this Agreement that:

(a) It is a municipality and political subdivision duly organized and validly existing under the Constitution, laws of the State of Ohio and its Charter.

(b) It is not in violation of or in conflict with any provision of the laws of the State that would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement, nor will its execution, delivery and performance of this Agreement (a) result in such a violation or conflict or (b) conflict with or result in any breach of any provisions of any other agreement or instrument to which the City is a party or by which it may be bound.

(c) It has and will have full power and authority (a) to execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by it in connection herewith and (b) to enter into, observe and perform the transactions contemplated by this Agreement and those other instruments and documents.

(d) It has or will have duly authorized the execution, delivery, observance and performance of this Agreement.

3.2 Representations and Warranties of the Developer. Developer hereby represents and warrants as of the date of delivery of this Agreement that:

(a) It is a limited liability company duly organized and validly existing under the laws of the State of Ohio.

(b) It is not in violation of or in conflict with any provision of the laws of the State that would impair its ability to observe and perform its covenants, agreements and obligations under this Agreement, nor will its execution, delivery and performance of this Agreement (a) result in such a violation or conflict or (b) conflict with or result in any breach of any provisions of any other agreement or instrument to which it is a party or by which it may be bound.

(c) It has and will have full power and authority (a) to execute, deliver, observe and perform this Agreement and all other instruments and documents executed and delivered by it in connection herewith and (b) to enter into, observe and perform the transactions contemplated by this Agreement and those other instruments and documents.

(d) It has or will have duly authorized the execution, delivery, observance and performance of this Agreement.

3.3 Deposits and Reimbursements. Following the Effective Date, the City may present Developer with paid invoices up to Twenty-Five Thousand Dollars (\$25,000.00; the “Approved Amount”) collectively for the City’s legal fees and economic development consultant fees for services related to the Project, including, but not limited to, this Agreement and TIF Financing, that were rendered by either the legal counsel to the City or the City’s economic development consultant (collectively, the “City Professional Advisers”) prior to the Effective Date of this Agreement, or that will be rendered by the City Professional Advisers during the undertaking of the Project. Developer shall have no further obligation to pay or reimburse the City for the costs of services rendered by the City Professional Advisers, unless otherwise set forth in this Agreement. Said invoices may be delivered to Developer in the entire Approved Amount, or in smaller increments from time to time until the Approved Amount is met. Developer shall pay the same within thirty (30) days of receipt.

#### **ARTICLE IV** **MISCELLANEOUS**

4.1 Breach and Remedy. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement by either Party to this Agreement, or any successor to such Party, such Party (or successor) shall, within thirty (30) days of receipt of written notice from the other, proceed to cure or remedy such default or breach. In case such action is not taken within such thirty (30) day period, or if such cure or remedy cannot be reasonably completed within such thirty (30) day period but is not begun during such period and cured or remedied within a reasonable time, the non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations. Furthermore, in the event of a default by Developer that is not cured or remedied as set forth above, the City may terminate this Agreement and may further take such actions as are necessary to terminate the TIF Financing and/or any other support or assistance to the Project or Developer. All rights and remedies shall be cumulative and shall not be construed to exclude any other remedies allowed at law or in equity.

4.2 Entire Agreement. This Agreement and the agreements attached hereto represent the entire and integrated agreement between the Parties for the subject matter hereof and supersedes all prior negotiations, representations, or agreements in such regard, either written or oral.

4.3 Amendments and Modification. This Agreement may be amended only by a written document signed by both Parties.

4.4 No Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any member, officer or agent of either Party.

4.5 Successor and Assigns. This Agreement shall be binding upon, and inure to the benefit of, all successors and assigns; provided, however, that neither Party may assign its interest in this Agreement without the written consent of the other Party.

4.6 Notices. Any notice, request, consent, approval or demand (collectively, a “Notice”) given or made under this Agreement shall be in writing and shall be given in the following manner: (a) by personal delivery of such Notice; (b) by mailing of such Notice by certified mail, return receipt requested; or (c) by nationally recognized commercial overnight delivery of such Notice for next business day delivery. All Notices shall be delivered to the addresses set forth in this Section. Notice served by certified mail shall be effective on the fifth business day after the date of mailing. Notice served by commercial overnight delivery shall be effective on the next business day following deposit with the overnight delivery company.

If to Developer: Adkins Developer, LLC  
4602 Dusty's Circle  
New Franklin, OH 44319  
Attn: Timothy J. Adkins

with a copy to: Roetzel & Andress, LPA  
222 S. Main St.  
Suite 400  
Akron, OH 44308  
Attn: Jason D. Dodson, Esq.

If to City: City of New Franklin  
5611 Manchester Road  
New Franklin, OH 44319  
Attn: Mayor

with a copy to: City of New Franklin  
5611 Manchester Road  
New Franklin, OH 44319  
Attn: Law Director

Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

4.7 Choice of Law and Forum Selection. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio. Any civil action relating to or arising from this Agreement shall be filed in the Summit County Court of Common Pleas.

4.8 Severability. If any provisions, covenants, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement and, to that end, all provisions, covenants, agreements or portions of this Agreement are declared to be severable.

4.9 Execution. This Agreement may be executed by the parties hereto in one or more counterparts or duplicate signature pages, each of which when so executed and delivered will be an original, with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. Electronic or facsimile signatures shall be treated as original signatures to this Agreement.

4.10 Exhibits. All of the exhibits attached to this Agreement are expressly incorporated herein and made a part hereof. If the Parties, after the execution of this Agreement, mutually agree to amend or modify any of the exhibits attached hereto, then the applicable exhibit attached hereto shall be removed and replaced by the mutually approved amended or modified version of such exhibit.

4.11 Force Majeure. Neither Party will be considered in default in its obligations, if the delay in performance is due to causes beyond its reasonable control and without its fault or negligence. Such

causes include, without limitation, acts of God or of the public enemy, acts of terrorism, acts of the federal or state government, acts or delays of the other party, fires, floods or other casualty, weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen due to any of those causes. It is the intent of the Parties that in the event of the occurrence of any force majeure event, the time or times for performance will be extended based on the delay caused by such force majeure event.

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**IN WITNESS WHEREOF**, the parties hereto have set their hand and seals, and have executed this Agreement on the day and year first above written.

**CITY OF NEW FRANKLIN, OHIO**

\_\_\_\_\_  
Paul Adamson, Mayor

Date: \_\_\_\_\_

**ADKINS PLX HOLDINGS, LLC**

\_\_\_\_\_  
Timothy J. Adkins, Manager

Date: \_\_\_\_\_

DRAFT

## EXHIBIT LIST

- “A” Description of the Development Property
- “B” Preliminary Plan of The Water 9 on Turkeyfoot Lake Subdivision
- “C” Public Improvements Construction as Part of Project
- “D” Compensation Agreement
- “E” Eligible Public Improvement Costs
- “F” Certified Statement

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**Exhibit A**

Description of the Development Property

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**Exhibit B**

Preliminary Plan of The Water 9 on Turkeyfoot Lake Subdivision

See attached.

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**Exhibit C-1**

Phase 1 Public Improvements Constructed in Project

See attached.

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**Exhibit C-2**

Phase 2 Public Improvements Constructed in Project

See attached.

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**Exhibit D**

Compensation Agreement

See attached.

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## Exhibit E

### Eligible Public Improvement Costs

The Public Improvements consist of any “public infrastructure improvement” defined under ORC Section 5709.40(A)(8) (subject to the terms of this Exhibit E) and that directly benefits or serves parcels in the Incentive Districts and specifically include, but are not limited to, the following improvements that will directly benefit or serve parcels in the Incentive Districts and all related costs of those permanent improvements (including, but not limited to, those costs listed in ORC Section 133.15(B)):

- **Roadways.** Construction, reconstruction, extension, opening, improving, widening, grading, draining, curbing or changing of the lines and traffic patterns of roads, highways; streets, intersections, bridges (both roadway and pedestrian), sidewalks, bikeways, medians. and viaducts accessible to and serving the public, and providing signage (including traffic signage and informational/promotional signage), lighting systems, signalization, and traffic controls, and all other appurtenances thereto;
- **Water/Sewer.** Construction, reconstruction or installation of public utility improvements (including any underground municipally owned utilities), public utility water systems (including hydrants, and further including specifically any water system owned by Aqua Ohio) storm and sanitary sewers (including necessary site grading therefore), and all appurtenances thereto;
- **Utilities.** Construction, reconstruction or installation of gas, electric and communication service facilities and all appurtenances thereto;
- **Stormwater.** Construction, reconstruction and installation of stormwater and flood remediation facilities, including facilities on private property when determined to be necessary for public health, safety and welfare;
- **Streetscape/Landscape.** Construction or installation of streetscape and landscape improvements including trees, tree grates, signage, curbs, sidewalks, street and sidewalk lighting, burial of overhead utility lines and related improvements, together with all appurtenances thereto, including, but not limited to streetscape improvements in conjunction with and along the roadway improvements described in “Roadways” above; and
- **Professional Services.** Engineering, consulting, legal, administrative, and other professional services associated with the planning, design, acquisition, construction, and installation of the foregoing improvements.

Notwithstanding the foregoing, none of the following costs shall be reimbursable as “public infrastructure improvements” hereunder:

- Construction of any seawall by Developer;
- Demolition, including demolition on private property when determined to be necessary for public health, safety and welfare;
- Implementation of environmental remediation measures necessary to enable the construction of the Developer Improvements and the construction of public health facilities;
- Private, non-utility water and fire protection systems;
- Scenic fencing, trash receptacles, benches, and newspaper racks; and
- Developer’s costs for the acquisition of the TIF Property.

## Exhibit F

### Form of Certified Statement

To: City of New Franklin, Ohio

Attention: Mayor

Subject: Request for Reimbursement from the TIF Fund for Public Improvements pursuant to the terms of the Amended and Restated Development and Tax Increment Financing Agreement dated \_\_\_\_\_, 2025 (the "Agreement"), by and between the City of New Franklin, Ohio, and Adkins PLX Holdings, LLC (the "Developer").

You are hereby requested to approve the amount of \$\_\_\_\_\_ as Costs of Public Improvements for the purposes set forth in Item I attached hereto. Unless otherwise defined herein, all capitalized terms set forth but not defined in this Certified Statement 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) I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents relating to the matters covered by this Certified Statement;
- (ii) The disbursement herein requested is for an obligation properly incurred, is a proper charge as a cost of the Public Improvements (as defined in the Agreement), and has not been the basis of any previous reimbursement request;
- (iii) The Developer is in material compliance with all provisions and requirements of the Agreement;
- (iv) The reimbursement requested hereby does not include any amount which is being retained under any holdbacks or retainages provided for in any applicable agreement;
- (v) 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 Public Improvements or any part thereof which warranties have vested in the Developer;
- (vi) The Developer is not aware of any mechanic's or materialman's liens (excluding those for which a bond or other form of security has been posted) from any contractors, subcontractors and suppliers (which would not include sellers of machinery and equipment) who have provided services or materials for the Public Improvements for which reimbursement is requested pursuant to this Certified Statement.
- (vii) The Developer has obtained lien releases from any contractors, subcontractors and suppliers who have provided services or materials for the Public Improvements for which reimbursement is requested pursuant to this Certified Statement, and a copy of the same are attached.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

ADKINS PLX HOLDINGS, LLC

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

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

Title: \_\_\_\_\_

APPROVED this \_\_\_\_ day of 20\_\_:

\_\_\_\_\_  
City of New Franklin, Ohio

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ITEM I

Requisition No. \_\_\_\_\_ for Public Improvements

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 Public Improvements:

Name of Vendor	Service Rendered	Time Period	Cost of Service Rendered
1.			
2.			

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