

COUNCIL OF THE TOWN OF RIVERDALE PARK

ORDINANCE 2013-OR-09

Introduced By: CM Alan Thompson

Date Introduced: December 2, 2013

Date Enacted: January 6, 2014

Date Effective: January 26, 2014

An Ordinance concerning

AUTHORIZATION OF REVENUE BONDS,
NOTES OR OTHER SIMILAR INSTRUMENTS TO BE
ISSUED TO FINANCE COSTS OF INFRASTRUCTURE IMPROVEMENTS
FOR THE CALVERT TRACT PROJECT

FOR the purpose of making certain legislative findings and determinations, among others, concerning the public benefit of the matters contemplated by this Ordinance; authorizing and empowering Town of Riverdale Park (the "Town") to issue, sell and deliver pursuant to the Tax Increment Financing Act identified herein (the "Act") its revenue bonds, notes or other similar instruments in one or more series from time to time (the "Bonds") in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000.00) and bearing interest at (i) a fixed rate or rates not to exceed eight percent (8.0%) per annum or (ii) a variable rate or rates not to exceed seven percent (7.0%) per annum initially and twelve percent (12.0%) per annum at any such time as the applicable variable rate is reset, in order to finance the cost of certain infrastructure improvements in or relating to the Calvert Tract Development District identified herein and other costs or reserves permitted under the Act; providing that the Bonds and the interest thereon shall never constitute a general obligation debt of or a pledge of the Town's full faith and credit or taxing powers; providing for the further specification, prescription, determination, provision for or approval by the chief executive of the Town (within the meaning of the Act) by executive order of various other matters, details, documents and procedures in connection with the authorization, issuance, security, sale and payment for any such Bonds; providing for certain certifications, representations, designations, elections and determinations with respect to any Bonds issued with the expectation that interest thereon shall be excludable from gross income for federal income tax purposes; providing that the provisions of this Ordinance shall be liberally construed; providing for a sunset date with respect to this Ordinance; providing that the title of this Ordinance constitutes a fair summary hereof but that the Town may publish a fair summary of this Ordinance in any format that meets Charter requirements; and generally providing for the issuance of the Bonds in accordance with the Act.

RECITALS

WHEREAS, Sections 12-201 through 12-213, inclusive, of the Economic Development Article of the Annotated Code of Maryland (the “Tax Increment Financing Act”), authorize a county or a municipal corporation (referred to in the Tax Increment Financing Act as a “political subdivision”) to establish a “development district” (as such term is used in the Tax Increment Financing Act) and a “special fund” (as such term is used in the Tax Increment Financing Act) into which real property taxes levied by the political subdivision on the “tax increment” (as such term is used in the Tax Increment Financing Act) of properties located in the development district shall be deposited; and

WHEREAS, the Tax Increment Financing Act further provides that a political subdivision or the Revenue Authority of Prince George’s County may issue “bonds” (as such term is used in the Tax Increment Financing Act) in order to finance the new development, redevelopment, revitalization and renovation of an industrial, commercial or residential area by paying for (i) the cost of a variety of activities specified in the Tax Increment Financing Act pertaining to improvements generally subject to characterization as public improvements or infrastructure improvements; (ii) reserves or capitalized interest; (iii) necessary costs of issuing such bonds; and (iv) the principal of and interest on loans, advances or indebtedness incurred by a political subdivision for any of the foregoing purposes; and

WHEREAS, before issuing bonds pursuant to the authority of the Tax Increment Financing Act, the governing body of the political subdivision must designate by resolution a contiguous area within its jurisdiction as a development district, receive from the supervisor of assessments a certification as to the amount of the “original assessable base” or, if applicable, the “adjusted assessable base”, each as defined in the Tax Increment Financing Act, create the required special fund by resolution and pledge that until the bonds have been fully paid or thereafter, the property taxes on real property within the development district shall be divided and allocated as provided in the Tax Increment Financing Act; and

WHEREAS, the Tax Increment Financing Act provides that the bonds shall be payable from that portion of the taxes representing the levy on the tax increment deposited in the special fund, and that the political subdivision may also establish sinking funds and debt service reserve funds, and pledge other assets and revenues toward the payment of the bonds; and

WHEREAS, Calvert Tract LLC, a Maryland limited liability company (the “Owner”), is the current owner of approximately 36 acres of property, more or less, located within the corporate limits of the Town of Riverdale Park (the “Property”), and the Owner or its affiliates intend to develop the Property with retail, commercial, residential and office facilities; and

WHEREAS, the Owner requested that Town of Riverdale Park (the “Town”), as permitted by the Tax Increment Financing Act, participate in the financing of a portion of the costs of certain infrastructure improvements that will support and enhance the developed Property; and

WHEREAS, the infrastructure improvements identified by the Owner as candidates for financing include (to the extent permitted by the Tax Increment Financing Act): (i) acquisition

of property and rights-of-way relating to the CSX Crossing (as defined below); (ii) demolition and clearing associated with preparing the site to construct the CSX Crossing, including any partial demolition of a building located on the site that directly facilitates the construction of the CSX Crossing; (iii) relocation of existing utilities associated with the construction of the CSX Crossing; (iv) construction and improvement of the east and west approaches for the CSX Crossing, including grading, retaining walls, subgrading and paving, lighting, signage and marking; (v) construction of the CSX Crossing; (vi) extension of certain roads to and from the development district associated with the CSX Crossing; (vii) landscaping and reforestation associated with the foregoing improvements that directly facilitate the construction of the CSX Crossing and the approaches to the CSX Crossing; and (viii) project design and other soft project costs relating to the CSX Crossing; and

WHEREAS, the “CSX Crossing” consists of a bridge over the CSX railroad tracks bordering upon or located on the Property, which bridge will provide vehicular, bike and pedestrian access between the Property and surrounding areas; and

WHEREAS, pursuant to Resolution 2013-R-11, adopted by the Town Council of the Town of Riverdale Park (the “Council”) on April 1, 2013 and effective on April 1, 2013 (the “Designation Resolution”), the Town designated the Property and all adjoining roads, highways, alleys, rights of way and other similar property in order to form a contiguous area as a “development district” to be known as the “Calvert Tract Development District” (the “Development District”) for purposes of the Tax Increment Financing Act, and the geographic area of the Development District is more particularly described on Exhibit A to the Designation Resolution; and

WHEREAS, as described in the Designation Resolution, the Owner had requested that the Town participate in the funding of the identified infrastructure improvements either by (i) issuing its bonds pursuant to the authority of the Tax Increment Financing Act or (ii) pledging its incremental tax revenues received from properties in the Development District to secure bonds issued by Prince George’s County, Maryland (the “County”) or the Revenue Authority of Prince George’s County pursuant to the authority of the Tax Increment Financing Act; and

WHEREAS, as further described in the Designation Resolution, the Owner had also discussed with the County the possibility of the County serving as the issuer of “bonds” (as such term is used in Sections 21-501 through 21-523, inclusive, of the Local Government Article of the Annotated Code of Maryland (previously codified as Section 9-1301 of Article 24 of the Annotated Code of Maryland) and in Section 10-269 of The Prince George’s County Code (collectively, the “Special Taxing District Acts”) in order to participate in the funding of the identified infrastructure improvements; and

WHEREAS, the County has determined to participate in the funding of the contemplated infrastructure improvements by issuing bonds pursuant to the authority of the Special Taxing District Acts rather than by (i) being the issuer (or the Revenue Authority of Prince George’s County being the issuer) of bonds pursuant to the authority of the Tax Increment Financing Act or (ii) pledging its incremental tax revenues received from properties in the Development District to secure bonds issued by the Town pursuant to the authority of the Tax Increment Financing Act; and

WHEREAS, accordingly, the Owner has requested that the Town agree to serve as the issuer of bonds pursuant to the authority of the Tax Increment Financing Act; and

WHEREAS, pursuant to the Designation Resolution, the Town established the special fund required by the Tax Increment Financing Act, which is designated as the "Calvert Tract Development District Tax Increment Fund" (the "Tax Increment Fund"), and determined certain other matters with respect to the Tax Increment Fund as required by the Tax Increment Financing Act; and

WHEREAS, pursuant to Section 12-204 of the Tax Increment Financing Act, the Town may implement its authority to issue bonds for the purpose of financing the costs of infrastructure improvements benefiting the Development District and certain related costs authorized by the Tax Increment Financing Act, by passing an ordinance which, among other matters, describes the proposed undertaking and states that it has complied with certain conditions precedent to the issuance of the bonds, specifies the maximum principal amount of the bonds to be issued, and specifies the maximum rate or rates of interest the bonds are to bear; and

WHEREAS, the Owner has requested that the Council pass this Ordinance authorizing the issuance of bonds pursuant to the Tax Increment Financing Act to finance a portion of the costs associated with the CSX Crossing and to satisfy certain Calvert Tract Project approval requirements; and

WHEREAS, by passage of this Ordinance, the Town desires to provide for the issuance of its revenue bonds, notes or other similar instruments in one or more series from time to time in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000.00) (collectively, the "Bonds") in order to finance the cost (within the meaning of the Tax Increment Financing Act) of infrastructure improvements benefiting the Development District and related financing costs or costs of issuing the Bonds; and

WHEREAS, in order to provide for the payment of the principal of and interest on the Bonds, pursuant to the Designation Resolution, the Town has pledged that the portion of the property taxes on real property located within the Development District representing the levy on the Tax Increment (as defined in the Designation Resolution) shall be paid into the Tax Increment Fund when collected and applied in accordance with Section 7 of the Designation Resolution and Section 12-209 of the Tax Increment Financing Act; and

WHEREAS, pursuant to Section 12-204(f) of the Tax Increment Financing Act, this Ordinance and any other ordinance, resolution or executive order passed, adopted or issued under such Section may not be subject to referendum by reason of any other State of Maryland or local law.

SECTION 1: DEFINITIONS; RULES OF CONSTRUCTION. BE IT ENACTED BY THE COUNCIL OF THE TOWN OF RIVERDALE PARK that:

(a) The Recitals to this Ordinance are deemed a substantive part of this Ordinance and incorporated by reference herein.

(b) Capitalized terms used in the Recitals to this Ordinance and not otherwise defined in the Sections of this Ordinance shall have the meanings given to such terms in the Recitals.

(c) Certain other capitalized terms used in this Ordinance are defined in specific Sections of this Ordinance and shall have the meanings given to such capitalized terms in such Sections.

(d) References in this Ordinance (i) to provisions of the Annotated Code of Maryland, The Prince George's County Code, or the Charter or the Town Code (each as defined in subsection (g) below), including to the Tax Increment Financing Act, shall be to such provisions, as replaced, supplemented or amended from time to time, and (ii) to terms also defined in the Tax Increment Financing Act or the Special Taxing District Acts are to be construed in accordance with the provisions of such respective Acts, and in the event of any inconsistency between such terms as used in this Ordinance and such Acts, or any of such Acts, the provisions of the applicable Act or Acts shall control.

(e) References in this Ordinance to "infrastructure improvements" are intended to include the activities relating to improvements generally characterized as infrastructure improvements or public improvements to the costs of which proceeds of Bonds may be applied in accordance with the provisions of the Tax Increment Financing Act.

(f) References in this Ordinance to "finance" or "financing" are intended to include "reimburse", "reimbursing", "refinance" or "refinancing", as applicable.

(g) References in this Ordinance to any Town official by title shall be deemed to refer (i) to any official authorized under the Charter of the Town of Riverdale Park (the "Charter") or other applicable law to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter or other applicable law, (iii) to any person who serves in a "Deputy" or "Assistant" capacity as such an official, provided that the applicable responsibilities, rights or duties referred to herein have been delegated to such deputy or assistant in accordance with applicable law or authority, and/or (iv) to the extent an identified official commonly uses another title not provided for in the Charter or the code of Town ordinances (the "Town Code"), the official, however known, who is charged under the Charter, the Town Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein.

SECTION 2: FINDINGS AND DETERMINATIONS. AND BE IT FURTHER ENACTED that:

(a) The designation of the Development District provided for in the Designation Resolution as a development district within the meaning of the Tax Increment Financing Act, and the issuance by the Town from time to time of one or more series of the Bonds pursuant to the Tax Increment Financing Act in order to finance costs and activities permitted by the Tax Increment Financing Act relating to the Development District, will serve the public purposes of providing infrastructure improvements permitted by the Tax Increment Financing Act, directly and indirectly enhancing the taxable base of the Town, encouraging the development of residential areas, commerce and industry within the Town, increasing the general health, welfare and safety of the residents of the Town and increasing employment within the Town through the provision of the contemplated infrastructure improvements within or, to the extent permitted by the Tax Increment Financing Act, outside the Development District.

(b) Any Bonds issued by the Town pursuant to the authority of the Tax Increment Financing Act to finance the costs of infrastructure improvements within or, to the extent permitted by the Tax Increment Financing Act, outside the Development District, shall be a special obligation of the Town and may not constitute a general obligation debt of the Town, a pledge of the Town's full faith and credit or taxing power, or a pledge of any other assets or revenues of the Town otherwise permitted to be pledged for such purpose in accordance with the provisions of the Tax Increment Financing Act, and the Town shall not be obligated to pay debt service on such Bonds except from moneys required to be deposited into the Tax Increment Fund.

(c) The infrastructure improvements proposed to be financed from Bond proceeds include, but are not limited to (i) acquisition of property and rights-of-way relating to the CSX Crossing; (ii) demolition and clearing associated with preparing the site to construct the CSX Crossing, including any partial demolition of a building located on the site that directly facilitates the construction of the CSX Crossing; (iii) relocation of existing utilities associated with the construction of the CSX Crossing; (iv) construction and improvement of the east and west approaches for the CSX Crossing, including grading, retaining walls, subgrading and paving, lighting, signage and marking; (v) construction of the CSX Crossing; (vi) extension of certain roads to and from the development district associated with the CSX Crossing; (vii) landscaping and reforestation associated with the foregoing improvements that directly facilitate the construction of the CSX Crossing and the approaches to the CSX Crossing; and (viii) project design and other soft project costs relating to the CSX Crossing; (collectively, the "Improvements"). The specific Bond-financed Improvements shall be identified or provided for in one or more development or other agreements as provided for in Section 4(a)(xvi) hereof.

(d) The Improvements, in addition to providing general public benefits to the Town and its citizens, specifically benefit the properties located in the Development District by providing needed infrastructure improvements for the use of the general public and residents of the Town and businesses located or to be located in the Development District and their visitors and invitees.

(e) By the adoption of the Designation Resolution, the Town took all necessary action contemplated by the Tax Increment Financing Act to provide for the segregation and deposit in the Tax Increment Fund of that portion of the Town's taxes representing the levy on the Tax Increment of properties located in the Development District, and by this Ordinance the Town hereby reiterates its pledge and covenants to so levy, collect and segregate such revenues for the benefit of the holders of the Bonds.

(f) By the adoption of the Designation Resolution and enactment of this Ordinance, the Council has complied with the provisions of the Tax Increment Financing Act, including but not limited to Sections 12-203, 12-204, 12-208(c) and 12-208(d) of the Tax Increment Financing Act, requiring certain actions to be performed prior to the issuance of any Bonds.

SECTION 3: AUTHORIZED AMOUNT AND NATURE OF BONDS. AND BE IT FURTHER ENACTED that:

(a) The issuance and sale or delivery by the Town of the Bonds in one or more series from time to time in an aggregate principal amount not to exceed Four Million Dollars (\$4,000,000.00), and bearing interest at (i) the maximum fixed rate or rates of interest not to exceed eight percent (8.0%) per annum or (ii) initially not to exceed seven percent (7.0%) per annum if issued as variable rate bonds and not to exceed twelve percent (12.0%) per annum when subject to reset, all as may be determined pursuant to this Ordinance, is hereby authorized and approved.

(b) The Bonds are authorized hereby to be executed by the manual or facsimile signature of the Mayor of the Town (the "Mayor") and the seal of the Town shall be affixed to the Bonds and attested by the Town Administrator of the Town (the "Town Administrator") or other similar administrative officer of the Town.

(c) As provided by the Tax Increment Financing Act, any series of the Bonds shall mature not later than forty (40) years from the date of issuance.

(d) The Bonds shall not be an indebtedness of the Town for which the Town is obligated to levy or pledge, or has levied or pledged, ad valorem taxes other than the real property taxes representing the levy on the tax increment of properties located in the Development District. The Bonds shall be special obligations of the Town and will not constitute a general obligation debt of the Town or a pledge of the Town's full faith and credit or taxing power. The only funds the Town will be obligated to use to make payment on the Bonds will be those that result from real property taxes levied by the Town on the tax increment of properties located in the Development District.

SECTION 4: AUTHORITY OF CHIEF EXECUTIVE TO DETERMINE CERTAIN MATTERS RELATING TO THE BONDS. AND BE IT FURTHER ENACTED that:

(a) Prior to the sale, issuance and delivery of any series of the Bonds, the Mayor or, to the extent another Town official serves in the capacity of the "chief executive" of the Town

within the meaning of the Tax Increment Financing Act (in either such case, the “Chief Executive”), by one or more executive orders issued after consultation with the Council’s Finance Committee and the financial advisor to the Town, is hereby authorized, empowered and directed to specify, prescribe, determine, provide for, or approve, for the purposes and within the limitations of the Tax Increment Financing Act and this Ordinance, all matters, details, forms, documents, and procedures pertaining to the sale, security, issuance, delivery, and payment of or for such series of the Bonds, including, without limitation, the following (references in the following clauses (i) – (xviii) to the Bonds are deemed to refer to any series of the Bonds):

- (i) The actual principal amount of the Bonds to be issued;
- (ii) The actual rate or rates of interest for the Bonds or the method by which the Bonds shall bear interest at a variable rate or by which any such initially determined rate shall be subject to reset, and any limitations thereon;
- (iii) The manner of sale of the Bonds, which may be at competitive or negotiated sale (including by private placement);
- (iv) The manner in which and the times and places that the interest on the Bonds is to be paid;
- (v) The time or times that the Bonds may be executed, issued and delivered;
- (vi) The form of the Bonds and the denominations in which the Bonds may be issued;
- (vii) The manner in which and the times and places at which the principal of and interest on the Bonds is to be paid, within the limitations set forth in the Tax Increment Financing Act and this Ordinance;
- (viii) Provisions pursuant to which any or all of the Bonds may be called for redemption prior to their stated maturity dates;
- (ix) Provisions for obtaining insurance for the Bonds or for the issuance of a guaranty, letter or credit, line of credit, or similar credit support for the Bonds;
- (x) The form and contents of, and provisions for the execution and delivery of, such financing or other documents that are not otherwise specifically identified in this Ordinance or the Designation Resolution, and any amendments, modifications or supplements thereto, as the Chief Executive shall deem necessary or desirable to evidence, secure or effectuate the sale, issuance and delivery of the Bonds, including, without limitation, any trust indenture or trust agreement, any financing agreement, any funding or similar agreement, any bond purchase agreement, agreements with consultants to or agents of the Town with respect to the Development District or the Bonds, including, without limitation, administrative services agreements, fee agreements, funding agreements, investment agreements, security agreements, assignments, guarantees or escrow agreements;

(xi) The creation of security for the Bonds and provision for the administration of the Bonds including, without limitation, the appointment of such trustees, escrow agents, fiscal agents, administrators of the Development District, paying agents, registrars, rebate monitors or other agents as the Chief Executive shall deem necessary or desirable to effectuate the transactions authorized hereby;

(xii) Provisions for the preparation and distribution of both a preliminary and a final official statement, placement memorandum, offering circular or other disclosure document in connection with the sale of the Bonds, if such preliminary official statement and final official statement, placement memorandum, offering circular or other disclosure document is determined to be necessary or desirable for the sale of the Bonds;

(xiii) Details relating to the manner of sale or delivery of the Bonds, including, without limitation (i) for a competitive sale, the date of sale, the form of notice of sale, the manner of dissemination or publication of the notice of sale or a summary thereof, and the bid parameters, (ii) for a negotiated sale, the identity of the underwriter or placement agent for the Bonds, if any, or the purchaser or purchasers of the Bonds, and the form and contents of, and provisions for the execution and delivery of, any contract or contracts for the purchase and sale of the Bonds (or any portion thereof), and (iii) for a private placement with the Owner or one or more of its affiliates;

(xiv) To the extent that other obligated persons with respect to the Bonds have not assured compliance with, or to the extent that the offering of the Bonds is not exempt from the requirements of, Rule 15c2-12 of the United States Securities and Exchange Commission, the determination of the form and contents of any written agreement or contract required by law or to the extent the same is determined to be necessary or desirable even if not required by law, for the benefit of the holders of the Bonds under which agreement or contract the Town will undertake to provide annual financial information, audited financial statements, event notices, and other information to the extent required by such Rule or such agreement or contract;

(xv) The negotiation, preparation, execution and delivery of any development agreements or use agreements with the owners of any portion of the property located within the Development District and/or their developers, contractors or agents and/or any other applicable governmental entities or agencies regarding the use and application of proceeds of the Bonds or the use or ownership of properties located within the Development District or outside the Development District if benefited by the Improvements or the use or ownership of the Improvements, and any agreements, documents or instruments necessary or desirable to provide for the transfer of ownership (by whatever means appropriate, including, without limitation, by deed, declaration, easement, right-of-way, plat or subdivision document) of the Improvements to the Town or any other governmental agency or public entity if required by the Chief Executive or in order to ensure that the interest payable on any such Bonds shall remain exempt from gross income for federal income tax purposes, if applicable.

(xvi) The specific Improvements and other permitted costs and expenses permitted by the Tax Increment Financing Act to be financed from proceeds of the Bonds or the

mechanics for determining the same, which may include any or all of the Improvements referenced in Section 1 hereof and/or other infrastructure improvements authorized by the Tax Increment Financing Act;

(xvii) Any matters contemplated by the Tax Increment Financing Act relating to application of the proceeds of the Bonds, including, without limitation, the establishment and application of sinking funds and reserve funds and provision for any payment of capitalized interest on the Bonds; and

(xviii) The determination of, or the provision for, such other matters in connection with the authorization, issuance, execution, sale, delivery, and payment of the Bonds, the security for the Bonds, and the consummation of the transactions contemplated by this Ordinance as may be deemed appropriate by the Chief Executive, including, without limitation, establishing procedures for the execution, acknowledgement, sealing and delivery of such other and further agreements, documents and instruments, and the authorization of the officials of the Town to take any and all actions, as are or may be necessary or appropriate to consummate the transactions contemplated by this Ordinance in accordance with the Tax Increment Financing Act and this Ordinance.

(b) The Council expressly authorizes any series of the Bonds (i) to be issued as a single bond, (ii) to be issued in draw-down form, (iii) to be issued so that Bonds of such series are delivered as funds are advanced, (iii) to be sold or delivered by private placement directly or through a placement agent to an initial purchaser or purchasers, and/or (iv) to contain (and for any related agreements, documents or instruments pursuant to which such series of Bonds is sold, issued or delivered to contain) provisions for the conversion, remarketing and/or reoffering of Bonds of such series (including provisions for partial and/or multiple conversions, remarketings and/or reofferings), and the authority delegated to the Chief Executive to determine matters relating to any series of the Bonds pursuant to subsection (a) of this Section 4 by executive order is hereby expressly declared to include authority to determine by executive order any of the matters referenced in this subsection (b) with respect to any such series of the Bonds, and the Chief Executive's authority to determine by executive order matters relating to any such series of the Bonds is hereby expressly declared to include (without limitation) authority to approve any amendments, modifications or supplements to any agreements, documents or instruments initially entered into in connection with the initial delivery of a series of the Bonds upon any conversion, remarketing and/or reoffering (in whole or in part) thereof.

(c) Any such matters specified, prescribed, determined, provided for or approved by the Chief Executive, by executive order, after consultation with the Council's Finance Committee and the financial advisor to the Town in accordance with this Section 4, shall be so undertaken by the Chief Executive with the advice of bond counsel to the Town and the Town Attorney, and the Chief Executive's execution and delivery of any such executive order shall constitute conclusive evidence of the Chief Executive's approval thereof and that such matters have been so determined after consultation with the Council's Finance Committee and the financial advisor to the Town and with the advice of bond counsel to the Town and the Town Attorney.

SECTION 5: FURTHER AUTHORITY OF THE CHIEF EXECUTIVE. AND BE IT FURTHER ENACTED that the Chief Executive, on behalf of the Town, by one or more executive orders, is hereby authorized to condition the issuance of any series of the Bonds upon the execution, delivery and recording, as applicable, by the Town, any of then-current owners of property located in the Development District, the developers of property within the Development District or other appropriate parties of any declaration of covenants, any development agreements, construction agreements, use agreements, memoranda of understanding or agreements, documents or instruments contemplated by Section 4(a)(xv) hereof, any notification to a governmental unit having jurisdiction over any Improvements located outside the Town, or any other similar documents, instruments or certificates reasonably related to the transactions contemplated by this Ordinance. The Chief Executive, on behalf of the Town, after consultation with the Council's Finance Committee and the financial advisor to the Town and with the advice of bond counsel to the Town and the Town Attorney, is hereby authorized and empowered to prepare or cause to be prepared, negotiate or cause to be negotiated and execute and deliver any such documents, instruments or certificates to which the Town is a party, and the same shall contain such terms, agreements and conditions and be in such form as the Chief Executive may approve, and the execution and delivery of the same by the Chief Executive shall constitute conclusive evidence of the Chief Executive's approval thereof and that such approval has been made after consultation with the Council's Finance Committee and the financial advisor to the Town and with the advice of bond counsel to the Town and the Town Attorney.

SECTION 6: CERTIFICATIONS AS TO TAX MATTERS. AND BE IT FURTHER ENACTED that:

(a) Any two or more of the Mayor, the Town Administrator and, to the extent the Town appoints a Director of Finance, Treasurer or similar finance official (the "Finance Official"), any such Finance Official (or any other Town official or officials designated by the Chief Executive pursuant to an executive order contemplated in Section 4 above), acting in concert on behalf of the Town, and provided that such actions are within the bounds of their authority, are hereby authorized to prepare or cause to be prepared, negotiate or cause to be negotiated, execute and deliver a tax and section 148 certificate or similar certificate or agreement as to tax and arbitrage matters with respect to any series of Bonds the interest on which is excludable from gross income for federal income tax purposes, including upon any conversion, remarketing or reoffering of a series of the Bonds (the "Tax Certificate"). The Tax Certificate shall contain such terms, agreements and conditions (and reflect, if applicable, any determinations provided for in any executive order executed and delivered pursuant to Section 4 above) and be in such form as such officials shall approve after consultation with bond counsel to the Town, and the execution of the Tax Certificate by such officials shall constitute conclusive evidence of their approval with respect thereto and that such approval has been made after consultation with bond counsel to the Town.

(b) The Town shall set forth in the Tax Certificate its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the applicable series of the Bonds or of any monies, securities or other obligations to the credit of any account of the Town which may be deemed to be proceeds of such series of the Bonds pursuant to the Internal Revenue Code of 1986, as amended (the "Tax Code"), or the income tax regulations promulgated

thereunder (the “Treasury Regulations”) (collectively, the “Bond Proceeds”). The Town covenants with the registered owners of the Bonds of any such series that the facts, estimates and circumstances set forth in the Tax Certificate will be based on the Town’s reasonable expectations on the date of issuance of such series of the Bonds and will be, to the best of the certifying officials’ knowledge, true and correct as of that date.

(c) The Town covenants with the registered owners of any such series of the Bonds that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Bonds of such series to be “arbitrage bonds” within the meaning of the Tax Code and the Treasury Regulations, and that it will comply with those provisions of the Tax Code and the Treasury Regulations as may be applicable to the Bonds of such series on their date of issuance and which may subsequently lawfully be made applicable to the Bonds of such series as long as any applicable Bond remains outstanding and unpaid.

(d) The Town specifically covenants that it will comply with the provisions of the Tax Code and the Treasury Regulations applicable to any such series of the Bonds, including, without limitation, compliance with provisions regarding the timing of the expenditure of the proceeds of the Bonds, the use of such proceeds and the facilities financed with such proceeds, the restriction of investment yields, the filing of information with the Internal Revenue Service, and the rebate of certain earnings resulting from the investment of the proceeds of the Bonds or payments in lieu thereof. The Town further covenants that it shall make such use of the proceeds of the Bonds of such series, regulate the investment of the proceeds thereof and take such other and further actions as may be required to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds of such series. All officials, officers, employees and agents of the Town are hereby authorized and directed to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bonds of such series as may be necessary or appropriate.

(e) In connection with their execution and delivery of the Tax Certificate, the authorized officials identified in this Section 6 are hereby authorized and empowered, on behalf of the Town, to make any designations, elections, determinations or filings on behalf of the Town provided for in or permitted by the Tax Code and the Treasury Regulations and to reflect the same in the Tax Certificate and/or the IRS Form 8038-G filed in connection with the issuance of the Bonds of any series or any other documentation deemed appropriate by bond counsel to the Town. The Council hereby recognizes that the Form 8038-G will be signed by only one such official.

(f) Notwithstanding the foregoing, the provisions of this Section 6 shall apply only to any series of Bonds that is issued with the expectation that interest on the Bonds of such series shall be excludable from gross income for purposes of federal income taxation.

SECTION 7: ADDITIONAL AUTHORIZED DOCUMENTATION AND ACTIONS. AND BE IT FURTHER ENACTED that the Mayor, the Town Administrator and the Finance Official, acting individually or in concert as appropriate (in any such case the “Authorized Representative”), and provided that such actions are within the bounds of their authority, are authorized and directed to take any and all actions and to execute, attest, affix the Town’s seal to and deliver, and to file and record in any appropriate public offices (if applicable) all documents, instruments, certifications, forms (including but not limited to, appropriate IRS forms in respect to the Bonds), financing statements, letters of instructions, written requests, contracts,

agreements and other papers customarily delivered in connection with the issuance of obligations in the nature of the Bonds, whether or not herein mentioned and not otherwise provided for herein or in the Designation Resolution, as may be necessary or convenient to evidence the approvals of the Town provided for in this Ordinance, to invest the proceeds of the Bonds or moneys on deposit in the Tax Increment Fund (in all such cases, in accordance with the provisions of applicable Maryland and federal law), to facilitate the issuance of any series of the Bonds and to consummate the transactions contemplated in this Ordinance or in any of the documents herein authorized and approved.

SECTION 8: LIBERAL CONSTRUCTION OF ORDINANCE. AND BE IT FURTHER ENACTED that the provisions of this Ordinance shall be liberally construed in order to effectuate and carry out the purposes of and the activities authorized by the Tax Increment Financing Act and the matters contemplated by this Ordinance.

SECTION 9: SUNSET DATE. AND BE IT FURTHER ENACTED that in the event no Bonds are issued pursuant to the Tax Increment Financing Act to finance the costs of the Improvements with respect to the Development District and other costs and expenses permitted under the Tax Increment Financing Act on or before March 31, 2017, this Ordinance shall be automatically revoked without further action by the Council and shall be considered terminated, null and void; provided that, the Council may take such actions as may be necessary in accordance with the Tax Increment Financing Act to provide for the expenditure or transfer of any moneys then on deposit in the Tax Increment Fund subsequent to such date.

SECTION 10: TITLE CONSTITUTES A FAIR SUMMARY. AND BE IT FURTHER ENACTED that the title of this Ordinance is deemed to be a fair summary of this Ordinance for publication and all other purposes; provided that, the Town may publish a fair summary of this Ordinance in any other format that meets the requirements of the Charter.

SECTION 11: SEVERABILITY PROVISIONS. AND BE IT FURTHER ENACTED that the provisions of this Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held or determined to be illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the intent of the Council that this Ordinance would have been passed if such illegal, invalid, unconstitutional or inapplicable provision, sentence, clause, section or part had not been included herein, and if the person or circumstances to which this Ordinance or any part hereof are inapplicable had been specifically exempted herefrom.

SECTION 12: EFFECTIVENESS OF ORDINANCE. AND BE IT FURTHER ENACTED that this Ordinance shall become effective at the expiration of twenty (20) calendar days following passage by the Council. Notwithstanding the provisions of Section 211 of the Charter, pursuant to Section 12-204(f) of the Tax Increment Financing Act, this Ordinance is not subject to referendum.

ATTEST:

COUNCIL OF THE TOWN OF
RIVERDALE PARK



Sara Imhulse, Town Administrator



Vernon S. Archer, Mayor

EXPLANATION:

Underlining indicates amendments to Ordinance as introduced.

~~Strike Out~~ indicates matter stricken by amendment from Ordinance as introduced.