

It was moved by Robert Carbonara and seconded by Lwann Snyder that the following resolution be adopted:

RESOLUTION NO. 2026-[01]

A RESOLUTION (I) APPROVING THE EXECUTION AND DELIVERY OF AN INDEMNIFICATION AGREEMENT; (II) APPROVING THE ISSUANCE OF TEMPORARY OHIO SALES AND USE TAX EXEMPTION CERTIFICATES FOR THE PURCHASE OF BUILDING AND CONSTRUCTION MATERIALS INCORPORATED INTO THE AN APPROXIMATELY THIRTY-NINE THOUSAND SEVEN HUNDRED FOUR SQUARE FOOT FACILITY CONSTITUTING A "PORT AUTHORITY FACILITY"; AND (III) AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the Fairfield County Port Authority (the "Authority"), by virtue of the laws of the State of Ohio, particularly Ohio Revised Code Sections 4582.21 through 4582.59 (the "Act") and the authorities therein mentioned, and pursuant to Resolution 2024-02 approved on July 11, 2024 by the Authority, is authorized (i) to acquire a leasehold interest in certain real property in the City of Pickerington, Fairfield County, Ohio (the "Project Site") by operation of a Ground Lease (the "Ground Lease") between Orthopedic One, Inc. (collectively, with its affiliates, subsidiaries, and related entities, the "Developer"), as ground lessor, and the Authority, as ground lessee; (ii) to acquire title to one or more structures and other site improvements to be located on the Project Site consisting primarily of an approximately 39,704 square foot facility and related improvements, together with appurtenances related thereto (collectively, the "Project") and to lease the Project and the Project Site to the Developer by operation of a Project Lease (the "Project Lease") between the Authority, as lessor, and the Developer, as lessee; (iii) to enter into a Construction Manager At-Risk Agreement (the "Construction Manager At-Risk Agreement") with the Developer relating to the Project; and (iv) to enter into an Indemnification Agreement (the "Indemnification Agreement") with the Developer relating to the Project; and

WHEREAS, to accommodate the timing of construction, the Developer has requested that the Authority provide a temporary certificate evidencing the exemption from the State of Ohio sales and use taxes of purchases of building and construction materials for incorporation into the Project; and

WHEREAS, the Authority now wishes to (i) enter into an Indemnification Agreement (the "Indemnification Agreement"), a copy of which is attached as Exhibit A to this Resolution, and (ii) authorize the issuance of the temporary exemption certificate; and

WHEREAS, the Project is still expected (i) to create jobs and employment opportunities and thereby to enhance the economic welfare of the people of Fairfield County and the Authority, (ii) to enhance the availability of adequate housing in the State of Ohio and to improve the general well-being of the State of Ohio, and (iii) to enhance, foster, aid, provide, or promote housing and economic development within Fairfield County; and

WHEREAS, the Authority is authorized by Ohio Revised Code Sections 4582.43 and 4582.431 to cooperate with other governmental agencies, for the acquisition and construction of projects that may be acquired and constructed by the Authority, and may enter into agreements to evidence the terms and conditions of such cooperation.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Fairfield County Port Authority that:

Section 1. The Board hereby approves the negotiation, execution, and delivery of an Indemnification Agreement, with such terms as shall not be materially adverse to the Authority, and in such form as may be approved by the officer or officers of the Authority executing the same. The Vice Chairperson/Secretary of the Authority, or the President and CEO of the Authority, or any of them, are hereby authorized and directed to execute and deliver, for and in the name and on behalf of the Authority the Indemnification Agreement with such terms as shall not be materially adverse to the Authority. The execution of the Indemnification Agreement by a duly authorized officer or officers of the Authority shall evidence conclusively that any such changes are not materially adverse to the Authority and that any conditions to its execution and delivery have been satisfied.

Section 2. This Board hereby authorizes and ratifies the actions of the Vice Chairperson/Secretary of the Authority, or the President and CEO of the Authority, or any of them, in consideration of the agreements contained in the Indemnification Agreement by the parties thereto, to provide the Developer or its nominees with appropriate temporary certificates (the "Temporary Exemption Certificates") to support the claim of an exemption from Ohio sales and uses taxes that might otherwise apply with respect to the purchase of building and construction materials incorporated into structures or improvements to real property, within the meaning of Ohio Revised Code Section 5739.02(B)(13), that constitute Project improvements.

Section 3. This Board finds and determines that all formal actions of this Board concerning and relating to the adoption of this Resolution were taken in an open meeting of this Board and that all deliberations of this Board and of any committees that resulted in those formal actions were in meetings open to the public in full compliance with applicable legal requirements including Section 122.22 of the Ohio Revised Code.

Section 4. This Resolution shall be in full force and effect upon its adoption.

The foregoing motion having been put to vote, the result of the roll call was as follows:

Voting Aye: Cathy Bitler, Robert Carbonara, Brian Housholder, Tom James, Rick Lemonds
Craig Maxey, Jeff Sauer, Lvan Snyder

Voting Nay: N/A

The undersigned, Chairman and Secretary of the Board of Directors of the Fairfield County Port Authority, do hereby certify that the foregoing is a true and correct copy of a resolution of the Fairfield County Port Authority, duly adopted February 5, 2026, and appearing upon the official records of that Board.

Adopted: 2/5, 2026
Dated: 2/5, 2026

BOARD OF DIRECTORS OF THE FAIRFIELD
COUNTY PORT AUTHORITY



Chairman

Attest: 

Vice Chairman/Secretary

EXHIBIT A

FORM OF INDEMNIFICATION AGREEMENT

INDEMNIFICATION AGREEMENT

This **Indemnification Agreement** (the “Agreement”) is entered into [2/5], 2026 by and between **Ortho One Pickerington, LLC** (“Developer”) and the **Fairfield County Port Authority** (“FCPA”) under the following circumstances:

RECITALS:

- A. The Developer plans to acquire, construct, equip, furnish, install and improve an approximately 39,704 square foot medical facility, together with necessary appurtenances related thereto (the “Project”), located in the City of Pickerington, Ohio (the “Project Site”).
- B. The costs of the Project will be the subject of a development arrangement whereby the Developer or an affiliate will ground lease the Project Site to the FCPA, the Developer will construct the Project pursuant to a construction agency agreement between the Developer and the FCPA, and the FCPA will lease the Project back to the Developer or an affiliate (collectively, the “Transaction”). In connection with the Transaction, the construction materials incorporated into the Project will not be subject to sales or use tax in Ohio (collectively, the “Development Incentives”). As part of the Development Incentives, the FCPA will provide the Developer with a sales tax exemption certificate for the construction materials associated with the Project (the “Sales Tax Exemption Certificate”).
- C. The Developer has requested that FCPA provide the Development Incentives in connection with the Project.
- D. The FCPA wishes to assist the Developer with the Project through the provision of the Development Incentives.
- E. The FCPA and the Developer have entered into a term sheet (the “Term Sheet”) concerning the Development Incentives, which contemplates that the parties will enter into definitive and final legal documentation and a closing of the Transaction for the Development Incentives by June 1, 2026.

NOW, THEREFORE, the FCPA and the Developer agree as follows:

Section 1. In order to induce the FCPA to approve the provision of Development Incentives by way of providing a sales tax exemption for construction materials prior to the closing of the Transaction and to induce the FCPA to enter into this Agreement, the Developer hereby agrees to defend, indemnify and hold the FCPA and its officials harmless from and against any and all loss, cost, expense, claims, audits, actions, proceedings, and including all applicable federal, state, and local environmental regulations, including reasonable documented costs of outside legal counsel to the FCPA, arising out of or connected with the FCPA’s provision of

Development Incentives prior to the closing of the Transaction as contemplated by this Agreement, except to the extent caused by the FCPA's gross negligence, willful misconduct or recklessness.

Section 2. Upon conveyance of the leasehold interest to the Project site to the FCPA by the Developer, (a) the Project will be a "project" and a "port authority facility" within the meaning of those terms as defined in Section 4582.21, Ohio Revised Code, (b) the acquisition, construction, development, and improvement of the Project will be consistent with the purpose of Sections 13 and 16 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio and to encourage housing opportunities within the State of Ohio, and (c) the Project will be consistent with the purposes of Section 4582.21(B)(1), Ohio Revised Code, by providing assistance to projects that provide education and create and preserve jobs and employment opportunities within the Village of Commercial Point, Ohio.

Section 3. The FCPA agrees to cooperate with the Developer in (i) accepting conveyance of leasehold interest to the Project Site pursuant to a Ground Lease; (ii) construction of the Project on the Project Site pursuant to the Construction Manager At-Risk Agreement; and (iii) leasing of the Project back to the Developer pursuant to a Project Lease. The FCPA agrees to provide the Developer or its nominees with appropriate certificates ("Exemption Certificates") to support the claim of an exemption from Ohio sales and uses taxes that might otherwise apply with respect to the purchase of building and construction materials incorporated into the Project that constitute Project improvements within the meaning of Section 5739.02(B)(13), Ohio Revised Code.

Section 4. The Developer agrees to the following: (a) to convey leasehold interest to the Project Site to the FCPA pursuant to the terms of the Ground Lease; (b) to accept a leaseback of the Project from the FCPA pursuant to the Project Lease; and (c) to assume responsibility for Project operation, maintenance and management pursuant to the terms of the Project Lease. As a condition to the execution of this Development Agreement by the FCPA, the Developer shall, and shall cause any additional indemnitors to, execute and deliver an Indemnity Agreement satisfactory in form and content to the FCPA and the Developer with respect to the Project.

Section 5. The parties further agree that the Developer will indemnify and hold the FCPA and its officers harmless from and against any and all costs that may arise from misuse of the Sales Tax Exemption Certificate issued by the FCPA to the Developer.

Section 6. The parties agree that, anything in the Term Sheet to the contrary notwithstanding, the final date for the closing of the Transaction shall be no later than June 1, 2026 (the "Final Closing Date").

Section 7. In the event that the Transaction does not close on or prior to the Final Closing Date attributable primarily to delays caused by the Developer and the Final Closing Date is not extended by mutual consent of the parties, which consent each party must reasonably provide, in addition to the fees and expenses to be paid by the Developer pursuant to the Term Sheet, the Developer will promptly pay or cause to be paid in full all sales tax it would have paid to the appropriate governmental authority, together with any penalties, fines and interest, had the

FCPA not provided the limited Development Incentives contemplated by this Agreement, and the Developer shall properly file or cause to be filed such returns and other necessary documentation concerning such payment of sales tax and other amounts with the appropriate governmental authorities.

Section 8. As consideration for entering into this Agreement, the Developer has made or will make a deposit of \$20,000.00, which will be applied as a credit to the FCPA Closing Fee (as defined in the Term Sheet) when the remainder of such fee is paid upon the closing of the Transaction.

Section 9. Any notice, demand, consent or other instrument required or permitted hereunder shall be hand-delivered, sent by a nationally recognized overnight courier, or sent by prepaid certified U.S. mail, return receipt requested, addressed to the parties at their ordinary and regular addresses. If any provision of this Agreement, or the application thereof to any situation or circumstance, shall be invalid or unenforceable, the remainder of this Agreement or the application of such other provisions shall not be affected. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same document. This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding against any of the parties hereto relating in any way to this Agreement or the subject matter hereof shall be brought and enforced exclusively in a State of Ohio court of competent jurisdiction located in Fairfield County, Ohio and the parties hereto consent to the exclusive jurisdiction of such courts in respect of any such action or proceeding. This Agreement and the Term Sheet contain the entire understanding of the parties hereto with respect to the subject matter hereof, and may not be amended except by a written instrument signed by both parties. Any prior negotiations, discussions, agreements or understandings with respect to the subject matter hereto are merged into this Agreement and shall not survive.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Developer and FCPA have each caused this Agreement to be duly executed by its authorized representative, as of the day and year first above written.

ORTHO ONE PICKERINGTON, LLC

By: _____

Title: _____

Accepted as of the date first above written:

FAIRFIELD COUNTY PORT AUTHORITY

By: Jill A. Somers _____

Title: CHAIR _____