

Proposed: 01/21/2020

ORDINANCE NO. 5-2020 (F), *Second Reading*

By Council Member Hart

An Ordinance providing for the issuance and sale of economic development tax increment financing revenue bonds, in a principal amount not to exceed \$26,000,000, for the purpose of paying a portion of the costs of the acquisition, construction, equipping, installation, furnishing and other improvement of a project, as defined in Section 165.01 of the Revised Code; authorizing execution and delivery of a trust agreement, a loan and service payment agreement, a bond placement agreement and related agreements, instruments and documents to provide for the revenues to pay and secure bond service charges and other required payments, the custody and application of funds and revenues, the permitted uses of bond proceeds in the financing of project costs, other requirements for the issuance, sale and delivery of the bonds and related matters; and declaring an emergency.

WHEREAS, the City is authorized and empowered by virtue of the laws of the State of Ohio, including, without limitation, Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Revised Code (“Act”), among other things, (i) to issue bonds to acquire, construct, reconstruct, equip, or improve a “project” as defined in Section 165.01 of the Revised Code, comprising an industrial, commercial or research facility, located within the boundaries of the City, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; (ii) to secure such bonds by a pledge of revenues, as provided herein; and (iii) to pass this Ordinance and to sign, deliver and enter into the agreements, instruments and other documents authorized herein on the terms and conditions provided herein; and

WHEREAS, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City and the State, the City has determined to issue the economic development tax increment financing revenue bonds described herein, to provide funds necessary to pay a portion of the costs of the redevelopment by F & C Development, Inc. (together with designated affiliates, “Developer”), of the site generally known as “Top of the Hill” located on approximately four acres of land situated between Euclid Heights Boulevard and Cedar Road at the top of Cedar Hill in the City (“Project Site”), with the Top of the Hill site to be leased to the Developer pursuant to a development agreement between the City and the Developer (as supplemented and amended, “Development Agreement”), and with Project Site improvements by the Developer to include (i) approximately 261 market-rate apartments, (ii) approximately 11,400 square feet of first floor restaurant, retail and commercial space, (iii) a public parking garage resulting in approximately 550 parking spaces, (iv) public gathering and green spaces and (v) all sidewalks, driveways, access ways and utility connections necessary for the improvements described in (i) through (iv) above (“Project Improvements” and, together with the Project Site, “Project”); and

WHEREAS, this Council has previously enacted legislation relating to and approving the Development Agreement, the ground lease and redevelopment of the Project Site, the Project Improvements, the exemption of 100% of the “improvements” (herein “TIF Improvements”), as defined in or for purposes of Section 5709.41 of the Revised Code (together with related statutory provisions, “TIF Act”), from real property taxation for a period of thirty (30) years ending not later than tax year 2050 (tax collection year 2051) (“TIF Exemption”) and the imposition of requirements

ORDINANCE NO. 5-2020 (F)

for payments in lieu of such exempted taxes (collectively “Service Payments”) by the Developer and future owners of the Project (collectively “Owners”), including payments to the Cuyahoga County Fiscal Officer in the same amounts and at the same times as the taxes exempted (“Statutory Service Payments”) and such supplemental or minimum service payments as are imposed on the Project consistent herewith (“Minimum Service Payments” and, together with the Statutory Service Payments, “TIF Payments”), an agreement (as amended and supplemented, “School Compensation Agreement”) with the Board of Education of the Cleveland Heights-University Heights City School District (“School District”) relating to the compensation to be paid to the School District from any Statutory Service Payments (“School Compensation Payments”) and related matters, and has previously determined and hereby confirmed that the Project constitutes a “project” as defined in the Act, that the Project is in furtherance of the City’s plans and actions in support of urban redevelopment in the City and that the City may, under the Act, issue tax increment financing revenue bonds and loan the proceeds thereof to the Developer to finance a portion of the costs of the Project; and

WHEREAS, the Cleveland Heights Community Improvement Corporation has certified to the City that the Project is in accordance with its plan for the industrial, commercial, distribution and research development of the City, as adopted and confirmed by the City pursuant to Section 1724.10 of the Revised Code; and

WHEREAS, the Developer and the City, together with Ross, Sinclair & Associates, LLC (“Placement Agent”) have signed a Preliminary Financing Term Sheet dated January 27, 2020 (“Term Sheet”) outlining the terms and conditions for the issuance of tax increment financing revenue bonds by the City under the Act, in an aggregate principal amount estimated not to exceed \$26,000,000, to finance a portion of the costs of the Project, a copy of which is on file with this Council; and

WHEREAS, this Council has now determined that it is necessary and desirable, and in the best interest of the City, to enact this Ordinance to authorize, approve and provide for the issuance and sale of economic development tax increment financing revenue bonds (“Bonds”), in an aggregate principal amount not to exceed \$26,000,000, the loan of the proceeds thereof to the Developer to pay or provide for a portion of the costs of the acquisition, construction, equipping, installation, furnishing and other improvement of the Project, the execution and delivery of a trust agreement, a loan and service payment agreement, a bond placement agreement and related agreements, instruments and documents (collectively “Bond Documents”) to provide for the revenues to pay and secure the payment of the principal of and the interest and any premium on the Bonds (collectively “Bond Service Charges”), administrative expenses and charges relating to the Bonds, including fees payable to the City, to the corporate bond trustee under such trust agreement (“Trustee”), to a qualified administrator appointed by the City to fulfill requirements under the Bond Documents (“Administrator”) or otherwise (collectively “Administrative Expenses” and, together with Bond Service Charges, “Bond Payments”) and to provide for the School Compensation Payments and any other required payments from the Service Payments, the custody and application of funds and revenues, the permitted uses of proceeds of the Bonds, and the requirements for the issuance, sale and delivery of the Bonds and related matters;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cleveland Heights, County of Cuyahoga, Ohio, that:

ORDINANCE NO. 5-2020 (F)

SECTION 1. Recitals and Definitions. This Council hereby adopts, confirms and restates, as fully as if set forth in this Section 1, the Recitals to this Ordinance, which are incorporated herein by reference as a statement of the findings and determinations of this Council, including as to the public purposes of the City in enacting this Ordinance, entering into the Bond Documents, issuing the Bonds and taking such other actions as are authorized by this Ordinance. In addition to the words and terms defined elsewhere in this Ordinance (including in the Recitals incorporated herein) or by reference to the Act or TIF Act, unless the context or use clearly indicates another meaning or intent:

“Administration Agreement” means an agreement for administrative services among the City, the Trustee and the Administrator appointed from time to time by the City Executive, which agreement is authorized hereby and may be amended, supplemented or replaced from time to time consistent with the Bond Legislation, the Loan/Service Agreement and the Bond Indenture.

“Bond Indenture” means the trust indenture or agreement authorized hereby between the City and the Trustee, as the same may be supplemented and amended from time to time consistent with the Bond Legislation.

“Bond Legislation” means this Ordinance, together with the Certificate of Award, as either or both may be amended or supplemented from time to time.

“Bonds” means the revenue bonds authorized in Section 3 of this Ordinance and to be issued under the Bond Indenture and designated “Taxable Economic Development TIF Revenue Bonds, Series 2020 (Top of the Hill Development Project)” or as may be otherwise approved in the Certificate of Award or the Bond Indenture.

“Certificate of Award” means the certificate to be executed by the City Executive and Director of Finance pursuant to the delegations and authorizations in this Ordinance to provide for certain terms of the Bonds and their sale and to make the additional designations, appointments or approvals authorized hereby, which may be amended or supplemented from time to time consistent with this Ordinance (as amended or supplemented to the applicable time).

“City Executive” means the City Manager or the Mayor.

“City Manager” means the City Manager, other chief administrative officer of the City, or any person serving in an interim or acting capacity with respect to such office or offices.

“Closing Date” means the date of issuance and delivery of all Bonds maturing on or before January 1, 2050.

“Continuing Disclosure Agreement” means any agreement or provisions within an agreement to provide any continuing disclosure that may be required pursuant to the Placement Agreement and by and between the City and the Administrator (or other designated agent retained for the purpose of providing such disclosure), which agreement is authorized hereby and may be amended, supplemented or replaced from time to time consistent with the Bond Legislation, the Placement Agreement and the Bond Indenture.

“County” means the County of Cuyahoga, Ohio.

ORDINANCE NO. 5-2020 (F)

“County Treasurer Agreement” means an agreement between the City and the County, acting on behalf of the County Treasurer, providing for the agreement of the County Treasurer not to sell any tax lien certificate related to the Project Site for an amount less than 100% of the applicable tax lien without consent of the City and Trustee, which agreement is authorized hereby and may be supplemented and amended from time to time consistent with the Bond Indenture.

“Deferred Delivery Dates” means July 1, 2020, January 4, 2021, July 1, 2021 and January 3, 2022.

“Deferred Delivery Bonds” means those Bonds maturing on or after July 1, 2050.

“Delivery Dates” means the Closing Date and each of the Deferred Delivery Dates.

“Director of Finance” means the Director of Finance or any person serving in an interim or acting capacity with respect to that office.

“Director of Law” means the Director of Law or the person at the time performing the duties of the chief legal officer of the City.

“Final Maturity Date” means January 1, 2052.

“Fund” or “Funds” means, as applicable, the Special Funds and the “Project Fund” and “Surplus Fund” to be established under the Bond Indenture, together with all of the accounts (and any subaccounts in those accounts) from time to time created in such Funds in accordance with the Bond Indenture, all of which are authorized hereby.

“Ground Lease” means the Ground Lease authorized pursuant to the Development Agreement between the City, as lessor, and the Developer, as lessee (which, as used herein, includes a Ground Lease between the City and Ground Lessee and a Sub-Ground Lease, co-terminous with and including all material terms of the Ground Lease, between the Ground Lessee and the Leasehold Owner), recorded, by memorandum or otherwise on or promptly after the Closing Date, as the same may be supplemented and amended in accordance with the terms and conditions of the Bond Indenture, Loan/Service Agreement and Development Agreement

“Ground Lessee” means Cleveland Heights FC II, LLC, an Ohio limited liability company, and its successors and permitted assigns.

“Guarantor” means David M. Flaherty, an individual and Indiana resident and one of the principals of the Developer.

“Holder” or “Bondholder” means the person in whose name a Bond is registered on the Bond register maintained by the Trustee, as Bond registrar.

“Interest Payment Date” means, as to the outstanding Bonds, January 1 and July 1 of each year commencing July 1, 2020.

“Leasehold Owner” means Cleveland Heights FC III, LLC, an Ohio limited liability company, and its successors and permitted assigns.

ORDINANCE NO. 5-2020 (F)

“Loan/Service Agreement” means a loan and service agreement between the City and Leasehold Owner, as borrower, joined as to certain service agreement covenants therein by the Ground Lessee, which agreement is authorized hereby and may be amended or supplemented from time to time consistent with the Bond Legislation and the Bond Indenture.

“Maturity Dates” means January 1 and July 1 of each year from July 1, 2023 through the Final Maturity Date.

“Mayor” means the Mayor of the City or any person serving in an interim or acting capacity with respect to that office.

“Owners” means the Ground Lessee, the Leasehold Owner, their successors and any permitted transferees therefrom, as lessees of the Project Site and owners of the Project Improvements.

“Placement Agreement” means a bond placement agreement with respect to the Bonds among the City, the Placement Agent, the Developer and, if and to the extent required, the Purchaser, which agreement is authorized hereby and may be amended or supplemented from time to time consistent with the Bond Legislation and the Bond Indenture.

“Pledged Revenues” means the TIF Payments, any other payments or amounts received or to be received by or on behalf of the City pursuant to the Loan/Service Agreement, the TIF Declaration/Mortgage and the other instruments and agreements contemplated by the Bond Indenture and intended to be used for Bond Service Charges, the proceeds of the sale of the Bonds (until applied to, and subject to application for, the purposes contemplated by the Bond Indenture), all other moneys received or to be received by the City or the Trustee and intended to be used for Bond Service Charges, any moneys, investments or other assets in or to be credited to the TIF Fund or the Special Funds, and all income and profit derived from the investment of the foregoing moneys (excepting any income or profit derived from investments in the TIF Fund). The term “Pledged Revenues” does not include any moneys or investments in the Surplus Fund, including any amounts transferred thereto to pay School Compensation Payments or otherwise constituting excess Service Payments to be applied in accordance with the Development Agreement.

“Purchaser” means, individually or collectively, the purchaser or purchasers of the Bonds, as identified by the Placement Agent in or pursuant to the Placement Agreement.

“Special Funds” means the “Revenue Fund”, the “Administrative Expense Fund”, the “Bond Fund” and the “Bond Reserve Fund” to be established under the Bond Indenture, together with all of the accounts (and any subaccounts in those accounts) from time to time created in such Funds in accordance with the Bond Indenture, all of which are authorized hereby.

“TIF Declaration/Mortgage” means an open-end mortgage and declaration of covenants and conditions relative to payments in lieu of taxes to be executed by the Owners and the City and recorded against the Project Site in the real estate records maintained by the Cuyahoga County Fiscal Officer on or promptly after the Closing Date.

“TIF Fund” means the urban redevelopment tax increment equivalent fund established by the City under the TIF Ordinance for the deposit of the Statutory Service Payments

ORDINANCE NO. 5-2020 (F)

“TIF Ordinance” means the ordinance passed by this Council approving the TIF Exemption.

“Trustee” means the corporate bond trustee appointed from time to time by the City Executive under the Bond Indenture and means initially The Huntington National Bank or another corporate bond trustee appointed in the Certificate of Award and its successors and permitted assigns, including any successor Trustee appointed consistent with the Bond Indenture.

Any reference herein to the City, to this Council, or to any officer, official or member of either, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions, and any document authorized hereunder may be signed on behalf of the City by an official who, on the date of signing is the proper official, although on the date of this Ordinance (or any other ordinance or instrument providing authority to act), that person was not the proper official.

Any reference to a section or provision of the Constitution of the State or the Act, the TIF Act or the Revised Code includes that section, provision or chapter as amended, modified, revised, supplemented or superseded from time to time; provided, that no such amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the City or the holder of the Bonds under this Ordinance, the Bond Indenture, the Bonds or any other instrument or document entered into in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay the Bond Service Charges and other Bond Payments in the amount and manner, at the times and from the sources provided in this Ordinance, except as permitted herein.

SECTION 2. Council Determinations. This Council hereby adopts and confirms its prior determinations, approvals and authorizations relating to the Project and the public purposes thereof, the Development Agreement, the Ground Lease and the issuance of the Bonds to finance a portion of the costs of the Project and, without implied limitation on the foregoing, hereby further determines or confirms that: (i) the Project is a “project” as defined in the Act and is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution and is in furtherance of the City’s plans and actions in support of urban redevelopment in the City; (ii) the acquisition, construction, equipping, installation, furnishing and other improvement of the Project, and the issuance of the Bonds and the loan of the proceeds thereof to the Leasehold Owner, is in furtherance of the purposes of the Act and will benefit the people of the City and of the State by creating and preserving jobs and employment opportunities and improving the economic welfare of the people of the City and of the State; and (iii) it is necessary and desirable, and in the best interest of the City, to enact this Ordinance to authorize, approve and provide for (A) the issuance and sale of the Bonds, in an aggregate principal amount not to exceed \$26,000,000, (B) the loan of the proceeds of the Bonds to the Leasehold Owner to pay or provide for a portion of the costs of the acquisition, construction, equipping, installation, furnishing and other improvement of the Project, (C) the execution and delivery by the City of the Bond Documents to which it is a party (“City Documents”), including the Bond Indenture, the Loan/Service Agreement, the TIF Declaration/Mortgage, the Placement Agreement, the Administration Agreement, any Continuing Disclosure Agreement and the County Treasurer Agreement, to provide for (x) the revenues necessary to pay and secure the payment of Bond Service Charges and Administrative Expenses and to provide for the School Compensation Payments and any other required payments, (y) the custody and application of funds and revenues

ORDINANCE NO. 5-2020 (F)

and the permitted uses of proceeds of the Bonds, and (z) the requirements for the issuance, sale and delivery of the Bonds and related matters.

SECTION 3. Issuance and Terms of Bonds. The Bonds shall be issued pursuant to the Bond Indenture and the Loan/Service Agreement, and shall be issued only in certificated fully-registered form, and in form and substance authorized in the Bond Indenture consistent with the Bond Legislation and otherwise approved by the City Executive, Director of Finance and Director of Law, such approvals being conclusively established by the execution and delivery thereof in accordance herewith. The Bonds shall each be dated its respective Delivery Date and shall be designated “Taxable Economic Development TIF Revenue Bonds, Series 2020 (Top of the Hill Development Project)” or as may be otherwise approved in the Certificate of Award or the Bond Indenture. The Bonds shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance and the Bond Indenture.

The Bonds shall be numbered in such manner as is determined by the Trustee in order to distinguish each Bond from any other Bond, shall be of such authorized denominations as are authorized by the Bond Indenture, and each Bond shall bear interest (based on a 360-day year comprised of twelve 30-day months) from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date. Bonds shall be exchangeable for Bonds of any authorized denomination or denominations and shall be subject to such transfer restrictions, including provision for a suitable legend evidencing those restrictions, as are further provided in or pursuant to the Bond Legislation and the Bond Indenture. Bond Service Charges shall be payable in such manner and at such place or places as are provided in the Bond Indenture.

The Bonds shall be issued in the aggregate principal amount, not to exceed \$26,000,000, established in the Certificate of Award, shall bear interest at the rate or rates, not to exceed seven percent (7.00%) per year, established in the Certificate of Award, payable on the Interest Payment Dates. The interest rate applicable to any Bond may vary from time to time in such manner as is approved in the Certificate of Award and provided for in the Bond Indenture. The Bonds shall mature serially in semiannual installments, in such amounts as are established in the Certificate of Award, on their respective Maturity Dates, each within 30 years from its respective Delivery Date, and all of the Bonds shall mature on or before the Final Maturity Date. The Bonds may be issued as one Bond, or multiple Bonds, maturing in serial installments; however, no such Bond shall bear interest at more than one rate at any particular time. The Bonds shall be subject to redemption prior to maturity at such times, in such principal amounts and at such prices as shall be established in the Certificate of Award, including redemption at the option of the City and on such notice and other conditions as shall be established in the Bond Indenture.

The principal maturities, the interest rate or rates and all other matters determined in the Certificate of Award shall be determined in the best interests of the City, shall be consistent with applicable requirements of the Development Agreement and School Compensation Agreement, and shall be established such that the Statutory Service Payments, as projected by a qualified consultant, will be sufficient in each year, together with the amounts deposited or to be deposited in the Funds for those purposes upon the Delivery Dates for the Bonds, to pay all scheduled Bond Payments and the projected School Compensation Payments payable therefrom.

ORDINANCE NO. 5-2020 (F)

The Bonds shall be signed by the City Executive and the Director of Finance, in the name of the City and in their official capacities, provided that one or both of those signatures may be a facsimile, and those officials are hereby authorized and directed to execute and deliver the Bonds in accordance herewith and with the Bond Indenture, but subject to satisfaction or waiver of any conditions stated in the Bond Legislation or the City Documents. The Bonds shall be issued and delivered on their respective Delivery Dates in the authorized denominations and numbers requested by the Placement Agent or Purchaser. A Bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Legislation or the Bond Indenture unless and until a certificate of authentication on such Bond is signed by the Trustee, as registrar and authenticating agent pursuant to the Bond Indenture.

SECTION 4. Sale and Delivery of Bonds. The Bonds shall be awarded and sold to the Purchaser pursuant to the Certificate of Award and Placement Agreement, and shall be sold at a purchase price equal to not less than 97% of the aggregate principal amount thereof plus any interest accrued from their Delivery Date, with all such discount representing net original issue discount. The City Manager and Director of Finance shall, in accordance with such officers' determination of the best interests of and financial advantages to the City and based on conditions then existing in the financial markets, consistently with the provisions of this Ordinance, establish the aggregate principal amount of and interest rate or rates to be borne by the Bonds, and the maturities thereof and other terms required in this Ordinance to be set forth in the Certificate of Award, sign the Certificate of Award evidencing that sale to the Purchaser, cause the Bonds to be prepared, and have the Bonds signed and delivered to the Trustee for authentication and delivery, on the respective Delivery Dates, to the Purchaser against payment by the Purchaser on such Delivery Dates, of the purchase price or prices thereof, and they shall, in the Certificate of Award, fix the principal amount of the Bonds to be issued in an amount which will provide the moneys necessary, together with other moneys expected to be available therefor, to make the deposits and payments required by the Bond Legislation and Bond Indenture, including those amounts to be used to pay Project costs, but subject to the limitations set forth or referenced herein or in the Bond Documents.

Other terms of the Bonds and the sale thereof may be specified in the Certificate of Award including, without limitation, the compensation payable to the Placement Agent in connection with the structuring, placement and sale of the Bonds, but not to exceed 1.3% of the principal amount of the Bonds, the amount and manner of funding of the Bond Reserve Fund, the amount of interest to be paid from Bond proceeds or other sources, the amount of the City's fees to be paid or reimbursed from the proceeds of the Bonds or other sources, the amounts of other fees and expenses to be paid or reimbursed from the proceeds of the Bonds or other sources, designation of an Administrator qualified to perform the duties required under the Administration Agreement and other City Documents and, if other than as identified herein, the Trustee. Nothing herein shall require that anything be done or established in the Certificate of Award (whether or not amended or supplemented, and whether or not previously done or established in the Certificate of Award) merely because this Ordinance authorizes the same to be done or established therein, so long as such thing is done or established consistent with this Ordinance. All matters determined in the Certificate of Award, or otherwise determined consistent with this Ordinance, as the same may be amended from time to time, shall be conclusive and binding on the City. All amounts payable with respect to the Project costs including, without limitation, any interest capitalized or otherwise funded consistent with the Act, counsel fees and other fees and charges to be paid or reimbursed in connection with the structuring, placement, issuance, sale and delivery of the Bonds may be

ORDINANCE NO. 5-2020 (F)

paid or reimbursed from, and as further described herein are hereby appropriated from, the proceeds of the sale of the Bonds and any other sources made available therefor under the Loan/Service Agreement and the Bond Indenture.

The City Executive and the Director of Finance are each authorized and directed, alone or together, to make the necessary arrangements with the Placement Agent and the Purchaser to establish the date or dates, and the location or locations, procedures and conditions, for delivery of the Bonds to the Purchaser pursuant to the Placement Agreement and the Bond Indenture, and are further authorized and directed to execute and deliver the Placement Agreement, with such necessary and customary terms and conditions that are not inconsistent with the provisions of the Bond Legislation, and otherwise in form and substance approved as in the best interest of the City by the official or officials executing the same and approved as to form and correctness by the Director of Law; provided, that the Placement Agreement shall provide that the Bonds are sold in a private placement to one or more investors knowledgeable with respect to the nature of, and risks related to, Ohio tax increment financing revenue bonds secured by service payments imposed pursuant to the TIF Act, and are so placed based on such customary representations of the Purchaser (in the Placement Agreement, a separate “investor acknowledgment letter” or both) relating to its status as such an investor and to its knowledge, research, diligence, non-distribution and investment intent as are acceptable to the official or officials signing or approving the Placement Agreement, all of which approvals shall be evidenced conclusively by the execution and delivery of the Placement Agreement consistent with this Ordinance. It is determined by this Council that the price for and the terms of the Bonds and the sale thereof, all as provided in this Ordinance and the Certificate of Award, Placement Agreement, Bond Indenture and other Bond Documents, are in the best interests of the City and are in compliance with all legal requirements.

SECTION 5. Application of Proceeds of Bonds; Creation of Funds. The Funds are hereby authorized and directed to be created, and the proceeds from the sale of the Bonds, together with any other amounts to be delivered to the Trustee for deposit therein, shall be deposited in accordance with the Bond Indenture and the written direction of the City Executive or Director of Finance, and all such amounts so deposited shall be applied in accordance with the Loan/Service Agreement and the Bond Indenture, including to pay or reimburse Project costs in accordance therewith and to pay or reimburse closing and other transaction costs relating to the issuance of the Bonds and the financing of Project costs (including costs of issuance of the Bonds, fees and expenses of the City, costs of funding the initial deposit to the Bond Reserve Fund, costs of funding permitted interest and Administrative Expenses with respect to the Bonds), all as provided in the Bond Indenture; and the proceeds from the sale of the Bonds, and any other moneys provided by or on behalf of the City for those purposes, are hereby appropriated for those purposes. Disbursement and application of amounts deposited in the Funds (and any accounts and subaccounts established therein under the Bond Indenture, all of which are authorized hereby) shall be in accordance with the Bond Indenture and Loan/Service Agreement.

SECTION 6. Security for the Bonds. Notwithstanding anything to the contrary herein or in the Bonds or in the Bond Indenture or any Bond Document: (i) the Bonds and the Bond Service Charges thereon shall be payable solely from and secured only by the Pledged Revenues and the Special Funds, as provided herein and in the Bond Indenture; (ii) the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit of the City, and do not and shall not pledge the general credit or taxing power of the City; (ii) nothing herein or in any of the Bonds, or

ORDINANCE NO. 5-2020 (F)

in the Bond Indenture, the Loan/Service Agreement, the TIF Declaration/Mortgage or any of the Bond Documents, gives the holders or owners of the Bonds, and they do not have, the right to have excises or taxes levied by this Council, or by the City or the State, for the payment of Bond Service Charges or any other obligations under or with respect to the Bonds, the Bond Indenture or any Bond Documents; and (iv) each of the Bonds shall contain a statement to the foregoing effects; provided, however, that nothing herein shall be deemed to prohibit the City, of its own volition and upon due appropriation therefor, from using to the extent it is lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Bond Legislation, the Bond Indenture or the Bonds.

SECTION 7. City Covenants. In addition to other representations and warranties of the City contained in this Ordinance, the City covenants and agrees that:

(a) Performance of Covenants and City Actions. The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under the Bond Legislation and the Bonds, the Bond Documents and all proceedings of this Council pertaining thereto. The City represents that (i) it is a municipal corporation, duly organized and existing under and by virtue of the laws of the State; (ii) it is, and upon delivery of the Bonds covenants that it will be, duly authorized by the Constitution and laws of the State, to issue the Bonds, to execute and deliver the City Documents, and to provide the security for payment of the Bond Service Charges in the manner and to the extent set forth herein and in the Bond Indenture and the Bonds; (iii) all actions on its part for the issuance of the Bonds, and the loan and use of the proceeds thereof, have been or will be taken duly and effectively; and (iv) the Bonds will be a valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to the Bond Legislation, the Bond Indenture and the Bonds is binding upon the City, and upon each officer or employee of the City as may from time to time have the authority under law to take any action on behalf of the City as may be necessary to perform all or any part of such obligation, as a duty of the City and of each of those officers and employees resulting from an office, trust or station within the meaning of Section 2731.01 of the Revised Code, providing for enforcement by writ of mandamus.

(b) Use of Proceeds. The City will use, or cause or require to be used, the proceeds of the Bonds to pay such costs of and relating to the Project and the Bonds as are authorized herein and in the Bond Documents.

(c) Payment of Bond Service Charges; Segregation of Funds. The City will, solely from the Pledged Revenues, pay or cause to be paid the Bond Service Charges on the dates, at the places and in the manner provided in the Bond Legislation, the Bond Indenture and the Bonds. The City will segregate, for accounting purposes, the Pledged Revenues and the Funds from all other revenues and funds of the City.

(d) Further Actions and Delivery of Instruments. The City will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the Bonds and the Bond Legislation or as may be required or authorized by the TIF Act, the Act, including Section 13 of Article VIII of the Ohio Constitution, the Bond Indenture or the Loan/Service Agreement, and will comply with all requirements of law applicable to the Bonds.

(e) Inspection of Project Books. All books and documents in the City's possession relating to the Project and the Pledged Revenues shall be open at all times during the City's regular business hours to inspection by such accountants or other agents of the holders of the Bonds as the holders of the Bonds may from time to time designate.

(f) Transcript of Proceedings. The Clerk of Council, or another appropriate officer of the City, shall furnish to the Bond Trustee a true transcript of proceedings, certified by that officer, of all proceedings had with reference to the issuance of the Bonds along with such information from its records as is necessary to determine the regularity and validity of the issuance of the Bonds.

SECTION 8. City Documents. To secure the payment of the Bond Service Charges on the Bonds as the same shall become due and payable and the performance by the City as provided in this Ordinance and in the City Documents, and to provide for the issuance and sale of the Bonds and the loan of proceeds thereof in accordance herewith to finance a portion of the costs of the acquisition, construction, installation, equipping, furnishing and other improvement of the Project Improvements, the City Executive and the Director of Finance, alone or together, are hereby authorized, for and in the name of the City and on its behalf, to execute and deliver the City Documents, and to acknowledge, approve or otherwise accept any Bond Documents benefiting the City, with such necessary and customary terms and conditions that are not inconsistent with the provisions of the Bond Legislation and otherwise in form and substance approved as in the best interest of the City by the official or officials executing, acknowledging, approving or otherwise accepting the same, and approved as to form and correctness by the Director of Law. To the extent applicable, the terms and conditions of the Bond Documents shall be in substantial conformity to the Term Sheet, but with such changes as are not inconsistent with the Bond Legislation, as are permitted by the Act and as are approved by the officer or officers executing, acknowledging, approving or otherwise accepting the Bond Documents. The approval of the City Documents, and of any other Bond Documents benefiting the City, shall be conclusively evidenced by the execution, acknowledgment, approval or acceptance of those documents by the officer or officers of the City authorized hereunder.

SECTION 9. Further Actions. The City Executive, Director of Finance, Director of Law and Clerk of Council, alone or together, are hereby further authorized and directed to execute any certifications, financing statements, assignments, memoranda, affidavits, applications, requests, consents, approvals, acknowledgments, notices, agreements, instruments and other documents, and any amendments or supplements thereto or replacements thereof, and to take such further actions as are necessary or appropriate to permit, undertake, implement, consummate and complete the transactions contemplated herein and in the Bonds and City Documents consistent with the Bond Legislation, the Bond Documents, the Development Agreement and the School Compensation Agreement and the best interests of the City, including (i) any such actions taken or to be taken either prior to or after the issuance and delivery of the Bonds, (ii) any such actions taken or to be taken in connection with disbursements of Bond proceeds or the collection, deposit, application and transfer of Service Payments, Pledged Revenues or other funds held from time to time in or to the credit of the TIF Fund or under the Bond Indenture, (iii) any such actions taken or to be taken in connection with the succession or replacement of the Trustee or Administrator, or the delivery of any credit enhancement or other additional or substitute security for the Bonds, (iv) any such actions taken or to be taken in connection with the determination, documentation or payment of School Compensation Payments, or any other amounts payable from the Statutory

ORDINANCE NO. 5-2020 (F)

Service Payments, (v) any such actions taken or to be taken in connection with any amendments or supplements to the City Documents, and (vi) any other action authorized, directed or permitted by the City Documents from time to time, all to the extent consistent with the Bond Legislation and the authority therein granted and at the time in effect.

SECTION 10. Certification and Delivery of Ordinance and Certificate of Award; Notice to Director of Development Services Agency. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance and a signed copy of the Certificate of Award to the Cuyahoga County Fiscal Officer. The City Manager is directed to deliver or cause to be delivered written notice by certified mail to the director of the Ohio Development Services Agency advising such director of the proposed delivery of the Bonds, the principal amount thereof, the identities of the Ground Lessee and Leasehold Owner, and a general description of the Project.

SECTION 11. Satisfaction of Conditions to Issue Bonds. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding special obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

SECTION 12. Severability. Each section of this Ordinance and each subdivision of any section thereof is hereby declared to be independent, and the finding or holding of any section or subdivision of any section thereof to be invalid or void shall not be deemed nor held to affect the validity of any other section or subdivision of this Ordinance.

SECTION 13. Ratification. Each action taken by the City and any officer or official of the City in connection with the Project and the Bonds is hereby ratified and confirmed and shall be given full force and effect as of the time such action was taken.

SECTION 14. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council and of any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any such committee, and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

SECTION 15. Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION 16. Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City, and for the further reason that this Ordinance is required to be immediately effective in order to execute and deliver the City Documents and to issue and sell the Bonds, which is necessary to enable the undertaking and financing of the Project consistent with the Development Agreement, and so that the City may provide for additional jobs and employment opportunities and improve the economic welfare of the City and its residents; wherefore, this Ordinance shall be in full force and

ORDINANCE NO. 5-2020 (F)

effect immediately upon its passage, provided it receives the affirmative vote of five members of Council elected thereto; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

JASON S. STEIN, Mayor
President of Council

SUSANNA NIERMANN O'NEIL
Acting Clerk of Council

PASSED: _____, 2020