

ORDINANCE NO. 27-2022 (F), *First Reading*

By Mayor Seren

An Ordinance providing for the issuance and sale of not to exceed \$1,500,000 of economic development nontax revenue bonds for the purpose of paying a portion of the costs of the acquisition of a portion of, and redevelopment 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, and declaring an emergency.

WHEREAS, the City is authorized 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, among other things, to issue bonds or notes to acquire, construct, equip, furnish or improve a "project" as defined in Section 165.01 of the Revised Code and to refund any bonds or notes previously issued for those purposes, all 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 of Ohio; and

WHEREAS, for the purpose of creating or preserving jobs and employment opportunities and improving the economic welfare of the people of the City, pursuant to Ordinance No. 6-2020, passed on February 18, 2020, the City issued its \$1,850,000 Economic Development Nontax Revenue Notes, Series 2020 (Top of the Hill Project), in anticipation of the issuance of bonds for the purpose stated in Section 3, which notes were retired, together with other funds available to the City, with \$1,490,000 Economic Development Nontax Revenue Notes, Series 2021 (Top of the Hill Project) (the Outstanding Notes), issued in anticipation of bonds pursuant to Ordinance No. 10-21, passed on March 1, 2021, which Outstanding Notes mature on April 19, 2022; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Bonds described in Section 3 and other funds available to the City; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to issue the Bonds described in Section 3 to provide funds sufficient for that purpose, including the payment of expenses properly allocable to the issuance of the Bonds;

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

**SECTION 1. Definitions and Interpretation.** In addition to the words and terms elsewhere defined in this Ordinance, unless the context or use clearly indicates another or different meaning or intent:

"Act" means the laws of the State, including, without limitation, Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Revised Code.

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“Additional Bonds” means any additional bond anticipation notes or bonds of the City which may be subsequently issued and payable solely from the Nontax Revenues on parity with the Bonds.

“Authorized Denominations” means the denomination of \$100,000 or any whole multiple of \$1,000 in excess thereof.

“Bond Fund” means the Bond Fund described in Section 9.

“Bond Proceedings” means, collectively, this Ordinance, the Certificate of Award and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders of the Bonds.

“Bond Register” means all books and records necessary for the registration, exchange and transfer of Bonds as provided in Section 6.

“Bond Registrar” means the Director of Finance, the Original Purchaser or a bank or trust company authorized to do business in the State and designated by the Director of Finance in the Certificate of Award pursuant to Section 5 as the initial authenticating agent, bond registrar, transfer agent and paying agent for the Bonds under the Certificate of Award and until a successor Bond Registrar shall have been designated by the City and, thereafter, “Bond Registrar” shall mean the successor Bond Registrar.

“Bonds” means the bonds of the City authorized in Section 3.

“Certificate of Award” means the certificate authorized by Section 7, to be executed by the Director of Finance, setting forth and determining those terms or other matters pertaining to the Bonds and their issuance, sale and delivery as this Ordinance requires or authorizes to be set forth or determined therein.

“City” means the City of Cleveland Heights, Ohio.

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

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

“Closing Date” means the date of physical delivery of, and payment of the purchase price for, the Bonds.

“Code” means the Internal Revenue Code of 1986, as amended, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a Section of the Code includes any applicable

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successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that Section.

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

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

“Financing Costs” shall have the meaning given in Section 133.01 of the Revised Code.

“Interest Payment Dates” means, unless otherwise specified in the Certificate of Award, June 1 and December 1 of each year that the Bonds are outstanding, commencing on the date specified in the Certificate of Award.

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

“Nontax Revenues” means all moneys of the City which are not moneys raised by taxation, to the extent available for the purpose of paying debt service charges on the Bonds, including, but not limited to the following: (a) proceeds from the sale or lease of all or a portion of the Project site; (b) grants from the United States of America and the State; (c) payments in lieu of taxes now or hereafter authorized by State statute to the extent not pledged to pay debt charges on other City indebtedness; (d) fines and forfeitures which are deposited in the City’s General Fund; (e) fees deposited in the City’s General Fund for services provided and from properly imposed licenses and permits; (f) investment earnings on the City’s General Fund and which are credited to the City’s General Fund; (g) investment earnings on other funds of the City that are credited to the City’s General Fund; (h) proceeds from the sale of assets which are deposited in the City’s General Fund; (i) gifts and donations; and (j) all rental payments which are deposited in the City’s General Fund.

“Original Purchaser” means the purchaser of the Bonds specified in the Certificate of Award.

“Outstanding Nontax Revenue Bonds” means the City’s outstanding Economic Development Nontax Revenue Bonds, Series 2022 (Federally Taxable), dated February 16, 2022.

“Principal Payment Dates” means, unless otherwise specified in the Certificate of Award, December 1 in each of the years as determined necessary by the Director of Finance in the Certificate of Award; provided that the final Principal Payment Date shall be not later than 30 years from the Closing Date, which determination shall be made by the Director of Finance in the Certificate of Award in such manner as to be in the best interest of and financially advantageous to the City.

“Project” means the acquisition of a portion of, and redevelopment by F & C Development, Inc. (together with certain designated affiliates) of, the Project Site, with improvements 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

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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.

“Regulations” means Treasury Regulations issued pursuant to the Code or to the statutory predecessor of the Code.

“State” means the State of Ohio.

Capitalized terms not otherwise defined in this Ordinance have the meanings assigned to them in the Act.

**SECTION 2. Council Determinations.** This Council hereby finds and determines that the Project is a “project” as in the Act and is consistent with the purposes of Section 13 of Article VIII of the Ohio Constitution; that the utilization of the Project is in furtherance of the purposes of the Act and has 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 that the amount necessary to retire the Outstanding Notes, which were issued to retire prior bond anticipation notes issued to finance the Project, will require the issuance, sale and delivery of the Bonds, which Bonds shall be payable and secured as provided herein.

**SECTION 3. Authorized Principal Amount and Purpose; Application of Proceeds.** This Council determines that it is necessary and in the best interest of the City to issue bonds of this City in the maximum principal amount of \$1,500,000 (the Bonds) for the purpose of paying a portion of the costs of the Project and to retire, together with other funds available to the City, the Outstanding Notes. The Bonds shall be issued pursuant to the Act, the City’s Charter, this Ordinance and the Certificate of Award.

The principal amount of Bonds to be issued shall not exceed the maximum principal amount specified in this Section 3 and shall be an amount determined by the Director of Finance in the Certificate of Award to be the principal amount of Bonds that is required to be issued at this time for the purpose stated in this Section 3, taking into account other City moneys available for the purpose, the estimates of the Financing Costs and the interest rates on the Bonds.

The proceeds from the sale of the Bonds received by the City (or withheld by the Original Purchaser on behalf of the City) shall be paid into the proper fund or funds, and those proceeds are hereby appropriated and shall be used for the purpose for which the Bonds are being issued, including without limitation but only to the extent not paid by others, the payment of the costs of issuing and servicing the Bonds, printing and delivery of the Bonds, legal services including obtaining the approving legal opinion of bond counsel, fees and expenses of any placement agent, paying agent and all other Financing Costs and costs incurred incidental to those purposes. The Certificate of Award may authorize the Original Purchaser to withhold certain proceeds from the purchase price of the Bonds to provide for the payment of Financing Costs related to the Bonds on behalf of the City. Any portion of those proceeds received by the City representing premium (after payment of any Financing Costs identified in the Certificate of Award) shall be paid into the Bond Fund, with such determination being made by the Director of Finance in the Certificate of Award, consistent with the Director of Finance’s determination of the best interest of and financial

advantages to the City. Any portion of those proceeds received by the City representing accrued interest shall be paid into the Bond Fund.

**SECTION 4. Denominations; Dating; Principal and Interest Payment and Redemption Provisions.**

The Bonds shall be issued in one lot and only as fully registered bonds, in Authorized Denominations, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as provided in the Certificate of Award, provided that their dated date shall not be more than 60 days prior to the Closing Date. If requested by the Original Purchaser, the Director of Finance is hereby authorized to prepare a single registered Bond with multiple maturities of principal in Authorized Denominations as set forth in a payment schedule to be set forth in such Bond or attached thereto.

(a) **Interest Rates and Payment Dates.** The Bonds shall bear interest at the rate or rates per year and computed on the basis of a 360-day year consisting of 12 30-day months or as shall be determined by the Director of Finance, subject to subsection (c) of this Section 4, in the Certificate of Award. Interest on the Bonds shall be payable at such rate or rates on the Interest Payment Dates until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) **Principal Payment Schedule.** The Bonds shall mature on the Principal Payment Dates in principal amounts as shall be determined by the Director of Finance, subject to subsection (c) of this Section 4, in the Certificate of Award, which determination shall be in the best interest of and financially advantageous to the City.

(c) **Conditions for Establishment of Interest Rates and Principal Payment Dates and Amounts.** The rate or rates of interest per year to be borne by the Bonds and the principal amount of Bonds maturing on each Principal Payment Date shall be such that the true interest cost of the Bonds shall not exceed 5%.

(d) **Payment of Debt Charges.** The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of and any premium on the Bonds shall be payable when due upon presentation and surrender of the Bonds at the main office of the Bond Registrar; provided, however, to the extent that in the case of the final principal payment due hereunder, surrender of the Bond at the main office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15<sup>th</sup> day preceding that Interest Payment Date. Notwithstanding the foregoing, so long as the entire principal amount of the Bonds is represented by a single registered Bond, (i) the principal installments on the Bonds may be paid on each Principal Payment Date and any redemption date by (A) wire transfer of immediately available funds to the registered owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner, provided that in connection with the payment or redemption of the final installment of principal of the Bonds, the registered owner thereof shall present and surrender its Bonds at the office of the Bond Registrar, and (ii) interest on the Bonds may be paid on each Interest Payment Date by (A) wire transfer of immediately available funds to the registered

owner, without presentation or surrender thereof, to an account in the United States as such owner will direct in writing to the Bond Registrar or (B) check or draft mailed to the registered owner.

(e) Redemption Provisions. The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) Optional Redemption. The Bonds of the maturities and interest rates specified in the Certificate of Award (if any are so specified) shall be subject to optional redemption by and at the sole option of the City, in whole or in part in Authorized Denominations, on the dates and at the redemption prices (expressed as a percentage of the principal amount to be redeemed), plus accrued interest to the redemption date, to be determined by the Director of Finance in the Certificate of Award; provided that the redemption price for any optional redemption date shall not be greater than 103%.

(ii) Partial Redemption. If fewer than all of the outstanding Bonds are called for optional redemption at one time and Bonds of more than one maturity (or interest rate within a maturity if applicable) are then outstanding, the Bonds that are called shall be Bonds of the maturity or maturities and interest rate or rates selected by the City. If fewer than all of the Bonds of a single maturity (or interest rate within a maturity if applicable) are to be redeemed, the selection of Bonds of that maturity (or interest rate within a maturity if applicable) to be redeemed, or portions thereof in Authorized Denominations, shall be made by the Bond Registrar by lot in a manner determined by the Bond Registrar. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than the Authorized Denominations are then outstanding, each Authorized Denomination unit of principal thereof shall be treated as if it were a separate Bond of the Authorized Denomination. If it is determined that one or more, but not all, of the Authorized Denomination units of principal amount represented by a Bond are to be called for redemption, then, upon notice of redemption of an Authorized Denomination unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (A) for payment of the redemption price of the Authorized Denomination unit or units of principal amount called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (B) for issuance, without charge to the registered owner, of a new Bond or Bonds of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(iii) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (A) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (B) the redemption price to be paid, (C) the date fixed for redemption, and (D) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first-class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register maintained by the Bond Registrar at the close of business on the 15<sup>th</sup> day preceding that

mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(iv) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to the provisions of Section 4(d), upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus accrued interest to the redemption date. If moneys for the redemption of all of the Bonds and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All moneys held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds; provided that any interest earned on the moneys so held by the Bond Registrar shall be for the account of and paid to the City to the extent not required for the payment of the Bonds called for redemption.

#### SECTION 5. Execution and Authentication of Bonds; Appointment of Bond Registrar.

The Bonds shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities; provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the Authorized Denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, shall be numbered as determined by the Director of Finance in order to distinguish each Bond from any other Bond and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to the Act, the City's Charter, this Ordinance and the Certificate of Award.

The Director of Finance is hereby authorized to designate in the Certificate of Award the Director of Finance, the Original Purchaser or a bank or trust company authorized to do business in the State to act as the initial Bond Registrar. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Certificate of Award, except to the extent paid or reimbursed by the Original Purchaser in accordance with the Certificate of Award, from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

**SECTION 6. Registration; Transfer and Exchange.**

(a) Bond Register. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep the Bond Register at its main office. Subject to the provisions of Section 4(d), the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond Proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section 6. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

(b) Transfer and Exchange. Any Bond may be exchanged for Bonds of any Authorized Denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the main office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any Authorized Denomination or Denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond Proceedings as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of (i) Bonds then subject to call for redemption between the 15<sup>th</sup> day preceding the mailing of notice of

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Bonds to be redeemed and the date of that mailing, or (ii) any Bond selected for redemption, in whole or in part.

**SECTION 7. Sale of the Bonds to the Original Purchaser.** The Director of Finance is authorized to sell the Bonds at private sale to the Original Purchaser at a purchase price, not less than 97% of the aggregate principal amount thereof, as shall be determined by the Director of Finance in the Certificate of Award, plus accrued interest (if any) on the Bonds from their date to the Closing Date, and shall be awarded by the Director of Finance with and upon such other terms as are required or authorized by this Ordinance to be specified in the Certificate of Award, in accordance with law and the provisions of this Ordinance.

The Director of Finance shall sign and deliver the Certificate of Award and shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price.

The Mayor, the City Administrator, the Director of Finance, the Director of Law, the Clerk of Council and other City officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The actions of the Mayor, the City Administrator, the Director of Finance, the Director of Law, the Clerk of Council or other City official, as appropriate, in doing any and all acts necessary in connection with the issuance and sale of the Bonds are hereby ratified and confirmed.

**SECTION 8. Federal Tax Considerations.** The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds or arbitrage bonds under Sections 141 or 148 of the Code or (ii) be treated other than as bonds the interest on which is excluded from gross income under Section 103 of the Code, and (b) the interest on the Bonds will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion, and (c) it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports and (v) refrain from certain uses of those proceeds, and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Director of Finance or any other officer of the City having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation (including specifically designation or treatment of the Bonds as "qualified tax-exempt obligations" if such designation or treatment is applicable and desirable, and to make any related necessary representations and covenants), choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City is permitted to or required to make or give under the federal income

tax laws, including, without limitation thereto, any of the elections provided for in or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of the City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Each covenant made in this section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Bonds from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Bonds.

**SECTION 9. Security for and Covenants Relating to Bonds.**

(a) The Bonds, together with the Outstanding Nontax Revenue Bonds and any Additional Bonds that may be issued concurrently or hereafter on a parity therewith, are special obligations of the City, and the principal and interest on the Bonds are payable solely from, and such payment is secured by a pledge of and lien on, those Nontax Revenues established by and as provided in this Ordinance which are on deposit in the Bond Fund, as described below.

There is hereby created a separate account or fund designated as the “Top of the Hill Bond Retirement Fund” (the “Bond Fund”) into which Nontax Revenues shall be deposited in accordance with the following provisions.

The City hereby covenants and agrees that on or before each Payment Date it shall deposit in the Bond Fund from Nontax Revenues selected by the City, an amount equal to the amount of principal and interest due on the Bonds on that Payment Date, less, in the discretion of the City, any interest earnings or other moneys accumulated in the Bond Fund which have not theretofore been used as a credit against a prior payment obligation. Moneys in the Bond Fund shall be used solely and exclusively to pay principal of and interest on the Bonds, the Outstanding Nontax Revenue Bonds, any parity obligations concurrently issued with the Bonds, and any hereafter designated Additional Bonds, all when due.

The City hereby covenants and agrees that so long as Bonds are outstanding, it will appropriate and maintain sufficient Nontax Revenues each year to make each payment due under this Section 9 and to pay principal and interest when due; provided, however, the payments due hereunder and under the Bonds are payable solely from Nontax Revenues, which Nontax Revenues

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are hereby selected by the City pursuant to Section 165.12 of the Revised Code as moneys that are not raised by taxation. The Bonds are not secured by an obligation or pledge of any moneys raised by taxation. The Bonds do not and shall not represent or constitute a debt or pledge of the faith or credit or taxing power of the City, and the owners of the Bonds have no right to have taxes levied by the City for the payment of principal and interest on the Bonds.

Nothing herein shall be construed as requiring the City to use or apply to the payment of principal and interest on the Bonds any funds or revenues from any source other than Nontax Revenues. Nothing herein, however, shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Ordinance or of the Bonds.

(b) The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions to be performed on its part under this Ordinance and the Bonds and under all proceedings of this Council pertaining thereto. The City represents that (i) it is, and upon delivery of the Bonds covenants that it will be, duly authorized by the Constitution and laws of the State including particularly and without limitation the Act, to issue the Bonds and to provide the security for payment of the debt service charges on the Bonds in the manner and to the extent set forth herein and in the Bonds; (ii) all actions on its part for the issuance of the Bonds have been or will be taken duly and effectively; and (iii) the Bonds will be valid and enforceable special obligations of the City according to their terms. Each obligation of the City required to be undertaken pursuant to this Ordinance 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 employee 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.

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

(d) The Clerk of Council, or another appropriate officer of the City, shall furnish to the Original Purchaser 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 the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

**SECTION 10. Financing Costs.** The expenditure of the amounts necessary to pay any Financing Costs in connection with the Bonds, to the extent not paid or reimbursed by the Original Purchaser in accordance with the Certificate of Award, is authorized and approved, and the Director of Finance is authorized to provide for the payment of any such amounts and costs from the proceeds of the Bonds to the extent available, and otherwise from any other funds lawfully available that are appropriated or shall be appropriated for that purpose.

**SECTION 11. Additional Bonds.** The City shall have the right from time to time to issue Additional Bonds on a parity with the Bonds, which Additional Bonds shall be payable solely from the Nontax Revenues, and such payment shall be secured by a pledge of and a lien on the Nontax

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Revenues as provided by the Act and by an ordinance passed by this Council authorizing the issuance of those Additional Bonds. Before any Additional Bonds are issued, the City shall be required to furnish a certificate of the Director of Finance showing that the maximum annual aggregate of estimated debt service charges on the Bonds, the Outstanding Nontax Revenue Bonds, any parity obligations delivered concurrently with or after the Bonds, and those Additional Bonds, or in the event that the Additional Bonds are to be issued as bond anticipation notes, the largest amount required to be paid in any succeeding calendar year to meet the estimated interest and principal maturities of the bonds anticipated by those bond anticipation notes, shall be not more than 50% of Nontax Revenues for the fiscal year immediately preceding the issuance of the proposed Additional Bonds (the Coverage Test).

Junior lien or other subordinate bonds payable from the Nontax Revenues may be issued without limitation.

The Additional Bonds shall bear such designation as may be necessary to distinguish them from the Bonds or other Additional Bonds having different provisions and shall have maturities, interest rates, interest payment dates, redemption provisions, denominations and other provisions as provided in the ordinances hereafter adopted providing for the issuance of the Additional Bonds; provided, however, that those terms and provisions shall not be inconsistent with this Ordinance to the extent it governs the issuance and terms of Additional Bonds.

**SECTION 12. Bond Counsel.** The legal services of the law firm of Squire Patton Boggs (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Bonds and rendering at delivery related legal opinions, all as set forth in the form of engagement letter from that firm which is now on file in the office of the Clerk of Council. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this City, or the execution of public trusts. For those legal services, that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. The Director of Finance is authorized and directed to make appropriate certification as to the availability of funds for those fees and any reimbursement and to issue an appropriate order for their timely payment as written statements are submitted by that firm. The amounts necessary to pay those fees and any reimbursement are hereby appropriated from the proceeds of the Bonds, if available, and otherwise from available moneys in the General Fund.

**SECTION 13. Notification of Bond Issuance.** The Director of Finance is authorized and directed to provide the notification required by Section 165.03(D) of the Revised Code to the Director of the Ohio Development Services Agency.

**SECTION 14. Satisfaction of Conditions for Bond Issuance.** 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;

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that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to the Act, the City's Charter, this Ordinance, the Certificate of Award and other authorizing provisions of law.

**SECTION 15. Prior Acts Ratified and Confirmed.** Any actions previously taken by City officials or agents of the City in furtherance of the matters set forth in this Ordinance are hereby approved, ratified and confirmed.

**SECTION 16. Compliance with Open Meeting Requirements.** This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

**SECTION 17. 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 18. 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 provide for the sale and issuance of the Bonds, which is necessary to make their proceeds available to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and 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.



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MELODY JOY HART  
President of Council



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AMY HIMMELEIN  
Clerk of Council

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PASSED: March 7, 2022

Presented to Mayor: March 9, 2022      Approved:

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KAHLIL SEREN  
Mayor