

ORDINANCE RECORD
COUNCIL OF THE CITY OF BRECKSVILLE

Ordinance No. 5492

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF ONE OR MORE SERIES OF TAX INCREMENT FINANCING REVENUE BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$12,000,000 FOR THE PURPOSE OF PAYING COSTS OF CONSTRUCTING AND IMPROVING PUBLIC INFRASTRUCTURE IN VALOR ACRES AND THE DALAD LANDS, PAYING CERTAIN FINANCING AND OTHER COSTS OF THE BONDS, AUTHORIZING VARIOUS RELATED DOCUMENTS AND INSTRUMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, this Council, pursuant to Ordinance No. 5346, passed on October 6, 2020 (the “TIF Ordinance”), declared that 100% of the increase in true value of certain real property located in the City in the areas known as the Valor Acres Phase II Parcels, as more specifically identified in the TIF Ordinance, is a public purpose and declared to be exempt from taxation and required the owners of such property to make service payments in lieu of taxes; and

WHEREAS, pursuant to a Second Amended and Restated Compensation Agreement with the Brecksville-Broadview Heights City School District, authorized by Ordinance No. 5335, passed on August 18, 2020, and Ohio Revised Code Section 5709.41, the City is required to make certain payments to the Brecksville-Broadview Heights City School District and the Cuyahoga Valley Career Center (the “School District Payments”); and

WHEREAS, this Council pursuant to Ordinance No. 5462, passed on December 21, 2021, entered into a Tax Increment Agreement (Valor Acres Residential Development)(the “TIF Agreement”) with DiGeronimo Development LLC, VA Vesta II, LLC and VA Vesta III, LLC (collectively, the “Developer Parties”) providing for, among other things, the use of Statutory Service Payments to fund public infrastructure improvements (the “Public Improvements”) identified in the TIF Agreement; and

WHEREAS, pursuant to Section 7(b) of the TIF Agreement, upon the request of the Developer Parties, the City agreed to assist the Developer Parties in the issuance of bonds to finance the Public Improvements, and the Developer Parties have requested that the City issue tax increment financing revenue bonds to finance those Public Improvements; and

WHEREAS, this Council finds and determines that it is necessary and in the best interest of the City to issue the revenue bonds in the maximum principal amount of \$12,000,000 for the purpose of paying (i) the costs of Public Improvements, (ii) the Financing Costs of such revenue bonds, (iii) costs of debt service reserve deposit and (iv) capitalized interest on such revenue bonds (the “Bonds”);

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, Cuyahoga County, 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 of Ohio, including the Constitution and the City Charter.

“Bond Proceedings” means, collectively, this Ordinance, the Purchase Agreement, the Trust Agreement, the TIF Declaration, any continuing disclosure agreement and such other agreements, instruments and proceedings, including the Bonds, that provide collectively for,

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among other things, the rights of holders and beneficial owners of the Bonds and the issuance of the Bonds.

“Debt Service Charges” means, for any period or payable at any time, the principal of and interest on the Bonds, for that period or payable at that time whether due at maturity or upon redemption.

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

“Minimum Service Payments” means any payments due from an owner of the Project Site pursuant to the TIF Declaration as “minimum service payment obligations” under and within the meaning of Section 5709.91 of the Revised Code.

“Net TIF Statutory Service Payments” means any Statutory Service Payments, net of School District Payments and any related administrative costs or payments to Cuyahoga County.

“Pledged Revenues” means (a) the Net TIF Statutory Service Payments, (b) any Minimum Service Payments, (c) any moneys and investments in the special funds held by the Trustee pursuant to the Trust Agreement, (d) any other moneys intended to be used for Debt Service Charges, and (e) all income and profit from the investment of the foregoing moneys.

“Purchase Agreement” means the Bond Purchase Agreement or Bond Placement Agreement between the City and the original purchaser of the Bonds, together with any other parties thereto deemed necessary or convenient, including, without limitation, any placement agent.

“Statutory Service Payments” means the service payments in lieu of taxes received by the City from the TIF Property pursuant to Section 2 of the TIF Ordinance.

“TIF Declaration” means the Declaration of Covenants and Imposition of Continuing Priority Lien recorded by the owners of the TIF Property to confirm that the obligations under the TIF Declaration bind the owners of the TIF Property and that such obligations, and the lien of the TIF Declaration attach to, bind and run with the TIF Property.

“TIF Property” means Phase II Parcels consisting generally of a portion of the 10.2 acres identified on Exhibit A to the TIF Ordinance as the CIC Property, as more specifically defined and described in Exhibits A and B to the TIF Declaration.

“Trust Agreement” means a trust agreement between the City and the Trustee, in its capacity as trustee of the bonds.

“Trustee” means The Huntington National Bank, or such other trustee appointed by the Director of Finance.

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 2. Findings. This Council hereby makes the findings and determinations set forth in the preambles to this Ordinance; finds and determines that the use of the Net TIF Statutory Service Payments to pay Debt Service Charges is a proper use of such service payments pursuant to the TIF Ordinance and TIF Agreement; finds and determines that the use of the Minimum Service Payments to pay Debt Service Charges is a proper use of such Minimum Service Payments; and that the amount necessary to finance the Public Improvements will require the

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issuance, sale and delivery of the Bonds, which Bonds shall be payable and secured as provided herein.

Section 3. Issuance of Bonds. This Council determines that it is necessary and in the best interest of the City to issue one or more series of tax increment financing revenue bonds in the maximum principal amount of \$12,000,000 for the purposes of paying (i) the costs of the Public Improvements, (ii) the Financing Costs of the Bonds, (iii) costs of any debt service reserve deposit, and (iv) capitalized interest on the Bonds. The Bonds shall be issued pursuant to the Act and the Bond Proceedings.

Each Bond shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that one or both of such signatures may be a facsimile. The Trustee is hereby appointed to act as the registrar for the Bonds and the Trustee will maintain a register evidencing the ownership of the Bonds. If so provided in the Trust Agreement, the Bonds or any portion thereof may be issued to a depository for use in a book-entry system. No Bond shall be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond Proceedings unless and until the certificate of authentication on the Bond is signed by the Trustee, as registrar.

Each Bond shall be designated "The City of Brecksville, Ohio, Tax Increment Financing Revenue Bonds, Series 2022 (Valor Acres Project)", with such additional designations as shall be determined by the Director of Finance or the Trustee as necessary or desirable to distinguish the Bonds as set forth in the Trust Agreement, and shall be issuable only in definitive (certificated) fully registered form in substantially the form set forth in the Trust Agreement. The Bonds shall be issued in authorized denominations as provided in the Trust Agreement and shall be numbered from R-1 upward. The Bonds may be issued on one or more dates as determined by the Director of Finance. Each Bond shall be dated the date of its issuance and the outstanding principal amount of each Bond shall bear interest at the rate or rates (not to exceed 7.0% per year), as determined on its sale date or at the time of issuance by the Director of Finance (with that determination conclusively evidenced by the Director of Finance's execution of the Purchase Agreement or the Bonds). Interest on each Bond shall be payable on the interest payment dates set forth in the Trust Agreement, 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. Interest on the outstanding principal amount of the Bonds shall be computed on the basis of a 360 day year consisting of twelve 30 day months. The Bonds shall have such other terms as provided therein and in the Trust Agreement.

All Bonds shall mature no later than thirty-five years after their date of issuance and are subject to (i) redemption at the option of the City at par plus accrued interest, in whole or in part in \$5,000 increments, on any date with such notice to bondholders as is required by the Trust Agreement, occurring on or after the date established in the Trust Agreement, which shall be no later than December 1, 2032, and (ii) if and as provided in the Trust Agreement, mandatory redemption, at par plus any accrued interest, in whole or in part in \$5,000 increments, on any business day, pursuant to mandatory sinking fund redemption requirements or upon the occurrence of certain events described in the Trust Agreement.

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

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Section 4. Sale of the Bonds.

(a) The Director of Finance is authorized to sell the Bonds to the purchaser or purchasers as identified in the Purchase Agreement at a purchase price, not less than 95% of the aggregate principal amount thereof, as shall be determined by the Director of Finance in the Purchase Agreement, 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 Purchase Agreement or the Trust Agreement, in accordance with law, and the provisions of this Ordinance and the Purchase Agreement. Bonds may be sold on one or more dates pursuant to one or more Purchase Agreements.

(b) Primary Offering Disclosure. The City is authorized to prepare a disclosure statement relating to the original issuance of the Bonds. The distribution and use of that disclosure statement is hereby approved. The Mayor and Director of Finance are each authorized to complete and sign on behalf of the City, and in their official capacities, that disclosure statement, and to certify or otherwise represent, that the disclosure statement is a "deemed final" offering disclosure statement (except for permitted omissions) by the City as of its date and is a final limited offering memorandum for purposes of SEC Rule 15c2-12(b)(1), (3) and (4) if and to the extent such Rule applies to the Bonds. Those officers are each further authorized to use and distribute, or authorize the use and distribution of, a final disclosure statement and supplements thereto in connection with the original issuance of the Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the City, and in their official capacities, such certificates in connection with the accuracy of the final offering disclosure statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

(c) Agreement to Provide Continuing Disclosure. For the benefit of the holders and beneficial owners from time to time of the Bonds, the City may enter into a continuing disclosure agreement to provide updated information regarding the Bonds to the holders and beneficial owners. In order to describe and specify certain terms of the City's continuing disclosure agreement for that purpose, and thereby to implement that agreement, including provisions for enforcement, amendment and termination, the Mayor and the Director of Finance are each authorized to sign and deliver, in the name and on behalf of the City, a continuing disclosure certificate or agreement in form and substance acceptable to the officer executing such certificate or agreement, which such acceptance conclusively evidenced by such execution.

Section 5. Creation of Funds; Application of Proceeds of Bonds. The special funds described in the Trust Agreement are hereby authorized and directed to be created, and the proceeds from the sale of the Bonds shall be deposited in accordance with the Trust Agreement and disbursed at the written direction of the Director of Finance to pay costs of the Public Improvements and Financing Costs, all as provided in the Trust Agreement, and the proceeds from the sale of the Bonds are appropriated to those purposes. The Purchase Agreement may authorize the original purchaser or placement agent 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. All remaining proceeds of the Bonds shall be deposited and applied for the purposes of the Bonds pursuant to the Trust Agreement.

Section 6. Security for the Bonds. The Bonds and any additional bonds that may be issued under the Trust Agreement hereafter on a parity with the Bonds shall be special obligations of the City. Debt Service Charges shall be payable equally and ratably solely from the Pledged Revenues, and the payment of Debt Service Charges shall be secured by a pledge of and lien on the Pledged Revenues. Nothing in the Bond Proceedings shall constitute a general obligation debt or tax-supported bonded indebtedness of the City; the general resources of the City shall not be required to be used, and neither the general credit nor taxing power or full faith and credit of the City are or shall be pledged, for the performance of any duty under the Bond Proceedings. Nothing in this Ordinance gives the holders of Bonds, and they do not have, the right to have excises or

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taxes levied by this City Council for the payment of Debt Service Charges, but the Bonds are payable solely from Pledged Revenues as provided in the Bond Proceedings, and each Bond shall contain a statement to that effect; provided, however, that nothing shall be deemed to prohibit the City, of its own volition, 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 Proceedings.

Section 7. Covenants of the City. In addition to the covenants and agreements of the City herein and in the Trust Agreement, the City, by issuance of the Bonds, covenants and agrees with their holders to perform its applicable covenants and agreements set forth in the Bond Proceedings. The City particularly covenants that: (a) it will use proceeds of the Bonds to pay costs of the Public Improvements and Financing Costs; (b) it shall promptly pay from Pledged Revenues the Debt Service Charges on every Bond issued at the places, on the dates and in the manner provided in the Bond Proceedings according to the true intent and meaning thereof; (c) it shall diligently pursue the collection of the service payments in lieu of taxes required pursuant to the TIF Ordinance and any Minimum Service Payments, including taking all lawful actions necessary to claim and maintain the exemption from real property taxation granted by the TIF Ordinance and taking all lawful actions as are necessary and advisable to collect delinquent service payments in lieu of taxes; (d) it shall not amend the TIF Ordinance nor enact any other legislation that would reduce the amount of Pledged Revenues below the amount necessary to pay Debt Service Charges on the Bonds; (e) at any and all times, it cause to be done all such further acts and things and cause to be signed and delivered all such further instruments as may be necessary to carry out the purpose of the Bonds and any Bond Proceedings or as may be required by the Act; (f) the Director of Finance will furnish to the Trustee a true transcript of proceedings of all proceedings had with reference to the issuance of the Bonds together with such information from the City's records as is necessary to determine the regularity and validity of such issuance; and (g) it will observe and perform faithfully at all times all covenants, agreements, authority, actions, undertakings, stipulations and provisions to be observed or performed on its part under the Bond Proceedings.

Each of those obligations is binding upon the City, and upon each City officer or employee as from time to time may have the authority under law to take any action on behalf of the City that may be necessary to perform all or any part of that 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. Notwithstanding the provisions of Section 5709.40(H) of the Revised Code, the provisions of Sections 133.25(B)(4)(except for division (f)) and 133.25(C) of the Revised Code apply to the Bonds. All enforcement actions must be taken in a court of commons pleas in Cuyahoga County, Ohio.

If any Bonds are issued as obligations the interest on which is excluded from gross income for federal income tax purposes, the City shall restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code (the "Code"). The Director of Finance is authorized and directed to execute and deliver (i) an appropriate certificate 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 interest on the Bonds, all as of the date of delivery of and payment for the Bonds; and (ii) the statement setting forth the information required by Section 149(e) of the Code.

The City shall (a) take or cause to be taken such actions which may be required of it for the interest on any such Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) not take or permit to be taken any actions which would adversely affect that exclusion, and that it, or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (iii) make timely rebate payments to the federal government, (iv)

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maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Director of Finance is authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

Section 8. Execution of Bond Proceedings and Other Agreements. To provide for the issuance and sale of, and security for the payment of Debt Service Charges on, the Bonds, each of the Mayor and Director of Finance, alone or together, is hereby authorized, for and in the name of the City, to execute and deliver the Trust Agreement, the TIF Declaration and the Purchase Agreement in substantially the forms thereof now on file with the Clerk of the City Council, with such changes therein prior to the date of execution and delivery and any further amendments thereto thereafter as are not inconsistent with this ordinance and not substantially adverse to the City and which are permitted by the Act and shall be approved by the officer or officers of the City executing those documents. The approval of such changes, and that such changes are not substantially adverse to the City, shall be conclusively evidenced by the execution of those documents by that official or those officials.

The Mayor, the Director of Finance and the Clerk of the City Council are each further authorized and directed to execute any certifications, agreements or other instruments or Bond Proceedings, including but not limited to any easements or maintenance agreements for the Public Improvements and any administration agreements related to the Bonds, and to take such further actions, as are necessary or appropriate to provide for the issuance and sale of the Bonds and to consummate the transactions contemplated in this Ordinance, the Bond Proceedings and the TIF Agreement. All actions heretofore taken by the officers and officials of the City in connection with the issuance and sale of the Bonds are hereby ratified and approved.

Section 9. Appropriation of Statutory Service Payments and Minimum Service Payments. The Statutory Service Payments and any Minimum Service Payments paid to the City shall be deemed appropriated for the purposes set forth in the Trust Agreement and authorized to be expended therefrom in accordance with the Trust Agreement, and the Director of Finance is authorized to make payments thereof in accordance with the Trust Agreement.

Section 10. Severability. Each section of this Ordinance and each subdivision or paragraph of any section hereof and each sentence of a paragraph hereof is hereby declared to be independent and the finding or holding of any section or any subdivision, paragraph or sentence hereof to be invalid or void shall not be deemed or held to affect the validity of any other section, subdivision, paragraph or sentence of this Ordinance.

Section 11. Retention of Bond Counsel. The legal services of Squire Patton Boggs (US) LLP, as bond counsel, be and are hereby retained. The legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Bonds and the rendering of the necessary legal opinions upon the delivery of the Bonds. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm shall be paid just and reasonable compensation for those legal services and shall be reimbursed for the actual out-of-pocket expenses it incurs in rendering 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 other moneys lawfully available and appropriated or to be appropriated for that purpose.

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Section 12. 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 open meetings of this Council or committees, 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 13. 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 this City, and for the further reason that this Ordinance must be immediately effective in order to issue and sell the Bonds, which is necessary to enable the City to make the Public Improvements in accordance with the TIF Agreement; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

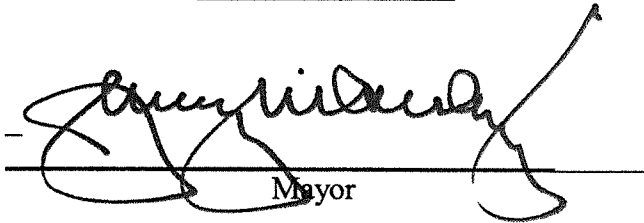
PASSED: 4-19, 2022

FIRST READING: 4-5-2022

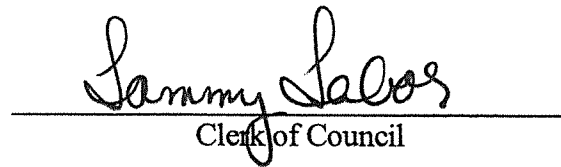
SECOND READING: 4-19-2022

APPROVED: 4-19, 2022

THIRD READING: _____

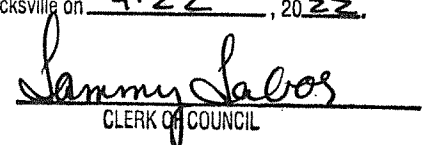


Mayor



Clerk of Council

I do hereby certify that the foregoing is a true and correct copy of Ordinance No. 5492 duly passed by the Council of the City of Brecksville, Ohio, on 4-19, 20 22 and that same was duly posted in accordance with the existing Charter of the City of Brecksville on 4-22, 20 22.



CLERK OF COUNCIL