

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$6,000,000 OF NOTES IN ANTICIPATION OF THE ISSUANCE OF BONDS AND THE LEVY AND COLLECTION OF SPECIAL ASSESSMENTS TO PAY THE COST OF IMPROVING CERTAIN PROPERTIES IN THE CITY OF BEACHWOOD, OHIO BY ACQUIRING AN EXISTING ROADWAY, CONSTRUCTING EATON BOULEVARD, CLEARING, GRADING, PAVING, DRAINING, CONSTRUCTING SIDEWALKS, CURBS AND DRIVEWAY APPROACHES, STORM SEWERS AND CATCH BASINS, WATERLINES, SANITARY SEWERS AND UTILITY CONDUITS, INSTALLING LANDSCAPING, IRRIGATION, TRAFFIC SIGNALS, SIGNAGE AND STREET LIGHTING, AND OTHERWISE IMPROVING THE SAME.

WHEREAS, this Council on July 19, 2010, adopted Resolution No. 2010-95 declaring the necessity of constructing the improvement described in Section 1; and

WHEREAS, the Finance Director, as fiscal officer of this City, has certified to this Council that the estimated life or period of usefulness of the improvement described in Section 1 is at least five years, the estimated maximum maturity of the bonds described in Section 1 is thirty years, and the maximum maturity of the notes described in Section 3, to be issued in anticipation of the bonds, is twenty years;

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

Section 1. It is necessary to issue bonds of this City in the aggregate principal amount of \$6,000,000 (the *Bonds*) to pay the property owner's cost, in anticipation of the levy and collection of special assessments, of improving certain properties in the City of Beachwood, Ohio by:

- (i) the acquisition of Spectrum Parkway (to be renamed Eaton Boulevard) from Richmond Road westerly to its terminus, a distance of approximately 550 lineal feet, (ii) construction of Eaton Boulevard from the current terminus of Spectrum Parkway westerly thence southerly to Harvard Road (including reconstruction of a portion of existing Robert Bishop Drive, to be renamed Eaton Boulevard), a distance of approximately 1,960 lineal feet, by clearing, grading, paving and constructing a roadway with upright curb, (iii) installing storm sewers with catch basins along Eaton Boulevard and replacing and upgrading existing storm sewer lines southerly along Richmond Road from Spectrum Parkway, (iv) installing a water main, constructing sidewalks, installing street lighting, installing signage, installing traffic signals, installing median landscaping between the lanes of the roadway, installing landscaping between the sidewalk and curb of the roadway, grading and installing landscaping upon any land or interest in land acquired by the City in connection with the Improvement, whether in fee or by easement and (v) installing landscape irrigation, sanitary sewers and utility conduits along Eaton

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Boulevard to accommodate the extension of such services, all of the foregoing together with the necessary appurtenances thereto.

Section 2. The Bonds shall be dated approximately September 1, 2011, shall bear interest at the now estimated rate of 6% per year, payable semi-annually until the principal amount is paid, and are estimated to mature in twenty annual principal installments that are substantially equal on December 1 of each year. The first principal payment of the Bonds is estimated to be December 1, 2012 and the first installment of interest on the Bonds is estimated to be paid on June 1, 2012.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount not to exceed \$6,000,000 (the *Notes*) shall be issued in anticipation of the issuance of the Bonds. The Notes shall be dated the date of their issuance and shall mature not later than one year from that date, as shall be fixed by the Finance Director in the certificate awarding the Notes (the *Certificate of Award*) in accordance with Section 6. The Notes shall bear interest at a rate or rates not to exceed 10% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The principal amount of Notes to be issued and the rate of interest on the Notes shall be determined by the Finance Director in the Certificate of Award.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America as determined by the Finance Director in the Certificate of Award, and shall be payable, without deduction for services of the City's paying agent, at (i) the Cleveland, Ohio office of The Huntington National Bank, or (ii) the designated office of a bank or trust company requested by the original purchaser of the Notes (the *Original Purchaser*), provided that such request shall be approved by the Finance Director after determining that the payment at that bank or trust company will adequately protect the funds of the City and that proper procedures and safeguards are available for that purpose, or (iii) the office of the Finance Director if agreed to by the Finance Director and the Original Purchaser (the *Paying Agent*).

Section 5. The Notes shall be signed by the Mayor and Finance Director, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Finance Director. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Finance Director will serve as note registrar) and in book entry or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the Revised Code if it is determined by the Finance Director that issuance of fully registered securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Finance Director and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to this Ordinance. As used in this section and this ordinance:

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“Book entry form” or “book entry system” means a form or system under which (i) the ownership of beneficial interests in the Notes and the principal of, and interest on, the Notes may be transferred only through a book entry, and (ii) a single physical Note certificate is issued by the City and payable only to a Depository or its nominee, with such Notes “immobilized” in the custody of the Depository or its agent for that purpose. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in the Notes and that principal and interest.

“Depository” means any securities depository that is a clearing agency under federal law operating and maintaining, with its Participants or otherwise, a book entry system to record ownership of beneficial interests in the Notes or the principal of, and interest on, the Notes and to effect transfers of the Notes, in book entry form, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“Participant” means any participant contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations.

The Notes may be issued to a Depository for use in a book entry system and, if and as long as a book entry system is utilized, (i) the Notes may be issued in the form of a single Note made payable to the Depository or its nominee and immobilized in the custody of the Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form shall be shown by book entry on the system maintained and operated by the Depository and its Participants, and transfers of the ownership of beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable, except for transfer to another Depository or to another nominee of a Depository, without further action by the City.

If any Depository determines not to continue to act as a Depository for the Notes for use in a book entry system, the Finance Director may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Finance Director does not or is unable to do so, the Finance Director, after making provision for notification of the beneficial owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall cause the Notes in bearer or payable to order form to be signed by the officers authorized to sign the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and expense (including any costs of printing), if the event is not the result of City action or inaction, of those persons requesting such issuance.

The Finance Director is also hereby authorized and directed, to the extent necessary or required, to enter into any agreements determined necessary in connection with the book entry

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system for the Notes, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 6. The Notes shall be sold at not less than par at private sale by the Finance Director in accordance with law and the provisions of this Ordinance. The Finance Director shall sign the Certificate of Award referred to in Section 3 evidencing that sale to the Original Purchaser, cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the Original Purchaser, to the Original Purchaser upon payment of the purchase price. The Mayor, the Finance Director, the Law Director, 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.

Section 7. The proceeds from the sale of the Notes, except any premium and accrued interest, shall be paid into the proper fund or funds and those proceeds are appropriated and shall be used for the purpose for which the Notes are being issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 8. The par value to be received from the sale of the Bonds or of any renewal notes and any excess funds resulting from the issuance of the Notes shall, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

Section 9. During the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, the same tax that would have been levied if the Bonds had been issued without the prior issuance of the Notes. The tax shall be within the 9.2 mill limitation provided by the Charter of the City, shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner, and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the Bonds when and as the same fall due.

All special assessments collected for the improvement described in Section 1 and any unexpended balance remaining in the improvement fund after the cost and expenses of the improvement have been paid shall be used for the payment of the debt charges on the Notes until paid in full. In each year to the extent money from the levy of the special assessments for the improvement is available for the payment of the debt charges on the Notes and Bonds and is appropriated for that purpose, the tax shall be reduced by the amount of money so available and appropriated.

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Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Notes in such manner and to such extent as may be necessary so that (a) the Notes will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Sections 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the Code) or (ii) be treated other than as bonds to which Section 103(a) of the Code applies, and (b) the interest on the Notes 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 Notes 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 Notes 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 Finance Director, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Notes 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 Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Notes 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 Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Notes, 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 Notes.

Section 11. The Clerk of Council is directed to deliver a certified copy of this Ordinance and a signed copy of the Certificate of Award to the County Auditor.

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Section 12. The legal services of Squire, Sanders & Dempsey L.L.P., 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 Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. 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, whether or not the Notes are ever issued. 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.

Section 13. 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 Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Notes have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 9) of the City are pledged for the timely payment of the debt charges on the Notes; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Notes.

Section 14. 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 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 15. 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 issue and sell the Notes, which is necessary to provide for the construction of the improvement, which is needed to provide access to the lots and lands to be assessed and to promote the economic development of the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

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ATTEST: I hereby certify that this legislation was duly adopted on the 19th day of July, 2010, and presented to the Mayor for approval or rejection in accordance with Article III, Section 8 of the Charter on the 20th day of July, 2010.

Clerk of Council

APPROVAL: I have approved this legislation this 20th day of July, 2010 and filed it with the Clerk.

Mayor