

ORDINANCE NO. 175-2022

TITLE: PAYMENTS IN LIEU OF TAXES

AN ORDINANCE DECLARING IMPROVEMENTS TO CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE, REQUIRING THE OWNERS OF THE IMPROVEMENTS THEREON TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING AN URBAN REDEVELOPMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF SUCH SERVICE PAYMENTS; PROVIDING RELATED AUTHORIZATIONS PURSUANT TO SECTIONS 5709.41, 5709.42 AND 5709.43, OF THE OHIO REVISED CODE, AND DECLARING AN EMERGENCY.

WHEREAS, Sections 5709.41, 5709.42 and 5709.43 of the Revised Code (collectively, the “Act”) provide that this Council may declare by ordinance to be a public purpose any Improvement (as defined in Section 5709.41(A)(2) of the Revised Code, an “Improvement” and collectively, the “Improvements”) to a parcel of real property located in the City if: (1) the City held fee title to the parcel prior to the adoption of the ordinance and (2) the parcel is leased, or the fee of the parcel is conveyed, to any person either before or after adoption of the ordinance, thereby authorizing the exemption of the Improvement from real property taxation for a period of time, and provide for the making of service payments in lieu of taxes of ad valorem by the owner of such parcels, and establish an urban redevelopment tax increment equivalent fund into which such service payments in lieu of taxes shall be deposited; and

WHEREAS, the City, pursuant to its powers under its Charter, the Ohio Constitution and the Revised Code, and acting through its Council, has determined to engage in urban redevelopment of certain real property in the City described on Exhibit A attached hereto (the “TIF Site”) and to carry out that public purpose, the City has heretofore acquired fee title to the TIF Site; and

WHEREAS, the City intends to convey the TIF Site to DR Magic Marketplace, LLC (the “Developer”), who will undertake the redevelopment of the same (the “Development”), resulting in the Improvements to the TIF Site, pursuant to a certain Development and Tax Increment Financing Agreement (“Development Agreement”) that will be entered into by and between the City and the Developer; and

WHEREAS, the City has determined that it is necessary and appropriate and in the best interests of the City to declare the Improvements with respect to the TIF Site to be exempt from real property taxation for the period of time specified herein and to provide for service payments in lieu of taxes with respect to the TIF Site pursuant to Section 5709.42 of the Revised Code; and

WHEREAS, as required by the Act and Section 5709.83 of the Ohio Revised Code, the City has provided all required notices to the Barberton City School District (the “School District”); and

NOW, THEREFORE, BE IT ORDAINED by City Council for the City of Barberton, Summit County, Ohio, that:

SECTION 1. Pursuant to and in accordance with the provisions of Section 5709.41 of the Revised Code, this Council hereby finds and determines that 75% of the Improvement with respect to the TIF Site is a public purpose, and 75% of said Improvement is hereby declared to be a public purpose and exempt from real property taxation for a period not to exceed ten (10) years and exempt from taxation commencing, for each parcel comprising the TIF Site, with the first tax year that begins after the effective date of this Ordinance and ending on the earlier of (1) the date the Improvements have been exempted from taxation for a period of ten (10) years or (2) the date on which the City has collected into the Fund established in Section 3 a total amount

of Service Payments (as defined below) available for and sufficient to pay the costs provided in Section 3 (the “Exemption Period”).

SECTION 2. As provided in Section 5709.42 of the Revised Code, the owner or owners of the Improvements are hereby required to and shall pay the service payments in lieu of ad valorem real property taxes to the County Fiscal Officer of Summit County (the “County”) (unless otherwise authorized and directed in writing by the County) on or before the final dates for payment of real property taxes, which service payments in lieu of ad valorem real property taxes, together with any associated rollback payments shall be deposited in the Fund described in Section 3. (Any late payments of service payments in lieu of ad valorem real property taxes shall be subject to penalty and bear interest at the then current rate established under Sections 323.121(B) (1) and 5703.47 of the Revised Code, as may hereinafter be amended, or any successor provisions thereto (the late payments together with the service payments in lieu of ad valorem real property taxes and rollback payments are referred to collectively as the “Service Payments”).) This Council hereby authorizes the Mayor, the Director of Finance, the Director of Law, and other appropriate officers of the City, to provide such information and certifications, and execute and deliver or accept delivery of such instruments, as are necessary or incidental to collect those Service Payments, and to make such arrangements as are necessary and proper for payment of the Service Payments.

SECTION 3. This Council hereby establishes, pursuant to and in accordance with Section 5709.43 of the Revised Code, the DR Magic Marketplace Urban Redevelopment Tax Increment Equivalent Fund (the “Fund”), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvement of the TIF Site, by or on behalf of the County Fiscal Officer as provided in Section 5709.42 of the Ohio Revised Code. The moneys in the Fund shall be used for any of the following purposes:

- (a) First, to pay to the Developer the “Costs of the Development” as described in the Development Agreement, which shall include any and all costs Developer incurred in order to construct the Development, including but not limited to: (i) cash paid; (ii) interest on any costs paid in an amount not to exceed 4%; (iii) review and inspection fees incurred in connection with the construction of the Development; (iv) other financing costs; (v) professional fees; and (vi) manager, construction management and supervisory fees, subject to the terms and conditions of the Development Agreement; or
- (b) Second, to pay the interest and any premium on, and principal of, any loans, notes or other financing acquired by the Developer to finance the Costs of the Development (including any amendment, replacement, refinancing, extension of such loans, notes or other financing) until the same are paid in full, including any administrative or other costs related to servicing the same; or
- (c) Third, funding any urban redevelopment activities within the City, and funding any activities which will provide for the creation of jobs and employment opportunities, and improve the economic welfare of the City; or
- (d) Fourth, such additional purposes as may be authorized by Council in any amendment to or supplement to this Ordinance.

The Fund shall remain in existence so long as such Service Payments are collected and used for the aforesaid purposes, after which, the Fund shall be dissolved in accordance with Section 5709.43 of the Revised Code.

SECTION 4. This Council further hereby authorizes and directs the Mayor, the Director of Finance, the Director of Law, or other appropriate officers of the City to sign and execute all documents and make such arrangements as are necessary and proper for

(i) collection of the Service Payments, which are to be deposited in the Fund and (ii) carrying out the transactions contemplated in this Ordinance.

SECTION 5. In accordance with Section 5709.832 of the Revised Code, this Council hereby determines that the Developer, its successors or assigns in interest to the property tax exemption authorized herein, shall not deny employment to any individual based solely on race, religion, sex, disability, color, national origin, or ancestry.

SECTION 6. This Council hereby designates the City’s tax incentive review council (“TIRC”) previously established by this County as the TIRC that shall annually review the exemptions provided pursuant to this Ordinance as required by R.C. Section 5709.85. In the event it is determined that such a TIRC did not previously exist, then the TIRC shall be established by the City pursuant to Section 5709.85 of the Ohio Revised Code.

SECTION 7. Pursuant to Section 5709.41(E) of the Revised Code, the Clerk of Council of the City is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Development of Development within 15 days after its passage. On or before March 31 of each year the Exemption remains in effect, the Mayor or other authorized officer of this City shall prepare and submit to the Director the status report required under Section 5709.41(E) of the Revised Code.

SECTION 8. 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, and that all deliberations of this Council and of any committees that resulted in those formal actions were held, in meetings open to the public in compliance with the law.

SECTION 9. 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 enable the City to provide for the real property tax exemption, the Service Payments, and the related objectives provided for herein that are needed to benefit the City and its residents by creating economic opportunities, enlarging the property tax and income tax bases, and stimulating collateral development within the City; wherefore, this Ordinance shall be in full force and effect immediately upon its passage by the affirmative vote of not less than two-thirds of the members of Council, and approval by the Mayor, or otherwise at the earliest time allowed by law.

Passed December 19, 2022

Clerk of Council

President of Council

Approved _____ 2022

Mayor