

ORDINANCE NO. 2012-02

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN A PRINCIPAL AMOUNT OF \$400,000, IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PAY COSTS OF CONSTRUCTING A NEW STREET IN THE NORTHBROOK INDUSTRIAL PARK, TOGETHER WITH ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2011-02 passed March 1, 2011, a note in anticipation of bonds in the amount of \$600,000 dated April 19, 2011, was issued, in part, for the purpose stated in Section 1, to mature on April 19, 2012 (the "Outstanding Note");

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

WHEREAS, the Director of Finance has certified to this Council that the estimated life or period of usefulness of the improvements described in Section 1 is at least five years, the estimated maximum maturity with respect to the Bonds described in Section 1 is 19 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is April 26, 2027;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brookville, County of Montgomery, Ohio, that:

Section 1. It is necessary to issue bonds of this City in a principal amount of \$400,000 (the "Bonds") to pay costs of constructing a new street in the Northbrook Industrial Park, together with all necessary appurtenances.

Section 2. The Bonds shall be dated approximately April 1, 2013, shall bear interest at the now estimated rate of six percent (6%) per year, payable semiannually until the principal amount is paid, and are estimated to mature in 19 annual principal installments on December 1 of each year that are in such amounts that the total principal and interest payments on the Bonds in any year in which principal is payable are substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2013.

Section 3. It is necessary to issue and this Council determines that notes in a principal amount of \$400,000 (the "Notes") shall be issued in anticipation of the issuance of the Bonds, to retire, together with other moneys available to the City, the Outstanding Note. The Notes shall be dated April 18, 2012 and the Notes shall mature on April 18, 2013, provided, however, that the Director of Finance may, if it is determined necessary or advisable for the sale of the Notes, establish a maturity date that is up to 14 days less than one year from the date of the issuance of the Notes by setting forth that maturity date in a final terms certificate setting forth certain terms of the Notes (the "Final Term Certificate"). The Notes shall bear interest at a rate or rates not to exceed

six percent (6%) 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 rate of interest on the Notes shall be determined by the Director of Finance in the Final Term Certificate.

Section 4. The principal of and interest on the Notes shall be payable in lawful money of the United States of America and shall be payable, without deduction for services of the City's paying agent, at the office of the Director of Finance (the "Paying Agent").

Section 5. The Notes shall be signed by the Municipal Manager and Director of Finance, 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 Fifth Third Securities, Inc. (the "Original Purchaser") and approved by the Director of Finance. The entire principal amount may be represented by a single note, may be issued as fully registered securities (for which the Director of Finance will serve as note registrar), and may be issued 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 Director of Finance that issuance of fully registered securities or in book-entry or other uncertificated form will facilitate the sale and delivery of the Notes. The Notes shall not have coupons attached, shall be numbered as determined by the Director of Finance 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.

The Notes may be issued to any securities depository (a "Depository") that is a clearing agency under federal law operating and maintaining, with any participants contracting with a Depository under a book entry system and includes security brokers and dealers, banks and trust companies, and clearing corporations or otherwise ("Participants"), a system (a "book entry 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. 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 Director of Finance may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Director of Finance does not or is unable to do so, the Director of Finance, 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 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 Director of Finance 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 system for the Notes.

Section 6. The Notes shall be sold to the Original Purchaser at not less than par at private sale by the Director of Finance in accordance with law, the provisions of this Ordinance and the Note Purchase Agreement (as hereinafter defined). The Director of Finance shall sign the Final Terms Certificate determining the final terms of the Notes as authorized by this Ordinance, 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 Note Purchase Agreement (the "Note Purchase Agreement") between the City and the Original Purchaser now on file with the Clerk of this Council is approved, and the Director of Finance is authorized to sign and deliver, on behalf of the City, the Note Purchase Agreement with such changes that are not inconsistent with the provisions of this Ordinance, are not materially adverse to the interests of the City and are approved by the Director of Finance. That any such changes to the Note Purchase Agreement are not materially adverse to the interests of the City and are approved by the Director of Finance shall be evidenced conclusively by the signing of the Note Purchase Agreement by the Director of Finance. The Mayor, the Municipal Manager, 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 Director of Finance is authorized, if it is determined to be in the best interest of the City, to combine the Notes with one or more other note issues of the City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.

Section 7. The portion of the proceeds of the Notes to be used to pay costs of issuance of the Notes shall be paid into a proper fund and shall be used for that purpose. The remaining proceeds of the Notes, including any premium, shall be deposited in the Bond Retirement Fund and used to pay principal of and interest on the Outstanding Note. All interest earned from the investment of the proceeds of the Notes (including interest earned on such interest) shall be credited to the fund in which such proceeds are deposited and, if needed, used for the purpose set forth above, and shall not be transferred to the General Fund. Any proceeds, of the Notes not spent for the purpose described above within 120 days of the issuance of the Notes shall be transferred, if necessary, to the Bond Retirement Fund and used to pay principal of and interest on the Notes when due.

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 principal of and interest 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 ten-mill limitation imposed by law, 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.

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 treated as 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 City hereby represents that the Outstanding Note was treated as a "qualified tax exempt obligation" pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Outstanding Note from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the Notes as "qualified tax exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Notes as "qualified tax exempt obligations", it has not formed or participated in the formation of, or benefited from or availed itself of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail itself of, any such entity. The City further represents that the Notes are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

The Director of Finance, 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, that 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 legal services of the law firm of Benesch, Friedlander, Coplan & Aronoff LLP (“Benesch”) are hereby retained. Those legal services shall be in the nature of legal advice and recommendations in connection with the authorization, sale and issuance of the Notes and rendering an opinion to the Original Purchaser, all as further provided in the engagement letter now on file with the Clerk of this Council. The form of the engagement letter now on file with the Clerk of this Council is approved, and the Municipal Manager is authorized to sign and deliver that engagement letter with any changes that are approved by the Municipal Manager and are not materially adverse to the interest of the City, all of which shall be conclusively evidenced by the signing of the engagement letter by the Municipal Manager.

In addition, this Council acknowledges that Benesch may represent, from time to time, the Original Purchaser in matters unrelated to the City. If Benesch is requested by the Original Purchaser to represent it in a matter unrelated to the City prior to issuance and delivery of the Notes, the Municipal Manager is authorized, after consultation with the Director of Law, to waive any conflict arising from such representation.

Section 12. The Director of Finance is directed to deliver a certified copy of this Ordinance to the County Auditor.

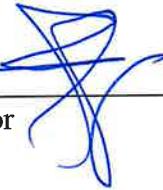
Section 13. This Council determines that all acts and conditions necessary to be done or performed by the City or to have been met precedent to and in the issuing of the Notes in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will 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 principal of and interest 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, and that all deliberations of this Council and any of its committees that resulted in those formal actions, were taken in meetings open to the public 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, and for the further reason that it is necessary for this Ordinance to be effective immediately to permit the City to timely retire the Outstanding Note and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: March 6, 2012

Mayor

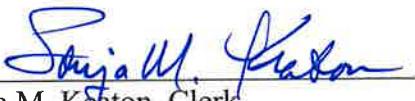


ATTEST:

Sanya M. Keaton
Clerk of Council

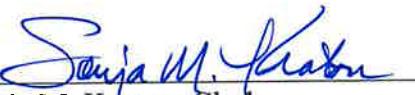
CERTIFICATE

The undersigned, Clerk of the City of Brookville, Ohio, does hereby certify that the foregoing is a true and correct copy of Ordinance No. 2012-02, passed by the Council of said City on the 6th day of March 2012.


Sonja M. Keaton, Clerk

CERTIFICATE OF POSTING

The undersigned, Clerk of Council of the City of Brookville, Ohio, hereby certifies that the foregoing Ordinance No. 2012-02 was posted at the City Building, U.S. Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio on the 7th day of March 2012 to the 7th day of April 2012, both days inclusive.


Sonja M. Keaton, Clerk