

ORDINANCE NO. 2007-07

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN AN AGGREGATE PRINCIPAL AMOUNT OF \$1,085,000, 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, the Director of Finance 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 20 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is 20 years;

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 the aggregate principal amount of \$1,085,000 (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, 2008, shall bear interest at the now estimated rate of five and one-half percent (5-1/2%) per year, payable semiannually until the principal amount is paid, and are estimated to mature in 20 annual principal installments on December 1 of each year. The first principal payment of the Bonds is estimated to be December 1, 2008.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of \$1,085,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds. The Notes shall be dated April 26, 2007 and shall mature April 25, 2008. The Notes shall bear interest at a rate or rates not to exceed five and one-half percent (5-1/2%) 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 or rates of interest on the Notes shall be determined by the Director of Finance in the certificate awarding the Notes (the Certificate of Award) in accordance with Section 7.

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 Director of Finance in the Certificate of Award, 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 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. As used in this section and this Ordinance:

“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 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, 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 plus accrued interest at private sale by the Director of Finance in accordance with law and the provisions of this Ordinance. The Director of Finance 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 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 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 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. This Council covenants that the City will restrict the use and investment of the proceeds of the Notes in such manner and to such extent, if any, as may be necessary after taking in the reasonable expectations at the time the Notes are issued, so that the Notes will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under

Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the Code) and will, to the extent possible, comply with all applicable provisions of the Code and the regulations thereunder in order for the interest on the Notes to remain exempt from federal income taxation, including any expenditure requirements, investment limitations, rebate requirements or use restrictions. The Director of Finance or any other officer of the City is authorized and directed to give an appropriate certificate of the City for inclusion in the transcript of proceedings regarding the issuance of the Notes setting forth the facts, estimates, circumstances and reasonable expectations pertaining to the use of the proceeds of the Notes and the provisions of the Code and the regulations thereunder.

The Notes are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it, together with all its subordinate entities or entities that issue obligations on its behalf, or on behalf of which it issues obligations, in or during the calendar year in which the Notes are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Notes, in an aggregate amount of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the Notes, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Notes as "qualified tax-exempt obligations". 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 information 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.

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

Section 12. 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 10) 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 13. 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 14. 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 this Ordinance is required to be effective immediately to permit the City to enter into a contract for the Improvement in order to permit the productive economic development of real estate adjacent to the Improvement; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: APRIL 12, 2007

APPROVED: _____

Mayor

ATTEST:

Suzanne M. Kator
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. 2007-07, passed by the Council of said City on the 12th day of April 2007.


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. 2007-07 was posted at the City Building, U.S. Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio on the 12th day of April 2007 to the 12th day of May 2007, both days inclusive.


Sonja M. Keaton, Clerk

FISCAL OFFICER'S CERTIFICATE

To the Council of the City of Brookville, Ohio:

As fiscal officer of the City of Brookville, I certify in connection with your proposed issue of notes in an aggregate principal amount of \$1,085,000 (the Notes), to be issued in anticipation of the issuance of bonds (the Bonds) to pay costs of constructing a new street in the Northbrook Industrial Park, together with all necessary appurtenances (the Improvement), that:

1. The estimated life or period of usefulness of the Improvement is at least five years.
2. The estimated maximum maturity of the Bonds, calculated in accordance with Section 133.20 of the Revised Code, is 20 years. If notes in anticipation of the Bonds are outstanding later than the last day of December of the fifth year following the year of issuance of the original issue of notes, the period in excess of those five years shall be deducted from that maximum maturity of the Bonds.
3. The maximum maturity of the Notes is 20 years.

Dated: April 12, 2007



Director of Finance
City of Brookville, Ohio