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ORDINANCE NO. 2006-07

AN ORDINANCE AUTHORIZING THE FINANCING OF THE ACQUISITION OF APPROXIMATELY 49.449 ACRES OF REAL PROPERTY IN AN AMOUNT NOT TO EXCEED \$1,200,000 BY OBTAINING A LOAN UNDER THE OHIO MUNICIPAL BOND POOLED FINANCING PROGRAM, AUTHORIZING A LOAN AGREEMENT AND NOTE, AND RELATED DOCUMENTS TO EVIDENCE SUCH LOAN, PLEDGING THE FULL FAITH AND CREDIT OF THE CITY TO THE REPAYMENT THEREOF, AND MATTERS RELATED THERETO, AND THE DECLARATION OF AN EMERGENCY.

WHEREAS, this Council has heretofore determined the necessity of acquiring approximately 49.449 acres of real property within the City (the "Project") to provide and enable the productive development, use and reuse of the Project; and

WHEREAS, the City has heretofore authorized and issued a note to acquire the Project (the "Prior Debt"); and

WHEREAS, Seasongood and Mayer, LLC, Cincinnati, Ohio (the "Underwriter") has proposed the Ohio Municipal Bond Pooled Financing Program (the "Program") whereby participating municipal corporations finance improvements, by entering into loan agreements and notes (collectively, the "Program Obligations"), and taking other related actions, may be able to achieve debt service and issuance cost savings when compared to that which could be the case if such municipal corporations financed such improvements separately; and

WHEREAS, in order to provide financing for the acquisition of the Project and pursuant to Ohio Revised Code Sections 4582.21 et seq., the Council has heretofore determined it to be necessary and appropriate to participate in the Program by obtaining a loan for the Project (the "Loan") by entering into a loan agreement (the "Loan Agreement") and note (the "Note") to finance the Project as described herein; and

WHEREAS, the principal amount of the Loan, which includes certain costs of the Program, shall not exceed \$1,200,000; and

WHEREAS, the Program provides that each participating municipal corporation will enter into a loan agreement and note, of the types authorized by this ordinance with the Columbus Regional Airport Authority, Ohio or its successor or assignee (together with any such successor or assignee, the "Port Authority"), which Port Authority has entered into a Indenture dated January 1, 2004 (the "Indenture") with U.S. Bank National Association, successor to National City Bank, as trustee (together with any successors or assigns, the "Trustee") assigning certain payments to be received with respect to such loan agreement and note to the Trustee and authorizing the issuance and sale of revenue bonds (the "Program Bonds") constituting special obligations of the Port Authority payable solely from payments to be received with respect to the Program Obligations;

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

SECTION 1. It is hereby determined that acquiring the Project provides for and enables the productive development, use and reuse of the Project. It is hereby further determined to be necessary and expedient, and in the best interest of the inhabitants and citizens of the City, and the City hereby agrees, to (i) acquire the Project, in accordance with a plan of financing pursuant to the Program, and (ii) participate in the Program, all as described in this ordinance.

SECTION 2. It is hereby determined that the City shall enter into the Loan Agreement and the Note (the Loan Agreement and Note, together with any other documents related to the Loan, are hereinafter called the "Loan Documents") pursuant to the Program to pay costs of the Project in substantially the forms presently on file with this Council, which are hereby approved.

SECTION 3. The Note, issued in anticipation of the issuance of bonds, shall (i) evidence a Loan in an aggregate principal amount not to exceed \$1,200,000; (ii) bear interest as provided therein, provided that such interest rate shall not exceed the lesser of (a) 25% and (b) the maximum rate allowed by law, such interest to be payable on the third business day preceding the first day of each month, commencing with the first such date following the delivery of the Loan Documents (each, a "Loan Repayment Date"); (iii) be dated as set forth therein; and (iv) mature not later than January 1, 2026. The Municipal Manager, the Director of Finance and the Director of Law, or any of them, are hereby separately authorized to execute and deliver the Loan Documents on behalf of the City with such changes not substantially adverse to the City as the official executing the document may approve; the approval of such changes and that the changes are not substantially adverse to the City shall be conclusively evidenced by the execution of a Loan Document by such official. The Loan Documents shall require the City to acquire the Project.

The Director of Finance is hereby authorized to request the Trustee to enter into an Interest Rate Exchange Agreement, as defined in the Loan Documents, for a portion of the Loan, not to exceed \$720,000, meaning that the interest payable on that portion of the Loan shall be a fixed rate not to exceed eight percent (8%) per annum, so the City will effectively pay interest on that portion of the Loan at a fixed rate and in the semiannual payments provided in the Loan Agreement, so long as there is no default under the Loan Documents. Furthermore, no Interest Rate Exchange Agreement will be requested by the City for the remaining portion of the Loan, meaning that the interest payable on that portion of the Loan by the City shall be calculated at a variable rate as set forth in the Loan Agreement.

The Director of Finance is hereby authorized to determine the aggregate principal amount of the Loan (not to exceed \$1,200,000) and the amount of the Loan for which an Interest Rate Exchange Agreement will be requested (not to exceed \$720,000).

Pursuant to the Program, the City's payments pursuant to the Loan Documents (the "Loan Payments"), as well as those of other municipal corporations participating in the Program, have been calculated to provide the Port Authority with revenues sufficient to pay debt service on the Program Bonds from time to time. This Council acknowledges that the City will be

directly obligated to the Trustee as assignee of the Port Authority, and that the Trustee may proceed directly against the City to enforce the City's obligations under the Loan Documents.

SECTION 4. The Director of Finance is appointed to act as the authenticating agent, note registrar, transfer agent and paying agent for the Note (the "Registrar"). The Director of Finance may resign as Registrar, or may be removed as Registrar by this Council, at any time after this Council has appointed a banking institution to succeed the Director of Finance as authenticating agent, bond registrar, transfer agent and paying agent for the Note, which banking institution shall then be the Registrar for all purposes of this ordinance and the Note.

The Registrar will complete the Note to be originally delivered by inserting the appropriate information into the Note form and will record the names and addresses of the owners of the Note in the books and records necessary for the registration, exchange and transfer of the Note (the "Register").

The Registrar will sign the Certificate of Authentication on the Note to be delivered.

The Registrar shall hold in safekeeping the Note forms, if any, not originally delivered, and shall notify the City of any need for additional Note forms in sufficient time to permit an adequate supply to be available for exchange or transfer.

So long as any of the Note remain outstanding, the Registrar will maintain and keep at its office the Register. The person in whose name a Note is registered on the Register shall be regarded as the absolute owner of that Note for all purposes of this ordinance. Payment of or on account of the principal of and interest on any Note shall be made only to or upon the order of that person; neither the City nor the Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section 4. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Note, including interest, to the extent of the amount or amounts so paid.

Any Note may be exchanged for a Note of a denomination of \$1,000 or any integral multiple of \$1,000 upon presentation and surrender at the office of the Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Registrar. A Note may be transferred only on the Register and only upon presentation and surrender of the Note at the office of the Registrar together with an assignment signed by the owner of the Note or by a person legally empowered to do so in a form satisfactory to the Registrar. Upon such exchange or transfer, the Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Note surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Registrar shall undertake the exchange or transfer of a Note only after the new Note is signed by the authorized officers of the City. In all cases of Notes exchanged or transferred, the City shall sign and the Registrar shall authenticate and deliver Notes in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid

with respect to the exchange or transfer. The City or the Registrar may require that those charges, costs and expenses, if any, be paid before the procedure is begun for the exchange or transfer. All Notes issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this ordinance, as the Notes surrendered upon that exchange or transfer.

The Registrar shall complete, authenticate, deliver and register new Notes to replace Notes lost, stolen, destroyed or mutilated upon receiving written instructions to do so from the Director of Finance together with evidence of indemnification, from the owner of the Note, of the City and the Registrar in a form satisfactory to the City and the Registrar.

The Registrar shall cancel any Notes surrendered to it pursuant to this ordinance for payment or retirement or for exchange, replacement or transfer. Written reports of surrender and cancellation of the Notes shall be made to the Director of Finance by the Registrar at least once each calendar year. Unless otherwise directed by the City or other lawful authority, canceled Notes shall be retained and stored by the Registrar for a period of seven years. After that time, or at any earlier time as authorized by the City, the canceled Notes may, at the direction of the Director of Finance, be either returned to the City or destroyed by the Registrar by shredding or cremation, and certificates of that destruction (describing the manner of that destruction) shall be provided by the Registrar to the Director of Finance.

The Registrar shall retain and store the Register for seven years after payment of all of the Notes. At any time and upon request by the City, the Registrar shall permit the City to inspect the Note Register and will provide the City with a copy of the Register. Pursuant to Section 9.96 of the Revised Code the Register is not a "public record" under Ohio law. In the event of a request to the Registrar by any person other than the City for inspection of the Register, the Registrar shall notify the Director of Finance and will not permit that inspection unless it is approved by the Director of Finance, except that the Registrar may permit an inspection pursuant to an order of a court of competent jurisdiction.

The Registrar shall pay the principal of and interest on the Notes in accordance with this ordinance, but only from money deposited with the Registrar by the City for that purpose. The City shall cause funds to be on deposit with the Registrar in an amount sufficient and available to pay the interest, or principal and interest, then to be due no later than 10:00 a.m. (Ohio time) on the day on which that payment is to be made.

**SECTION 5.** The City hereby consents to and approves the assignment of all or part of the Loan Payments and any Loan Documents by the Port Authority to the Trustee or other entity as security for the Program Notes or other related obligations. The issuance of the Program Notes by the Port Authority to be secured in part by the City's Loan Payments is hereby approved. The determinations of the final terms of the Loan Documents, including the interest rate component, financed amount, term, and amortization schedule, and any other matters required by this ordinance to be determined or approved by an officer of the City, shall be conclusively evidenced by the execution and delivery of any Loan Document by such officer.

**SECTION 6.** The Loan Documents shall be executed and delivered pursuant to the Program, and proceeds of the Loan from time to time shall be paid into the proper fund and used

for the purpose of paying costs of the Project and the City's participation in the Program and for no other purpose, and for which purpose such proceeds are hereby irrevocably pledged and appropriated.

The Municipal Manager, the Director of Finance, the Director of Law, the Clerk of Council and other appropriate officials of the City, are each hereby separately authorized, without further action of this council, to take any and all actions and to execute such other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams LLP, special counsel to the City, in order to effect the City's participation in the Program and the intent of this ordinance. The Clerk of Council, or other appropriate officer of the City, shall certify a true transcript of all proceedings had with respect to the Loan Documents, along with such information from the records of the City as is necessary to determine the regularity and validity of the Loan Documents.

SECTION 7. This Council, for and on behalf of the City, hereby covenants that it will restrict the use of the proceeds of the Loan in such manner and to such extent, if any, and take such other actions, as may be necessary, after taking into account reasonable expectations at the time the City's obligations under the Loan Documents are incurred, so that the Program Notes will not constitute obligations the interest on which is subject to federal income taxation or "arbitrage bonds" under Sections 103(b)(2) or 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder and will, to the extent possible, comply with all other applicable provisions of the Code and the regulations thereunder in order to retain the federal income tax exemption for interest on the Program Notes, including any expenditure requirements, investment limitations, rebate requirements or use restrictions.

SECTION 8. During the years in which the Note is outstanding, there shall be levied on all the taxable property in the City, in addition to all other taxes, sufficient to pay the principal of, and the interest at the rate eight percent (8%) per annum (the "Appropriated Interest") on, the Note when due, which tax shall be not less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation imposed by law, shall be and is ordered computed, certified and 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 Note when due.

SECTION 9. The City hereby covenants that so long as the Note remains unpaid:

- (a) The City shall not, without consent of the Trustee, extend, or assent to the extension of, the time for payment of any amounts payable under the Loan Documents;
- (b) The City shall, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the Loan Documents and this ordinance

and will comply with all requirements of law applicable to the Project and the operation thereof;

- (c) The City shall execute, perform and comply with the terms and conditions of any Loan Document and this ordinance in accordance with the terms thereof, and shall comply with the terms and conditions of the Indenture insofar as they relate to the City; and
- (d) All of the obligations set forth and covenants made under this ordinance are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code.

SECTION 10. For the benefit of the beneficial owners from time to time of the Program Notes, this Council agrees, on behalf of the City, to the extent that it is an "obligated person" with respect to the Program Notes within the meaning of Rule 15c2-12 of the Securities and Exchange Commission (the "Rule"), to provide or cause to be provided such financial information and operating data, audited financial statements and notices, in such form and manner as may be requested by the Underwriter for purposes of complying with the Rule. The obligation of the City to provide the annual information and notices of the events described above shall be described and specified in the Loan Agreement or in a Continuing Disclosure Certificate which the Director of Finance is hereby authorized to execute and deliver on behalf of the City, and shall terminate, if and when the City no longer remains such an "obligated person".

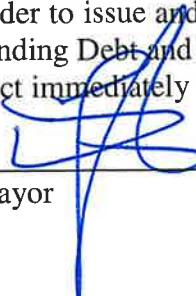
SECTION 11. That the law firm of Peck, Shaffer & Williams LLP be and is hereby retained as special counsel to the City to prepare the Loan Documents and the necessary authorization for the issuance, sale and delivery thereof and, if appropriate, rendering its approving legal opinion in connection therewith in accordance with the written agreement presently on file with the City which the Mayor, the City Manager, the Director of Finance and the Law Director are each hereby separately authorized, alone or with others, to execute and deliver on behalf of the City, with such changes thereto not substantially adverse to the City as may be approved by such officers. The approval of such changes by such officers, and that the same are not substantially adverse to the City, shall be conclusively evidenced by the execution of such agreement by such officers. Such law firm shall be compensated by the City for the above services in accordance with such written agreement.

SECTION 12. It is hereby determined that the terms of the Loan Documents, and the City's participation in the Program, all as provided therein and in this ordinance, are desirable, expedient and in the best interest of the City, and in compliance with all legal requirements.

SECTION 13. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were passed in an open meeting of this council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including Section 121.22 of the Ohio Revised Code.

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 immediately effective in order to issue and deliver the Note, which is necessary to enable the City to timely retire the Outstanding Debt and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage.

PASSED September 5, 2006

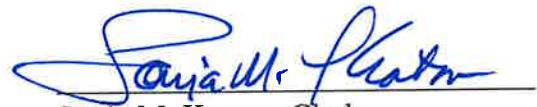
  
\_\_\_\_\_  
Mayor

ATTEST:

  
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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.2006-07, passed by the Council of said City on the 5th day of September 2006.



Sonja M. Keaton  
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. 2006-07 was posted at the City Building, U.S. Post Office and the Brookville Branch of the Montgomery County Public Library, Brookville, Ohio on the 7th day of September 2006 to the 7th day of October 2006, both days inclusive.



Sonja M. Keaton  
Sonja M. Keaton, Clerk