

ORDINANCE NO. 08-12

PROVIDING FOR THE ISSUANCE AND SALE OF NOTES IN THE MAXIMUM PRINCIPAL AMOUNT OF \$219,100, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING THE COSTS OF ACQUIRING AND IMPROVING A VILLAGE ADMINISTRATION BUILDING, TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 08-09 passed June 9, 2009, notes in anticipation of bonds in the amount of \$250,000, dated June 30, 2009, were issued for the purpose stated in Section 1 hereof, to mature on June 1, 2012 (the "*Outstanding Notes*"); and

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

WHEREAS, the Fiscal Officer of this Village 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, calculated in accordance with Section 133.20 of the Ohio Revised Code, is at least twenty (20) years, and the maximum maturity of the Notes described in Section 3 to be issued in anticipation of the Bonds for the purpose described in Section 1 is June 30, 2029;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Lithopolis, Fairfield and Franklin Counties, Ohio, that:

Section 1. It is necessary to issue bonds of this Village in the maximum principal amount of \$219,100 (the "*Bonds*") for the purpose of paying the costs of acquiring and improving a Village administration building, together with all necessary appurtenances thereto (the "*Improvement*").

Section 2. The Bonds shall be dated approximately June 1, 2017, shall bear interest at the now estimated rate of 6.00% per year, payable semiannually until the principal amount is paid, and are estimated to mature in seventeen (17) annual principal installments on December 1 of each year and in such amounts that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable, shall be substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2017.

Section 3. It is necessary to issue and this Council determines that notes in the maximum principal amount of \$219,100 (the "*Notes*") shall be issued in anticipation of the issuance of the Bonds for the purpose described in Section 1 and to retire, together with other funds available to the City, the Outstanding Notes. The principal amount of Notes to be issued (not to exceed the stated maximum amount) shall be determined by the Fiscal Officer in the certificate awarding the Notes in accordance with Section 6 of this Ordinance (the "*Certificate of Award*") as that amount which is required to be issued at this time for the purpose stated in this Section 1, taking into account the

costs of the Improvement, costs related to the issuance of the Notes and the interest rates on the Notes. The Notes shall be dated the date of issuance and shall mature on June 1 in the years 2013 through 2017 and in such amounts as determined by the Fiscal Officer in the Certificate of Award as being in the best interest of and financially advantageous to the Village. The Notes shall bear interest at a rate or rates not to exceed 6.00% per year (computed on the basis of a 365-day year and actual days elapsed), payable on the dates specified in the Certificate of Award and at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest on the Notes and the payment dates for interest on the Notes (which initial payment date shall not be later than one year following the date of issuance and which payment dates shall not occur more frequently than twice each calendar year) shall be determined by the Fiscal Officer in the Certificate of Award in accordance with Section 6 of this Ordinance.

The Notes may be redeemed in whole or in part at any time without premium. Notice of redemption, identifying the Notes or any portion thereof, to be called, shall be mailed by certified mail to the registered holders thereof not less than thirty (30) days prior to the date of redemption. Notice having been mailed in the manner provided in the preceding sentence hereof, the Notes or portions thereof called for redemption shall become due and payable on the redemption date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus accrued interest to the redemption date. If money for the redemption of all of the Notes or any portion thereof to be redeemed, together with accrued interest thereon to the redemption date, is held by the Note Registrar (as hereinafter defined) on the redemption date so as to be available therefor on that date and if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Notes or any such portion thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Notes and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America without deduction for the services of the Note Registrar (as hereinafter defined) as paying agent. Principal of the Notes shall be payable when due upon presentation and surrender of the Notes at the main office of the Note Registrar; provided, however, to the extent that the Notes are represented by a single note as permitted by Section 5, principal of the Notes shall be payable when due upon presentation and proper endorsement by the Note Registrar on the Notes, and in the case of the final principal payment due hereunder, surrender of the Notes at the main office of the Note Registrar. Debt charges on a Note shall be paid on each payment date by check or draft mailed to the person in whose name the Note was registered, and to that person's address appearing, on the Note Register at the close of business on the 15th day of the calendar month next preceding that payment date.

Section 5. The Notes shall be signed by the Mayor and Fiscal Officer, in the name of the Village and in their official capacities; *provided* that one of those signatures may be a facsimile. The Notes shall be issued in minimum authorized denominations of \$100 (and may be issued in denominations in excess thereof *provided* that any such amount is a whole multiple of \$100) and with numbers as requested by the original purchaser and approved by the Fiscal Officer. The entire principal amount may be represented by a single note if it is determined by the Fiscal Officer that

issuance 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 Fiscal Officer 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 Fiscal Officer shall serve as the initial authenticating agent, note registrar, transfer agent and paying agent for the Notes (the "*Note Registrar*"), provided, that the Fiscal Officer may designate a successor Note Registrar if the Fiscal Officer determines that designation to be in the best financial interests of the Village and, thereafter, "*Note Registrar*" shall mean the successor Note Registrar.

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

Any Note may be exchanged for Notes of any authorized denomination upon presentation and surrender at the main office of the Note 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 Note Registrar. A Note may be transferred only on the Note Register upon presentation and surrender of the Note at the main office of the Note Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Note Registrar. Upon exchange or transfer the Note 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 unpaid 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 Village are required, the Note Registrar shall undertake the exchange or transfer of Notes only after the new Notes are signed by the authorized officers of the Village. In all cases of Notes exchanged or transferred, the Village shall sign and the Note Registrar shall authenticate and deliver Notes in accordance with the provisions of the Note proceedings. The exchange or transfer shall be without charge to the owner, except that the Village and Note 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 Village or the Note Registrar may require that those charges, 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 Village, evidencing the same debt, and entitled to the same security and benefit under the Note proceedings as the Notes surrendered upon that exchange or transfer. Neither the Village nor the Note Registrar shall be required to make any exchange or transfer of (i) Notes then subject to call for redemption between the 15th day preceding the mailing of notice of

Notes to be redeemed and the date of that mailing, or (ii) any Note selected for redemption, in whole or in part.

Section 6. The Notes shall be sold at not less than par plus accrued interest (if any) at private sale by the Fiscal Officer in accordance with law and the provisions of this Ordinance. The Fiscal Officer shall sign the Certificate of Award referred to in Section 3 fixing the interest rate or rates which the Notes shall bear, the interest payment dates, and the principal amount payable on each principal payment date, and 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 Fiscal Officer, the Village Solicitor and other Village 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 Fiscal Officer is authorized, if it is determined to be in the best interest of the Village, to combine the issue of Notes with one or more other note issues of the Village into a consolidated note issue pursuant to Section 133.30(B) of the Ohio Revised Code.

Section 7. The proceeds from the sale of the Notes received by the Village (or withheld by the original purchaser on behalf of the Village) 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. The Certificate of Award may authorize the original purchaser to withhold certain proceeds from the sale of the Notes to provide for the payment of certain financing costs on behalf of the Village. Any portion of those proceeds received by the Village (after payment of those financing costs) representing premium or 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 Village, 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.

In each year to the extent net revenues from the municipal water utility or the municipal sewer utility are available for the payment of the debt charges on the Notes and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of such net revenues so available and appropriated.

In each year to the extent receipts from the municipal income tax are available for the payment of the debt charges on the Notes and the Bonds and are appropriated for that purpose, and to the extent not paid from net revenues of the municipal water utility or the municipal sewer utility, the amount of the tax shall be reduced by the amount of the receipts so available and appropriated in compliance with the following covenant. To the extent necessary, the debt charges on the Notes and the Bonds shall be paid from municipal income taxes lawfully available therefor under the Constitution and laws of the State of Ohio; and the Village hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7), Ohio Revised Code, to appropriate annually from such municipal income taxes such amount as is necessary to meet such annual debt charges.

Nothing in the preceding two paragraphs in any way diminishes the irrevocable pledge of the full faith and credit and general property taxing power of the Village to the prompt payment of the debt charges on the Notes and the Bonds.

Section 10. The legal services of the law firm of Squire Sanders (US) LLP are hereby retained. Those legal services shall be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the authorization, sale and issuance of the Notes and securities issued in renewal of the Notes and rendering at delivery related legal opinions. In providing those legal services, as an independent contractor and in an attorney-client relationship, that firm shall not exercise any administrative discretion on behalf of this Village in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, any county or municipal corporation or of this Village, or the execution of public trusts. For those legal services that firm shall be paid just and reasonable compensation and shall be reimbursed for actual out-of-pocket expenses incurred in providing those legal services. The Fiscal Officer 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 11. The Fiscal Officer is directed to promptly deliver a certified copy of this Ordinance and the Certificate of Award to the County Auditors of Fairfield and Franklin Counties, Ohio.

Section 12. This Council determines that all acts and conditions necessary to be done or performed by the Village 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 Village 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 Village 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 any of its 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 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 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 enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

DATE PASSED: 5/22/12

ATTEST: [Signature]
CLERK

DATE: 5-22-12

SIGNED: [Signature]
MAYOR

DATE: 5/22/12

APPROVED AS TO FORM:

[Signature]
~~BROWNING & COOKE~~
VILLAGE SOLICITOR
BY: JON M. BROWNING