Reconsidered 8/14/07 & adopted 4-3

DEFEATED

ORDINANCE NO.: **2007-10**
SPONSOR: **MAYOR CROGHAN**
INTRODUCED: **MAY 22, 2007** **ASSIGNED TO:** FINANCE

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF $3,000,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, TO PAY COSTS OF CONSTRUCTING, FURNISHING AND EQUIPPING A NEW CENTRAL ADMINISTRATION BUILDING AND IMPROVING ITS SITE, AND DECLARING AN EMERGENCY.

WHEREAS, the Director of Finance, as fiscal officer of this City, 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 25 years and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the Bonds, is 240 months from their date of issuance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GREEN, COUNTY OF SUMMIT, STATE OF OHIO, THAT:

SECTION ONE:
Authorized Principal Amount and Purpose of Anticipated Bonds. It is necessary to issue bonds of this City in the aggregate principal amount of $3,000,000 (the Bonds) to pay costs of constructing, furnishing and equipping a new Central Administration Building and improving its site and acquiring interests in real property required therefor, all together with the necessary appurtenances thereto.

SECTION TWO:
Estimated Bond Terms. The Bonds will be dated approximately July 1, 2008, will bear interest at the now estimated rate of 6% per year, payable semiannually until the principal amount is paid, and are estimated to mature in 25 annual principal installments on December 1 of each year that are substantially equal. The first principal payment of the Bonds is estimated to be December 1, 2009.

SECTION THREE:
Principal Amount of Notes; Note Terms. It is necessary to issue and this Council determines that notes in the aggregate principal amount of $3,000,000 (the Notes) will be issued in anticipation of the issuance of the Bonds. The Notes will be dated the date of issuance and will mature one year from the date of issuance; provided that the Director of Finance may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is not earlier than three months or later than one year from the date of issuance by setting forth that maturity date in the certificate signed in accordance with Section 6 of this Ordinance (the Final Terms Certificate). The Notes will bear interest at a rate not to exceed 6% per year (computed on the basis of a 360-day year consisting of 12 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 will be determined by the Director of Finance in the Final Terms Certificate.

SECTION FOUR:
Payment of Debt Charges; Paying Agent. The debt charges on the Notes will be payable in Federal Reserve funds of the United States of America and will be payable, without deduction for services of

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the City's paying agent, at the principal corporate trust office of The Huntington National Bank, Columbus, Ohio, or at the principal corporate trust office or other office of a bank or trust company designated by the Director of Finance in the Final Terms Certificate, after determining that the payment at that bank or trust company will not endanger the funds or securities of the City and that proper procedures and safeguards are available for that purpose, or at the office of the Director of Finance if agreed to by the Director of Finance and the Original Purchaser (as defined in Section 6) (the Paying Agent).

SECTION FIVE:
Form and Execution of Notes; Book Entry System. The Notes will be signed by the Mayor and the 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 will be issued in the denominations and numbers as requested by the Original Purchaser and approved by the Director of Finance, provided that no Note will be issued in a denomination less than $100,000. The entire principal amount may be represented by a single note and may be issued as fully registered securities (for which the Director of Finance will serve as note registrar) and 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 in that form will facilitate the sale and delivery of the Notes. The Notes will not have coupons attached, will be numbered as determined by the Director of Finance and will 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 will have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial interests in book entry form will 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 will be made only by book entry by the Depository and its Participants; and (iv) the Notes as such will 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, will permit withdrawal of the Notes from the Depository, and will cause the Notes in bearer or payable to order 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 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 SIX:
Sale of the Notes. The Notes are sold at not less than par plus accrued interest to Seasongood & Mayer, LLC, Cincinnati, Ohio (the Original Purchaser), in accordance with law and the provisions of this Ordinance. The Director of Finance will sign the Final Terms Certificate 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 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 issue of 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 SEVEN:
Application of Note Proceeds. 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 EIGHT:
Application and Pledge of Bond or Renewal Note Proceeds or Excess Funds. 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 will, to the extent necessary, be used to pay the debt charges on the Notes at maturity and are pledged for that purpose.

SECTION NINE:
Provisions for Tax Levy. During the year or years in which the Notes are outstanding, there will 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 will

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be within the ten-mill limitation imposed by law, will 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 will be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy will 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 that other funds are available for the payment of debt charges on the Notes and Bonds and are appropriated for that purpose, the amount of the tax shall be reduced by the amount of funds so available and appropriated.

SECTION TEN:

Federal Tax Considerations. 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 of the Code applies, and (b) the interest on the Notes will not be 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 Director of Finance, as the fiscal officer, or any other officer of the City having responsibility for issuance of the Notes is 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, 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 will 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, the 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 ELEVEN:
Certification and Delivery of Ordinance. The Clerk of Council is directed to deliver or cause to be delivered a certified copy of this Ordinance to the Summit County Fiscal Officer.

SECTION TWELVE:
Satisfaction of Conditions for Note Issuance. 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 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 THIRTEEN:
Retention of Bond Counsel. The legal services of Squire, Sanders & Dempsey L.L.P., as bond counsel, are retained. The legal services will be in the nature of legal advice and recommendations as to the documents and the proceedings in connection with the issuance and sale of the Notes and the rendering of the necessary legal opinion upon the delivery of the Notes. In rendering those legal services, as an independent contractor and in an attorney-client relationship, that firm will not exercise any administrative discretion on behalf of the City in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, the City or any other political subdivision, or the execution of public trusts. That firm will be paid just and reasonable compensation for those legal services and will be reimbursed for the actual out-of-pocket expenses it incurs in rendering those legal services and in paying other financing costs in connection with the Notes at the direction of the City.

SECTION FOURTEEN:
Compliance with Open Meeting Requirements. 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 FIFTEEN:
Captions and Headings. The captions and headings in this Ordinance are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof. Reference to a Section means a section of this Ordinance unless otherwise indicated.

SECTION SIXTEEN:
Declaration of Emergency; Effective Date. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety of the City, and for the further reason that this Ordinance must be immediately effective so that the Notes can be delivered at the earliest possible date to make their proceeds available to enable the City to meet its obligations in connection with the construction of that improvement which is required to provide for the efficient and safe administration of the government of the City and the health and safety of its

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residents; as such, this Ordinance will be in full force and effect immediately upon its passage and approval by the Mayor.

ADOPTED: _____

_____
Molly Kapeluck, Clerk

_____
Bruce Manwaring,
Council President

DEFEATED

APPROVED: _____, 2007

_____
Daniel L. Croghan, Mayor

COPIED _____
SVCE ZONE PARK ROAD ENG
LAW FIN MAY PLAN FIRE

ENACTED EFFECTIVE: _____, 2007

ON ROLL CALL: Colopy nay Croce nay France yea Manwaring yea
Padrutt nay Ridgeway nay Smole yea defeated 4-3

Suburbanite publication on July 16 and July 23

Shelly McKeller
~~Molly Kapeluck, Clerk~~
Shelly Keller, Acting Clerk

5/17/2007 2:19 PM Approved as to form and content by Stephen J. Pruneski, Law Director SJP 5/17/07