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COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2015-12

By Richard T. Melott Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$310,000 TO PAY COSTS OF RECONSTRUCTING STREETS IN THE BLUEGRASS DEVELOPMENT AREA, 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 and the maximum maturity of the bonds for that improvement is twenty years.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, Cuyahoga County, State of Ohio, that:

Section 1. It is necessary to issue bonds of this City in the maximum aggregate principal amount of \$310,000 (the Bonds) to pay costs of reconstructing streets in the Bluegrass Development area, including issuance costs relating to the Bonds.

The aggregate principal amount of Bonds to be issued shall not exceed \$310,000 and shall be in an amount determined by the Director of Finance to be the aggregate principal amount of Bonds that are required to be issued, taking into account the purchase price of the Bonds, in order to effect the purpose for which the Bonds are to be issued, taking into account other funds available for the purpose and prevailing market conditions, and including the payment of expenses relating to the issuance of the Bonds, which amount shall be set forth in the certificate providing for the final terms of the Bonds and signed by the Director of Finance in accordance with this ordinance (the "Final Terms Certificate").

Section 2. The Bonds shall be issued in one lot and only as fully registered bonds, in the denominations of \$1,000 and any integral multiples thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated not earlier than February 1, 2015 and not later than March 31, 2015, as established by the Director of Finance in the Final Terms Certificate.

(a) The Bonds shall bear interest at the rate or rates per year (computed on the basis of twelve 30-day months and a 360-day year), as specified in the Final Terms Certificate, such that the yield on the Bonds (determined as required for filing the Form 8038G with the Internal Revenue Service) shall not exceed 5.5%. Interest on the Bonds shall be payable on June 1 and December 1 of each year (the Interest Payment Dates), commencing no later than December 1, 2015, as specified in the Final Terms Certificate, until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date.

(b) The Bonds shall mature or be payable pursuant to Mandatory Sinking Fund Redemption Requirements (as hereinafter defined and described) on December 1 of each of the following years (the Principal Payment Dates) in the following estimated principal amounts (based on an assumed principal amount of \$310,000):

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<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2016	\$20,000	2024	\$20,000
2017	20,000	2025	20,000
2018	20,000	2026	20,000
2019	20,000	2027	20,000
2020	20,000	2028	20,000
2021	20,000	2029	25,000
2022	20,000	2030	25,000
2023	20,000		

; provided, however, that subject to Section 1 and the parameters set forth in this Section, the principal amount of Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements on any Principal Payment Date as set forth above may be increased or decreased as determined by the Director of Finance in the Final Terms Certificate, in accordance with her determination of the best interest of and financial advantages to the City, so long as the aggregate principal amount of Bonds issued and maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements does not exceed \$310,000.

Consistent with the foregoing and in accordance with her determination of the best interest of and financial advantages to the City, the Director of Finance shall specify in the Final Terms Certificate (i) the principal amount of Bonds, if any, maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Principal Payment Date, (ii) the Principal Payment Date or Dates, if any, on which Bonds not subject to mandatory sinking fund redemption (Serial Bonds) shall mature; (iii) the Principal Payment Date or Dates, if any, on which Bonds subject to mandatory sinking fund redemption (Term Bonds) shall be stated to mature; and (iv) the Principal Payment Date or Dates on which any Term Bonds shall be subject to mandatory sinking fund redemption (Mandatory Redemption Dates).

(c) The rate or rates of interest per year to be borne by the Bonds, as specified by the Director of Finance in the Final Terms Certificate, and the principal amount of Bonds maturing or payable pursuant to Mandatory Sinking Fund Redemption Requirements on each Principal Payment Date as specified above or as revised and determined by the Director of Finance in the Final Terms Certificate, shall be such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than three times the amount of those payments in any other fiscal year.

(d) The Bonds shall be subject to redemption prior to stated maturity as follows:

(i) Mandatory Sinking Fund Redemption of Term Bonds. Term Bonds, if any, shall be subject to mandatory redemption in part by lot and be redeemed pursuant to mandatory sinking fund requirements, at a redemption price of 100% of the principal amount redeemed, plus accrued interest to the redemption date, on the applicable Mandatory Redemption Dates and in the principal amounts payable on those Dates for which provision is made in the Final Terms Certificate (such Dates and amounts, the Mandatory Sinking Fund Redemption Requirements).

The aggregate of the moneys to be deposited with the Bond Registrar (as defined in Section 4 of this ordinance) for payment of principal of and interest on Term Bonds on each Mandatory Redemption Date shall include an amount sufficient to redeem on that Date the principal amount of Term Bonds payable on that Date pursuant to Mandatory Sinking Fund Redemption Requirements (less the amount of any credit as provided below).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) of the City for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so delivered. That option shall be exercised by the City on or before the 45th day preceding the applicable Mandatory Redemption Date, by furnishing the Bond Registrar a certificate, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then

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current Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date. If the certificate is not timely furnished to the Bond Registrar, the applicable Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of the applicable Mandatory Sinking Fund Redemption Requirements) or purchased for cancellation and canceled by the Bond Registrar, to the extent not applied theretofore as a credit against any Mandatory Sinking Fund Redemption Requirement for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so redeemed or purchased and canceled.

Each Term Bond so delivered, or previously redeemed, or purchased and canceled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current Mandatory Sinking Fund Redemption Requirement (and corresponding mandatory redemption obligation) for Term Bonds stated to mature on the same Principal Payment Date as the Term Bonds so delivered, redeemed or purchased and canceled. Any excess of that amount over the then current Mandatory Sinking Fund Redemption Requirement shall be credited against any subsequent Mandatory Sinking Fund Redemption Requirements (and corresponding mandatory redemption obligations) for Term Bonds stated to mature on that Principal Payment Date, in the order directed by the Director of Finance.

(ii) Optional Redemption. If determined in the Final Terms Certificate to be in the best interest of and financially advantageous to the City, the Bonds of particular maturities as set forth in the Final Terms Certificate shall be subject to prior redemption, by and at the sole option of the City, in whole or in part on any date, in integral multiples of \$5,000, at the optional redemption dates and at the redemption prices (expressed as a percentage of the principal amount redeemed) specified in the Final Terms Certificate, plus, in each case, accrued interest to the redemption date, provided the earliest optional redemption date shall not be earlier than December 1, 2021 and the highest redemption price shall not be greater than 102%. If optional redemption of Term Bonds at a redemption price exceeding 100% of the principal amount to be redeemed is to take place as of any Mandatory Redemption Date applicable to those Term Bonds, the Term Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Term Bonds of the same maturity to be redeemed on the same date by operation of the Mandatory Sinking Fund Redemption Requirements. Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Bond Registrar, given upon the direction of this Council by adoption of a resolution or passage of an ordinance. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

(iii) Partial Redemption. If fewer than all of the outstanding Bonds are called for optional redemption at one time and Bonds of more than one maturity are then outstanding, the Bonds that are called shall be called as selected by, and selected in a manner determined by, the City. If fewer than all of the Bonds of a single maturity are to be redeemed, the selection of Bonds of that maturity to be redeemed, or portions thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by lot in a manner determined by the Bond Registrar. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal thereof shall be treated as if it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all, of the \$5,000 units of principal amount represented by a Bond are to be called for redemption, then, upon notice of redemption of a \$5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of the redemption price of the \$5,000 unit or units of principal amount called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (ii) for issuance, without charge to the registered owner, of a new Bond or Bonds of any authorized denomination or denominations in an aggregate principal amount equal to the unmaturing and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

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(iv) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (i) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (ii) the redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register (as defined in Section 6 of this ordinance) maintained by the Bond Registrar at the close of business on the 15th day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(v) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, moneys that, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus accrued interest to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, subject to Section 5 of this ordinance, 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 moneys for the redemption of all of the Bonds and portions thereof to be redeemed, together with accrued interest thereon to the redemption date, are held by the Bond Registrar 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 Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If those moneys shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds 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. All moneys held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

Section 3. The Bonds shall be signed by the Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the denominations and numbers as requested by the Original Purchaser (as defined in Section 7(a)) and approved by the Director of Finance, 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. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this ordinance, the Final Terms Certificate, the Continuing Disclosure Agreement (as defined in Section 7(c)) and such other proceedings of the City, including the Bonds, that provide collectively for, among other things, the rights of holders and beneficial owners of the Bonds (the "Bond Proceedings") unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar (as defined in Section 4) as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond Proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. U.S. Bank National Association, or its successor, is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar). The Mayor and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Bond Registrar Agreement between the City and the Bond Registrar in substantially the form as is now on file with the Clerk of Council. The Bond Registrar Agreement is approved, together with any changes or amendments that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Mayor and the Director of Finance on

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behalf of the City, all of which shall be conclusively evidenced by the signing of the Bond Registrar Agreement or amendments thereto. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Bond Registrar Agreement from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 5. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal and any premium shall be payable when due upon presentation and surrender of the Bonds at the principal corporate trust office of the Bond Registrar, or such other office designated by the Bond Registrar and approved by the Director of Finance. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register (as defined in Section 6) at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date). Notwithstanding the foregoing, if and so long as the Bonds are issued in a book entry system, principal of and interest and any premium on the Bonds shall be payable in the manner provided in any agreement entered into by the City in connection with the book entry system.

Section 6. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep at its principal corporate trust office, or such other office designated by the Bond Registrar and approved by the Director of Finance, all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the Bond Register). Subject to the provisions of Section 5, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond Proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond 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 City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the designated office of the Bond 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 Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the designated office of the Bond 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 Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmaturing principal amount of the Bond 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 Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond Proceedings. The exchange or transfer shall be without charge to the owner, except that the City and Bond 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 Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds 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 the Bond Proceedings, as the Bonds surrendered upon that exchange or transfer. Neither the City nor the Bond Registrar shall be required to make any exchange or transfer of a Bond during the period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing or to transfer or exchange any Bond selected for redemption, in whole or in part.

Notwithstanding any other provisions of this ordinance, if it is determined by the Director of Finance to be in the best interests of and financially advantageous to the City, the Bonds may be

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issued in book entry form in accordance with the provisions of this Section. 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 book entry interests in Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (ii) physical Bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Bonds “immobilized” in the custody of the Depository. The book entry maintained by others than the City is the record that identifies the owners of book entry interests in those Bonds 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 book entry interests in Bonds or the principal and interest, and to effect transfers of Bonds, 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 Bonds 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 Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) the book entry interest owners in book entry form shall have no right to receive Bonds in the form of physical securities or certificates; (iii) ownership of book entry 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 book entry interests shall be made only by book entry by the Depository and its Participants; and (iv) the Bonds 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 Bonds 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 book entry interest owners by the then Depository and any other arrangements deemed necessary, shall permit withdrawal of the Bonds from the Depository, and authenticate and deliver bond certificates in registered form 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 Bonds, after determining that the signing thereof will not endanger the funds or securities of the City, and after the approval of the form of any such agreement by the Director of Law.

Section 7. (a) The Bonds are sold at private sale at a purchase price of not less than 97% of par plus any accrued interest from the date of the Bonds to the date of their delivery, with the purchaser of Bonds (the “Original Purchaser”), principal amount of the Bonds, final purchase price, interest rate or rates, annual principal installments, Serial Bonds, Term Bonds, Mandatory Redemption Dates and Mandatory Sinking Fund Redemption Requirements, optional redemption provisions, and such other terms and conditions, all to be set forth in the Final Terms Certificate, in accordance with law and the provisions of this ordinance and the Bond Purchase Agreement described below. The Mayor and the Director of Finance shall sign and deliver, in the name of and on behalf of the City, the Bond Purchase Agreement between the City and the Original Purchaser in substantially the form as is now on file with the Clerk of Council. The Bond Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this ordinance

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and not substantially adverse to the City and that are approved by the Mayor and the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Bond Purchase Agreement or amendments thereto. The Director of Finance shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the Original Purchaser upon payment of the purchase price. The Mayor, the Clerk of Council, the Director of Finance, the Director of Law 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 she determines it to be in the best interest of the City, to combine the issue of Bonds with one or more other bond issues of the City into a consolidated bond issue pursuant to Section 133.30(B) of the Revised Code, which bonds of the consolidated issue shall be in the denomination of \$5,000 and any integral multiple thereof.

(b) If in the judgment of the Mayor and Director of Finance a disclosure document in the form of an official statement is appropriate relating to the original issuance of the Bonds, either or both of those officers, on behalf of the City and in their official capacities, are authorized to (i) prepare or cause to be prepared, and make or authorize modifications, completions or changes of or supplements to, such an official statement, (ii) determine, and to certify or otherwise represent, when the official statement is to be "deemed final" (except for permitted omissions) by the City as of its date or is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or authorize the use and distribution of, those official statements and any supplements thereto in connection with the original issuance of the Bonds, and (iv) complete and sign the final official statement as so approved together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those official statements.

(c) For the benefit of the holders and beneficial owners from time to time of the Bonds, the City agrees to provide or cause to be provided such financial information and operating data, audited financial statements and notices of the occurrence of certain events, in such manner as may be required for purposes of Securities and Exchange Commission Rule 15c2-12 (the Rule). The Mayor and the Director of Finance are authorized and directed to complete, sign and deliver the Continuing Disclosure Agreement, in the name and on behalf of the City, in substantially the form as is now on file with the Clerk of Council. The Continuing Disclosure Agreement is approved, together with any changes or amendments that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Director of Finance and Director of Law on behalf of the City, all of which shall be conclusively evidenced by the signing of the Continuing Disclosure Agreement.

The Director of Finance is further authorized and directed to establish procedures in order to ensure compliance by the City with its Continuing Disclosure Agreement, including timely provision of information and notices as described above. Prior to making any filing required under the Rule, the Director of Finance shall consult with and obtain legal advice from, as appropriate, the Director of Law and bond counsel or other qualified independent special counsel selected by the City. The Director of Finance, acting in the name and on behalf of the City, shall be entitled to rely upon any such legal advice in determining whether a filing should be made. The performance by the City of its Continuing Disclosure Agreement shall be subject to the annual appropriation of any funds that may be necessary to perform it.

(d) If she determines it to be in the best interests of and financially advantageous to the City, the Director of Finance is authorized, on behalf of this City, (i) to apply for and accept a commitment for municipal bond insurance issued by a nationally-recognized municipal bond insurance company insuring the payment when due of the principal of and interest on the Bonds, (ii) to apply for a rating on the Bonds from one or more nationally-recognized rating organizations, (iii) to do any and all things and take any and all actions required to secure a policy of municipal bond insurance and/or a rating or ratings on the Bonds including, but not limited to, entering into agreements on behalf of this City necessary to secure a policy of municipal bond insurance which agreements may be in separate documents or included in the Bond Purchase Agreement, the Bond Registrar Agreement or the Final Terms Certificate, or any combination thereof, and (iv) to provide for the payment of the cost of obtaining each such rating or policy, except to the extent paid by the

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Original Purchaser in accordance with the Bond Purchase Agreement, from the proceeds of the Bonds to the extent available and otherwise from any other funds lawfully available and that are appropriated or to be appropriated for that purpose.

Section 8. The proceeds from the sale of the Bonds, 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 Bonds are being issued and used to pay the issuance costs of the Bonds. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 9. There shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be 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, 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 Bonds when and as the same fall due. To the extent not provided for by other funds appropriated for the payment of debt charges, in each year the amount of such property tax shall be reduced by the amount of lawfully available municipal income taxes appropriated and to be applied to the payment of the debt charges on the Bonds in compliance with the following covenant. To the extent necessary, the debt charges on the Bonds shall be paid from municipal income taxes lawfully available therefore under the Constitution and laws of the State of Ohio; and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7), Revised Code, to appropriate annually from such municipal income taxes such amounts, and to continue to levy and collect such municipal income taxes in such amounts, as are necessary to meet such annual debt charges. Nothing in this paragraph in any way diminishes the pledge of the full faith and credit and general property taxing power of the City to the prompt payment of the debt charges on the Bonds.

Section 10. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 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 thereon 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 Bonds to be and to 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 Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (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 Bonds 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 Bonds 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 Bonds, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the aforesaid amount of the Bonds, 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

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Ord. _____ No. 2015-12

By Malott _____ Sponsored By Mayor Kleem _____

that are not advance refunding obligations as defined in Section 149(d)(5) of the Code to the extent that the amount of the refunding obligations does not exceed the outstanding principal amount of the refunded obligations) 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 Bonds 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 formation of, or benefitted 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 Bonds 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 Bonds as the City is permitted 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 Bonds 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 Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, 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 Bonds.

Section 11. The Clerk of Council is directed to deliver a certified copy of this ordinance and a signed copy of the Final Terms Certificate to the County Fiscal Officer.

Section 12. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds 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 Bonds 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 Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 13. This Council finds and determines that all formal actions of this Council and of any of its committees concerning and relating to the passage of this ordinance were taken, and that all deliberations of this Council and of any committees that resulted in those formal actions were held, in meetings open to the public 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, property, health, safety and welfare of the City and for the further reason that this ordinance is required to be immediately effective in order to issue and sell the Bonds, which is necessary to eliminate potential hazards to vehicular and pedestrian traffic and to enable the City to benefit from the substantial cost savings of issuing the Bonds

COUNCIL CHAMBER

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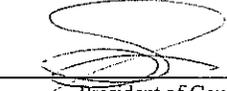
City of Berea, Ohio

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simultaneously with other bonds to be issued to retire outstanding notes maturing March 25, 2015; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

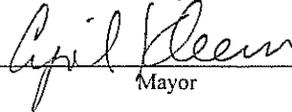
Passed: February 17, 2015



President of Council

Attest: [Signature]
Clerk of Council

Approved: February 21, 2015



Mayor