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3
4 CITY OF CUYAHOGA FALLS, OHIO

5
6 ORDINANCE NO. 59 -2011
7

8
9 AN ORDINANCE PROVIDING FOR THE ISSUANCE AND
10 SALE OF \$8,600,000 PRINCIPAL AMOUNT OF NOTES, IN
11 ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE
12 PURPOSE OF REVITALIZING THE STATE ROAD
13 REDEVELOPMENT AREA BY ACQUIRING, CLEARING AND
14 IMPROVING CERTAIN PROPERTIES IN THAT AREA, AND
15 DECLARING AN EMERGENCY.
16

17 WHEREAS, the City has undertaken a program for the clearance, redevelopment
18 and rehabilitation of blighted areas in the City, and the City, under its home rule
19 powers, and acting through this City Council, by Resolution No. 18-2007, passed
20 October 1, 2007, approved the State Road Redevelopment and Retail Analysis Master
21 Plan (which plan is herein referred to as the "Urban Redevelopment Plan") for the State
22 Road commercial area (the "Plan Area"); and
23

24 WHEREAS, the Urban Redevelopment Plan includes, but is not limited to,
25 undertakings and activities by the City for the purpose of elimination of blight and to
26 obtain redevelopment of the sites and facilities therein for commercial purposes to
27 prevent the recurrence of blight, and revitalizing the Plan Area pursuant to Section 20
28 of Article VIII of the Ohio Constitution by providing for and enabling the
29 environmentally safe and productive development and use or reuse of lands within the
30 Plan Area by addressing by clearance, land acquisition or assembly or otherwise
31 property conditions or circumstances that preclude and inhibit environmentally sound
32 and economic use or reuse of such properties; and
33

34 WHEREAS, this City Council, in furtherance of carrying out that Urban
35 Redevelopment Plan and revitalizing the Plan Area, authorized the appropriation of
36 certain property in the Plan Area by Resolution 18-2007 and by Ordinance No. 116-
37 2007, passed October 9, 2007; and
38

39 WHEREAS, pursuant to Ordinance No. 78-2010, passed July 12, 2010, notes in
40 anticipation of bonds in the amount of \$9,600,000 dated August 18, 2010 and maturing
41 August 18, 2011 (the Outstanding Notes) were issued for the purpose stated in Section 1
42 (the Project); and
43

44 WHEREAS, this Council finds and determines that the City should retire the
45 Outstanding Notes with the proceeds of the Notes described in Section 3 and other funds
46 available to the City; and
47

48 WHEREAS, the Director of Finance, as fiscal officer of this City, has certified to this
49 Council that the estimated life or period of usefulness of the improvement described in
50 Section 1 is at least five years, the estimated maximum maturity of the bonds described in
51 Section 1 is 50 years, and the maximum maturity of the notes described in Section 3, to
52 be issued in anticipation of the bonds, is August 21, 2028;
53

54 NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,
55 Summit County, Ohio, that:
56

57 Section 1. It is necessary to issue bonds of this City in the aggregate principal amount
58 of \$8,600,000 (the Bonds) for the purpose of revitalizing the State Road Redevelopment
59 Area by acquiring, clearing and improving certain properties in that Area.
60

61 Section 2. The Bonds shall be dated approximately August 1, 2012, shall bear interest
62 at the now estimated rate of 7.5% per year, payable on June 1 and December 1 of each
63 year, commencing December 1, 2012, until the principal amount is paid, and are
64 estimated to mature in twenty-five annual principal installments that are in such amounts
65 that the total principal and interest payments on the Bonds in any fiscal year in which
66 principal is payable are substantially equal. The first principal installment is estimated to
67 be December 1, 2013.
68

69 Section 3. It is necessary to issue and this Council determines that notes in the
70 aggregate principal amount of \$8,600,000 (the Notes) shall be issued in anticipation of the
71 issuance of the Bonds and to retire, together with other funds available to the City, the
72 Outstanding Notes. The Notes shall bear interest at a rate or rates not to exceed 6.5% per
73 year (computed on the basis of a 360-day year consisting of twelve 30-day months),
74 payable at maturity and until the principal amount is paid or payment is provided for.
75 The rate or rates of interest on the Notes shall be determined by the Director of Finance in
76 the certificate awarding the Notes (the "Certificate of Award") in accordance with Section 6
77 of this ordinance.
78

79 Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of
80 the United States of America, and shall be payable, without deduction for services of the
81 City's paying agent, at the main office of The Huntington National Bank, Columbus, Ohio
82 or at the office of a bank or trust company designated by the Director of Finance in the
83 Certificate of Award after determining that the payment at that bank or trust company will
84 not endanger the funds or securities of the City and that proper procedures and
85 safeguards are available for that purpose or at the office of the Director of Finance if agreed
86 to by the Director of Finance and the Original Purchaser (the Paying Agent). The Notes
87 shall be dated the date of issuance and shall mature not earlier than ten months from that
88 date and not later than twelve months from that date, as shall likewise be fixed by the
89 Director of Finance in the Certificate of Award.
90

91 Section 5. The Notes shall be signed by the Mayor and Director of Finance, in the
92 name of the City and in their official capacities, provided that one of those signatures may
93 be a facsimile. The Notes shall be issued in the denominations and numbers as requested
94 by the original purchaser and approved by the Director of Finance, provided that unless
95 the City causes the distribution of an official statement, as described in Section 6 hereof,
96 no Note shall be issued in a denomination less than \$100,000. The entire principal
97 amount may be represented by a single note and may be issued as fully registered
98 securities (for which the Director of Finance will serve as note registrar) and in book entry
99 or other uncertificated form in accordance with Section 9.96 and Chapter 133 of the
100 Revised Code if it is determined by the Director of Finance that issuance of fully registered
101 securities in that form will facilitate the sale and delivery of the Notes. The Notes shall not
102 have coupons attached, shall be numbered as determined by the Director of Finance and
103 shall express upon their faces the purpose, in summary terms, for which they are issued
104 and that they are issued pursuant to this Ordinance. As used in this section and this
105 ordinance:
106

107 "Book entry form" or "book entry system" means a form or system under which (i) the
108 ownership of beneficial interests in the Notes and the principal of, and interest on, the
109 Notes may be transferred only through a book entry, and (ii) a single physical Note
110 certificate is issued by the City and payable only to a Depository or its nominee, with such
111 Notes "immobilized" in the custody of the Depository or its agent for that purpose. The
112 book entry maintained by others than the City is the record that identifies the owners of
113 beneficial interests in the Notes and that principal and interest.

114
115 "Depository" means any securities depository that is a clearing agency under federal
116 law operating and maintaining, with its Participants or otherwise, a book entry system to
117 record ownership of beneficial interests in the Notes or the principal of, and interest on,
118 the Notes and to effect transfers of the Notes, in book entry form, and includes and means
119 initially The Depository Trust Company (a limited purpose trust company), New York, New
120 York.

121
122 "Participant" means any participant contracting with a Depository under a book entry
123 system and includes security brokers and dealers, banks and trust companies, and
124 clearing corporations.

125
126 The Notes may be issued to a Depository for use in a book entry system and, if and as
127 long as a book entry system is utilized, (i) the Notes may be issued in the form of a single
128 Note made payable to the Depository or its nominee and immobilized in the custody of the
129 Depository or its agent for that purpose; (ii) the beneficial owners in book entry form shall
130 have no right to receive the Notes in the form of physical securities or certificates; (iii)
131 ownership of beneficial interests in book entry form shall be shown by book entry on the
132 system maintained and operated by the Depository and its Participants, and transfers of
133 the ownership of beneficial interests shall be made only by book entry by the Depository
134 and its Participants; and (iv) the Notes as such shall not be transferable or exchangeable,
135 except for transfer to another Depository or to another nominee of a Depository, without
136 further action by the City.

137
138 If any Depository determines not to continue to act as a Depository for the Notes for
139 use in a book entry system, the Directory of Finance may attempt to establish a securities
140 depository/book entry relationship with another qualified Depository. If the Director of
141 Finance does not or is unable to do so, the Director of Finance, after making provision for
142 notification of the beneficial owners by the then Depository and any other arrangements
143 deemed necessary, shall permit withdrawal of the Notes from the Depository, and shall
144 cause the Notes in bearer or payable form to be signed by the officers authorized to sign
145 the Notes and delivered to the assigns of the Depository or its nominee, all at the cost and
146 expense (including any costs of printing), if the event is not the result of City action or
147 inaction, of those persons requesting such issuance.

148
149 The Director of Finance is also hereby authorized and directed, to the extent necessary
150 or required, to enter into any agreements determined necessary in connection with the
151 book entry system for the Notes, after determining that the signing thereof will not
152 endanger the funds or securities of the City.

153
154 Section 6. The Notes shall be sold at not less than 97% of the principal amount
155 thereof plus any accrued interest at private sale by the Director of Finance in accordance
156 with law and the provisions of this ordinance. The Director of Finance shall, in
157 accordance with his determination of the best interests of and financial advantages to the
158 City and its taxpayers and conditions then existing in the financial market, consistently
159 with the provisions of Sections 3 and 4, establish the interest rates to be borne by the

160 Notes and their maturity, sign the Certificate of Award referred to in Sections 3 and 4
161 evidencing those determinations, cause the Notes to be prepared, and have the Notes
162 signed and delivered, together with a true transcript of proceedings with reference to the
163 issuance of the Notes if requested by the original purchaser or purchasers (collectively, the
164 "Original Purchaser"), to the Original Purchaser upon payment of the purchase price. The
165 Mayor and the Director of Finance are also authorized, if requested by the Original
166 Purchaser as a condition of such sale, to execute, on behalf of the City, a Note Purchase
167 Agreement between the City and such Original Purchaser relating to the sale of such
168 Notes, or the sale of any consolidated issue of which the Notes are a part, substantially in
169 the form now on file with the Clerk of Council in Council File No. _____, which Note
170 Purchase Agreement is hereby approved, together with any changes or amendments not
171 inconsistent with this ordinance and not substantially adverse to the City and that are
172 approved by the Mayor and the Director of Finance on behalf of the City, all of which shall
173 be conclusively evidenced by the signing of the Note Purchase Agreement or any
174 amendments thereto by the Mayor and the Director of Finance. The Mayor, the Director of
175 Finance, the Clerk of Council and other City officials, as appropriate, are each authorized
176 and directed to sign any transcript certificates, financial statements, continuing disclosure
177 agreement and other documents and instruments and to take such actions as are
178 necessary and appropriate to consummate the transactions contemplated by this
179 ordinance. The Director of Finance is authorized, if it is determined to be in the best
180 interest of the City, to combine the issue of Notes with one or more other note issues of the
181 City into a consolidated note issue pursuant to Section 133.30(B) of the Revised Code.
182

183 The Director of Finance is hereby authorized to offer all or part of the Notes at par and
184 any accrued interest to the Treasury Investment Board of the City for investment under
185 Section 731.56 of the Revised Code, in accordance with law and the provisions of this
186 ordinance if, as a result of the conditions then existing in the financial markets, the
187 Director of Finance determines it is in the best financial interest of the City in lieu of the
188 private sale authorized in the preceding paragraph.
189

190 If the Mayor or the Director of Finance determines it to be in the best interests of and
191 financially advantageous to the City, either or both of those officers are authorized, on
192 behalf of the City, to apply for a rating on the Notes from one or more nationally-
193 recognized rating organizations.
194

195 If in the judgment of the Mayor or the Director of Finance a disclosure document in the
196 form of an official statement (including within such term, but not limited to, an annual
197 information statement) is appropriate or necessary relating to the original issuance of the
198 Notes, either or both of those officers, on behalf of the City and in their official capacities,
199 are authorized to (i) prepare or cause to be prepared, and make or authorize modifications,
200 completions or changes of or supplements to, such an official statement, (ii) determine,
201 and to certify or otherwise represent, when the official statement is to be "deemed final"
202 (except for permitted omissions) by the City as of its date or is a final official statement for
203 purposes of SEC Rule 15c2-12(b)(1), (3) and (4), (iii) use and distribute, or authorize the
204 use and distribution of those official statements and any supplements thereto in
205 connection with the original issuance of the Notes, and (iv) complete and sign those official
206 statements as so approved together with such certificates, statements or other documents
207 in connection with the finality, accuracy and completeness of those official statements.
208

209 As used in this Section and this ordinance:
210

211 "Note proceedings" means, collectively, this ordinance and the other proceedings of the
212 City, including the Notes, that collectively provide for, among other things, the rights of
213 holders and beneficial owners of the Notes.

214
215 "Rule" means Rule 15c2-12 prescribed by the Securities and Exchange Commission
216 pursuant to the Securities Exchange Act of 1934.

217
218 "Specified Events" means the occurrence of any of the following events, within the
219 meaning of the Rule, with respect to the Notes as applicable: principal and interest
220 payment delinquencies; non-payment related defaults; unscheduled draws on debt service
221 reserves reflecting financial difficulties; unscheduled draws on credit enhancements
222 reflecting financial difficulties; substitution of credit or liquidity providers, or their failure
223 to perform; adverse tax opinions or events affecting the tax-exempt status of the Notes;
224 modifications to rights of holders or beneficial owners of the Notes; Note calls; defeasances;
225 release, substitution or sale of property securing repayment of the Notes; and rating
226 changes. The City has not obtained or provided, and does not expect to obtain or provide,
227 any debt service reserves, credit enhancements or credit or liquidity providers for the
228 Notes, the Notes are not subject to call for redemption prior to maturity, and repayment of
229 the Notes is not secured by a lien on any property capable of release or sale or for which
230 other property may be substituted.

231
232 If the City prepares and causes the distribution of an Official Statement for the Notes,
233 for the benefit of the holders and beneficial owners from time to time of the Notes, the City
234 agrees, as the only obligated person with respect to the Notes under the Rule, to provide or
235 cause to be provided such notices, in such manner, as may be required for purposes of
236 paragraph (b)(5)(i)(C) of the Rule, including specifically notice to the Municipal Securities
237 Rulemaking Board (MSRB) through its Electronic Municipal Market Access (EMMA)
238 system, in a timely manner, of the occurrence of any Specified Event, if that event is
239 material. (The City's agreement in this paragraph is herein referred to as the Continuing
240 Disclosure Agreement).

241
242 The Director of Finance is further authorized and directed to establish procedures to
243 ensure compliance by the City with the Continuing Disclosure Agreement, including timely
244 provision of notices as described above. Prior to providing notice of the occurrence of any
245 Specified Event or of any other events, the Director of Finance shall consult with and
246 obtain legal advice from, as appropriate, the Director of Law and bond or other qualified
247 independent special counsel selected by the City. The Director of Finance, acting in the
248 name and on behalf of the City, shall be entitled to rely upon any such legal advice in
249 determining whether a notice should be provided.

250
251 The City reserves the right to amend the Continuing Disclosure Agreement, and to
252 obtain the waiver of noncompliance with any provision of that Agreement, as may be
253 necessary or appropriate to achieve its compliance with any applicable federal securities
254 law or rule, to cure any ambiguity, inconsistency or formal defect or omission, and to
255 address any change in circumstances arising from a change in legal requirements, change
256 in law, or change in the identity, nature or status of the City, or type of business
257 conducted by the City. Any such amendment or waiver will not be effective unless the
258 Agreement (as amended or taking into account such waiver) would have complied with the
259 requirements of the Rule at the time of the primary offering of the Notes, after taking into
260 account any applicable amendments to or official interpretations of the Rule, as well as
261 any change in circumstances, and until the City shall have received: either (i) a written
262 opinion of bond or other qualified independent special counsel selected by the City that the
263 amendment or waiver would not materially impair the interests of holders or beneficial

264 owners of the Notes or (ii) the written consent to the amendment or waiver of the holders of
265 at least a majority of the principal amount of the Notes then outstanding.
266

267 The Continuing Disclosure Agreement shall be solely for the benefit of the holders and
268 beneficial owners from time to time of the Notes. The exclusive remedy for any breach of
269 the Agreement by the City shall be limited, to the extent permitted by law, to a right of
270 holders and beneficial owners to institute and maintain, or to cause to be instituted and
271 maintained, such proceedings as may be authorized at law or in equity to obtain the
272 specific performance by the City of its obligations under the Agreement. Any individual
273 holder or beneficial owner may institute and maintain, or cause to be instituted and
274 maintained, such proceedings to require the City to provide or cause to be provided a
275 pertinent filing if such a filing is due and has not been made. Any such proceedings to
276 require the City to perform any other obligation under the Agreement (including any
277 proceedings that contest the sufficiency of any pertinent filing) shall be instituted and
278 maintained only (i) by a trustee appointed by the holders and beneficial owners of not less
279 than 25% in principal amount of the Notes then outstanding or (ii) by holders and
280 beneficial owners of not less than 10% in principal amount of the Notes then outstanding,
281 in accordance with Section 133.25(B)(4)(b) or (C)(1) of the Revised Code, as applicable (or
282 any like or comparable successor provisions).
283

284 The performance by the City of the Continuing Disclosure Agreement shall be subject
285 to the annual appropriation of any funds that may be necessary to perform it.
286

287 The Continuing Disclosure Agreement shall remain in effect only for such period that
288 the Notes are outstanding in accordance with their terms and the City remains an
289 obligated person with respect to the Notes within the meaning of the Rule. The obligation
290 of the City to provide the notices of the Specified Events shall terminate, if and when the
291 City no longer remains such an obligated person.
292

293 Section 7. The proceeds from the sale of the Notes, except any premium and accrued
294 interest, shall be paid into the proper fund or funds and those proceeds are appropriated
295 and shall be used for the purpose for which the Notes are being issued. Any portion of
296 those proceeds representing premium and accrued interest shall be paid into the Bond
297 Retirement Fund.
298

299 Section 8. The par value to be received from the sale of the Bonds or of any renewal
300 notes and any excess funds resulting from the issuance of the Notes shall, to the extent
301 necessary, be used to pay the debt charges on the Notes at maturity and are pledged for
302 that purpose.
303

304 Section 9. During the year or years in which the Notes are outstanding, there shall be
305 levied on all the taxable property in the City, in addition to all other taxes, the same tax
306 that would have been levied if the Bonds had been issued without the prior issuance of the
307 Notes. The tax shall be within the eleven mill limitation provided by the Charter of the
308 City, shall be and is ordered computed, certified, levied and extended upon the tax
309 duplicate and collected by the same officers, in the same manner, and at the same time
310 that taxes for general purposes for each of those years are certified, levied, extended and
311 collected, and shall be placed before and in preference to all other items and for the full
312 amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement
313 Fund, which is irrevocably pledged for the payment of the debt charges on the Notes or the
314 Bonds when and as the same fall due. In each year to the extent money from the
315 municipal income tax is available for the payment of the debt charges on the Notes and
316 Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the

317 amount of the money so available and appropriated in compliance with the covenant
318 hereinafter set forth. To the extent necessary, the debt charges on the Notes and Bonds
319 shall be paid from municipal income taxes lawfully available therefor under the
320 Constitution and laws of the State of Ohio; and the City hereby covenants, subject and
321 pursuant to such authority, including particularly Section 133.05(B)(7), Revised Code, to
322 appropriate annually from such municipal income taxes such amount as is necessary to
323 meet such annual debt charges. Nothing in this paragraph in any way diminishes the
324 pledge of the full faith and credit and property taxing power of the City to the prompt
325 payment of the debt charges on the Notes.
326

327 Section 10. The City does not intend or represent that the interest on the Notes will be
328 excluded from gross income for federal income tax purposes under Section 103 of the
329 Internal Revenue Code of 1986 and the City is not obligated to take any action to attempt
330 to secure or maintain any such exclusion.
331

332 Section 11. The Clerk of Council is directed to deliver a certified copy of this ordinance
333 to the Fiscal Officer in Summit County.
334

335 Section 12. This Council determines that all acts and conditions necessary to be done
336 or performed by the City or to have been met precedent to and in the issuing of the Notes
337 in order to make them legal, valid and binding general obligations of the City have been
338 performed and have been met, or will at the time of delivery of the Notes have been
339 performed and have been met, in regular and due form as required by law; that the full
340 faith and credit and general property taxing power (as described in Section 9) of the City
341 are pledged for the timely payment of the debt charges on the Notes; and that no statutory
342 or constitutional limitation of indebtedness or taxation will have been exceeded in the
343 issuance of the Notes.
344

345 Section 13. The Director of Law is authorized to engage the legal services of the law
346 firm of Squire, Sanders & Dempsey (US) LLP, which legal services are to be in the nature of
347 legal advice and recommendations as to the documents and the proceedings, and
348 rendering an approving legal opinion, in connection with the issuance and sale of the
349 Notes. In rendering those legal services, as an independent contractor and in an
350 attorney-client relationship, that Firm shall not exercise any administrative discretion on
351 behalf of this City in the formulation of public policy, expenditure of public funds,
352 enforcement of laws rules and regulations of the State, any county, or cities or of this City,
353 or the execution of public trusts. For those legal services that Firm shall be paid fees now
354 estimated at \$11,000, and in addition shall be reimbursed for actual out-of-pocket
355 expenses (including, but not limited to, travel, long-distance telephone, fax and duplicating
356 expenses) incurred in rendering those legal services. The Director of Finance is authorized
357 and directed to make appropriate certification as to the availability of funds for that fee
358 and any reimbursement and to issue an appropriate order for their payment as they
359 become payable.
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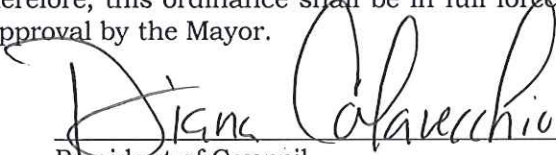
361 Section 14. This Council finds and determines that all formal actions of this Council
362 and of any of its committees concerning and relating to the passage of this ordinance were
363 taken in an open meeting and that all deliberations of this Council and of any committees
364 that resulted in those formal actions were held, in meetings open to the public, in
365 compliance with Chapter 107 of the City's Codified Ordinances.
366

367 Section 15. This ordinance is declared to be an emergency measure necessary for the
368 immediate preservation of the public peace, health and safety of the City, and for the
369 further reason that this ordinance is required to be immediately effective in order to issue

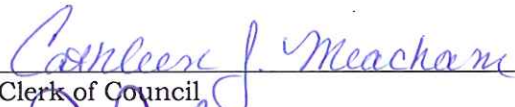
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and sell the Notes, which is necessary to enable the City to timely retire the Outstanding Notes and thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: 7-11-11

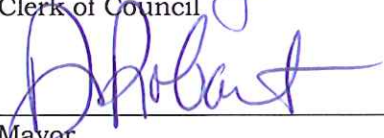


President of Council



Clerk of Council

Approved: 7/12/11



Mayor

6/27/11
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