ORDINANCE NO. 2014-18

INTRODUCED BY: Mayor Rinker and Council as a Whole

**AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF $1,100,000 OF NOTES OF MAYFIELD VILLAGE, OHIO, IN ANTICIPATION OF THE ISSUANCE OF BONDS FOR THE PURPOSE OF CONSERVING, PRESERVING AND ENHANCING THE AVAILABILITY OF OPEN SPACES IN THE VILLAGE BY ACQUIRING LAND OR INTERESTS THEREIN, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance No. 2013-12, passed July 15, 2013, a note in anticipation of bonds in the amount of $1,900,000, dated August 28, 2013, was issued for the purpose identified in Section 1 hereof as Project No. 3 and as a consolidated issue pursuant to Section 133.30(B) of the Revised Code, to mature on August 28, 2014 (the Outstanding Note); and

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

WHEREAS, the Director of Finance, as 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 is 27 years, and the maximum maturity of the notes described in Section 3, to be issued in anticipation of those bonds, is September 11, 2026;

NOW, THEREFORE, BE IT ORDAINED by the Council of Mayfield Village, Cuyahoga County, Ohio, that:

Section 1. It is necessary to issue bonds of this Village in the aggregate principal amount of $1,100,000 (the Bonds) for the purpose of conserving, preserving and enhancing the availability of open spaces in the Village by acquiring land or interests therein.

Section 2. The Bonds shall be dated approximately August 1, 2015, shall bear interest at the now estimated rate of 6% per year, payable on June 1 and December 1 of each year, commencing December 1, 2015, until the principal amount is paid, and are estimated to mature in 27 annual principal installments that are substantially equal. The first principal installment is estimated to be December 1, 2015.

Section 3. It is necessary to issue and this Council determines that notes in the aggregate principal amount of $1,100,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire, together with other funds available to the Village, the Outstanding Note. The Notes shall bear interest at a rate or rates not to exceed 5.5% per year (computed on the basis of a 360-day year consisting of twelve 30-day months), payable at maturity and until the principal amount is paid or payment is provided for. The rate or rates of interest shall be determined by the Director of Finance in the certificate awarding the Notes in accordance with Section 6 (the Certificate of Award). The Notes shall be dated as of their date of issuance, and shall mature one year from that date, 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 up to thirty days less than one year from the date of issuance by setting forth that maturity date in the Certificate of Award.

Section 4. The debt charges on the Notes shall be payable in Federal Reserve funds of the United States of America and shall be payable, without deduction for services of the Village's paying agent, at the principal corporate trust office of The Huntington National Bank, Columbus, Ohio, or at the office of a bank or trust company requested by the original purchaser of the Notes, provided that such request shall be approved by the Director of Finance after determining that the payment at that bank or trust company will not endanger the funds of the Village 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.

Section 5. The Notes shall be signed by the Mayor, the President of Council and the Director of Finance in the name of the Village and in their official capacities, provided that all but one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, provided that no Note shall 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 shall not have coupons attached, 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. 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 Village 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 Village 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 shall have no right to receive the Notes in the form of physical securities or certificates; (iii) ownership of beneficial 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 beneficial interests shall be made only by book entry by the Depository and its Participants; and (iv) the Notes 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 Village.

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, shall permit withdrawal of the Notes from the Depository, and shall 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 Village 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 Notes, after determining that the signing thereof will not endanger the funds or securities of the Village.

Section 6. The Notes shall be sold at not less than par at private sale by the Director of Finance in accordance with law and the provisions of this ordinance. The Director of Finance shall, in accordance with that officer's determination of the best interests of and financial advantages to the Village and its taxpayers and based on conditions then existing in the financial markets, consistently with the provisions of Section 3, establish the interest rate or rates to be borne by the Notes and make such other determinations with respect thereto as provided herein, sign the Certificate of Award referred to in Section 3 evidencing that sale, 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 Director of Finance is also authorized, if requested by the original purchaser as a condition of such sale, to execute, on behalf of the Village, a Note Purchase Agreement between the Village and such original purchaser relating to the sale of such Notes, or the sale of any consolidated issue of which the Notes are a part, substantially in the form now on file with the Clerk of Council, which Note Purchase Agreement is hereby approved, together with any changes or amendments not inconsistent with this ordinance and not substantially adverse to the Village and that are approved by the Director of Finance on behalf of the Village, all of which shall be conclusively evidenced by the signing of the Note Purchase Agreement or any amendments thereto by the Director of Finance. The Mayor, the Director of Finance, the Clerk of Council, the President of Council, the Law Director 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 Director of Finance 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 Revised Code.

If in the judgment of the Mayor or the Director of Finance a disclosure document in the form of an official statement is appropriate or necessary relating to the original issuance of the Notes, either or both of those officers, on behalf of the Village 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 Village 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 Notes, and (iv) complete and sign those official statements as so approved together with such certificates, statements or other documents in connection with the finality, accuracy and completeness of those official statements.

Section 7. 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 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 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 Notes or Bonds in compliance with the following covenant. To the extent necessary, the debt charges on the Notes or 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 Sections 133.05(B)(7) and 5705.51(A)(5) and (D), 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 section 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 or Bonds.

Section 10. The Village 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(a) of the Code applies, and (b) the interest on the Notes will not be treated as a preference item under Section 57 of the Code.

The Village 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, and (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 Village hereby represents that the Outstanding Note (the Refunded Obligation) was designated or treated as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code. The Village hereby covenants that it will redeem the Refunded Obligation from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating the amount of the Notes equal to the face amount thereof as "qualified tax-exempt obligations" and as not to be taken into account under subparagraph (D) of Section 265(b)(3) of the Code, without necessity for further designation, by reason of subparagraph (D)(ii) of Section 265(b)(3) of the Code. Further, the Village 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

benefited 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 Village 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 amount of the Notes (such amount being based on the issue price of the Notes as determined under the Code) in excess of the face amount thereof are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the Village 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 Notes 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 aforesaid amount of the Notes, 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 Notes, 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 that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding $10,000,000, unless the Village 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 Notes as "qualified tax-exempt obligations". Further, the Village 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 Village 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 Village having responsibility for issuance of the Notes is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the Village with respect to the Notes as the Village 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 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 of 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 Village, 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 Village,

for inclusion in the transcript of proceedings for the Notes, setting forth the reasonable expectations of the Village 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.

Each covenant made in this section with respect to the Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Notes (and, if different, the original issue and any refunding issues in a series of refundings), to the extent such compliance is necessary to assure exclusion of interest on the Notes from gross income for federal income tax purposes, and the officers identified above are authorized to take actions with respect to those issues as they are authorized in this section to take with respect to the Notes.

Section 11. In connection with the issuance of the Notes, the legal services of Squire Patton Boggs (US) LLP, as bond counsel, are retained pursuant to an engagement letter which has been delivered to the Village by that firm. That engagement letter, and the execution thereof by the Mayor, the Director of Finance, the Director of Law, or any one of them, are hereby authorized, ratified and approved. In rendering 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, municipality or other political subdivision, or of this Village, or the execution of public trusts.

Section 12. The Clerk of Council is directed to forward a certified copy of this ordinance to the County Fiscal Officer.

Section 13. 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 14. 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 in an open meeting of this Council or of any of its committees, and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 15. This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Village, and for the further reason that the immediate effectiveness of this ordinance is required in order to effect the issuance and sale of the Notes, which is necessary to enable the Village to retire the Outstanding Note and

thereby preserve its credit; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

William Buckholtz, President of Council

First reading: July 21, 2014

Second reading: Suspended

Third reading: Suspended

PASSED: July 21, 2014

APPROVED: _____ 7/23/14
Bruce G. Rinker Date
Mayor

APPROVED AS TO FORM: _____
Joseph W. Diemert, Jr., Law Director

ATTEST: _____
Mary E. Betsa, Clerk of Council