

<b>Name</b>	<b>Beckenbach</b>		<b>Binford</b>		<b>Bolton</b>		<b>Brownrigg</b>		<b>Mateyo</b>		<b>Semersky</b>	
<b>Vote</b>	<b>Aye</b>	<b>Nay</b>	<b>Aye</b>	<b>Nay</b>	<b>Aye</b>	<b>Nay</b>	<b>Aye</b>	<b>Nay</b>	<b>Aye</b>	<b>Nay</b>	<b>Aye</b>	<b>Nay</b>
<b>Suspension</b>												
<b>Passage</b>												

ORDINANCE NO.: 3467

INTRODUCED BY: \_\_\_\_\_

AN ORDINANCE TO PROVIDE FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$375,000 OF NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING A PORTION OF THE COST OF IMPROVING EDDY ROAD BETWEEN CERTAIN TERMINI, BY PROVIDING FULL WIDTH AND DEPTH PAVEMENT REMOVAL AND REPLACEMENT, REPAIR OF THE CONCRETE DECK, INSTALLATION OF CURBS, SIDEWALKS AND DRIVE APRONS, REPLACEMENT OF THE DRIVEWAY CUT-THROUGHS, REPLACEMENT OF TREE LAWNS, CONSTRUCTION OF A NEW MEDIAN, REPLACEMENT OF THE DAMAGED STORM SEWER AND INSTALLATION OF LIGHTING IMPROVEMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 3434, passed December 17, 2008, as amended by Ordinance No. 3437, passed January 21, 2009, notes in anticipation of bonds in the amount of \$375,000, dated January 27, 2009 (the Outstanding Notes), were issued for the purpose stated in Section 1, to mature on January 27, 2010; and

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

WHEREAS, the Clerk, 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 20 years, and the maximum maturity of the Notes described in Section 3, to be issued in anticipation of the bonds, is January 31, 2026;

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

Section 1. It is necessary to issue bonds of this Village in an aggregate principal amount not to exceed \$375,000 (the Bonds) for the purpose of paying a portion of the cost of improving Eddy Road between certain termini, by providing full width and depth pavement removal and replacement, repair of the concrete deck, installation of curbs, sidewalks and drive aprons, replacement of the driveway cut-throughs, replacement of tree lawns, construction of a new median, replacement of the damaged storm sewer and installation of lighting improvements.

Section 2. The Bonds shall be dated approximately December 1, 2010, shall bear interest at the now estimated rate of 6.00% per year, payable on June 1 and December 1 of each year, commencing June 1, 2010, until the principal amount is paid, and are estimated to mature in 20 annual principal installments such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is substantially equal.

Section 3. It is necessary to issue, and this Council determines, that notes in an aggregate principal amount not to exceed \$375,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds to retire, together with other funds available to the Village, the Outstanding Notes. The Notes shall be designated "Eddy Road Improvement Notes, Series 2010." The Notes shall be dated the date of their issuance and shall mature one year from that date, provided that the Clerk may, if it is determined to be necessary or advisable to the sale of the Notes, establish a maturity date that is any date not later than one year from the date of issuance by setting forth that maturity date in the Certificate of Award. The Notes shall bear interest at a rate not to exceed 5.00% per year (computed on a 360-day per year basis) payable at maturity and until the principal amount is paid or payment is provided for. The principal amount of and rate of interest on the Notes shall be determined by the Clerk in a certificate awarding the Notes (the Certificate of Award) in accordance with Section 6 of this Ordinance.

Section 4. The debt charges on the Notes shall be payable in lawful money of the United States of America, or in Federal Reserve funds of the United States of America if so determined by the original purchaser, and shall be payable, without deduction for services of the Village's paying agent, at the corporate trust office of The Huntington National Bank, Cleveland, Ohio, or at the principal office of a bank or trust company requested by the original purchaser of the largest principal amount of the Notes, provided that such request shall be approved by the Clerk after determining that the payment at that bank or trust company will not endanger the funds or securities of the Village and that proper procedures and safeguards are available for that purpose. The Notes shall be not be prepayable prior to maturity.

Section 5. The Notes shall be signed by the Mayor and Clerk, in the name of the Village and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Clerk. The entire principal amount of the Notes may be represented by a single note and may be issued as fully registered securities (for which the Clerk 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 Clerk 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 Clerk 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 Clerk may attempt to establish a securities depository/book entry relationship with another qualified Depository. If the Clerk does not or is unable to do so, the Clerk, 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 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 Clerk 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 a purchase price of not less than par at private sale to the purchaser of the Notes designated by the Clerk in the Certificate of Award upon determination that the selection of such purchaser is in the best interest of and financially advantageous to the Village. The Clerk shall execute a Certificate of Award specifying the principal amount of and rate of interest, the purchase price and such certain other terms of the Notes as this Ordinance requires or permits to be specified in the Certificate of Award. The Clerk shall cause the Notes to be prepared, and have the Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Notes if requested by the original purchaser, to the original purchaser upon payment of the purchase price. The Mayor, the Clerk, the Solicitor and other Village officials, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Clerk 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) Ohio Revised Code.

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.

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 an item of tax preference 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, (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 Clerk, 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 (including specifically designation of the Notes as “qualified tax-exempt obligations”), choice, consent, approval, or waiver on behalf of the Village with respect to the Notes as the Village is permitted to 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 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 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 charges 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. The Clerk is directed to deliver or cause to be delivered a certified copy of this Ordinance and a signed copy of the Certificate of Award to the Cuyahoga County Auditor.

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

Section 13. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law.

Section 14. This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and welfare of the Village, and for the further reason that this Ordinance is required to be immediately effective in order to issue and sell the Notes, which is necessary to provide the moneys required to retire the Outstanding Notes and thereby preserve the credit of the Village; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

PASSED: December 16, 2009

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JOHN M. LICASTRO, MAYOR

ATTEST: \_\_\_\_\_  
W. JAMES GALLAGHER, CLERK