

ORDINANCE NO. 15-06-287

AN ORDINANCE authorizing and providing for a Loan Agreement for the purpose of purchasing certain personal property in and for the Frankfort Square Park District, Will County, Illinois, and authorizing and providing for the issue of a \$154,260.00 Promissory Note, of said Park District evidencing the rights to payment under such Agreement, prescribing the details of the Agreement and Note, and providing for the security for and means of payment under the Agreement of the Note.

* * *

WHEREAS, the Frankfort Square Park District, Will County, Illinois (the "*District*"), is a park district of the State of Illinois operating under and pursuant to the Park District Code of the State of Illinois, as amended (the "*Park Code*"), and in particular, the provisions of Section 6-7 of the Park Code (collectively, the "*Promissory Note Provisions*"); and

WHEREAS, the Board of Park Commissioners of the District (the "*Board*") has considered the needs of the District and, in so doing, the Board has deemed and does now deem it advisable, necessary, and for the best interests of the District to purchase certain personal property, including a dance floor, gymnastics mats, IT equipment and key system, a Toro Fairway mower, school furniture and shelving, a storage building, and a digital sign, in and for the Frankfort Square Park District, Will County, Illinois (the "*Purchase*"), all as shown on file with and approved by the Board; and

WHEREAS, the Board has determined the total cost of the Purchase and expenses incidental thereto to be not less than \$154,260.00, plus estimated investment earnings which may be received on said sum prior to disbursement; and

WHEREAS, sufficient funds of the District are not available to pay the costs of the Purchase, and it will, therefore, be necessary to borrow money in the amount of \$154,260.00 for the purpose of paying such costs; and

WHEREAS, pursuant to the Promissory Note Provisions, the District has the power to borrow money for any corporate purpose from any bank or other financial institution provided such money shall be repaid within 2 years from the time the money is borrowed and to execute a promissory note or similar debt instrument to evidence the indebtedness incurred by the borrowing; and

WHEREAS, the Board finds that it is desirable and in the best interests of the District to avail itself of the provisions of the Promissory Note Provisions to authorize an Loan Agreement (the “*Agreement*”); authorize the President and Secretary of the Board to execute and attest, respectively, the Agreement on behalf of the District and to file same with said Secretary in his or her capacity as keeper of the records and files of the District; and issue a Promissory Note evidencing the indebtedness incurred under the Agreement in the amount of \$154,260.00:

NOW, THEREFORE, Be It Ordained by the Board of Park Commissioners of the Frankfort Square Park District, Will County, Illinois, as follows:

Section 1. Incorporation of Preambles. The Board hereby finds that all of the recitals contained in the preambles to this Ordinance are full, true and correct and does incorporate them into this Ordinance by this reference.

Section 2. Authorization. It is necessary and advisable for the residents of the District, and the officers of the District hereinafter identified are authorized to pay the costs of the Purchase and to borrow money and, in evidence thereof and for the purpose of financing same, enter into the Agreement and, further, to provide for the issuance and delivery of a Promissory Note evidencing the indebtedness incurred under the Agreement.

Section 3. Agreement is a General Obligation; Annual Appropriation. The District hereby represents, warrants, and agrees that the obligation to make the payments due under the Agreement shall be a general obligation of the District payable from any funds of the District

lawfully available and annually appropriated for such purpose. The District represents and warrants that the total amount due under the Agreement, together with all other indebtedness of the District, is within all statutory and constitutional debt limitations. The District agrees to appropriate funds of the District annually and in a timely manner so as to provide for the making of all payments when due under the terms of the Agreement.

Section 4. Execution and Filing of the Agreement. From and after the effective date of this Ordinance, the President and Secretary of the Board be and they are hereby authorized and directed to execute and attest, respectively, the Agreement, in substantially the form set forth in Section 5 of this Ordinance, and to do all things necessary and essential to effectuate the provisions of the Agreement, including the execution of any documents and a Promissory Note incidental thereto or necessary to carry out the provisions thereof. Upon full execution, the original of the Agreement shall be filed with the Secretary of the Board and retained in the District records and shall constitute authority for the issuance of the Promissory Note hereinafter authorized.

Section 5. Form of the Agreement. The Agreement shall be in substantially the form as follows:

[INSERT FORM OF LOAN AGREEMENT PROVIDED BY BANK]

Section 6. Promissory Note Details. For the purpose of providing for the financing of the Purchase, there shall be issued a Promissory Note of the District in the principal amount of \$154,260.00, (the “*Promissory Note*”). The Promissory Note shall be dated June 18, 2015, and shall become due in accordance with the amortization schedule attached hereto as **Exhibit A**.

The Promissory Note shall bear interest at a rate equal to 3.15% from its date or from the most recent interest payment date to which interest has been paid or duly provided for, until the principal amount of the Promissory Note is paid. Interest payment dates each year shall be January 1 and June 1. Interest on the Promissory Note shall be paid by check or draft of the Frankfort Square Park District (the “*Promissory Note Registrar*”), payable upon presentation in lawful money of the United States of America, to the person in whose name such Promissory Note is registered at the close of business on the 1st day of the month preceding the interest payment date. The principal of the Promissory Note shall be payable upon maturity in lawful money of the United States of America at the principal corporate trust office of the Promissory Note Registrar.

The Promissory Note shall be signed by the President and Secretary of the Board, and in case any officer whose signature shall appear on any Promissory Note shall cease to be such officer before the delivery of such Promissory Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

Section 7. Redemption. The Promissory Note shall be subject to redemption prior to maturity at the option of the District as a whole or in part at the redemption price of par plus accrued interest to the redemption date.

Section 8. Form of Promissory Note. The Promissory Note shall be in substantially the following form:

[INSERT FORM OF PROMISSORY NOTE PROVIDED BY BANK]

Section 9. Sale of Promissory Notes. The Promissory Note hereby authorized shall be executed as in this Ordinance provided as soon after the passage hereof as may be, and thereupon be delivered to Old Plank Trail Community Bank, Cook, Illinois (the “*Purchaser*”), upon receipt of the purchase price therefor, the same being \$154,260.00; the contract for the sale of the Promissory Note heretofore entered into (the “*Purchase Contract*”) is in all respects ratified, approved and confirmed, it being hereby found and determined that the Promissory Note have been sold at such price and bear interest at such rates that neither the true interest cost (yield) nor the net interest rate received upon such sale exceed the maximum rate otherwise authorized by Illinois law and that the Purchase Contract is in the best interests of the District and that no person holding any office of the District, either by election or appointment, in any manner holds a prohibited financial interest directly in his own name or indirectly in the name of any other person, association, trust or corporation, in the Purchase Contract.

The officers of the Board are hereby authorized to take any action as may be required on the part of the District to consummate the transactions contemplated by the Purchase Contract, this Ordinance and the Promissory Note.

Section 10. Use of Promissory Note Proceeds. Accrued interest received on the delivery of the Promissory Note is hereby appropriated for the purpose of paying first interest due on the Promissory Note and is hereby ordered deposited into the “Promissory Note 2015 Fund” (the “*Promissory Note Fund*”), which shall be the fund for the payment of the principal of and interest on the Promissory Note. Funds lawfully available for the purpose of paying the principal of and interest on the Promissory Note shall be deposited into the Promissory Note Fund and used solely and only for such purpose. The principal proceeds of the Promissory Note are hereby appropriated to pay the costs of issuance of the Promissory Note and for the purpose of paying the cost of the Purchase.

Alternatively to the creation of the funds described above, the appropriate officers may allocate the funds to be deposited into the Promissory Note Fund or proceeds of the Promissory Notes to one or more related funds of the District already in existence and in accordance with good accounting practice; *provided, however*, that this shall not relieve such officers of the duty to account and invest such funds and the proceeds of the Promissory Notes, as herein provided, as if the funds described above had in fact been created.

Section 11. Non-Arbitrage and Tax-Exemption. The District hereby covenants that it will not take any action, omit to take any action or permit the taking or omission of any action within its control (including, without limitation, making or permitting any use of the proceeds of the Promissory Note) if taking, permitting or omitting to take such action would cause the Promissory Note to be an arbitrage bond or a private activity bond within the meaning of the Internal Revenue Code of 1986, as amended (the “Code”), or would otherwise cause the interest on the Promissory Notes to be included in the gross income of the recipients thereof for federal income tax purposes. The District acknowledges that, in the event of an examination by the Internal Revenue Service of the exemption from federal income taxation for interest paid on the Promissory Note, under present rules, the District may be treated as a “taxpayer” in such examination and agrees that it will respond in a commercially reasonable manner to any inquiries from the Internal Revenue Service in connection with such an examination. The Board and the District further certify, covenant and represent as follows:

A. Small Issuer Exception. The District is a governmental unit that has the power to impose a tax or to cause another entity to impose a tax of general applicability that, when collected, may be used for the governmental purposes of the District. The power to impose such tax is not contingent on approval by another governmental unit; a tax of general applicability is one that is not limited to a small number of persons. The District is not subject to Control by any other governmental unit or political subdivision. The Promissory Note is not nor will be a “private activity bond” (as defined in Section 141 of the Code). Ninety-five percent or more of the Sale Proceeds will be used for local governmental activities of the District. None of the District, any entity that

issues tax-exempt bonds on behalf of the District or any entity subject to Control by the District will issue, during the calendar year 2015, any tax-exempt bonds (other than current refunding bonds to the extent of the aggregate face amount of the tax-exempt bonds being currently refunded thereby) in an aggregate face amount in excess of the *maximum aggregate face amount* (as hereinafter defined). As used herein, (a) “*tax-exempt bonds*” means obligations of any kind, the interest on which is excludable from gross income of the holders or owners thereof for federal income tax purposes pursuant to Section 103 of the Code but not including (i) “private activity bonds” (as defined in Section 141 of the Code) or (ii) obligations issued to refund another obligation if it is issued not more than 90 days before the redemption of the refunded obligation to the extent the amount of the refunding obligation does not exceed the outstanding amount of the refunded obligation, (b) “*aggregate face amount*” means, if an issue has more than a De minimis Amount of Original Issue Discount or Premium, the issue price of the issue and otherwise means the face amount of the issue and (c) “*maximum aggregate face amount*” means, the sum of (i) \$5,000,000 and (ii) the aggregate face amount of bonds issued during the calendar year that are allocable to financing construction expenditures for public school facilities, but in no event can the *maximum aggregate face amount* exceed \$10,000,000. Subject to compliance with all the terms and provisions hereof, the District is excepted from the required rebate of arbitrage profits on the Promissory Note under Section 148(f)(4)(D) of the Code and from the terms and provisions of this Ordinance that need only be complied with if the District is subject to the arbitrage rebate requirement.

B. Bank Qualification. (a) The District hereby designates the Promissory Note as a “qualified tax-exempt obligation” for the purposes and within the meaning of Section 265(b)(3) of the Code. In support of such designation, the District hereby certifies that (i) the Promissory Note will not be at anytime a “private activity bond” (as defined in Section 141 of the Code) other than a “qualified 501(c)(3) bond” (as defined in Section 145 of the Code), (ii) not more than \$10,000,000 of obligations of any kind (including the Promissory Note) issued by or on behalf of the District during calendar year 2015 will be designated for purposes of Section 265(b)(3) of the Code.

(b) The District is not subject to Control by any entity, and there are no entities subject to Control by the District.

(c) On the date hereof, the District does not reasonably anticipate that for calendar year 2015 it will issue any additional Section 265 Tax-Exempt Obligations (other than the Promissory Note), or that any additional Section 265 Tax-Exempt Obligations will be issued on behalf of it. “*Section 265 Tax-Exempt Obligations*” are obligations the interest on which is excludable from gross income of the owners thereof under Section 103 of the Code, *except for* private activity bonds other than qualified 501(c)(3) bonds, both as defined in Section 141 of the Code. The District will not issue or permit the issuance on behalf of it or by any entity subject to Control by the District (which may hereafter come into existence) of Section 265 Tax-Exempt Obligations (including the Promissory Notes) that exceed the aggregate amount of \$10,000,000 during calendar year 2015 unless it first obtains an opinion of Bond Counsel to the effect

that such issuance will not adversely affect the treatment of the Promissory Note as “qualified tax-exempt obligations” for the purposes and within the meaning of Section 265(b)(3) of the Code.

C. Records Retention. The District agrees to keep and retain or cause to be kept and retained sufficient records to support the continued exclusion of the interest paid on the Promissory Notes from federal income taxation, to demonstrate compliance with the covenants in this Ordinance and to show that all tax returns related to the Promissory Note submitted or required to be submitted to the Internal Revenue Service are correct and timely filed. Such records shall include, but are not limited to, basic records relating to the Promissory Note transaction (including this Ordinance and the Bond Counsel opinion); documentation evidencing the expenditure of Promissory Note proceeds; documentation evidencing the use of Promissory Note-financed property by public and private entities (*i.e.*, copies of leases, management contracts and research agreements); documentation evidencing all sources of payment or security for the Promissory Note; and documentation pertaining to any investment of Promissory Note proceeds. Such records shall be kept for as long as the Promissory Note is outstanding, plus the period ending three (3) years after the later of the final payment date of the Promissory Note or the final payment date of any obligations or series of obligations issued to refund directly or indirectly all or any portion of the Promissory Note.

The District also agrees and covenants with the purchasers and holders of the Promissory Note from time to time outstanding that, to the extent possible under Illinois law, it will comply with whatever federal tax law is adopted in the future which applies to the Promissory Note and affects the tax-exempt status of the Promissory Note.

The Board hereby authorizes the officials of the District responsible for issuing the Promissory Note, the same being the President and Secretary of the Board and the Treasurer, to make such further covenants and certifications as may be necessary to assure that the use thereof will not cause the Promissory Note to be an arbitrage bond and to assure that the interest on the Promissory Note will be exempt from federal income taxation. In connection therewith, the District and the Board further agree: (a) through their officers, to make such further specific covenants, representations as shall be truthful, and assurances as may be necessary or advisable; (b) to consult with counsel approving the Promissory Note and to comply with such advice as may be given; (c) to pay to the United States, as necessary, such sums of money representing required rebates of excess arbitrage profits relating to the Promissory Note; and (d) if deemed

necessary or advisable by their officers, to employ and pay fiscal agents, financial advisors, attorneys, and other persons to assist the District in such compliance.

Section 12. Severability. If any section, paragraph, clause or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 13. Repeal. All ordinances, resolutions or parts thereof in conflict herewith be and the same are hereby repealed, and this Ordinance shall be in full force and effect forthwith upon its adoption.

Adopted June 18, 2015.

President, Board of Park Commissioners

Attest:

Secretary, Board of Park Commissioners

EXHIBIT A
AMORTIZATION SCHEDULE

4830-6361-1940, v. 1