

**BOROUGH OF CLARKS SUMMIT  
ORDINANCE NO. 08 OF 2008**

AN ORDINANCE OF THE BOROUGH OF CLARKS SUMMIT AUTHORIZING THE ISSUANCE OF A TAX AND REVENUE ANTICIPATION NOTE IN THE AGGREGATE PRINCIPAL AMOUNT OF TWO HUNDRED THOUSAND AND 00/100 (\$200,000.00) DOLLARS, PROVIDING FOR THE DATE, DENOMINATION, INTEREST RATE, MATURITY DATE, PLACE OF PAYMENT AND PREPAYMENT PROVISIONS IN RESPECT OF THE NOTE; ACCEPTING THE PROPOSAL OF FIDELITY BANK , FOR THE PURCHASE OF THE NOTE; PROVIDING FOR THE SECURITY OF THE NOTE; AUTHORIZING THE PROPER OFFICES TO EXECUTE AND DELIVER THE NOTE; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING OF THE PROCEEDINGS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; PROVIDING FOR THE ESTABLISHMENT OF A TAX DEPOSITORY FUND FOR THE DEPOSIT OF TAX RECEIPTS AND AUTHORIZING THE APPROPRIATE OFFICIALS OF CLARKS SUMMIT BOROUGH TO EXECUTE ALL DOCUMENTS AND UNDERTAKE ALL SUCH ACTION AS NECESSARY TO COMPLETE THE TAX ANTICIPATION NOTE PROCEEDINGS.

WHEREAS, Council of the Borough of Clarks Summit, County of Lackawanna, Commonwealth of Pennsylvania, hereinafter (the "Borough") anticipates receiving taxes and revenues during the fiscal year beginning January 1, 2009, which are as yet uncollected; and

WHEREAS, the Borough has estimated its expected taxes, revenues and expenditures for the upcoming fiscal year and anticipates that it may experience a cash flow deficit during some portions of such fiscal year; and

WHEREAS, the Borough has therefore determined to borrow for the purpose of meeting current expenses by issuing Notes to be repaid from such anticipated taxes and revenues, all in accordance with the Local Government Unit Debt Act (the "Debt Act"); and

WHEREAS, the Borough has received an acceptable proposal for the purchase of its Tax and Revenue Anticipation Note hereinafter described; and

WHEREAS, as required by Section 8126 of the Debt Act, the authorized officers of the Borough have heretofore made an estimate of the monies to be received during the period when the said Tax and Revenue Anticipation Note will be outstanding from taxes then levied and assessed and revenues and will execute of a certificate with respect thereto (the "Certificate as to Taxes and Revenues") certifying the said estimate.

NOW THEREFORE, BE IT ORDAINED by the Council of the Borough of Clarks Summit, Borough of Clarks Summit, County of Lackawanna, Commonwealth of Pennsylvania, that:

## SECTION 1.

For the reasons and purposes cited above, the Borough hereby authorizes the issuance of a Tax and Revenue Anticipation Note in the aggregate principal amount of Two Hundred Thousand and 00/100 (\$200,000.00) Dollars in anticipation of the receipt of current taxes and revenues during the fiscal year commencing January 1, 2009. Said Note to be sold and delivered as hereinafter provided.

## SECTION 2.

The President of Clarks Summit Borough Council and other appropriate officials of the Borough of Clarks Summit are hereby authorized and directed to prepare and verify a certified copy of this Ordinance and a true and correct copy of the accepted proposal for the purchase of the Note all as required by Section 8128 of the Debt Act, and to file all of the above, together with the executed copy of the Certificate as to Taxes and Revenues, the contents of which are hereby approved, with the Department of Community and Economic Development of the Commonwealth of Pennsylvania. The President of Council and other appropriate officials of the Borough of Clarks Summit are also hereby authorized and directed to prepare and verify a certificate indicating the cumulative cash flow deficit calculated in accordance with Section 103 of the Internal Revenue Code of 1954, as amended, and the Regulations promulgated thereunder.

## SECTION 3.

The Note shall be designated 2009 Tax and Revenue Anticipation Note, shall be issued in the face amount of Two Hundred Thousand and 00/100 (\$200,000.00) Dollars and shall bear interest at a "Bank Qualified Tax Exempt Rate" of 2.59% per annum and shall be substantially in the form as attached hereto as Exhibit "A", which is incorporated herein by reference.

## SECTION 4.

The Note shall be executed by the President of the Council of Clarks Summit Borough and such other officials of the Borough of Clarks Summit as are necessary and shall have the corporate seal of the Borough of Clarks Summit affixed thereto, duly attested by the Secretary of Clarks Summit Borough. The Manager of Clarks Summit Borough is hereby authorized and directed to deliver the note to Fidelity Bank and to take such other action as may be necessary or appropriate in order to effectuate the issuance and sale of the Note, all in accordance with this Ordinance and the Debt Act.

## SECTION 5.

The Note shall be secured by pledge of, security interest in, and a lien and charge on, the taxes and/or all other revenues, as the case may be, to be received by the Borough during the period when the Note is outstanding; and the President of Clarks Summit Borough Council and/or other officials of the Borough of Clarks Summit are hereby authorized and directed to execute such financing statements as may be necessary under the Uniform Commercial Code and Section 8125 of the Debt Act to fully perfect said pledge, security interest, lien and charge.

## SECTION 6.

The Borough hereby covenants that it will make no use of the proceeds of the Note which would cause the Note to be an "arbitrage bond" within the meaning of Section 148 of the Internal Revenue Code of 1986 and the regulations thereunder and that it will comply with the requirements of said Section and the regulations throughout the term of the Note. The Borough will not make any investment inconsistent with the foregoing covenant. The Note is hereby designated as a "Qualified Tax Exempt Obligation" pursuant to Section 265(b)(3) of said Code.

SECTION 7.

The Borough hereby ratifies acceptance of the proposal submitted by Fidelity Bank as accepted by Borough Council on this 3<sup>rd</sup> day of December, 2008. A copy of the Fidelity Bank proposal and commitment letter are attached.

SECTION 8.

If any sentence, clause, section or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Council of the Borough of Clarks Summit that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

SECTION 9.

This Ordinance shall become effective immediately upon passage.

SECTION 10.

This Ordinance is enacted by Council of the Borough of Clarks Summit under the authority of the Act of Legislation, February 1, 1966, P.L. (1965) No. 581 §1005, as amended 1979, November 2, P.L. 458 No. 94, 53 P.S. §46005, et seq., known as the Borough Code and any other applicable law arising under the laws of the Commonwealth of Pennsylvania.

Approved on the 3<sup>rd</sup> day of December, 2008.

\_\_\_\_\_  
Germaine Carey, President  
Clarks Summit Borough Council

ATTEST:

\_\_\_\_\_  
Virginia Kehoe,  
Borough Secretary/Manager

\_\_\_\_\_  
Harold P. Kelly  
Clarks Summit Borough

Passed by Clarks Summit Borough Council on **this 3<sup>rd</sup> day of December, 2008**, receiving the affirmative votes of \_\_\_\_\_ negative votes of \_\_\_\_\_.