

ORDINANCE NO. 10-93

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF BONDS IN THE MAXIMUM PRINCIPAL AMOUNT OF \$8,175,000 FOR THE PURPOSE OF PAYING COSTS OF CONSTRUCTING A MUNICIPAL GOLF COURSE, INCLUDING A CLUB HOUSE, MAINTENANCE BUILDING, PUMP HOUSE, UTILITIES, PARKING FACILITIES, LANDSCAPING, EQUIPMENT, AND ALL NECESSARY APPURTENANCES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 12-92 passed August 31, 1992, Notes in anticipation of Bonds in the amount of \$4,100,000 dated September 14, 1992 were issued for the purpose of constructing a municipal golf course to mature on June 1, 1993 (the Outstanding Notes); and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Bonds described in Section 2 hereof and to provide an additional \$4,075,000 for the purpose stated in Section 2; and

WHEREAS, the Director of Finance as fiscal officer of this City has certified to this Council that the estimated life or period of usefulness of the Improvement is at least five years and the maximum maturity of the Bonds is 27 years based upon the weighted average of the amounts allocated to the several classes of improvements set forth in the Fiscal Officer's Certificate, which allocation is approved, ratified and confirmed;

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

Section 1. That this Council hereby declares that an emergency exists affecting the public welfare, in that the Bonds authorized by this emergency ordinance must be sold without delay in order to retire bond anticipation notes maturing on June 1, 1993 and thereby maintain the credit standing of the City.

Section 2. That it is necessary to issue bonds of this City in the maximum principal amount of \$8,175,000 (the Bonds) for the purpose of paying costs of constructing a municipal golf course, including a club house, maintenance building, pump house, utilities, parking facilities, landscaping, equipment and all necessary appurtenances. The Bonds shall be issued pursuant to the Charter of the City, Chapter 133, Ohio Revised Code, and this ordinance. The principal amount of the Bonds to be issued (not to exceed the stated maximum) shall be determined by the Director of Finance. The Director of Finance may adjust the principal amounts of Bonds maturing in each of the years 1994 through 2020 if in his judgment it is advantageous to and in the best interest of the City to make any such adjustments and to reflect any reduction by reason of the issuance of Bonds in less than the stated maximum; provided, however, that no such adjustment shall increase or decrease the principal amount maturing in any of those years by more than 30% of the amount scheduled to mature in those years as set forth in Section 5, and provided further that any adjustment of the maturity schedule shall be such that the principal installments are such that the total principal and interest payments on the Bonds in any fiscal year in which principal is payable is not more than

three times the amount of those payments in any other fiscal year. The principal amount of Bonds to be issued and any adjustment made by the Director of Finance pursuant to this paragraph shall be reflected in a final principal amount and final maturity schedule set forth in the Certificate of Award.

Section 3. That the Bonds shall be issued in one lot and only as fully registered bonds, in the denominations of \$5,000 or any integral multiple thereof, but in no case as to a particular maturity date exceeding the principal amount maturing on that date. The Bonds shall be dated as of May 15, 1993.

Section 4. That the Bonds shall bear the rate or rates of interest (computed on a 360-day per year basis), not exceeding 7-1/2% per year for any stated maturity, as specified in a certificate of award which shall be signed by the Director of Finance and provide for the award of the Bonds (the Certificate of Award); provided, that the Bonds of any one stated maturity all shall bear the same rate of interest, no rate shall be less than the rates stated for any earlier maturity, and the difference between the highest and lowest rate stated shall not exceed 400 basis points. Interest on the Bonds shall be payable at such rate or rates on June 1 and December 1 of each year (the Interest Payment Dates), commencing December 1, 1993, until the principal amount has been paid or provided for. The Bonds shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from May 15, 1993.

Section 5. The Bonds shall mature on December 1 in the following years in the principal amount set forth opposite the respective years:

<u>Maturity</u> <u>Year</u>	<u>Principal</u> <u>Amount</u> <u>Maturing</u>	<u>Maturity</u> <u>Year</u>	<u>Principal</u> <u>Amount</u> <u>Maturing</u>
1994	\$155,000.00	2008	\$290,000.00
1995	160,000.00	2009	305,000.00
1996	165,000.00	2010	320,000.00
1997	170,000.00	2011	340,000.00
1998	175,000.00	2012	360,000.00
1999	185,000.00	2013	380,000.00
2000	195,000.00	2014	400,000.00
2001	200,000.00	2015	425,000.00
2002	210,000.00	2016	445,000.00
2003	220,000.00	2017	475,000.00
2004	235,000.00	2018	500,000.00
2005	245,000.00	2019	530,000.00
2006	260,000.00	2020	560,000.00
2007	270,000.00		

Provided, however, that the Bonds or a portion of the Bonds may be issued as term bonds stated to mature on December 1, 2020 and on an earlier December 1 if so determined by the Director of Finance in the Certificate of Award (the Term Bonds) but payable on December 1 in the years and principal amounts provided for in the Certificate of Award (Mandatory Redemption Dates) pursuant to Mandatory Redemption Requirements as hereinafter defined and further described below. The Director of Finance shall determine in the

Certificate of Award whether the Bonds shall be issued as Term Bonds (maturing on December 1, 2020 or on that date plus another earlier December 1) and any Mandatory Redemption Dates with respect to the Term Bonds on which the yearly principal amount shall be payable pursuant to Mandatory Redemption Requirements rather than at stated maturity (the Mandatory Redemption Requirements).

Section 6. The Bonds shall be subject to redemption prior to stated maturity as follows:

(a) Mandatory Redemption. If any of the Bonds are issued as Term Bonds, the Term Bonds shall be subject to mandatory redemption and be redeemed pursuant to Mandatory Redemption Requirements, at a redemption price of 100% of the principal amount redeemed, plus interest accrued to the redemption date, on the Mandatory Redemption Dates.

The aggregate of the moneys to be deposited with the Bond Registrar (as defined in Section 8 below) for payment of principal of and interest on any Term Bonds shall include amounts sufficient to redeem on the Mandatory Redemption Dates the principal amount of Term Bonds payable on those dates pursuant to the Mandatory Redemption Requirements (less the amount of any credit as provided below).

The City shall have the option to deliver to the Bond Registrar for cancellation Term Bonds in any aggregate principal amount and to receive a credit against the then current Mandatory Redemption Requirement (and corresponding mandatory redemption obligation) of the City for any Term Bonds. That option shall be exercised by the City on or before the forty-fifth day preceding the applicable Mandatory Redemption Date, by furnishing the Bond Registrar a certificate, signed by the Director of Finance, setting forth the extent of the credit to be applied with respect to the then current Mandatory Redemption Requirement. If the certificate is not timely furnished to the Bond Registrar, the Mandatory Redemption Requirement (and corresponding mandatory redemption obligation) shall not be reduced. A credit against the then current Mandatory Redemption Requirement (and corresponding mandatory redemption obligation) also shall be received by the City for any Term Bonds which prior thereto have been redeemed (other than through the operation of the Mandatory Redemption Requirements) or purchased for cancellation and cancelled by the Bond Registrar, to the extent not applied theretofore as a credit against any redemption obligation.

Each Term Bond so delivered, or previously redeemed, or purchased and cancelled, shall be credited by the Bond Registrar at 100% of the principal amount thereof against the then current Mandatory Redemption Requirement (and corresponding mandatory redemption obligation). Any excess of that amount over the then current Mandatory Redemption Requirement shall be credited against subsequent Mandatory Redemption Requirements (and corresponding mandatory redemption obligations) in the order directed by the Director of Finance.

(b) Optional Redemption. The Bonds shall be subject to optional redemption in accordance with this section unless it is determined by the Director of Finance that it is advantageous to and in the best interest of the

City for the Bonds to be issued without optional redemption provisions and that determination shall be set forth in the Certificate of Award. Any Bonds stated to mature on or after December 1, 2005 shall be subject to redemption by and at the option of the City, in whole or in part on any date on or after December 1, 2004, in integral multiples of \$5,000 at the following redemption prices (expressed as percentages of the principal amount redeemed), plus accrued interest to the redemption date:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
December 1, 2004 through November 30, 2005	101%
December 1, 2005 and thereafter	100%

If optional redemption at a price exceeding 100% of the principal amount to be redeemed is to take place as of any applicable Mandatory Redemption Date, the Bonds, or portions thereof, to be redeemed optionally shall be selected by lot prior to the selection by lot of the Bonds to be redeemed on the same date by operation of the Mandatory Redemption Requirements of paragraph (c)(i). The Bonds to be redeemed pursuant to this paragraph shall be redeemed only upon written notice from the Director of Finance to the Bond Registrar, given upon the direction of the Council by adoption of a resolution or ordinance. That notice shall specify the redemption date and the principal amount of each maturity of Bonds to be redeemed, and shall be given at least 45 days prior to the redemption date or such shorter period as shall be acceptable to the Bond Registrar.

(c) Partial Redemption. If fewer than all of the outstanding Bonds are called for redemption at one time and Bonds of more than one maturity are then outstanding, the Bonds that are called shall be called in the order of maturities of the Bonds as determined by the Director of Finance. If fewer than all Bonds of a single maturity are to be redeemed, the selection of Bonds of that maturity to be redeemed, or portions thereof in amounts of \$5,000 or any integral multiple thereof, shall be made by the Bond Registrar by lot in any manner that the Bond Registrar may determine. In the case of a partial redemption of Bonds by lot when Bonds of denominations greater than \$5,000 are then outstanding, each \$5,000 unit of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of principal amount represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the registered owner of that Bond shall surrender the Bond to the Bond Registrar (i) for payment of the redemption price of the \$5,000 unit or units called for redemption (including, without limitation, the interest accrued to the date fixed for redemption and any premium), and (ii) for issuance, without charge to the registered owner thereof, of a new Bond or Bonds of any authorized denomination or denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

(d) Notice of Redemption. The notice of the call for redemption of Bonds shall identify (i) by designation, letters, numbers or other distinguishing marks, the Bonds or portions thereof to be redeemed, (ii) the

redemption price to be paid, (iii) the date fixed for redemption, and (iv) the place or places where the amounts due upon redemption are payable. The notice shall be given by the Bond Registrar on behalf of the City by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption, to the registered owner of each Bond subject to redemption in whole or in part at the registered owner's address shown on the Bond Register (as defined in Section 7 below) maintained by the Bond Registrar at the close of business on the fifteenth day preceding that mailing. Failure to receive notice by mail or any defect in that notice regarding any Bond, however, shall not affect the validity of the proceedings for the redemption of any Bond.

(e) Payment of Redeemed Bonds. In the event that notice of redemption shall have been given by the Bond Registrar to the registered owners as provided above, there shall be deposited with the Bond Registrar on or prior to the redemption date, funds which, in addition to any other moneys available therefor and held by the Bond Registrar, will be sufficient to redeem at the redemption price thereof, plus interest accrued to the redemption date, all of the redeemable Bonds for which notice of redemption has been given. Notice having been mailed in the manner provided in the preceding paragraph hereof, the Bonds and portions thereof called for redemption shall become due and payable on the redemption date, and, upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, plus interest accrued to the redemption date. If money for the redemption of all of the Bonds and portions thereof to be redeemed, together with interest accrued thereon to the redemption date, is held by the Bond Registrar on the redemption date, so as to be available therefor on that date and, if notice of redemption has been deposited in the mail as aforesaid, then from and after the redemption date those Bonds and portions thereof called for redemption shall cease to bear interest and no longer shall be considered to be outstanding. If that money shall not be so available on the redemption date, or that notice shall not have been deposited in the mail as aforesaid, those Bonds and portions thereof shall continue to bear interest, until they are paid, at the same rate as they would have borne had they not been called for redemption. All money held by the Bond Registrar for the redemption of particular Bonds shall be held in trust for the account of the registered owners thereof and shall be paid to them, respectively, upon presentation and surrender of those Bonds.

Section 7. The Bonds shall be signed by the Mayor or Deputy-Mayor and the Director of Finance, in the name of the City and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be issued in the denominations and numbers as requested by the original purchaser and approved by the Director of Finance, 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. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under this ordinance unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, this ordinance. The certificate of

authentication may be signed by any authorized officer or employee of the Bond Registrar or by any other person acting as an agent of the Bond Registrar and approved by the Director of Finance on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 8. The Fifth Third Bank, Cincinnati, Ohio, is appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the Bond Registrar). The Director of Finance is designated as the officer of the City to sign and deliver and the Director of Finance shall sign and deliver, in the name and on behalf of the City, the Bond Registrar Agreement between the City and the Bond Registrar (the Agreement) in substantially the form as is now on file with the Clerk of Council. The Agreement is approved, together with any changes or amendments that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the Agreement or amendments to the Agreement. The Director of Finance shall provide for the payment of the services rendered and for reimbursement of expenses incurred pursuant to the Agreement from the proceeds of the Bonds to the extent available and then from other money lawfully available and appropriated or to be appropriated for that purpose.

Section 9. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal and any premium shall be payable when due upon presentation and surrender of the Bonds at the main office of the Bond Registrar. Interest on a Bond shall be paid on each Interest Payment Date by check or draft mailed to the person in whose name the Bond was registered, and to that person's address appearing, on the Bond Register at the close of business on the 15th day of the calendar month next preceding that Interest Payment Date (the Record Date).

Section 10. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep at its main office all books and records necessary for the registration, exchange and transfer of Bonds as provided in this Section (the Bond Register). Subject to the provisions of Section 9, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of this ordinance. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this Section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the main office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the main office of the Bond Registrar together with an assignment signed by the registered owner or by a

person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall sign and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under this ordinance, as the Bonds surrendered upon that exchange or transfer.

Notwithstanding any other provisions of this ordinance, if it is determined by the Director of Finance to be advantageous to the City, the Bonds may be issued in book entry form in accordance with the following provisions of this section. 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 Bonds and the principal of and interest on the Bonds may be transferred only through a book entry, and (ii) physical Bond certificates in fully registered form are issued by the City only to a Depository or its nominee as registered owner, with the Bonds "immobilized" in the custody of the Depository. The book entry maintained by others than the City is the record that identifies the owners of beneficial interests in those Bonds 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 Bonds or the principal and interest, and to effect transfers of Bonds, 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 Bonds 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 Bonds may be issued in the form of a single, fully registered Bond representing each maturity and registered in the name of the Depository or its nominee, as registered owner, and immobilized in the custody of the Depository; (ii) the beneficial owners in book entry form shall have no right to receive Bonds 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 Bonds 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 City.

If any Depository determines not to continue to act as a Depository for the Bonds 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 Treasurer 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 Bonds from the Depository, and authenticate and deliver bond certificates in registered form 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 District 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 Bonds, after determining that the signing thereof will not endanger the funds or securities of the City.

Section 11. The Bonds are sold to Banc One Capital Corporation at private sale at not less than 98% of par as set forth in the Certificate of Award. The Director of Finance shall cause the Bonds to be prepared and signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Bonds, to the original purchaser upon payment of the purchase price. The Director of Finance is authorized to sign and deliver, in the name and on behalf of the City, the Bond Purchase Agreement between the City and Banc One Capital Corporation in substantially the form as is now on file with the Clerk of Council. The Bond Purchase Agreement is approved, together with any changes or amendments that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the Director of Finance on behalf of the City, all of which shall be conclusively evidenced by the signing of the agreement or amendments to the agreement. The City Manager, Mayor or Deputy-Mayor, the Director of Finance, and Clerk of Council, 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 preliminary official statement of the City relating to the original issuance of the Bonds substantially in the form now on file with the Clerk of Council is approved. The distribution and use of that preliminary official statement is hereby approved. The City Manager and the Director of Finance are each authorized and directed to complete and sign on behalf of the City, and in their official capacities, that preliminary official statement, with such modifications, completions, changes and supplements, as those officers shall approve or authorize for the purpose of preparing and determining, and to certify or otherwise represent, that the revised official

statement is a "deemed final" official statement (except for permitted omissions) by the City as of its date and is a final official statement for purposes of SEC Rule 15c2-12(b)(1), (3) and (4).

Those officers are each further authorized to use and distribute, or authorize the use and distribution of, the final official statement and supplements thereto in connection with the original issuance of the Bonds as may in their judgment be necessary or appropriate. Those officers and each of them are also authorized to sign and deliver, on behalf of the City, and in their official capacities, such certificates in connection with the accuracy of the final official statement and any amendment thereto as may, in their judgment, be necessary or appropriate.

Section 12. The proceeds from the sale of the Bonds, 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 of which the Bonds are issued. Any portion of those proceeds representing premium and accrued interest shall be paid into the Bond Retirement Fund.

Section 13. There shall be levied on all the taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. 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 Bonds when and as the same fall due. In each year to the extent money from municipal income taxes is available for the payment of the debt charges on the Bonds and is appropriated for that purpose, the amount of the tax shall be reduced by the amount of the money so available and appropriated in compliance with the covenant hereinafter set forth.

The City covenants to appropriate annually from the municipal income taxes such amounts as are necessary to meet the annual debt charges on the Bonds, and any ad valorem property taxes which are provided for pursuant to Section 133.22 or Section 133.23 of the Ohio Revised Code shall, in addition to any other reduction permitted by those sections, be reduced by the amount of such municipal income taxes to be applied to such debt charges in compliance with this covenant.

Section 14. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds 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 thereon will not be treated as an item of tax preference under Section 57 of the Code.

The City 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 Bonds to be and to 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 Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property acquired with those proceeds, (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.

Each covenant made in this section with respect to the Bonds is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Bonds (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 Bonds 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 Bonds.

Bonds in the amount of \$4,075,000 are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City 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 Bonds 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 \$4,075,000 of the Bonds, 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 \$4,075,000 of the Bonds, 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 City 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 Bonds as "qualified tax-exempt obligations".

The City hereby represents that the Outstanding Notes are treated as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. The City hereby covenants that it will redeem the Outstanding Notes, from proceeds of, and within 90 days after issuance of the Bonds, and represents that all other conditions are met for treating the portion of the Bonds (\$4,100,000) providing for the current refunding of the Outstanding Notes 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 City represents and covenants that, during any time or in any manner as might affect the status of the Bonds 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 City further represents that the Bonds 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 City having responsibility for issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval, or waiver on behalf of the City with respect to the Bonds as the City 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 Bonds 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 City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, 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 Bonds.

Section 15. The Clerk of Council is directed to deliver a certified copy of this ordinance and a signed copy of the Certificate of Award to the Auditor of Montgomery County.

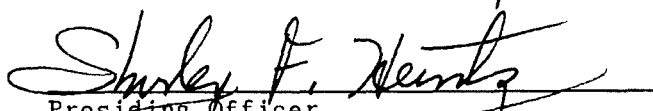
Section 16. This Council determines that all acts and conditions necessary to be performed by the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City have been performed and have been met, or will at the time of delivery of the Bonds 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 13) of the City are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds.

Section 17. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council 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 18. That this ordinance shall become effective upon its adoption, in accordance with Section 5.05 of the Charter of the City and by reason of Sections 5.05 and 8.11 of the Charter of the City shall not stand repealed as of the 75th day after adoption.

Adopted this 3rd day of May, 1993.


Presiding Officer

Attest: 
Clerk of Council