

EMERGENCY ORDINANCE NO. 16-93
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER James Singer
ON THE NINETEENTH DAY OF JULY, 1993

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF \$9,180,000 NOTES, IN ANTICIPATION OF THE ISSUANCE OF BONDS, FOR THE PURPOSE OF PAYING COSTS OF ACQUIRING REAL PROPERTY FOR MUNICIPAL RECREATIONAL FACILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Emergency Ordinance No. 1-93 passed January 11, 1993, notes in anticipation of bonds in the amount of \$9,180,000, dated January 27, 1993 (the Outstanding Notes), were issued for the purpose stated in Section 1, to mature on August 3, 1993; and

WHEREAS, this Council finds and determines that the City should retire the Outstanding Notes with the proceeds of the Notes described in Section 3; and

WHEREAS, the Director of Finance has certified that the estimated life or period of usefulness of the improvement is at least five years and that the estimated maximum maturity of the bonds is thirty years, and the maximum maturity of the notes is twenty years less such period of time any prior bond anticipation notes for such purpose have been outstanding; now, therefore,

THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

SECTION 1. That this Council hereby declares that an emergency exists affecting the public welfare, in that the Notes authorized by this

emergency ordinance must be sold without delay in order to retire the Outstanding Notes maturing on August 3, 1993 and thereby maintain the credit standing of the City.

SECTION 2. That it is necessary to issue bonds of this City in the aggregate principal amount of \$9,180,000 (the Bonds) for the purpose of paying costs of acquiring real property for municipal recreational facilities.

SECTION 3. That the Bonds shall be dated approximately February 1, 1995, shall bear interest at the now estimated rate of 5-1/2% per year, payable semiannually until the principal amount is paid, and are estimated to mature in twenty annual principal installments that are substantially equal.

SECTION 4. That it is necessary to issue and this Council determines that notes in the aggregate principal amount of \$9,180,000 (the Notes) shall be issued in anticipation of the issuance of the Bonds and to retire the Outstanding Notes dated January 27, 1993. The Notes shall be issued in two series designated as the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes (collectively the Notes). The Tax-exempt Series 1993-2 Notes shall be issued in the aggregate principal amount of \$8,530,000 and the Taxable Series 1993-2 Notes shall be issued in the aggregate principal amount of \$650,000. The Notes shall bear interest at rates not to exceed 5-1/2% 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. If requested by the original purchasers, the Notes may provide that, in the event the City does not pay or make provision for payment at maturity of the debt charges on the Notes, the principal amount of the Notes shall bear interest at different

rates not to exceed 9-1/2% per year from the maturity date until the City pays or makes provision to pay that principal amount. The rates of interest on the Notes shall be determined by the Director of Finance in the certificates awarding the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes in accordance with Section 6 of this ordinance.

SECTION 5. The Fifth Third Bank, Cincinnati, Ohio, is appointed to act as the note registrar, transfer agent and paying agent for the Notes (the Note 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 Note Registrar Agreement between the City and the Note 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 money lawfully available and appropriated or to be appropriated for that purpose. That 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 City's paying agent, upon presentation and surrender of the Notes at the main office of The Fifth Third Bank, Cincinnati, Ohio. The Notes shall be dated August 3, 1993, shall mature on February 2, 1995, and shall not be subject to redemption prior to maturity.

SECTION 6. That the Notes shall be signed by the Mayor or Deputy-Mayor and Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be a facsimile. The Notes shall be issued only as fully registered notes in the denominations and numbers as requested by the original purchaser of each series and approved by the Director of Finance, provided that the entire principal amount of each series may be represented by a single note. In addition, the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes may be issued in the denominations of \$100,000 each or in any denomination that is the sum of (i) \$100,000 and (ii) \$5,000 or any whole multiple thereof and are not exchangeable for other Tax-exempt Series 1993-2 Notes or Taxable Series 1993-2 Notes in denominations less than \$100,000. 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.

So long as any of the Notes remain outstanding, the City will cause the Note Registrar to maintain and keep at its main office all books and records necessary for the registration, exchange and transfer of Notes as provided in this Section (the Note Register). The person in whose name a Note is registered on the Note Register shall be regarded as the absolute owner of that Note for all purposes of this ordinance. Payment of or on account of the debt charges on any Note shall be made only to or upon the order of that person; neither the City nor the Note 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 Note, including interest, to the extent of the amount or amounts so paid.

Any Note may be exchanged for Notes of any authorized denomination upon presentation and surrender at the main office of the Note 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 Note Registrar. A Note may be transferred only on the Note Register upon presentation and surrender of the Note at the main office of the Note 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 Note Registrar. Upon exchange or transfer the Note Registrar shall complete, authenticate and deliver a new Note or Notes of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Note 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 Note Registrar shall undertake the exchange or transfer of Notes only after the new Notes are signed by the authorized officers of the City. In all cases of Notes exchanged or transferred, the City shall sign and the Note Registrar shall deliver Notes in accordance with the provisions of this ordinance. The exchange or transfer shall be without charge to the owner, except that the City and Note 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 Note Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or

transfer. All Notes issued 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 Notes surrendered upon that exchange or transfer.

SECTION 7. That the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes shall be separately 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 sign the certificates of award referred to in Section 3 evidencing those sales, cause the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes to be prepared, and have the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes signed and delivered, together with a true transcript of proceedings with reference to the issuance of the Tax-exempt Series 1993-2 Notes and the Taxable Series 1993-2 Notes if requested by the original purchasers, to the original purchasers upon payment of the purchase price. The Mayor or Deputy-Mayor, the Director of Finance, the City Manager, and the 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.

SECTION 8. That 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 9. That 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 10. That during the year or years in which the Notes are outstanding, there shall be levied on all the taxable property in the City, 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 to the extent money from the municipal income tax is available for the payment of the debt charges on the Notes and 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.

To the extent necessary, the debt charges on the Notes and the Bonds shall be paid from municipal income taxes lawfully available therefore under the Constitution and laws of the State of Ohio and the Charter of the City;

and the City hereby covenants, subject and pursuant to such authority, including particularly Section 133.05(B)(7), Revised Code, to appropriate annually from such municipal income taxes such amount as is 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 revenues of the City to the prompt payment of the debt charges on the Notes and Bonds.

SECTION 11. That the City covenants that it will use, and will restrict the use and investment of, the proceeds of the Tax-exempt Series 1993-2 Notes in such manner and to such extent as may be necessary so that (a) the Tax-exempt Series 1993-2 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 Tax-exempt Series 1993-2 Notes 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 Tax-exempt Series 1993-2 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 Tax-exempt Series 1993-2 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 City hereby represents that \$5,900,000 of notes dated April 30, 1990 and \$2,335,000 of notes dated June 19, 1990 (collectively, the 1990 Notes), which were issued for the purpose stated in Section 2 of this ordinance, were designated at the time of their issuance as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Code. The City further represents that the 1990 Notes were refunded on April 29, 1991 by notes in the face amount of \$8,752,166 issued April 29, 1991 (the 1991 Notes), that the 1991 Notes were refunded on April 28, 1992 by notes in the face amount of \$9,180,000 issued April 28, 1992 (the 1992 Notes), and that the 1992 Notes were refunded on January 27, 1993 by the Outstanding Notes. The City further represents that the remaining \$295,000 principal amount of the Tax-exempt Series 1993-1 Notes (as hereafter defined) which were issued for the purpose stated in Section 2 of this ordinance were designated at the time of their issuance 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, consisting of \$8,530,000 principal amount of Tax-exempt Series 1993-1 Notes (the Tax-exempt Series 1993-1 Notes) and \$650,000 principal amount of Taxable Series 1993-1 Notes (the Taxable Series 1993-1 Notes), from proceeds of, and within 90 days after issuance of, the Notes, and represents that all other conditions are met for treating \$8,530,000 principal amount of the Tax-exempt Series 1993-2 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.

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 calendar year 1993 (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 \$295,000 principal amount of the Tax-exempt Series 1993-1 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 \$295,000 principal amount of the Tax-exempt Series 1993-1 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 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 Tax-exempt Series 1993-2 Notes as "qualified tax-exempt obligations".

Further, the City represents and covenants that, during any time or in any manner as might affect the status of the Tax-exempt Series 1993-2 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 City further represents that the Tax-exempt Series 1993-2 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 City having responsibility for issuance of the Tax-exempt Series 1993-2 Notes 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 Tax-exempt Series 1993-2 Notes as the City is permitted to or required to make or give under the federal income tax laws, for the purpose of assuring, enhancing or protecting favorable tax treatment or status of the Tax-exempt Series 1993-2 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 City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Tax-exempt Series 1993-2 Notes, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Tax-exempt Series 1993-2 Notes, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Tax-exempt Series 1993-2 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 Tax-exempt Series 1993-2 Notes.

Each covenant made in this section with respect to the Tax-exempt Series 1993-2 Notes is also made with respect to all issues any portion of the debt service on which is paid from proceeds of the Tax-exempt Series 1993-2 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 Tax-exempt Series 1993-2 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 Tax-exempt Series 1993-2 Notes.

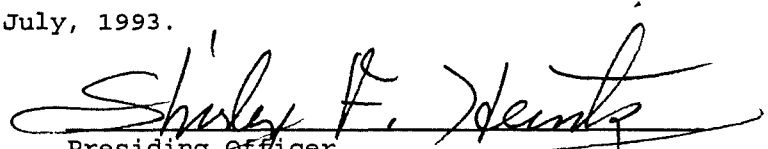
SECTION 12. That the Clerk of Council is directed to deliver a certified copy of this ordinance to the County Auditor.

SECTION 13. That this Council determines that all acts and conditions necessary to be done or performed by the City 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 City 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 City 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. That 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 15. 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 19th day of July, 1993.


Presiding Officer

Attest: 
Clerk of Council