

EMERGENCY ORDINANCE NO. 22-93

AN EMERGENCY ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF \$4,750,000 OF CITY OF CENTERVILLE, OHIO HEALTH CARE VARIABLE RATE DEMAND REVENUE BONDS, SERIES 1993 (BETHANY LUTHERAN VILLAGE CONTINUING CARE FACILITY EXPANSION PROJECT) AND \$5,500,000 OF CITY OF CENTERVILLE, OHIO HEALTH CARE VARIABLE RATE DEMAND REVENUE BONDS, SERIES 1994 (BETHANY LUTHERAN VILLAGE CONTINUING CARE FACILITY EXPANSION PROJECT) TO FINANCE THE COSTS OF THE ACQUISITION, CONSTRUCTION, INSTALLATION, EQUIPPING AND FINANCING OF IMPROVEMENTS TO A "HOSPITAL FACILITY" WITHIN THE MEANING OF CHAPTER 140, OHIO REVISED CODE, TO BE LEASED TO LUTHERAN SOCIAL SERVICES OF THE MIAMI VALLEY, AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE FIRST AMENDMENT TO LEASE AGREEMENT, THE FIRST SUPPLEMENTAL TRUST INDENTURE, THE MORTGAGE MODIFICATION AND RESTATEMENT AGREEMENT, THE AMENDED AND RESTATED OPEN-END MORTGAGE, ASSIGNMENT OF RENTS AND LEASES AND OPTION TO PURCHASE AND SECURITY AGREEMENT (FEE AND LEASEHOLD ESTATE), AND THE BOND PLACEMENT AGREEMENT RELATING TO THE BONDS, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Centerville, Ohio, a municipal corporation and political subdivision in and of the State of Ohio, is authorized and empowered, by virtue of the laws of the State of Ohio, including, without limitation, Chapter 140, Ohio Revised Code, (a) to issue its revenue bonds in order to assist in the financing of the costs of acquiring, constructing, installing, equipping and financing improvements to certain existing "hospital facilities," as defined in Section 140.01(E), Ohio Revised Code, located within the boundaries of the City of Centerville, Ohio, at 6451 Far Hills Avenue, Centerville, Ohio, (b) to acquire the New Project, as hereinafter defined, and enter into a lease agreement amendment to provide for the lease of the New Project and to provide for rental payments constituting "hospital receipts", as defined in Section 140.01(G), Ohio Revised Code, sufficient to pay the principal of, and the interest and premium, if any, on those revenue bonds, (c) to secure those revenue bonds by a trust indenture and supplement thereto, as provided herein, and (d) to enact this Bond Legislation and to enter into the First Supplemental Indenture, the Bond Placement Agreement, the First Mortgage Amendment and the First Lease Amendment, all as hereinafter defined, upon the terms and conditions provided herein and therein;

WHEREAS, Lutheran Social Services of the Miami Valley is an Ohio nonprofit corporation qualified to do business in the State of Ohio and is the operator of the Project Premises, the acquisition, construction, renovation and equipping of a portion of which were financed with the proceeds of the Project Bonds;

WHEREAS, it is hereby determined by this Council that undertaking the New Project, including the financing thereof, will require the issuance, sale and delivery of Series 1993 Bonds in the principal amount of \$4,750,000 and Series 1994 Bonds in the principal amount of \$5,500,000, and hereafter may require the Issuer's issuance, sale and delivery of Additional Bonds on a parity therewith and with the Project Bonds, all of which Bonds shall be equally and ratably payable and secured as provided herein and in the Indenture.

NOW THEREFORE, the Municipality of Centerville, Ohio hereby ordains:

Section 1. Emergency Clause. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health and public welfare of the people of the Issuer, the existing emergency being that the financing for the New Project will be jeopardized and construction of the New Project cannot proceed until the New Bonds are issued, and there being an urgent necessity to take such actions as will effectuate financing for Lutheran Social Services of the Miami Valley of the New Project and thus provide health care services within the Issuer.

Section 2. Definitions. In addition to the words and terms defined elsewhere in this Bond Legislation, unless the context or use clearly indicates another meaning or intent:

"Act" means Chapter 140, Ohio Revised Code, as enacted and amended from time to time pursuant to the Ohio Constitution.

"Additional Bonds" means bonds which may be issued under Section 2.04 of the Indenture.

"Agreement" means the Lease Agreement, dated as of May 1, 1988, between the Issuer and LSSMV, as amended by the First Lease Amendment and as further amended or supplemented from time to time.

"Alternate Letter of Credit" means an Alternate Letter of Credit as defined in the Indenture.

"Bond Fund" means the Bond Fund created in Section 5.05 of the Indenture.

"Bond Legislation" means this Ordinance and, to the extent applicable, Ordinance No. 4-88 of the Legislative Authority.

"Bond Placement Agreement" means, with respect to each series of New Bonds, the Bond Placement Agreement dated as of or prior to the date of initial issuance of the Series 1993 Bonds among the Issuer, LSSMV, the Letter of Credit Bank and the Placement Agent.

"Bonds" means the Project Bonds, the New Bonds and any other Additional Bonds.

"Clerk" means the Clerk of the Legislative Authority.

"Code" means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether proposed, temporary or final) under the Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

"Construction Fund" means the Construction Fund created in Section 5.03 of the Indenture.

"Executive" means the Manager of the Issuer.

"First Lease Amendment" means the First Amendment to Lease Agreement, dated as of December 1, 1993, between the Issuer and LSSMV.

"First Mortgage Amendment" means the Mortgage Modification and Restatement Agreement dated as of December 1, 1993, and the Amended and Restated Open-End Mortgage, Assignment of Rents and Leases and Option to Purchase and Security Agreement (Fee and Leasehold Estate), dated as of December 1, 1993, among LSSMV and the Issuer, as Grantors, and the Trustee and the Letter of Credit Bank, as Grantees.

"First Supplemental Indenture" means the First Supplemental Trust Indenture, dated as of December 1, 1993, between the Issuer and the Trustee.

"Fiscal Officer" means the Director of Finance of the Issuer.

"Guaranty" means, as to the Project Bonds, the Guaranty dated as of May 1, 1988, from LSSMV, as guarantor, to the Trustee and, as to the New Bonds, the Guaranty dated as of December 1, 1993, from LSSMV, as guarantor, to the Trustee.

"Holder" or "Holder of a Bond" means the person in whose name a Bond is registered on the Bond Register for which provision is made in Section 3.06 of the Indenture.

"Indenture" means the Trust Indenture, dated as of May 1, 1988, between the Issuer and the Trustee, as amended and

supplemented by the First Supplemental Indenture and as further amended or supplemented from time to time.

"Interest Payment Date" means, as to the New Bonds, each date set forth as such in the form of New Bond attached as Exhibit A to the First Supplemental Indenture.

"Issuer" means the City of Centerville, Ohio, an Ohio municipal corporation.

"Lease Payments" means the amounts required to be paid by LSSMV as "Lease Payments" pursuant to Section 4.1 of the Original Agreement and Section 4(A) of the First Lease Amendment.

"Legislative Authority" means the Council of the Issuer.

"Letter of Credit" means a Letter of Credit as defined in the Indenture.

"Letter of Credit Bank" means a Letter of Credit Bank as defined in the Indenture and, with respect to the Series 1993 Letter of Credit and the Series 1994 Letter of Credit, initially means PNC Bank, Ohio, National Association.

"LSSMV" means Lutheran Social Services of the Miami Valley, an Ohio non-profit corporation, and its lawful successors and assigns, to the extent permitted by the Agreement.

"Mortgage" means the Open-End Mortgage and Security Agreement, dated as of May 1, 1988, from LSSMV and the Issuer, as mortgagors, to the Trustee and National City Bank, as mortgagees, with National City Bank's interests therein being assigned to the Letter of Credit Bank, as amended and supplemented by the First Mortgage Amendment.

"New Bonds" means the Series 1993 Bonds and the Series 1994 Bonds; provided that until the Series 1994 Bonds are issued, "New Bonds" shall mean only the Series 1993 Bonds.

"New Project" means the real and personal property improvements and additions to the Project Premises, as more particularly described in Exhibit A hereto.

"Person" or words importing persons mean firms, associations, partnerships (including, without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

"Placement Agent" means PNC Securities Corp.

"Project" means the Project as defined in the Indenture, including the New Project.

"Project Premises" means, collectively, the Project Site (as defined in the Agreement) and Project Facilities (as defined in the Agreement), and including all improvements to the Project Premises acquired, constructed and installed as part of the Project.

"Project Purposes" means the purposes of a "Hospital Facility" as defined in the Act.

"Project Bonds" means the \$12,500,000 City of Centerville, Ohio Health Care Variable Rate Demand Revenue Bonds, Series 1988 (Bethany Lutheran Village Continuing Care Facility Expansion Project) of the Issuer, dated as of May 1, 1988, issued by the Issuer pursuant to the Issuer's Ordinance No. 4-88 and the Indenture.

"Rebate Fund" means the Rebate Fund created in Section 5.10 of the Indenture.

"Refunding Fund" means the Refunding Fund created in Section 5.01 of the Indenture.

"Remarketing Agent" means, initially, PNC Securities Corp, and any Person meeting the qualifications of, and designated from time to time to act as Remarketing Agent under, Section 6.17 of the Indenture.

"Revenues" means all moneys, investments and proceeds of investments received by the Issuer or the Trustee in connection with the lease, operation, acquisition, construction, improvement or equipping of the Project Premises, including, without limitation, (a) all moneys received under this Agreement, including, without limitation, all Lease Payments, (b) all moneys payable to the Trustee under the Guaranty or Mortgage, (c) all other moneys received or to be received by the Issuer or the Trustee in respect of payment of the Bonds, including, without limitation, all moneys and investments in the Bond Fund, (d) all gifts, grants, contributions, donations, interest subsidies or other moneys received under any federal program for assistance in financing the costs of the Project, and (e) all income and profit from the investment of the foregoing moneys, less (f) all reasonable and proper expenses of operating, maintaining and repairing the Project Premises, if any, to be paid by the Issuer or the State or any officer or body or agency of either. Notwithstanding anything in the foregoing sentence to the contrary, the term "Revenues" does not include any moneys or investments in the Rebate Fund or the Refunding Fund or moneys payable to the Issuer, the Trustee, the Remarketing Agent, the Tender Agent, the Registrar, or any Paying Agent or Authenticating Agent pursuant to Sections 4.4, 5.4 or 7.4 of the Agreement (other than moneys

payable under Section 4.4 of the Agreement to be applied to the Purchase of Project Bonds or New Bonds pursuant to Section 4.07, 4.09, 4.10 or 4.12 of the Indenture).

"Series 1993 Bonds" means the \$4,750,000 City of Centerville, Ohio Health Care Variable Rate Demand Revenue Bonds, Series 1993 (Bethany Lutheran Village Continuing Care Facility Expansion Project) of the Issuer, dated as of the date of their initial delivery, issued by the Issuer pursuant to the Bond Legislation and this First Supplemental Indenture.

"Series 1994 Bonds" means the \$5,500,000 City of Centerville, Ohio Health Care Variable Rate Demand Revenue Bonds, Series 1994 (Bethany Lutheran Village Continuing Care Facility Expansion Project) of the Issuer, dated as of the date of their initial delivery, issued by the Issuer pursuant to the Bond Legislation and the First Supplemental Indenture.

"Series 1993 Letter of Credit" means the irrevocable letter of credit to be issued by the Letter of Credit Bank and delivered to the Trustee on the same date as the delivery of the Series 1993 Bonds to the original purchasers thereof and being an irrevocable obligation to make payment of the amounts therein specified with respect to (a) the principal amount of the Series 1993 Bonds (i) to enable the Trustee to pay the principal amount of the Series 1993 Bonds when due at maturity, upon redemption or acceleration and (ii) to enable the Tender Agent to pay the portion of the purchase price of Series 1993 Bonds tendered to it and not remarketed equal to the principal amount of such Series 1993 Bonds, plus (b) an amount equal to interest to accrue at the Maximum Interest Rate (as defined in the Indenture) on the Series 1993 Bonds for 110 days (i) to enable the Trustee to pay interest on the Series 1993 Bonds when due and (ii) to enable the Tender Agent to pay the portion of the purchase price of Series 1993 Bonds tendered to it and not remarketed equal to the accrued interest on such Series 1993 Bonds, as the same may be transferred, reissued, extended or replaced in accordance with the Indenture and the Series 1993 Letter of Credit and includes any Alternate Letter of Credit issued in replacement thereof.

"Series 1994 Letter of Credit" means the irrevocable letter of credit to be issued by the Letter of Credit Bank and delivered to the Trustee on the same date as the initial delivery of the Series 1994 Bonds pursuant to the Purchase Agreement therefor and being an irrevocable obligation to make payment of the amounts therein specified with respect to (a) the principal amount of the Series 1994 Bonds (i) to enable the Trustee to pay the principal amount of the Series 1994 Bonds when due at maturity, upon redemption or acceleration and (ii) to enable the Tender Agent to pay the portion of the purchase price of Series 1994 Bonds tendered to it and not remarketed equal to the principal amount of such Series 1994 Bonds, plus (b) an amount equal to interest to accrue at the Maximum

Interest Rate on the Series 1994 Bonds for 110 days (i) to enable the Trustee to pay interest on the Series 1994 Bonds when due and (ii) to enable the Tender Agent to pay the portion of the purchase price of Series 1994 Bonds tendered to it and not remarketed equal to the accrued interest on such Series 1994 Bonds, as the same may be transferred, reissued, extended or replaced in accordance with the Indenture and the Series 1994 Letter of Credit and includes any applicable Alternate Letter of Credit issued in replacement thereof.

"State" means the State of Ohio.

"Supplemental Indenture" means the First Supplemental Indenture and any other indenture supplemental to the Indenture entered into between the Issuer and the Trustee in accordance with Article VIII of the Indenture.

"Tender Agent" means PNC Bank, Ohio, National Association, Cincinnati, Ohio, and any successor Tender Agent as determined or designated under or pursuant to the Indenture.

"Trustee" means PNC Bank, Ohio, National Association, Cincinnati, Ohio, until a successor Trustee shall have become such pursuant to the applicable provisions of the Indenture, and thereafter "Trustee" shall mean the successor Trustee.

The captions and headings in this Bond Legislation are solely for convenience of reference and do not define, limit or describe the scope or intent of any provisions or Sections of this Bond Legislation.

Section 3. Determinations By Legislative Authority. The Legislative Authority hereby determines:

(a) that the Issuer is a "public hospital agency" as defined in Section 140.01(B), Ohio Revised Code; that LSSMV is a "nonprofit hospital agency" as defined in Section 140.01(C), Ohio Revised Code; that the Project Premises are "hospital facilities" as defined in Section 140.01(E), Ohio Revised Code; that the Issuer has the authority to acquire title to the Series 1993 Project as part of the Project Premises pursuant to Section 140.03(B)(1), Ohio Revised Code; and that the Issuer may lease the New Project as part of the Project Premises pursuant to Section 140.05(E), Ohio Revised Code;

(b) that the actions authorized by this Bond Legislation will serve the public purpose of better providing for the health and welfare of the people of the State and the residents of the Issuer by enhancing the availability, efficiency and economy of "hospital facilities" and the services rendered thereby and of providing efficient operation of "hospital facilities" to provide health care services to the residents of the Issuer which are

available to the general public without discrimination by reason of race, creed, color or national origin; and

(c) that the First Supplemental Indenture, Bond Placement Agreement, First Lease Amendment and First Mortgage Amendment provided for in Section 10 hereof will promote the public purpose set forth in subsection (b) above and in Section 140.02 of the Ohio Revised Code, are authorized under Sections 140.03 and 140.05 of the Ohio Revised Code, and the execution and delivery thereof will duly benefit the Issuer.

Section 4. Authorization of New Bonds. This Legislative Authority determines it to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and in the First Supplemental Indenture and pursuant to the authority of the Act, \$4,750,000 in aggregate principal amount of Series 1993 Bonds and \$5,500,000 in aggregate principal amount of Series 1994 Bonds, each for the purpose of providing funds to finance the costs of acquiring, constructing, installing, equipping and financing the New Project pursuant to the Indenture and Agreement. The Series 1993 Bonds shall be designated "City of Centerville, Ohio Health Care Variable Rate Demand Revenue Bonds, Series 1993 (Bethany Lutheran Village Continuing Care Facility Expansion Project)". The Series 1994 Bonds shall be designated "City of Centerville, Ohio Health Care Variable Rate Demand Revenue Bonds, Series 1994 (Bethany Lutheran Village Continuing Care Facility Expansion Project)". Each series of New Bonds shall be issued as and constitute Additional Bonds under the Indenture.

The Series 1993 Bonds shall be issued on or before December 31, 1993, and are hereby designated as "qualified tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code. The Issuer does not anticipate issuing more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 1993. The Series 1994 Bonds shall be issued on or after January 1, 1994, and are hereby designated as "qualified tax-exempt obligations" for the purposes set forth in Section 265(b)(3) of the Code. The Issuer does not anticipate issuing more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 1994.

This Legislative Authority, as the "applicable elected representative" of the Issuer for purposes of Section 147(f) of the Code, hereby signifies its approval of the New Bonds in the amounts and for the purposes specified above. The New Project consists of improvements and additions to the Bethany Lutheran Village continuing care facility located at 6451 Far Hills Avenue, Centerville, Ohio, including the construction of a two-story building addition to the Bethany Lutheran Village Health Care Center, such addition to contain 196 nursing home beds, the construction of an energy center to serve as the source of heating and air conditioning for the building addition and LSSMV's existing nursing facility, as well as to provide emergency electricity and



domestic hot water, the construction of a new parking lot and sidewalk, renovation and replacement work in the independent living Bethany Lutheran Village Tower, and related improvements, furnishings and equipment.

Section 5. Terms and Provisions of New Bonds.

(a) Generally. The New Bonds of each series (i) shall be issued, unless a Supplemental Indenture shall have been executed and delivered pursuant to Section 8.02(i) of the Indenture, only in fully registered form, substantially as set forth in Exhibit A to the First Supplemental Indenture; (ii) shall be exchangeable for other New Bonds of the same series and of authorized denominations, as provided in the Indenture; (iii) shall be numbered in such manner as to distinguish each Series 1993 Bond and each Series 1994 Bond from any other Bond; (iv) shall be in the denominations of \$100,000 (unless reduced to \$5,000 pursuant to Section 2.06(d) of the Indenture) and any integral multiple thereof; (v) shall be subject to optional and mandatory redemption in the amounts, upon the conditions, and at the times and prices set forth in the Indenture; and (vi) shall be dated as of the date of their initial delivery. Each New Bond shall bear interest, in accordance with the Indenture, from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date.

(b) Interest Rate and Principal Maturities. The New Bonds shall bear interest at the rate per annum determined as set forth in Exhibit A hereto, payable on each Interest Payment Date, and shall mature on November 1, 2013.

Principal of and interest and any premium on the New Bonds shall be payable as provided in the Indenture, in each instance without deduction for the services of any paying agent.

(c) Execution. The New Bonds shall be signed by the Executive and Fiscal Officer in their respective official capacities (provided that either or both of those signatures may be facsimiles).

(d) Appointment of Remarketing Agent and Tender Agent. The Issuer hereby appoints PNC Securities Corp as the Remarketing Agent, and PNC Bank, Ohio, National Association, as the Tender Agent under the Indenture.

Section 6. Sale of New Bonds. The Series 1993 Bonds will be sold and awarded, at a purchase price of \$4,750,000, to the original purchasers thereof arranged for by the Placement Agent pursuant to the Bond Placement Agreement. The Series 1994 Bonds will be sold and awarded, at a purchase price of \$5,500,000, to the original purchasers thereof arranged for by the Placement Agent pursuant to the Bond Placement Agreement.

The Executive, the Fiscal Officer and the Clerk are authorized and directed to make the necessary arrangements with the Placement Agent and such original purchasers to establish the dates, locations, procedures and conditions for the delivery of the New Bonds purchased by such original purchasers and to take all steps necessary to effect the due execution, authentication and delivery of the New Bonds to such original purchasers under the terms of this Bond Legislation, the Indenture and the Bond Placement Agreement; provided that the Series 1993 Bonds may not be initially delivered after December 31, 1993; and provided that the Series 1994 Bonds may not be initially delivered before January 1, 1994.

It is determined by this Legislative Authority that the prices for and the terms of the New Bonds, and the sale thereof, all as provided in this Bond Legislation and the Indenture, are in the best interests of the Issuer and are in compliance with all legal requirements. The use and distribution of a Private Placement Memorandum relating to the original issuance of the New Bonds substantially in the form now on file with the Issuer is authorized hereby. The Issuer has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any statements in such Private Placement Memorandum or any supplements thereto, or in any reports, financial information, offering or disclosure documents or other information in any way relating to the Project, LSSMV, the Letter of Credit Bank or the original purchasers of the New Bonds.

Section 7. Allocation of Proceeds of New Bonds. The proceeds from the sale of each series of New Bonds shall be deposited and credited to the Construction Fund in accordance with the terms of the Indenture.

Section 8. Security for the Bonds. To the extent provided in, and except as otherwise permitted under the Indenture, the Bonds shall be equally and ratably payable solely from the Revenues and shall be secured by an assignment of and grant of a security interest in the Revenues and by the Indenture. The Series 1993 Bonds shall in addition be secured by the Guaranty and the Mortgage, and shall be payable from the moneys derived by the Trustee from drawings under the Series 1993 Letter of Credit. The Series 1994 Bonds shall in addition be secured by the Guaranty and the Mortgage, and shall be payable from the moneys derived by the Trustee from drawings under the Series 1994 Letter of Credit.

Anything in the Bond Legislation, the Bonds or the Indenture to the contrary notwithstanding, the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit of the Issuer or of the State or any political subdivision thereof and the Holders of the Bonds shall have no right to have taxes or excises levied by the General Assembly of the State or the taxing authority of the Issuer or of any political subdivision of the

State for the payment of the principal of, premium, if any, or interest on the Bonds, but such Bonds are payable solely from the Revenues (being generally the Lease Payments, "hospital receipts", as defined in Section 140.01(G), Ohio Revised Code, and any unexpended proceeds of the Bonds), and the Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the Revenues. Nothing herein or in the Indenture, however, shall be deemed to prohibit the Issuer, of its own volition, from using to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of the Indenture, the Bond Legislation or any of the Bonds.

Section 9. Covenants and Agreements of Issuer. In addition to the other covenants and agreements of the Issuer in this Bond Legislation and the Indenture, the Issuer covenants and agrees that:

(a) Arbitrage Provisions and Issuer Information Return. The Issuer covenants that it will restrict the use of the proceeds of each series of New Bonds in such manner and to such extent as may be necessary so that such series of New Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Executive or any member of the Legislative Authority, or any other officer having responsibility for the issuance of the New Bonds, alone or in conjunction with LSSMV or any officer, employee, agent of or consultant to LSSMV, and upon receipt of indemnities satisfactory to the Municipal Attorney, shall give:

(i) an appropriate certificate of the Issuer for inclusion in the transcript of proceedings for each series of New Bonds setting forth the reasonable expectations of the Issuer regarding the amount and use of all of the proceeds of such series of New Bonds, the facts, estimates and circumstances on which they are based and other facts and circumstances relevant to the tax treatment of interest on such series of New Bonds, all as provided by LSSMV, as of the date of delivery of and payment for such series of New Bonds; and

(ii) the statements setting forth the information required by Section 149(e) of the Code, which shall be based on the relevant information provided by LSSMV.

The Issuer covenants that it (i) will take, or require to be taken, all actions that may be required of it for the interest on the New Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The Fiscal Officer, the Executive and other appropriate officers are hereby authorized and directed to take any and all actions and make or give reports and

certifications, as may be appropriate to assure such exclusion of that interest.

(b) Transcript of Proceedings. The Clerk, or other appropriate officer of the Issuer, shall furnish the Placement Agent and the original purchasers of each series of New Bonds a true transcript of proceedings, certified by the Clerk or other officer, of (i) all proceedings had with reference to the issuance of such series of New Bonds and (ii) any other information from the records of the Issuer which may be necessary or appropriate to determine the regularity and validity of the issuance of such series of New Bonds.

Section 10. First Supplemental Indenture, First Lease Amendment, First Mortgage Amendment and Bond Placement Agreement. To provide for the issuance and sale of the New Bonds and the consummation of the transactions contemplated therein, the Executive is authorized and directed, for and in the name and on behalf of the Issuer, to execute, acknowledge and deliver, the First Supplemental Indenture, the First Lease Amendment, the First Mortgage Amendment and the Bond Placement Agreement, in substantially the forms submitted to this Legislative Authority. Those instruments are approved with changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer and which are permitted by the Act and shall be approved by the officer or officers executing these instruments; provided, that the approval of those changes by those officers, and their character as not being substantially adverse to the Issuer, shall be evidenced conclusively by their execution of those instruments. The Clerk is hereby authorized and directed to file in the office of the Clerk, as a part of the minutes of the meeting at which this Ordinance is adopted, for inspection by any interested person, a copy of the First Supplemental Indenture, the First Lease Amendment, the First Mortgage Amendment and the Bond Placement Agreement, and such documents shall be on file for inspection by any interested person.

Section 11. Other Documents. The Executive, the Fiscal Officer and/or the Clerk are each separately authorized and directed to execute any certifications, financing statements, assignments and instruments which are necessary or appropriate to perfect the assignments set forth in the Indenture and to consummate the transactions contemplated in this Bond Legislation, the First Supplemental Indenture, the First Lease Amendment, the First Mortgage Amendment and the Bond Placement Agreement.

Section 12. Compliance with Open Meeting Requirements. It is found and determined that all formal actions of this Legislative Authority concerning and relating to the adoption of this Bond Legislation were adopted in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority

and of any of its committees that resulted in those formal actions, were in meetings open to the public, in compliance with the law.

Section 13. Effective Date. This Bond Legislation shall take effect and be in force immediately upon its adoption

Brooks A. Compton  
Presiding Officer

Attest: Marilyn J. W. Slaughter  
Clerk of Council

Adopted: November 15, 1993

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and complete copy of Ordinance No. 22-93, adopted by the Council on November 15, 1993, and has not been amended or rescinded as of this date.

Marilyn J. Laughlin  
Clerk of Council

November 15, 1993  
Date

## EXHIBIT A TO ORDINANCE

The capitalized terms not defined herein shall have the meanings ascribed to them in the Indenture.

In addition to the words and terms defined elsewhere in the attached Ordinance, the following terms shall have the following meanings:

"Business Day" means any day other than a Saturday, Sunday or holiday or a day on which banks located in the city or cities in which the principal corporate trust office of the Trustee, the principal office of the Remarketing Agent or the principal Office of the Letter of Credit Bank are located are required or authorized to close or on which The New York Stock Exchange is closed.

"Computation Period" means during any Other Rate Period, the six month period or integral multiple thereof elected pursuant to Section 2.08 of the Indenture (and hereinafter described) during which the interest rate will not be subject to adjustment.

"Fixed Interest Rate" means the fixed non-floating annual interest rate on the New Bonds (or any portion thereof) established in accordance with Section 2.08 of the Indenture (and hereinafter described).

"Fixed Rate Period" means, as to the New Bonds (or any portion thereof), any Fixed Rate Period as provided for in Section 2.08 of the Indenture (and hereinafter described).

"Interest Adjustment Date" means, as to each series of New Bonds (or any applicable portion thereof pursuant to Section 2.08 of the Indenture) (i) during any Weekly Rate Period, (a) the second Business Day of each calendar week commencing with the Interest Adjustment Date occurring during the calendar week next following the calendar week during which such series of New Bonds are issued and delivered to the original purchasers thereof or (b) any other date on which an adjustment of the interest rate on the New Bonds is required in the judgment of the Remarketing Agent in order to permit the Remarketing Agent to remarket the New Bonds at par and (ii) during any Other Rate Period, the twelfth Business Day prior to the beginning of each Computation Period.

"Other Rate Period" means, as to the New Bonds (or any applicable portion thereof pursuant to Section 2.08 of the Indenture), any interest rate period other than a Weekly Rate Period or a Fixed Rate Period as provided for in Section 2.08 of the Indenture (as hereinafter described).

"Remarketing Agent" means, initially, PNC Securities Corp, and any Person meeting the qualifications of, and designated from time

to time to act as Remarketing Agent under, Section 6.18 of the Indenture.

"Weekly Rate Period" means, as to each series of New Bonds (or any applicable portion thereof pursuant to Section 2.08 of the Indenture), the period from and including the date of original delivery of such series of New Bonds to the original purchasers thereof to the date preceding the first day of an Other Rate Period or the Fixed Rate Period, whichever comes first, and any other Weekly Rate Period provided for in Section 2.08 of the Indenture (as hereinafter described).

"Weekly Variable Rate" means a floating weekly interest rate on the New Bonds (or any portion thereof) established and adjusted in accordance with Section 2.08 of the Indenture (as hereinafter described).

The New Bonds shall bear interest on their unpaid principal amounts payable on February 1, 1994, and thereafter on the first day of each May, August, November and February (each, an "Interest Payment Date").

(a) Weekly Variable Rate. During any Weekly Rate Period, the New Bonds shall bear interest at the rate per annum established as follows, computed on the basis of a 365 or 366 day year, as applicable, for the actual number of days elapsed. From the date of issuance and delivery of each series of the New Bonds to the original purchasers thereof to and including the first Interest Adjustment Date, such series of the New Bonds shall bear interest at the interest rate established by the Remarketing Agent in a certificate delivered by the Remarketing Agent at the closing of the issuance of such series of the New Bonds, which rate shall be the interest rate which, if borne by such series of the New Bonds, would, based upon current transactions in comparable securities in which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions, be the interest rate necessary to enable the Remarketing Agent to sell such series of the New Bonds at a price equal to the principal amount thereof plus accrued interest thereon; provided, however, that in no event shall the interest rate on any New Bonds exceed the Maximum Interest Rate. Thereafter, the Remarketing Agent shall determine the interest rate on the New Bonds on each Interest Adjustment Date and such rate (i) shall become effective on Wednesday of such week, if such Interest Adjustment Date is the second Business Day of a calendar week, and (ii) otherwise shall become effective on the next Business Day after such Interest Adjustment Date. The interest rate on the New Bonds determined by the Remarketing Agent shall be the interest rate which, if borne by the New Bonds, would, based upon current transactions in comparable securities in which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions, be the interest rate necessary to enable the Remarketing Agent to sell the New Bonds in



the secondary market at a price equal to the principal amount thereof plus accrued interest thereon; provided, however, that if, for any reason, the Remarketing Agent fails to make or to announce such determination on such Interest Adjustment Date, the rate to take effect on Wednesday of such week or on the following Business Day, as applicable, shall be a rate equal to the previously determined Weekly Variable Rate; provided, however, that in no event shall the interest rate on the New Bonds exceed the Maximum Interest Rate.

(b) Other Rate Periods. During any Other Rate Period the New Bonds shall bear interest at the rate per annum established as follows, computed on the basis of a 360-day year of twelve 30-day months, and payable on each Interest Payment Date. The Remarketing Agent shall determine the interest rate on the New Bonds on each Interest Adjustment Date, and such rate shall become effective on the first Business Day of the next Computation Period. The interest rate on the New Bonds determined by the Remarketing Agent shall be the interest rate which, if borne by the New Bonds, would, based upon current transactions in comparable securities in which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions, be the interest rate necessary to enable the Remarketing Agent to sell the New Bonds in the secondary market at a price equal to the principal amount thereof plus accrued interest thereon; provided, however, that if, for any reason, the Remarketing Agent fails to make or to announce such determination on such Interest Adjustment Date, the rate to take effect on the first Business Day of the next Computation Period shall be a rate equal to the previously determined interest rate; provided, however, that in no event shall the interest rate on the New Bonds exceed the Maximum Interest Rate.

(c) Conversion. Upon receipt by the Paying Agent, as defined in the Indenture, the Trustee, the Letter of Credit Bank, the Issuer and the Remarketing Agent of (i) a direction from LSSMV or an Authorized LSSMV Representative, as defined in the Indenture, specifying the date a Weekly Rate Period or Other Rate Period shall be established or the date the Computation Period shall be changed (which shall be an Interest Payment Date at least sixty (60) days, or such shorter period agreed to by the Trustee, the Remarketing Agent and LSSMV, from the date LSSMV gives such direction and during an Other Rate Period, the last Interest Payment Date of a Computation Period) and (ii) if an Other Rate Period is specified, the Computation Period for that Other Rate Period, the Remarketing Agent shall compute the applicable interest rate as described above. Such direction shall be accompanied by an opinion of nationally recognized bond counsel stating that such conversion is authorized or permitted by the Indenture and the Act, and that conversion to a Weekly Rate Period or an Other Rate Period or change in the Computation Period in accordance with the provisions of the Indenture will not adversely affect the exclusion from gross income of the interest on the New Bonds for federal income tax

purposes. Upon such direction, the Trustee shall give notice by mail to the Holders of the New Bonds not less than fifteen (15) days prior to the date of conversion. Such notice shall state (A) that the interest period on the New Bonds is scheduled to be converted to a Weekly Rate Period, an Other Rate Period or a different Computation Period for an Other Rate Period, (B) the effective date of such conversion and whether the new period is a Weekly Rate Period or an Other Rate Period, in which case the Computation Period must be stated, (C) that the effective date of such conversion shall be an Interest Payment Date on which interest will be paid at the applicable rate theretofore prevailing, (D) that thereafter interest will be determined on the basis of the new Weekly Rate Period or Computation Period, as applicable, and (E) the manner in which the New Bonds shall be purchased on demand as provided in Section 4.12(a) of the Indenture. Such notice shall be given by registered or certified mail to the Holders of the New Bonds whose names appear on the Register.

(d) Fixed Interest Rate. Upon conversion to a Fixed Interest Rate as hereinafter provided, the New Bonds shall, from and after the date of conversion until maturity bear interest, payable on each Interest Payment Date, at the Fixed Interest Rate computed on the basis of a 360-day year of twelve 30-day months. LSSMV or an Authorized LSSMV Representative shall provide a written direction to the Paying Agent, the Trustee, the Letter of Credit Bank, the Issuer and the Remarketing Agent specifying the date of conversion (which shall be an Interest Payment Date not less than sixty (60) days, or such shorter period agreed to by the Trustee, the Remarketing Agent and LSSMV, from the date LSSMV gives such direction and during an Other Rate Period shall be the last Interest Payment Date of a Computation Period) and the date the Fixed Interest Rate shall be established (which shall not be less than ten (10) Business Days prior to the date of conversion). Such direction shall be accompanied by written consent of the Letter of Credit Bank (which consent shall not be unreasonably withheld), and an opinion of nationally recognized bond counsel stating that such conversion to the Fixed Interest Rate is authorized or permitted by the Indenture and the Act, and that conversion to the Fixed Interest Rate in accordance with the provisions of the Indenture will not adversely affect the exclusion from gross income of the interest on the New Bonds for federal income tax purposes. Following receipt of LSSMV's direction, the Remarketing Agent shall determine, on the date specified by LSSMV for such determination, the Fixed Interest Rate as the interest rate which, if borne by the New Bonds, would, based upon current transactions in comparable securities in which the Remarketing Agent is involved or of which it is aware and prevailing financial market conditions, be the interest rate necessary to enable the Remarketing Agent to sell the New Bonds in the secondary market at a price equal to the principal thereof plus accrued interest thereon. Such determination by the Remarketing Agent shall be conclusive and shall be the Fixed Interest Rate for the New Bonds commencing with the Interest

Payment Date which is the date of conversion until maturity; provided, however, that in no event shall the interest rate on the New Bonds exceed the Maximum Interest Rate.

The Trustee shall give notice by mail to the Holders of the New Bonds not less than fifteen (15) days prior to the date of conversion to the Fixed Interest Rate. Such notice shall state (A) that the interest rate on the New Bonds is scheduled to be converted to a Fixed Interest Rate, (B) the effective date of the Fixed Interest Rate, (C) the date the Fixed Interest Rate is scheduled to be determined, (D) if applicable, that the minimum authorized denomination for a New Bond will be reduced to \$5,000, (E) that subsequent to such effective date the Holder of New Bonds will no longer have the right to require purchase of New Bonds by the Tender Agent, and (F) that New Bonds not purchased by the Tender Agent on or prior to the effective date of the Fixed Interest Rate will be purchased by the Tender Agent on the effective date of the Fixed Interest Rate at a price of par plus accrued interest, if any, except New Bonds or portions thereof which the Holder shall have directed the Tender Agent not to purchase in accordance with Section 4.11 of the Indenture. Such notice shall be given by registered or certified mail to the Holders of the New Bonds whose names appear on the Register.

(e) Partial Conversion. The conversion options specified in paragraphs (c) and (d) above may be exercised from time to time with respect to all of the outstanding New Bonds or to any portion of any series thereof in the principal amount of \$1,000,000 or any integral multiple of \$100,000 in excess thereof. In the event of any such partial conversion, the provisions described above shall be deemed to apply to the applicable portion of the New Bonds so converted; provided that any notices specified to be given to Holders of New Bonds shall be given only to the Holders whose New Bonds or portions thereof are to be converted. Upon any partial conversion, the selection of New Bonds of the applicable series or portions thereof to be converted shall be made by lot by the Trustee in the same manner as provided in the Indenture for partial redemptions.

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