

ORDINANCE NO. 67-78

AN ORDINANCE REPEALING ORDINANCES NUMBERED 55-78 AND 56-78 AND AUTHORIZING THE ISSUANCE OF A \$3,400,000 INDUSTRIAL DEVELOPMENT REVENUE BOND OF THE CITY OF CENTERVILLE, OHIO, FOR THE PURPOSE OF FINANCING A "PROJECT" FOR CENTERVILLE ASSOCIATES, LTD.; PROVIDING FOR THE PLEDGE AND ASSIGNMENT OF REVENUES FOR THE PAYMENT OF SAID BOND; AUTHORIZING A BOND PURCHASE AGREEMENT AND LOAN AGREEMENT APPROPRIATE FOR THE SECURITY OF SUCH REVENUES AND OTHER AGREEMENTS TO SECURE FURTHER THE PAYMENT OF SAID BOND.

WHEREAS, the City of Centerville (hereinafter called the "Issuer"), is a municipal corporation and political subdivision in and of the State of Ohio, and by virtue of the laws of the State, including Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Ohio Revised Code, is authorized and empowered, among other things: (a) to loan funds to acquire and construct real and personal property comprising a commercial shopping center facility located within the boundaries of the Issuer, for use by Centerville Associates, Ltd., (b) to issue its revenue bonds for the purpose set forth herein, (c) to secure such revenue bonds by a pledge and assignment of revenues and other documents, as provided for herein, and (d) to enact this Bond Legislation and execute the Bond Purchase Agreement and the Loan Agreement hereinafter identified, upon the terms and conditions provided therein; and

WHEREAS, this Legislative Authority has heretofore found and determined, and does hereby confirm, that (a) the

property to be acquired and constructed with the proceeds of the Bonds herein authorized (hereinafter called the "Project") constitutes a "project" as defined in Section 165.01 of the Ohio Revised Code, (b) that the utilization of the Project for such purpose by Centerville Associates, Ltd. is economically sound and will benefit the people of the Issuer by creating jobs and employment opportunities and improving the economic welfare of the people of the Issuer, and (c) that said Project will not be required by the Issuer for its other public purposes; and

WHEREAS, since the adoption of Ordinances numbered 55-78 and 56-78 on November 6, 1978, it has become necessary to revise substantially the provisions contained therein with respect to the issuance of the Project Bond and therefore it is determined by this Legislative Authority to repeal said Ordinances; and

WHEREAS, it is determined by this Legislative Authority that the amount necessary to finance the costs of or related to the acquisition and construction of the Project, including the financing thereof, will require the issuance, sale and delivery of a Project Bond in the maximum principal amount of \$3,400,000;

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE hereby Ordains:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Bond Legislation, the following words and terms as used in this Bond Legislation shall have the following meanings unless the context or use clearly indicates another of different meaning or intent:

"Act" means, collectively, Section 13 of Article VIII of the Ohio Constitution, and Chapter 165 of the Ohio Revised Code.

"Bond" or "Bonds" means the Project Bond.

"Bond Account" means the Bond Account created by Section 7 hereof.

"Bondholder" or "Holder" or "holder of Bonds" means The First National Bank, Dayton, Ohio, or any other subsequent financial institutions or insurance companies holding the Bonds.

"Bond Legislation" means this Ordinance, as the same may from time to time be lawfully amended, modified or supplemented.

"Bond Purchase Agreement" means the Agreement authorized in Section ¹¹~~10~~ hereof.

"Bond Service Charges" means the principal, interest, and redemption premium, if any, required to be paid by the Issuer on the Bonds.

"Construction Loan Account" means the Construction Loan Account created by Section ⁷~~6~~ hereof.

"Cumulative Aggregate Disbursements to Date" means the cumulative total sum of disbursements at any time noted on the Bond.

"Debt Instruments" means the Bond and Note (as defined in the Loan Agreement) and all other instruments: (i) evidencing the indebtedness evidenced thereby, (ii) securing the Bond or Note, (iii) providing for the issuance of the Bond or Note, (iv) regulating in any manner any of the documents mentioned in this definition, or (v) all modifications to any of the documents mentioned in this definition.

"Developer" means Centerville Associates, Ltd., an Ohio limited partnership and its permitted successors and assigns.

"Disbursement" or "Disbursements" means the authorized payments by the Original Purchaser from the proceeds of the sale of the Project Bond from the Construction Loan Account as provided in the Loan Agreement and aggregated and listed on the schedules attached to the Project Bond.

"Executive" means the City Manager of the Issuer.

"Final Disbursement Date" means November 30, 1979, or such later date as may be agreed in writing by the Developer, the Original Purchaser and The Life Insurance Company of Virginia.

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

"Fixed Maturity Date" means June 1, 1999, or, if the Bond becomes taxable for Federal income tax purposes, June 1, 2004.

"Indenture" means any future Indenture between the Issuer and a Trustee.

"Interim Disbursement Date" means May 31, 1979, or such later date as may be agreed in writing by the Developer, the Original Purchaser and The Life Insurance Company of Virginia.

"Issuer" means the City of Centerville, a municipal corporation and political subdivision in and of the State of Ohio.

"Loan" means the loan by the Issuer to the Developer of the proceeds of the sale of the Project Bond.

"Loan Agreement" means the instrument, executed by and between the Issuer and the Developer and dated as of January 1, 1979, as the same may be duly amended, modified or supplemented in accordance with the provisions thereof.

"Legal Officer" means the Municipal Attorney of the Issuer.

"Legislative Authority" means the City Council of the Issuer.

"Mortgage" means a first mortgage of the Project to the Original Purchaser securing the Project Bonds.

"Original Purchaser" means The First National Bank, Dayton, Ohio, and its successors and assigns.

"Outstanding Bonds" or "Bonds outstanding" or "outstanding" as applied to Bonds, means, as of any date, all Bonds which have been delivered, or are then being delivered, under this Bond Legislation except:

- (a) Bonds surrendered for and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;*
- (b) Bonds for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to such date into a Bond Account (whether upon or prior to the maturity date of the Bonds or upon the redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of this Bond Legislation; provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements in accordance with this Bond Legislation shall have been made therefor, or waiver of such notice shall have been provided for; and*
- (c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement).*

"Paying Agents" means any banks or trust companies designated as the future paying agencies or places of payment for Bonds or coupons, if any, by or pursuant to the applicable Bond Legislation, and their successors designated pursuant to any applicable Bond Legislation.

"Person" means natural persons, partnerships, firms, associations, corporations and public bodies.

"Pledged Receipts" means the loan payments, rentals, revenues and other income, charges and moneys derived by the Issuer and the Developer from the use, lease, sale or other disposition of the Project (including proceeds from the foreclosure or deed in lieu of foreclosure ordered pursuant to the mortgage or in lieu thereof) and required by the Bond Legislation to be credited to the Bond Account or by the Loan Agreement to be deposited or credited to in any other fund or account or to serve as additional security for the Bond pursuant to any of the Debt Instruments.

"Prime Leases" means the leases of the Project to the Prime Lessees.

"Prime Lessees" means any lessee of the Project occupying 10% or more of the floor space of the Project or paying 10% or more of the gross annual rent received by the Developer with respect to the Project.

"Project" means the real, personal, or real and personal, property identified in Exhibits B and C to the Loan Agreement, or in or pursuant to any amendments thereof or acquired, constructed or installed as a replacement or substitution therefor or addition thereto, and together constituting a "project" as defined in the Act.

"Project Bonds" means the Industrial Development Revenue Bonds authorized in Section 2 hereof.

"Project Purpose" means a facility to be used as a commercial shopping center facility, and such related uses as are permitted by the Loan Agreement.

"Registered Bonds" means Bonds registered in the name of the Holder, and "fully registered Bonds" means Bonds without coupons registered as to both principal and interest.

"State" means the State of Ohio.

"Total Aggregate Disbursements at Final Disbursement Date" means the sum of "Total Aggregate Disbursements at Final Disbursement Date" without deduction of any payments of principal of or interest on the Project Bond all as reflected on the Disbursement Schedule attached to the Project Bond.

"Total Aggregate Disbursements at Interim Disbursement Date" means the sum of "Total Aggregate Disbursements at Interim Disbursement Date" without deduction of any payments of principal of or interest on the Project Bond all as reflected on the Disbursement Schedule attached to the Project Bond.

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Ohio Constitution or to a section, provision or chapter of the Ohio Revised Code shall include such section or provision or chapter as from time to time amended, modified,

revised, supplemented, or superseded, provided that no such amendment, modification, revision, supplementation, or supersession shall alter the obligation to pay the Bond service charges in the amount and manner, at the times, and from the sources provided in any Bond Legislation and any Indenture, except as otherwise herein permitted.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation.

Section 2. Authorization of Project Bond. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, a Project Bond in the maximum principal amount of \$3,400,000 in the form approved by the Legal Officer for the purpose of providing funds to pay the costs of acquiring and constructing the Project, to be used for the Project Purpose by the Developer. Said Project Bonds shall be designated "Industrial Development Revenue Bond (Centerville Associates, Ltd., Project)".

Section 3. Terms of Project Bond. The Project Bond shall be issued in fully registered form in the name of the Original Purchaser, shall be numbered R-1, shall be in the form approved by the Legal Officer, and shall mature on the Fixed Maturity Date subject to all provisions for amortization and

redemption. The Project Bond shall be assignable only to a financial institution as defined by Section 1726.01 of the Ohio Revised Code or to an insurance company as defined by Section 3903.02(A) of the Ohio Revised Code or any successor Sections thereto and only on or after the Interim Disbursement Date and shall be a negotiable instrument as provided in Section 165.03 of the Ohio Revised Code.

The total actual principal amount of the Project Bond shall be equal to the "Total Aggregate Disbursements at Final Disbursement Date" as hereinafter provided: each Disbursement from the Construction Loan Account shall be listed and aggregated by the Original Purchaser in accordance with the disbursement schedule attached to the Project Bond. The Original Purchaser is hereby authorized to make such Disbursements until the Interim Disbursement Date; and, thereafter, the Original Purchaser is authorized to disburse pursuant to any of the Debt Instruments up to \$3,400,000.

Interest on the Project Bond prior to the Interim Disbursement Date shall be paid at the rate of eighty percent (80%) of the prime rate of interest charged by The First National Bank, Dayton, Ohio, in its capacity as a commercial lender, computed and paid upon the applicable amount of "Cumulative Aggregate Disbursements to Date" payable on the last day of each month commencing ^{February 28,} ~~January 31,~~ 1979. Such prime rate of interest shall be adjusted monthly as of the last day

of the month and such adjusted rate shall apply to the payment due as of the last day of the next succeeding month.

Interest on the Project Bond after the Interim Disbursement Date shall be paid at the rate of seven and three-eighths per centum (7-3/8%) per annum, computed and paid upon the Total Aggregate Disbursements at Interim Disbursement Date on the first day of the second month after which the Interim Disbursement occurs, and thereafter as to each Loan Payment Date interest shall be computed through the end of the month immediately preceding the month in which the Loan Payment Date occurs on the unpaid principal balance of the Bond as of the end of the preceding month until payment of the principal amount of "Total Aggregate Disbursements at Interim Disbursement Date" has been made. Principal thereon in the amount of "Total Aggregate Disbursements at Final Disbursement Date", shall be paid on the first of each month commencing upon the first day of the second month after the "Interim Disbursement Date"; upon commencement of such payments of principal, payments of such principal and interest together shall be made on the first of each month in 240 monthly installments with the first 239 installments to be in the amount of \$27,143.34 or such lesser amount as may be due because of any adjustments to the interest portion of such amount prior to the Final Disbursement Date, which interest portion will vary prior to the Final Disbursement Date since such interest portion is based upon the amount of principal

disbursed prior to the Final Disbursement Date, and the final installment to be in the amount of the then remaining unpaid balance of principal and interest and additional payments as described in Section 3.2 of the Loan Agreement, if any.

If at any time for any reason, a final determination is made that the Holder is required to treat any payment of interest or part thereof on the Project Bond as subject to Federal tax imposed upon or measured by income (except solely as the result of the Holder's own action or inaction), the interest rate on the Project Bond with respect to all payments as to which the Holder is so required to treat as subject to such Federal tax shall be increased to nine and three-quarters per centum per annum (9-3/4%). In the event the interest rate on the Project Bond shall be so increased, the monthly installments of principal and interest payable thereon shall be increased so as to fully amortize the outstanding principal amount of such Bond over a twenty-five year term instead of the original twenty-year term. A "final determination" shall be deemed to have occurred as of the time interest becomes taxable to the Holder of the Project bond as a result of a ruling or technical advice by the Internal Revenue Service in which the Developer has participated or has had the opportunity to participate, or a written opinion of nationally recognized bond counsel acceptable to the Holder of the Project Bond.

The Bond is not callable prior to June 1, 1990. Thereafter, the Bond is callable in whole at the following

redemption prices (expressed as percentages of the principal amount thereof), plus accrued interest to the redemption date: on or after June 1, 1990, but prior to June 1, 1991 at 103%; on or after June 1, 1991, but prior to June 1, 1992 at 102%; on or after June 1, 1992 but prior to final maturity at 101%. The Bond is also subject to redemption in whole in the event that the Developer is obligated to prepay the Loan as provided in Section 11.3 of the Loan Agreement.

If the Project Bond shall be redeemed (except pursuant to the immediately preceding sentence), notice of the call for redemption of the Project Bond, identifying the Project Bond, the redemption price to be paid, the date fixed for redemption shall be given by the Developer on behalf of the Issuer by delivering a copy of a redemption notice by certified mail, return receipt requested, at least thirty (30) days but not more than ninety (90) days prior to the date fixed for redemption to the Holder.

Bond Service Charges on the Project Bond and Additional Payments as defined in the Loan Agreement shall be payable, without deduction for services of any paying agent, at the principal office of the Holder, by a good and sufficient check or draft made payable to the Holder in the amount required by the Bonds held by the Holder.

The Project Bond shall be executed on behalf of the Issuer by its Executive and Fiscal Officer, and the corporate seal of the Issuer shall be affixed thereto.

Section 4. Bond Anticipation Note. If requested by the Developer, between the Interim Disbursement Date and the Final Disbursement Date, the Executive and Fiscal Officer are hereby authorized and directed to execute, enseal with the corporate seal of the Issuer, and deliver one or more Bond Anticipation Notes in anticipation of the "Total Aggregate Disbursements at Final Disbursement Date". Such Note or Notes shall have such terms as may be approved by the Legal Officer at the time of its issuance. Such Note or Notes shall be retired no later than the Final Disbursement Date either with cash or from the proceeds of the Bond at the Final Disbursement Date. Such Note or Notes shall bear interest at the rate of eighty percent (80%) of the prime rate of interest charged by The First National Bank, Dayton, Ohio, in its capacity as a commercial lender.

Section 5. Terms of All Bonds. All Bonds shall bear such designations as may be necessary to distinguish them from Bonds of any other series. Bond service charges and Additional Payments on all Bonds shall be payable in lawful money of the United States of America. Bonds shall be issued as coupon Bonds registrable as to principal or as fully registered Bonds, and may be exchanged as between forms, all as may be provided in any Indenture. All Bonds shall be negotiable instruments as provided in Section 165.03 of the Act, and shall express on their faces the purpose for which they are issued and such

other statements or legends as may be required by law. All Bonds and coupons shall be executed in the manner provided by the applicable law in effect at the time of their issuance. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds or coupons, if any, shall cease to be such officer before the issuance, authentication or delivery of such Bonds or coupons, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until that time.

Unless otherwise provided in the Bond Legislation authorizing the issuance of Additional Bonds, notice of call for redemption of all Bonds shall be given in the manner provided in Section 3 hereof for the notice of call for redemption of the Project Bond. If fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Bonds to be redeemed, together with accrued interest to the redemption date and all Additional Payments, shall be held by the Holder so as to be available therefor, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to the redemption date shall be void.

As provided herein, the Bonds shall be equally and ratably (a) payable solely from the Bond Account and the

Pledged Receipts and (b) secured by the Debt Instruments. Anything in the Bond Legislation, the Bonds or any of the Debt Instruments to the contrary notwithstanding, neither the Bond Legislation, the Bonds, nor any other Debt Instruments shall constitute a debt or a pledge of the faith and credit of the Issuer, and the Bonds shall contain on the face thereof a statement to that effect and that, except as provided in the last sentence of this Section 4, such Bonds are payable solely from the aforesaid Bond Account and Pledged Receipts assigned for their payment; provided, however, that nothing herein shall be deemed to prohibit the Issuer, of its own volition, from using to the extent lawfully authorized to do so any other resources for the fulfillment of any of the terms, conditions or obligations of the Debt Instruments. In addition, the Bonds shall contain on the face thereof a statement to the effect that any judgment obtained by the holder of the Bonds shall not be enforceable against the Developer or any of its partners except to the extent of their interest in the property and/or lien conveyed in the Mortgage and conveyed in all other Debt Instruments.

Section 6. Sale of Project Bond. The Project Bond is hereby sold and awarded to the Original Purchaser, in accordance with its offer therefor in the Bond Purchase Agreement, at a purchase price equal to the "Total Aggregate Disbursements at Final Disbursement Date". The Executive and

the Fiscal Officer are authorized and directed to make on behalf of the Issuer the necessary arrangements with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Project Bond to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Project Bond under the terms of this Bond Legislation, the Bond Purchase Agreement and all other Debt Instruments. It is hereby determined that the price for and the terms of the Project Bond, and the sale thereof, all as provided in this Bond Legislation, are in the best interest of the Issuer and consistent with all legal requirements.

Section 7. Allocation of Proceeds of Project Bonds - Construction Loan Account. All of the sums from the sale of the Project Bond shall be disbursed as provided in Section 3 hereof from the Construction Loan Account and in accordance with the Bond Purchase Agreement.

There is hereby created by the Issuer and ordered maintained, in accordance with the Bond Purchase Agreement, as a separate account in the custody of the Original Purchaser an account in the name of the Issuer to be designated "City of Centerville--Centerville Associates Construction Loan Account" (herein called the "Construction Loan Account").

Section 8. Source of Payment - Bond Account. As provided in the Loan Agreement, Loan Payments (as defined in

the Loan Agreement), sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Developer directly to the Holder for the account of the Issuer and credited to the Bond Account.

There is hereby created by the Issuer and ordered maintained, in accordance with the Bond Purchase Agreement, as a separate account in the custody of the Holder, an account to be designated "City of Centerville--Centerville Associates Revenue Bond Account" (herein called the "Bond Account"). The Bond Account is hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at maturity or by redemption, all as provided herein and in the Loan Agreement and in the Bond Purchase Agreement.

There shall be credited to the Bond Account, as and when received, (a) all Loan Payments specified in the Loan Agreement, and (b) all other Pledged Receipts and other moneys received by the Developer, Original Purchaser or the Issuer under any of the Debt Instruments which are required thereby to be paid into the Bond Account.

The Issuer hereby covenants and agrees that so long as any of the Bonds are outstanding it will deposit, or cause to be deposited or credited, in the Bond Account Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Bonds are

outstanding, it will diligently and promptly proceed in good faith and use its best efforts to cause the Project to be continuously and efficiently used as a revenue producing shopping center undertaking, and that, should there be a default under any of the Debt Instruments, the Issuer shall fully cooperate with the Holder to fully protect the rights and security of the Holder hereunder and shall diligently and promptly proceed in good faith and use its best efforts (but subject to the Holder's right to foreclose and otherwise exhaust piecemeal or collectively all remedies available to it) to secure another user for the Project to the end that at all times Pledged Receipts shall be derived sufficient in time and amount to pay the Bond service charges as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to operate the Project or to use or apply to the payment of Bond service charges any funds or revenues from any source other than Pledged Receipts.

Section 9. Covenants of Issuer. In addition to other covenants of the Issuer in this Bond Legislation, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges and Additional Payments. The Issuer will, solely from the sources herein provided, pay or cause to be paid the Bond service charges on each and all Bonds and Additional Payments on the dates, at the places and in the manner provided herein and in the Bonds and coupons, if any, and in all other Debt Instruments.

(b) Performance of Covenants, Authority and Actions.

The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Debt Instruments executed and delivered under this Bond Legislation, and in all other proceedings of its Legislative Authority pertaining to the Debt Instruments. The Issuer warrants and covenants that it is, and upon delivery of the Project Bond will be, duly authorized by the Constitution and laws of the State of Ohio, including particularly and without limitation the Act, to issue the Project Bond and to execute the Bond Purchase Agreement, the Loan Agreement and all other Debt Instruments to be executed by it, to provide the security for payment of the Bond Service Charges and Additional Payments in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Project Bond and execution and delivery of the Bond Purchase Agreement, the Loan Agreement and all other Debt Instruments to be executed by it have been or will be duly and effectively taken; and that the Project Bond will be a valid and enforceable special obligation of the Issuer according to the terms thereof. Each provision of the Bond Legislation, Project Bond and all other Debt Instruments to be executed by the Issuer is binding upon such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the

duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Project Bond and all other Debt Instruments to be executed by the Issuer is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty, specifically enjoined by law resulting from an office, trust, or station within the meaning of Section 2731.01 of the Ohio Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or to the Pledged Receipts shall at all times be open to inspection by such accountants or other agents of the Holder as the Holder may from time to time designate.

(d) Rights Under Loan Agreement. Any Trustee, in its name or in the name of the Issuer, or any Holder may, for and on behalf of the Bondholders, enforce all rights of the Issuer and all obligations of the Developer under and pursuant to the Loan Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(e) Maintenance of Loan Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the Debt Instruments, and will take all actions within its authority to maintain the Debt Instruments in effect in

accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate.

(f) Arbitrage Provisions. The Issuer will use its best efforts to restrict the use of the proceeds of the Project Bond in such manner and to expectations at the time the Project Bond is delivered to the Holder, so that they will not constitute arbitrage bonds under Section 103(c) of the Internal Revenue Code and the regulations prescribed under that section. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Project Bond, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Project Bond, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 103(c) and regulations thereunder. The Clerk of the Legislative Authority, or other appropriate officer of the Issuer, shall furnish to the Holder a true transcript of proceeding, certified by said Clerk or officer, of all proceedings had with reference to the issuance of the Project Bond along with such information for the records as is necessary to determine the regularity and validity of the issuance of said Bond.

Section 10. Loan Agreement and all other Debt Instruments (except the Bond Purchase Agreement) to be executed by the Issuer. In order to better secure the payment of the Bond service charges as the same shall become due and payable, the Executive and Fiscal Officer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, a Loan Agreement and all other Debt Instruments to be executed by it in substantially the form submitted to this Legislative Authority, which are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of said Loan Agreement by such officers.

Section 11. Bond Purchase Agreement. The Executive and Fiscal Officer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, a Bond Purchase Agreement in substantially the form submitted to this Legislative Authority, which is hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers

executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of said Bond Purchase Agreement by such officers.

Section 12. Determination Pursuant to Section 165.03, Ohio Revised Code. Pursuant to Section 165.03 of the Ohio Revised Code, the Legislative Authority hereby finds and determines that the Project is a "project" as defined in Chapter 165 of the Ohio Revised Code and is consistent with the provisions of Section 13 of Article VIII, Ohio Constitution.

Section 13. Sunshine Law. This Legislative Authority hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

Section 14. Prevailing Rates of Wages. All wages paid to laborers and mechanics employed on the Project shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of

prevailing wage rates; provided that, if the Developer undertakes, as a part of the Project, construction to be performed by its regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of passage of this Bond Legislation, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees.

Section 15. Election by Issuer. The Issuer hereby elects with respect to the Project Bonds to be within the limitation imposed by the provision of Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and the Executive Officer or Fiscal Officer is hereby authorized and directed to perform any and all acts and provide such information as may be required by the Secretary of the Treasury, his delegate, or the Internal Revenue Service in order to implement such election.

Section 16. Repeal of Ordinances Numbered 55-78 and 56-78. Ordinances numbered 55-78 and 56-78 adopted November 6, 1978 attached hereto and made a part hereof are hereby repealed in their entirety.

Section 17. Effective Date. This ordinance shall be effective from and after the earliest date permitted by law.

ADOPTED this 8th day of January, 1978

Attest:

Maile J. Sander
Clerk of Council

Victor A. Greer
Presiding Officer

CERTIFICATE

The undersigned Clerk of Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 67-78, duly adopted on the 8th day of January, 1978, and that such Ordinance No. _____ remains in full force and effect and has not been amended or rescinded as of this date.

January 8, 1978


Clerk of Council
City of Centerville, Ohio

ORDINANCE NO. 479

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$2,400,000 INDUSTRIAL DEVELOPMENT REVENUE BOND SERIES A, OF THE CITY OF CENTERVILLE, OHIO, FOR THE PURPOSE OF FINANCING A PORTION OF A "PROJECT" FOR CENTERVILLE ASSOCIATES, LTD.; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BOND; AUTHORIZING A BOND PURCHASE AGREEMENT AND LOAN AGREEMENT APPROPRIATE FOR THE SECURITY OF SUCH REVENUES AND TO SECURE FURTHER THE PAYMENT OF SAID BOND.

WHEREAS, the City of Centerville (hereinafter called the "Issuer"), is a municipal corporation and political subdivision in and of the State of Ohio, and by virtue of the laws of the State, including Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Ohio Revised Code, is authorized and empowered, among other things: (a) to loan funds to acquire and construct real and personal property comprising a commercial shopping center facility located within the boundaries of the Issuer, for use by Centerville Associates, Ltd., (b) to issue its revenue bonds for the purpose set forth herein, (c) to secure such revenue bonds by a pledge and assignment of revenues, as provided for herein, and (d) to enact this Bond Legislation and execute the Bond Purchase Agreement and the Loan Agreement hereinafter identified, upon the terms and conditions provided therein; and

WHEREAS, this Legislative Authority has heretofore found and determined, and does hereby confirm, that (a) the

property to be acquired and constructed with the proceeds of the Bonds herein authorized (hereinafter called the "Project") constitutes a "project" as defined in Section 165.01 of the Ohio Revised Code, (b) that the utilization of the Project for such purpose by Centerville Associates, Ltd. is economically sound and will benefit the people of the Issuer by creating jobs and employment opportunities and improving the economic welfare of the people of the Issuer, and (c) that said Project will not be required by the Issuer for its other public purposes; and

WHEREAS, it is determined by this Legislative Authority that the amount necessary to finance the costs of or related to the acquisition and construction of the Project, including the financing thereof, will require the issuance, sale and delivery of Project Bonds in a maximum principal amount of \$3,400,000, which will be issued in two series, Series A and B, each series to be issued pursuant to a separate ordinance, and hereafter may require the Issuer's best efforts to issue, sell and deliver Additional Bonds on a parity therewith, all of which Bonds shall be equally and ratably payable and secured as provided herein;

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE hereby Ordains:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Bond Legislation, the following

words and terms as used in this Bond Legislation shall have the following meanings unless the context or use clearly indicates another of different meaning or intent:

"Act" means, collectively, Section 13 of Article VIII of the Ohio Constitution, and Chapter 165 of the Ohio Revised Code.

"Additional Bonds" means Bonds of the Issuer issued under Section 8 of this Bond Legislation.

"Bond" or "Bonds" means the Project Bond (Series A) and Additional Bonds.

"Bond Account" means the Bond Account created by Section 7 hereof.

"Bondholder" or "Holder" or "holder of Bonds" means The First National Bank, Dayton, Ohio, or any other subsequent financial institutions or insurance companies holding the Bonds.

"Bond Legislation" means this Ordinance, except that when used with reference to an issue of Additional Bonds it shall mean this Bond Legislation to the extent applicable and the other legislation providing for the issuance of such Additional Bonds, and except that when used with reference to Bonds when Additional Bonds are outstanding it shall mean this Bond Legislation and the Bond Legislation providing for the issuance of Additional Bonds, all as the same may from time to time be lawfully amended, modified or supplemented.

"Bond Purchase Agreement" means the Agreement authorized in Section 11 hereof.

"Bond Service Charges" means the principal, interest, and redemption premium, if any, required to be paid by the Issuer on the Bonds.

"Construction Loan Account" means the Construction Loan Account created by Section 6 hereof.

"Cumulative Aggregate Disbursements to Date" means the cumulative total sum of disbursements at any time noted on the Bond.

"Developer" means Centerville Associates, Ltd., an Ohio limited partnership and its successors and assigns.

"Disbursement" or "Disbursements" means the authorized payments by the Original Purchaser from the proceeds of the sale of the Project Bond from the Construction Loan Account as provided in the Loan Agreement and aggregated and listed on the schedules attached to the Project Bond.

"Executive" means the City Manager of the Issuer.

"Final Disbursement Date" means May 31, 1979.

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

"Fixed Maturity Date" means June 1, 1999, or, if the Bond becomes taxable for Federal income tax purposes, June 1, 2004.

"Indenture" means any future Indenture between the Issuer and a Trustee.

"Issuer" means the City of Centerville, a municipal corporation and political subdivision in and of the State of Ohio.

"Loan" means the loan by the Issuer to the Developer of the proceeds of the sale of the Project Bond as the same may hereafter be increased from the proceeds from the sale of Additional Bonds.

"Loan Agreement" means the instrument, executed by and between the Issuer and the Developer and dated as of December 1, 1978, as the same may be duly amended, modified or supplemented in accordance with the provisions thereof.

"Legal Officer" means the Municipal Attorney of the Issuer.

"Legislative Authority" means the City Council of the Issuer.

"Mortgage" means a first mortgage of the Project to the Original Purchaser securing the Project Bonds.

"Original Purchaser" means The First National Bank, Dayton, Ohio.

"Outstanding Bonds" or "Bonds outstanding" or "outstanding" as applied to Bonds, means, as of any date, all Bonds which have been delivered, or are then being delivered, under this Bond Legislation except:

- (a) Bonds surrendered for and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;
- (b) Bonds for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to such date into a Bond Account (whether upon or prior to the maturity or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of this Bond Legislation; provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements in accordance with this Bond Legislation shall have been made therefor, or waiver of such notice shall have been provided for; and
- (c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement).

"Paying Agents" means any banks or trust companies designated as the future paying agencies or places of payment for Bonds or coupons, if any, by or pursuant to the applicable Bond Legislation, and their successors designated pursuant to any applicable Bond Legislation.

"Person" means natural persons, partnerships, firms, associations, corporations and public bodies.

"Pledged Receipts" means the loan payments, rentals, revenues and other income, charges and moneys derived by the Issuer from the use, lease, sale or other disposition of the Project and required by the Bond Legislation to be credited to the Bond Account or by the Loan Agreement to be deposited or credited to in any other fund or account.

"Prime Leases" means the leases of the Project to the Prime Lessees.

"Prime Lessees" means any lessee of the Project occupying 10% or more of the floor space of the Project or paying 10% or more of the gross annual rent received by the Developer with respect to the Project.

"Project" means the real, personal, or real and personal, property identified in Exhibits B and C to the Loan Agreement, or in or pursuant to any amendments thereof or acquired, constructed or installed as a replacement or substitution therefor or addition thereto, and together constituting a "project" as defined in the Act.

"Project Bonds" means the Industrial Development Revenue Bonds authorized in Section 2 hereof.

"Project Purpose" means a facility initially to be used as a commercial shopping center facility, and such subsequent or related uses as are permitted by the Loan Agreement.

"Registered Bonds" means Bonds registered in the name of the Holder, and "fully registered Bonds" means Bonds without coupons registered as to both principal and interest.

"State" means the State of Ohio.

"Total Aggregate Disbursements at Final Disbursement Date" means the sum of "Total Aggregate Disbursements at Final Disbursement Date" without deduction of any payments of principal of or interest on the Project Bond all as reflected on the Disbursement Schedule attached to the Project Bond.

"Trustee" means the Trustee at the time under any future Indenture.

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Ohio Constitution or to a section, provision or chapter of the Ohio Revised Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded, provided that no such amendment, modification, revision, supplementation, or supersession shall alter the obligation to pay the Bond service charges in the amount and manner, at the times, and from the sources provided in any Bond Legislation and any Indenture, except as otherwise herein permitted.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation.

Section 2. Authorization of Project Bond. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, \$2,400,000 maximum principal amount of a Project Bond in the maximum amount of \$2,400,000 in the form of Exhibit A hereto (except as to insubstantial additions to the attached Disbursement Schedule)

for the purpose of providing funds to pay part of the costs of acquiring and constructing the Project, to be used for the Project Purpose by the Developer. Said Project Bonds shall be designated "Industrial Development Revenue Bond, Series A (Centerville Associates, Ltd., Project)". The Issuer may also issue, sell and deliver Additional Bonds on a parity with the Project Bond for the purposes and in the manner provided in Section 8 of this Bond Legislation.

Section 3. Terms of Project Bond. The Project Bond shall be issued in fully registered form in the name of the Original Purchaser, shall be numbered R-1, shall be in the form of Exhibit A hereto, and shall mature on the Fixed Maturity Date subject to all provisions for amortization and redemption. The Project Bond shall be assignable only to a financial institution as defined by Section 1726.01 of the Ohio Revised Code or to an insurance company as defined by Section 3903.02(A) of the Ohio Revised Code or any successor Sections thereto and only on or after the Final Disbursement Date and shall be a negotiable instrument as provided in Section 165.03 of the Ohio Revised Code.

The total actual principal amount of the Project Bond shall be equal to the "Total Aggregate Disbursements at Final Disbursement Date" as hereinafter provided: each Disbursement from the Construction Loan Account shall be listed and aggregated by the Original Purchaser in accordance with the

disbursement schedule attached to the Project Bond. The Original Purchaser is hereby authorized to make such Disbursements until the Final Disbursement Date.

Interest on the Project Bond prior to the Final Disbursement Date shall be paid at the rate of eighty percent (80%) if the prime rate of interest charged by The First National Bank, Dayton, Ohio, in its capacity as a commercial lender, computed and paid upon the applicable amount of "Cumulative Aggregate Disbursements to Date" payable on the last day of each month commencing December 31, 1978. Such prime rate of interest shall be adjusted montly as of the last day of the month and such adjusted rate shall apply to the payment due as of the last day of the next succeeding month.

Interest on the Project Bond after the Final Disbursement Date shall be paid at the rate of seven and three-eighths per centum (7-3/8%) per annum, computed and paid upon the Total Aggregate Disbursements at Final Disbursement Date on the first day of the second month after which the Final Disbursement occurs, and thereafter as to each Loan Payment Date interest shall be computed through the end of the month in which the Loan Payment Date occurs on the unpaid principal balance of the Bond as of the end of the preceding month until payment of the principal amount of "Total Aggregate Disbursements at Final Disbursement Date" has been made or provided for. Principal thereon in the amount of "Total

Aggregate Disbursements at Final Disbursement Date", shall be paid on the first of each month commencing upon the first day of the second month after the "Final Disbursement Date"; upon commencement of such payments of principal, payments of such principal and interest together shall be made on the first of each month in 240 monthly installments with the first 239 installments to be in the amount of \$19,147.29, and the final installment to be in the amount of the then remaining unpaid balance of principal and interest and unreimbursed advances, if any, until payment of such principal has been made or provided for on or by the Fixed Maturity Date.

If at any time for any reason, a final determination is made that the Holder is required to treat any payment of interest or part thereof on the Project Bond as subject to Federal tax imposed upon or measured by income (except solely as the result of the Holder's own action or inaction), the interest rate on the Project Bond with respect to all payments as to which the Holder is so required to treat as subject to such Federal tax shall be increased to nine and three-quarters per centum per annum (9-3/4%). In the event the interest rate on the Project Bond shall be so increased, the monthly installments of principal and interest payable thereon shall be increased so as to fully amortize the outstanding principal amount of such Bond over a twenty-five year term instead of the original twenty-year term. A "final determination" shall be

deemed to have occurred upon the receipt by the holder of the Project Bond of a ruling or technical advice by the Internal Revenue Service in which the Developer has participated or has had the opportunity to participate, or a written opinion of bond counsel acceptable to both the Developer and the Holder of the Project Bond.

The Bond is callable for redemption in whole in the event of the exercise by the Developer to prepay all of the Loan as provided in Sections 11.2(a) and (b) of the Loan Agreement. This Bond is also callable in whole at the following redemption prices (expressed as percentages of the principal amount thereof), plus accrued interest to the redemption date: on or after June 1, 1990, but prior to June 1, 1991 at 103%; on or after June 1, 1991, but prior to June 1, 1992 at 102%; on or after June 1, 1992 but prior to final maturity at 101%. The Bond is also subject to redemption in whole in the event that the Developer is obligated to prepay the Loan as provided in Section 11.3 of the Loan Agreement.

If the Project Bond shall be redeemed, notice of the call for redemption of the Project Bond, identifying the Project Bond, the redemption price to be paid, the date fixed for redemption shall be given by the Developer on behalf of the Issuer by mailing a copy of a redemption notice by first class mail at least thirty (30) days prior to the date fixed for redemption to the Holder; provided, however, that failure to

give such notice by mailing, or any defect in such notice, shall not affect the validity of any proceedings for the redemption of the Project Bonds.

Bond Service Charges on the Project Bond shall be payable, without deduction for services of any paying agent, at the principal office of the Holder, by check or draft.

The Project Bond shall be executed on behalf of the Issuer by its Executive and Fiscal Officer, and the corporate seal of the Issuer shall be affixed thereto.

Section 4. Terms of All Bonds. All Bonds shall bear such designations as may be necessary to distinguish them from Bonds of any other series. Bond service charges on all Bonds shall be payable in lawful money of the United States of America. Subject to provisions of the applicable Bond Legislation, Bonds shall be issued as coupon Bonds registrable as to principal or as fully registered Bonds, and may be exchanged as between forms, all as may be provided in any Indenture. All Bonds shall be negotiable instruments as provided in Section 165.03 of the Act, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law. All Bonds and coupons shall be executed in the manner provided by the applicable law in effect at the time of their issuance. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds or coupons, if any, shall

cease to be such officer before the issuance, authentication or delivery of such Bonds or coupons, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until that time.

Unless otherwise provided in the Bond Legislation authorizing the issuance of Additional Bonds, notice of call for redemption of all Bonds shall be given in the manner provided in Section 3 hereof for the notice of call for redemption of the Project Bond. If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Holder or any Trustee or Paying Agents so as to be available therefor, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to the redemption date shall be void.

As provided herein, the Bonds shall be equally and ratably (a) payable solely from the Bond Account and the Pledged Receipts and (b) secured by the Mortgage, a pledge of and lien on the Pledged Receipts, and a conditional first assignment of the Prime Leases (as defined in the Loan Agreement). Anything in the Bond Legislation, the Bonds or any

Indenture to the contrary notwithstanding, neither the Bond Legislation, the Bonds, nor any Indenture, nor the Mortgage shall constitute a debt or a pledge of the faith and credit of the Issuer, and the Bonds shall contain on the face thereof a statement to that effect and that such Bonds are payable solely from the aforesaid Bond Account and Pledged Receipts pledged to their payment; provided, however, that nothing herein shall be deemed to prohibit the Issuer, of its own volition, from using to the extent lawfully authorized 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. In addition, the Bonds shall contain on the face thereof a statement to the effect that the holder of the Bonds shall have no recourse against the Developer or any of its partners in any action for payment of the Bonds except to the extent of their interest in the property conveyed by the Mortgage.

Section 5. Sale of Project Bond. The Project Bond is hereby sold and awarded to the Original Purchaser, in accordance with its offer therefor in the Bond Purchase Agreement, at a purchase price equal to the "Total Aggregate Disbursements at Final Disbursement Date". The Executive and the Fiscal Officer are authorized and directed to make on behalf of the Issuer the necessary arrangements with the Original Purchaser to establish the date, location, procedure

and conditions for the delivery of the Project Bond to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Project Bond under the terms of this Bond Legislation and the Bond Purchase Agreement. It is hereby determined that the price for and the terms of the Project Bond, and the sale thereof, all as provided in this Bond Legislation, are in the best interest of the Issuer and consistent with all legal requirements.

Section 6. Allocation of Proceeds of Project Bonds - Construction Loan Account. All of the sums from the sale of the Project Bond shall be disbursed as provided in Section 3 hereof from the Construction Loan Account and in accordance with the Bond Purchase Agreement.

There is hereby created by the Issuer and ordered maintained, in accordance with the Bond Purchase Agreement, as a separate account in the custody of the Original Purchaser an account in the name of the Issuer to be designated "City of Centerville--Centerville Associates Series A Construction Loan Account" (herein called the "Construction Loan Account").

Section 7. Source of Payment - Bond Account. As provided in the Loan Agreement, Loan Payments (as defined in the Loan Agreement), sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Developer directly to the Holder for the account of the Issuer and credited to the Bond Account.

There is hereby created by the Issuer and ordered maintained, in accordance with the Bond Purchase Agreement, as a separate account in the custody of the Holder, an account to be designated "City of Centerville--Centerville Associates Series A Revenue Bond Account" (herein called the "Bond Account"). The Bond Account is hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at maturity or by redemption, all as provided herein and in the Loan Agreement and in the Bond Purchase Agreement.

There shall be credited to the Bond Account, as and when received, (a) all Loan Payments specified in the Loan Agreement, and (b) all other Pledged Receipts and other moneys received by the Developer, Original Purchaser or the Issuer under the Loan Agreement, the Bond Purchase Agreement, the Mortgage, any conditional assignment of the Prime Lease or any Indenture which are required thereby to be paid into the Bond Account.

The Issuer hereby covenants and agrees that so long as any of the Bonds are outstanding it will deposit, or cause to be deposited or credited, in the Bond Account Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Bonds are outstanding, it will diligently and promptly proceed in good

faith and use its best efforts to cause the Project to be continuously and efficiently used as a revenue producing undertaking, and that, should there be a default under the Loan Agreement, the Issuer shall fully cooperate with the Holder to fully protect the rights and security of the Holder hereunder and shall diligently and promptly proceed in good faith and use its best efforts to secure another user for the Project to the end that at all times Pledged Receipts shall be derived sufficient in time and amount to pay the Bond service charges as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to operate the Project or to use or apply to the payment of Bond service charges any funds or revenues from any source other than Pledged Receipts.

Section 8. Additional Bonds. The Issuer, at the request of the Developer if the Developer is not then in default under the Loan Agreement, and with the prior written consent of the Holder, to the extent permitted by law, including the Act, then in effect and for purposes consistent with the Act:

- (a) shall to the extent reasonably deemed necessary by the Issuer to create or maintain the character or significance of the Project as furthering the purpose of the Act use its best efforts to issue Additional Bonds from time to time to provide for:
 - (i) completion of the Project, or
 - (ii) the acquisition for the Project of additional real estate or interests therein

within the boundaries of the Issuer, repairs to the Project of a major nature arising from casualty or unanticipated conditions, or the acquisition, construction, enlargement, improvement, equipping and furnishing of property to be used in connection with the Project and to be located on or adjacent to the Real Property as defined in the Loan Agreement, or any combination thereof, or

(iii) any combination of (i) and (ii), and

(b) may issue Additional Bonds from time to time to provide for:

(i) the acquisition for the Project of additional real estate or interests therein within the boundaries of the Issuer, or the acquisition, construction, enlargement, improvement, equipping and furnishing of property to be used in connection with the Project or any combination thereof, or

(ii) refunding outstanding Bonds, or

(iii) any combination of (i) and (ii), or

(iv) any combination of the purposes recorded in (i), (ii), and (iii) and in clause (a) hereof.

Provided that the proceeds of any Additional Bonds shall be used solely to pay permissible costs under the Act and that the issuance of such Additional Bonds shall not result in the interest on the Bonds outstanding immediately prior to such issuance becoming subject to federal tax. Such Additional Bonds shall be on a parity with the Project Bond and any Additional Bonds theretofore or thereafter issued. Before any Additional Bonds are authenticated or delivered there shall be delivered to the Holder or any appropriate trustee (a) an instrument conveying title to the Developer to any additional

real estate, interests therein or personal property acquired, or necessary, in connection with the portion of the Project to be financed from the proceeds of the Additional Bonds then to be authenticated, and a certificate of an architect that such real estate or interests therein together with other real estate or interests therein then owned by the Developer and constituting part of the Project is all of the real estate or interests therein necessary to the ownership and operation of the Project, and (b) any necessary amendment of the Loan Agreement to provide for (i) increased Loan Payments (as defined in the Loan Agreement) so that the aggregate of the Loan Payments thereafter payable under the Loan Agreement shall be sufficient in amount to make all required payments into the Bond Account in order to pay when due Bond service charges on all Bonds then to be outstanding, and for all Additional Payments (as defined in the Loan Agreement) by the Developer under the provisions of the Loan Agreement and Bond Legislation, and (ii) the loan by the Issuer to the Developer, and the inclusion with the term "Project" as defined in the Loan Agreement, of the real estate, interests therein and personal property to be financed from the proceeds of the Additional Bonds then to be authenticated.

Section 9. Covenants of Issuer. In addition to other covenants of the Issuer in this Bond Legislation, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges. The Issuer will, solely from the sources herein provided, pay or cause to be paid the Bond service charges on each and all Bonds on the dates, at the places and in the manner provided herein and in the Bonds and coupons, if any.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Bond Purchase Agreement, the Loan Agreement, any Indenture and in any and every Bond executed and delivered under this Bond Legislation, and in all other proceedings of its Legislative Authority pertaining to the Bond or the Loan Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Project Bond will be, duly authorized by the Constitution and laws of the State of Ohio, including particularly and without limitation the Act, to issue the Project Bond and to execute the Bond Purchase Agreement and the Loan Agreement, to provide the security for payment of the Bond Service Charges in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Project Bond and execution and delivery of the Bond Purchase Agreement and the Loan Agreement have been or will be duly and effectively taken; and that the Project Bond will be a valid and enforceable special obligation of the Issuer according to the terms thereof. Each provision

of the Bond Legislation and Project Bond is binding upon such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Project Bond is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty, specifically enjoined by law resulting from an office, trust, or station within the meaning of Section 2731.01 of the Ohio Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or to the Pledged Receipts shall at all times be open to inspection by such accountants or other agents of the Holder as the Holder may from time to time designate.

(d) Rights Under Loan Agreement. Any Trustee, in its name or in the name of the Issuer, or any Holder may, for and on behalf of the Bondholders, enforce all rights of the Issuer and all obligations of the Developer under and pursuant to the Loan Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(e) Maintenance of Loan Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part

under the Loan Agreement, and will take all actions within its authority to maintain the Loan Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate.

(f) Arbitrage Provisions. The Issuer will use its best efforts to restrict the use of the proceeds of the Project Bond in such manner and to expectations at the time the Project Bond is delivered to the Holder, so that they will not constitute arbitrage bonds under Section 103(c) of the Internal Revenue Code and the regulations prescribed under that section. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Project Bond, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Project Bond, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 103(c) and regulations thereunder. The Clerk of the Legislative Authority, or other appropriate officer of the Issuer, shall furnish to the Holder a true transcript of proceeding, certified by said Clerk or officer, of all proceedings had with reference to the issuance of the Project Bond along with such information for the records as is necessary to determine the regularity and validity of the issuance of said Bond.

Section 10. Loan Agreement. In order to better secure the payment of the Bond service charges as the same shall become due and payable, the Executive and Fiscal Officer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, a Loan Agreement in substantially the form submitted to this Legislative Authority, which is hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of said Loan Agreement by such officers.

Section 11. Bond Purchase Agreement. The Executive and Fiscal Officer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, a Bond Purchase Agreement in substantially the form submitted to this Legislative Authority, which is hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively

evidenced by the execution of said Bond Purchase Agreement by such officers.

Section 12. Determination Pursuant to Section 165.03, Ohio Revised Code. Pursuant to Section 165.03 of the Ohio Revised Code, the Legislative Authority hereby finds and determines that the Project is a "project" as defined in Chapter 165 of the Ohio Revised Code and is consistent with the provisions of Section 13 of Article VIII, Ohio Constitution.

Section 13. Sunshine Law. This Legislative Authority hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of its committees, if any, which resulted in formal action, were taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

Section 14. Prevailing Rates of Wages. All wages paid to laborers and mechanics employed on the Project shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates; provided that, if the Lessee undertakes, as a part of the Project, construction to be performed by its regular bargaining unit employees who are covered under a

collective bargaining agreement which was in existence prior to the date of passage of this Bond Legislation, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees.

Section 15. Election by Issuer. The Issuer hereby elects with respect to the Project Bonds to be within the limitation imposed by the provision of Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and the Executive Officer or Fiscal Officer is hereby authorized and directed to perform any and all acts and provide such information as may be required by the Secretary of the Treasury, his delegate, or the Internal Revenue Service in order to implement such election.

Section 16. Effective Date. This ordinance shall be effective from and after the earliest date permitted by law.

ADOPTED this 6th day of November, 1978

Attest:

Mari A. ...
Clerk of Council

Victor A. Green
Presiding Officer

CERTIFICATE

The undersigned Clerk of Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 56-78, duly adopted on the 6th day of November, 1978, and that such Ordinance No. 56-78 remains in full force and effect and has not been amended or rescinded as of this date.

November 6, 1978

Marvin J. W. [Signature]
Clerk of Council
City of Centerville, Ohio

ORDINANCE NO. 55-78

AN ORDINANCE AUTHORIZING THE ISSUANCE OF \$1,000,000 INDUSTRIAL DEVELOPMENT REVENUE BOND SERIES B, OF THE CITY OF CENTERVILLE, OHIO, FOR THE PURPOSE OF FINANCING A PORTION OF A "PROJECT" FOR CENTERVILLE ASSOCIATES, LTD.; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SAID BOND; AUTHORIZING A BOND PURCHASE AGREEMENT AND LOAN AGREEMENT APPROPRIATE FOR THE SECURITY OF SUCH REVENUES AND TO SECURE FURTHER THE PAYMENT OF SAID BOND.

WHEREAS, the City of Centerville (hereinafter called the "Issuer"), is a municipal corporation and political subdivision in and of the State of Ohio, and by virtue of the laws of the State, including Section 13 of Article VIII of the Ohio Constitution and Chapter 165 of the Ohio Revised Code, is authorized and empowered, among other things: (a) to loan funds to acquire and construct real and personal property comprising a commercial shopping center facility located within the boundaries of the Issuer, for use by Centerville Associates, Ltd., (b) to issue its revenue bonds for the purpose set forth herein, (c) to secure such revenue bonds by a pledge and assignment of revenues, as provided for herein, and (d) to enact this Bond Legislation and execute the Bond Purchase Agreement and the Loan Agreement hereinafter identified, upon the terms and conditions provided therein; and

WHEREAS, this Legislative Authority has heretofore found and determined, and does hereby confirm, that (a) the

property to be acquired and constructed with the proceeds of the Bonds herein authorized (hereinafter called the "Project") constitutes a "project" as defined in Section 165.01 of the Ohio Revised Code, (b) that the utilization of the Project for such purpose by Centerville Associates, Ltd. is economically sound and will benefit the people of the Issuer by creating jobs and employment opportunities and improving the economic welfare of the people of the Issuer, and (c) that said Project will not be required by the Issuer for its other public purposes; and

WHEREAS, it is determined by this Legislative Authority that the amount necessary to finance the costs of or related to the acquisition and construction of the Project, including the financing thereof, will require the issuance, sale and delivery of Project Bonds in a maximum principal amount of \$3,400,000, which will be issued in two series, Series A and B, each series to be issued pursuant to a separate ordinance, and hereafter may require the Issuer's best efforts to issue, sell and deliver Additional Bonds on a parity therewith, all of which Bonds shall be equally and ratably payable and secured as provided herein;

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE hereby Ordains:

Section 1. Definitions. In addition to the words and terms elsewhere defined in this Bond Legislation, the following

words and terms as used in this Bond Legislation shall have the following meanings unless the context or use clearly indicates another of different meaning or intent:

"Act" means, collectively, Section 13 of Article VIII of the Ohio Constitution, and Chapter 165 of the Ohio Revised Code.

"Additional Bonds" means Bonds of the Issuer issued under Section 8 of this Bond Legislation.

"Bond" or "Bonds" means the Project Bond (Series B) and Additional Bonds.

"Bond Account" means the Bond Account created by Section 7 hereof.

"Bondholder" or "Holder" or "holder of Bonds" means The First National Bank, Dayton, Ohio, or any other subsequent financial institutions or insurance companies holding the Bonds.

"Bond Legislation" means this Ordinance, except that when used with reference to an issue of Additional Bonds it shall mean this Bond Legislation to the extent applicable and the other legislation providing for the issuance of such Additional Bonds, and except that when used with reference to Bonds when Additional Bonds are outstanding it shall mean this Bond Legislation and the Bond Legislation providing for the issuance of Additional Bonds, all as the same may from time to time be lawfully amended, modified or supplemented.

"Bond Purchase Agreement" means the Agreement authorized in Section 11 hereof.

"Bond Service Charges" means the principal, interest, and redemption premium, if any, required to be paid by the Issuer on the Bonds.

"Construction Loan Account" means the Construction Loan Account created by Section 6 hereof.

"Cumulative Aggregate Disbursements to Date" means the cumulative total sum of disbursements at any time noted on the Bond.

"Developer" means Centerville Associates, Ltd., an Ohio limited partnership and its successors and assigns.

"Disbursement" or "Disbursements" means the authorized payments by the Original Purchaser from the proceeds of the sale of the Project Bond from the Construction Loan Account as provided in the Loan Agreement and aggregated and listed on the schedules attached to the Project Bond.

"Executive" means the City Manager of the Issuer.

"Final Disbursement Date" means May 31, 1979, or, if the Project Bond has not been purchased at that time by The Life Insurance Company of Virginia, then November 30, 1979.

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

"Fixed Maturity Date" means June 1, 1999, or, if the Bond becomes taxable for Federal income tax purposes, June 1, 2004.

"Indenture" means any future Indenture between the Issuer and a Trustee.

"Issuer" means the City of Centerville, a municipal corporation and political subdivision in and of the State of Ohio.

"Loan" means the loan by the Issuer to the Developer of the proceeds of the sale of the Project Bond as the same may hereafter be increased from the proceeds from the sale of Additional Bonds.

"Loan Agreement" means the instrument, executed by and between the Issuer and the Developer and dated as of December 1, 1978, as the same may be duly amended, modified or supplemented in accordance with the provisions thereof.

"Legal Officer" means the Municipal Attorney of the Issuer.

"Legislative Authority" means the City Council of the Issuer.

"Mortgage" means a second mortgage of the Project to the Original Purchaser securing the Project Bonds.

"Original Purchaser" means The First National Bank, Dayton, Ohio.

"Outstanding Bonds" or "Bonds outstanding" or "outstanding" as applied to Bonds, means, as of any date, all Bonds which have been delivered, or are then being delivered, under this Bond Legislation except:

- (a) Bonds surrendered for and replaced upon exchange or transfer, or cancelled because of payment or redemption, at or prior to such date;

- (b) Bonds for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to such date into a Bond Account (whether upon or prior to the maturity or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of this Bond Legislation; provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements in accordance with this Bond Legislation shall have been made therefor, or waiver of such notice shall have been provided for; and
- (c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement).

"Paying Agents" means any banks or trust companies designated as the future paying agencies or places of payment for Bonds or coupons, if any, by or pursuant to the applicable Bond Legislation, and their successors designated pursuant to any applicable Bond Legislation.

"Person" means natural persons, partnerships, firms, associations, corporations and public bodies.

"Pledged Receipts" means the loan payments, rentals, revenues and other income, charges and moneys derived by the Issuer from the use, lease, sale or other disposition of the Project and required by the Bond Legislation to be credited to the Bond Account or by the Loan Agreement to be deposited or credited to in any other fund or account.

"Prime Leases" means the leases of the Project to the Prime Lessees.

"Prime Lessees" means any lessee of the Project occupying 10% or more of the floor space of the Project or paying 10% or more of the gross annual rent received by the Developer with respect to the Project.

"Project" means the real, personal, or real and personal, property identified in Exhibits B and C to the Loan Agreement, or in or pursuant to any amendments thereof or acquired, constructed or installed as a replacement or substitution therefor or addition thereto, and together constituting a "project" as defined in the Act.

"Project Bonds" means the Industrial Development Revenue Bonds authorized in Section 2 hereof.

"Project Purpose" means a facility initially to be used as a commercial shopping center facility, and such subsequent or related uses as are permitted by the Loan Agreement.

"Registered Bonds" means Bonds registered in the name of the Holder, and "fully registered Bonds" means Bonds without coupons registered as to both principal and interest.

"State" means the State of Ohio.

"Total Aggregate Disbursements at Final Disbursement Date" means the sum of "Total Aggregate Disbursements at Final Disbursement Date" without deduction of any payments of principal or interest on the Project Bond all as reflected on the Disbursement Schedule attached to the Project Bond.

"Trustee" means the Trustee at the time under any future Indenture.

Any reference herein to the Issuer, to the Legislative Authority, or to any officers thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions. Any reference to a section or provision of the Ohio Constitution or to a section, provision or chapter of the Ohio Revised Code shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented, or superseded, provided that no such amendment, modification, revision, supplementation, or supersession shall alter the obligation to pay the Bond service charges in the amount and manner, at the times, and from the sources provided in any Bond Legislation and any Indenture, except as otherwise herein permitted.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation.

Section 2. Authorization of Project Bond. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, \$1,000,000 maximum principal amount of a Project Bond in the maximum amount of \$1,000,000 in the form of Exhibit A hereto (except as to insubstantial additions to the attached Disbursement Schedule)

for the purpose of providing funds to pay part of the costs of acquiring and constructing the Project, to be used for the Project Purpose by the Developer. Said Project Bonds shall be designated "Industrial Development Revenue Bond, Series B (Centerville Associates, Ltd., Project)". The Issuer may also issue, sell and deliver Additional Bonds on a parity with the Project Bond for the purposes and in the manner provided in Section 8 of this Bond Legislation.

Section 3. Terms of Project Bond. The Project Bond shall be issued in fully registered form in the name of the Original Purchaser, shall be numbered R-1, shall be in the form of Exhibit A hereto, and shall mature on the Fixed Maturity Date subject to all provisions for amortization and redemption. The Project Bond shall be assignable only to a financial institution as defined by Section 1726.01 of the Ohio Revised Code, or to an insurance company as defined by Section 3903.02(A) of the Ohio Revised Code or any successor Sections thereto or to any other person or entity so long as the assignment to such person or entity does not violate Federal or state securities laws, and only on or after the Final Disbursement Date and shall be a negotiable instrument as provided in Section 165.03 of the Ohio Revised Code.

The total actual principal amount of the Project Bond shall be equal to the "Total Aggregate Disbursements at Final Disbursement Date" as hereinafter provided: each Disbursement

from the Construction Loan Account shall be listed and aggregated by the Original Purchaser in accordance with the disbursement schedule attached to the Project Bond. The Original Purchaser is hereby authorized to make such Disbursements until the Final Disbursement Date.

Interest on the Project Bond prior to the Final Disbursement Date shall be paid at the rate of eighty percent (80%) if the prime rate of interest charged by The First National Bank, Dayton, Ohio, in its capacity as a commercial lender, computed and paid upon the applicable amount of "Cumulative Aggregate Disbursements to Date" payable on the last day of each month commencing December 31, 1978. Such prime rate of interest shall be adjusted montly as of the last day of the month and such adjusted rate shall apply to the payment due as of the last day of the next succeeding month.

Interest on the Project Bond after the Final Disbursement Date shall be paid at the rate of seven and three-eighths per centum (7-3/8%) per annum, computed and paid upon the Total Aggregate Disbursements at Final Disbursement Date on the first day of the second month after which the Final Disbursement occurs, and thereafter as to each Loan Payment Date interest shall be computed through the end of the month in which the Loan Payment Date occurs on the unpaid principal balance of the Bond as of the end of the preceding month until payment of the principal amount of "Total Aggregate

Disbursements at Final Disbursement Date" has been made or provided for. Principal thereon in the amount of "Total Aggregate Disbursements at Final Disbursement Date", shall be paid on the first of each month commencing upon the first day of the second month after the "Final Disbursement Date"; upon commencement of such payments of principal, payments of such principal and interest together shall be made on the first of each month in 240 monthly installments with the first 239 installments to be in the amount of \$ 1,979.68, and the final installment to be in the amount of the then remaining unpaid balance of principal and interest and unreimbursed advances, if any, until payment of such principal has been made or provided for on or by the Fixed Maturity Date.

If at any time for any reason, a final determination is made that the Holder is required to treat any payment of interest or part thereof on the Project Bond as subject to Federal tax imposed upon or measured by income (except solely as the result of the Holder's own action or inaction), the interest rate on the Project Bond with respect to all payments as to which the Holder is so required to treat as subject to such Federal tax shall be increased to nine and three-quarters per centum per annum (9-3/4%). In the event the interest rate on the Project Bond shall be so increased, the monthly installments of principal and interest payable thereon shall be increased so as to fully amortize the outstanding principal

amount of such Bond over a twenty-five year term instead of the original twenty-year term. A "final determination" shall be deemed to have occurred upon the receipt by the holder of the Project Bond of a ruling or technical advice by the Internal Revenue Service in which the Developer has participated or has had the opportunity to participate, or a written opinion of bond counsel acceptable to both the Developer and the Holder of the Project Bond.

The Bond is callable for redemption in whole in the event of the exercise by the Developer to prepay all of the Loan as provided in Sections 11.2(a) and (b) of the Loan Agreement. This Bond is also callable in whole at the following redemption prices (expressed as percentages of the principal amount thereof), plus accrued interest to the redemption date: on or after June 1, 1990, but prior to June 1, 1991 at 103%; on or after June 1, 1991, but prior to June 1, 1992 at 102%; on or after June 1, 1992 but prior to final maturity at 101%. The Bond is also subject to redemption in whole in the event that the Developer is obligated to prepay the Loan as provided in Section 11.3 of the Loan Agreement.

The Bond is also subject to mandatory redemption in whole on November 30, 1979, at the option of the holder of the Bond at the redemption price of 100% of the principal amount thereof, plus accrued interest to the redemption date in the event that the Bond has not been purchased by The Life Insurance Company of Virginia.

If the Project Bond shall be redeemed, notice of the call for redemption of the Project Bond, identifying the Project Bond, the redemption price to be paid, the date fixed for redemption shall be given by the Developer on behalf of the Issuer by mailing a copy of a redemption notice by first class mail at least thirty (30) days prior to the date fixed for redemption to the Holder; provided, however, that failure to give such notice by mailing, or any defect in such notice, shall not affect the validity of any proceedings for the redemption of the Project Bonds.

Bond Service Charges on the Project Bond shall be payable, without deduction for services of any paying agent, at the principal office of the Holder, by check or draft.

The Project Bond shall be executed on behalf of the Issuer by its Executive and Fiscal Officer, and the corporate seal of the Issuer shall be affixed thereto.

Section 4. Terms of All Bonds. All Bonds shall bear such designations as may be necessary to distinguish them from Bonds of any other series. Bond service charges on all Bonds shall be payable in lawful money of the United States of America. Subject to provisions of the applicable Bond Legislation, Bonds shall be issued as coupon Bonds registrable as to principal or as fully registered Bonds, and may be exchanged as between forms, all as may be provided in any Indenture. All Bonds shall be negotiable instruments as

provided in Section 165.03 of the Act, and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law. All Bonds and coupons shall be executed in the manner provided by the applicable law in effect at the time of their issuance. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds or coupons, if any, shall cease to be such officer before the issuance, authentication or delivery of such Bonds or coupons, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until that time.

Unless otherwise provided in the Bond Legislation authorizing the issuance of Additional Bonds, notice of call for redemption of all Bonds shall be given in the manner provided in Section 3 hereof for the notice of call for redemption of the Project Bond. If Bonds or portions of fully registered Bonds are duly called for redemption and if on such redemption date moneys for the redemption of all the Bonds to be redeemed, together with accrued interest to the redemption date, shall be held by the Holder or any Trustee or Paying Agents so as to be available therefor, then from and after such redemption date such Bonds or portions of fully registered Bonds shall cease to bear interest and any coupons for interest thereon maturing subsequent to the redemption date shall be void.

As provided herein, the Bonds shall be equally and ratably (a) payable solely from the Bond Account and the Pledged Receipts and (b) secured by the Mortgage (which is a second mortgage), a subordinated pledge of and lien on the Pledged Receipts, and a conditional subordinated assignment of the Prime Leases (as defined in the Loan Agreement). Anything in the Bond Legislation, the Bonds or any Indenture to the contrary notwithstanding, neither the Bond Legislation, the Bonds, nor any Indenture, nor the Mortgage shall constitute a debt or a pledge of the faith and credit of the Issuer, and the Bonds shall contain on the face thereof a statement to that effect and that such Bonds are payable solely from the aforesaid Bond Account and Pledged Receipts pledged to their payment; provided, however, that nothing herein shall be deemed to prohibit the Issuer, of its own volition, from using to the extent lawfully authorized 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. In addition, the Bonds shall contain on the face thereof a statement to the effect that the holder of the Bonds shall have no recourse against the Developer or any of its partners in any action for payment of the Bonds except to the extent of their interest in the property conveyed by the Mortgage.

Section 5. Sale of Project Bond. The Project Bond is hereby sold and awarded to the Original Purchaser, in accordance with its offer therefor in the Bond Purchase Agreement, at a purchase price equal to the "Total Aggregate Disbursements at Final Disbursement Date". The Executive and the Fiscal Officer are authorized and directed to make on behalf of the Issuer the necessary arrangements with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Project Bond to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Project Bond under the terms of this Bond Legislation and the Bond Purchase Agreement. It is hereby determined that the price for and the terms of the Project Bond, and the sale thereof, all as provided in this Bond Legislation, are in the best interest of the Issuer and consistent with all legal requirements.

Section 6. Allocation of Proceeds of Project Bonds - Construction Loan Account. All of the sums from the sale of the Project Bond shall be disbursed as provided in Section 3 hereof from the Construction Loan Account and in accordance with the Bond Purchase Agreement.

There is hereby created by the Issuer and ordered maintained, in accordance with the Bond Purchase Agreement, as a separate account in the custody of the Original Purchaser an

account in the name of the Issuer to be designated "City of Centerville--Centerville Associates Series B Construction Loan Account" (herein called the "Construction Loan Account").

Section 7. Source of Payment - Bond Account. As provided in the Loan Agreement, Loan Payments (as defined in the Loan Agreement), sufficient in time and amount to pay the Bond Service Charges as they come due, are to be paid by the Developer directly to the Holder for the account of the Issuer and credited to the Bond Account.

There is hereby created by the Issuer and ordered maintained, in accordance with the Bond Purchase Agreement, as a separate account in the custody of the Holder, an account to be designated "City of Centerville--Centerville Associates Series A Revenue Bond Account" (herein called the "Bond Account"). The Bond Account is hereby pledged to and shall be used solely and exclusively for the payment of Bond Service Charges as they fall due at maturity or by redemption, all as provided herein and in the Loan Agreement and in the Bond Purchase Agreement.

There shall be credited to the Bond Account, as and when received, (a) all Loan Payments specified in the Loan Agreement, and (b) all other Pledged Receipts and other moneys received by the Developer, Original Purchaser or the Issuer under the Loan Agreement, the Bond Purchase Agreement, the Mortgage, any conditional assignment of the Prime Lease or any

Indenture which are required thereby to be paid into the Bond Account.

The Issuer hereby covenants and agrees that so long as any of the Bonds are outstanding it will deposit, or cause to be deposited or credited, in the Bond Account Pledged Receipts sufficient in time and amount to pay the Bond Service Charges as the same become due and payable, and to this end the Issuer covenants and agrees that, so long as any Bonds are outstanding, it will diligently and promptly proceed in good faith and use its best efforts to cause the Project to be continuously and efficiently used as a revenue producing undertaking, and that, should there be a default under the Loan Agreement, the Issuer shall fully cooperate with the Holder to fully protect the rights and security of the Holder hereunder and shall diligently and promptly proceed in good faith and use its best efforts to secure another user for the Project to the end that at all times Pledged Receipts shall be derived sufficient in time and amount to pay the Bond service charges as the same become due and payable. Nothing herein shall be construed as requiring the Issuer to operate the Project or to use or apply to the payment of Bond service charges any funds or revenues from any source other than Pledged Receipts.

Section 8. Additional Bonds. The Issuer, at the request of the Developer if the Developer is not then in default under the Loan Agreement, and with the prior written

consent of the Holder, to the extent permitted by law, including the Act, then in effect and for purposes consistent with the Act:

- (a) shall to the extent reasonably deemed necessary by the Issuer to create or maintain the character or significance of the Project as furthering the purpose of the Act use its best efforts to issue Additional Bonds from time to time to provide for:
 - (i) completion of the Project, or
 - (ii) the acquisition for the Project of additional real estate or interests therein within the boundaries of the Issuer, repairs to the Project of a major nature arising from casualty or unanticipated conditions, or the acquisition, construction, enlargement, improvement, equipping and furnishing of property to be used in connection with the Project and to be located on or adjacent to the Real Property as defined in the Loan Agreement, or any combination thereof, or
 - (iii) any combination of (i) and (ii), and
- (b) may issue Additional Bonds from time to time to provide for:
 - (i) the acquisition for the Project of additional real estate or interests therein within the boundaries of the Issuer, or the acquisition, construction, enlargement, improvement, equipping and furnishing of property to be used in connection with the Project or any combination thereof, or
 - (ii) refunding outstanding Bonds, or
 - (iii) any combination of (i) and (ii), or
 - (iv) any combination of the purposes recorded in (i), (ii), and (iii) and in clause (a) hereof.

Provided that the proceeds of any Additional Bonds shall be used solely to pay permissible costs under the Act and that the issuance of such Additional Bonds shall not result in the interest on the Bonds outstanding immediately prior to such issuance becoming subject to federal tax. Such Additional Bonds shall be on a parity with the Project Bond and any Additional Bonds theretofore or thereafter issued. Before any Additional Bonds are authenticated or delivered there shall be delivered to the Holder or any appropriate trustee (a) an instrument conveying title to the Developer to any additional real estate, interests therein or personal property acquired, or necessary, in connection with the portion of the Project to be financed from the proceeds of the Additional Bonds then to be authenticated, and a certificate of an architect that such real estate or interests therein together with other real estate or interests therein then owned by the Developer and constituting part of the Project is all of the real estate or interests therein necessary to the ownership and operation of the Project, and (b) any necessary amendment of the Loan Agreement to provide for (i) increased Loan Payments (as defined in the Loan Agreement) so that the aggregate of the Loan Payments thereafter payable under the Loan Agreement shall be sufficient in amount to make all required payments into the Bond Account in order to pay when due Bond service charges on all Bonds then to be outstanding, and for all Additional

Payments (as defined in the Loan Agreement) by the Developer under the provisions of the Loan Agreement and Bond Legislation, and (ii) the loan by the Issuer to the Developer, and the inclusion with the term "Project" as defined in the Loan Agreement, of the real estate, interests therein and personal property to be financed from the proceeds of the Additional Bonds then to be authenticated.

Section 9. Covenants of Issuer. In addition to other covenants of the Issuer in this Bond Legislation, the Issuer further covenants and agrees as follows:

(a) Payment of Bond Service Charges. The Issuer will, solely from the sources herein provided, pay or cause to be paid the Bond service charges on each and all Bonds on the dates, at the places and in the manner provided herein and in the Bonds and coupons, if any.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, the Bond Purchase Agreement, the Loan Agreement, any Indenture and in any and every Bond executed and delivered under this Bond Legislation, and in all other proceedings of its Legislative Authority pertaining to the Bond or the Loan Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Project Bond will be, duly authorized by the Constitution and

laws of the State of Ohio, including particularly and without limitation the Act, to issue the Project Bond and to execute the Bond Purchase Agreement and the Loan Agreement, to provide the security for payment of the Bond Service Charges in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Project Bond and execution and delivery of the Bond Purchase Agreement and the Loan Agreement have been or will be duly and effectively taken; and that the Project Bond will be a valid and enforceable special obligation of the Issuer according to the terms thereof. Each provision of the Bond Legislation and Project Bond is binding upon such officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Project Bond is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty, specifically enjoined by law resulting from an office, trust, or station within the meaning of Section 2731.01 of the Ohio Revised Code, providing for enforcement by writ of mandamus.

(c) Inspection of Project Books. All books and documents in the Issuer's possession relating to the Project or to the Pledged Receipts shall at all times be open to inspection by such accountants or other agents of the Holder as the Holder may from time to time designate.

(d) Rights Under Loan Agreement. Any Trustee, in its name or in the name of the Issuer, or any Holder may, for and on behalf of the Bondholders, enforce all rights of the Issuer and all obligations of the Developer under and pursuant to the Loan Agreement, whether or not the Issuer is in default of the pursuit or enforcement of such rights and obligations.

(e) Maintenance of Loan Agreement. The Issuer shall do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the Loan Agreement, and will take all actions within its authority to maintain the Loan Agreement in effect in accordance with the terms thereof and to enforce and protect the rights of the Issuer thereunder, including actions at law and in equity, as may be appropriate.

(f) Arbitrage Provisions. The Issuer will use its best efforts to restrict the use of the proceeds of the Project Bond in such manner and to expectations at the time the Project Bond is delivered to the Holder, so that they will not constitute arbitrage bonds under Section 103(c) of the Internal Revenue Code and the regulations prescribed under that section. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Project Bond, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for

inclusion in the transcript of proceedings for the Project Bond, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 103(c) and regulations thereunder. The Clerk of the Legislative Authority, or other appropriate officer of the Issuer, shall furnish to the Holder a true transcript of proceeding, certified by said Clerk or officer, of all proceedings had with reference to the issuance of the Project Bond along with such information for the records as is necessary to determine the regularity and validity of the issuance of said Bond.

Section 10. Loan Agreement. In order to better secure the payment of the Bond service charges as the same shall become due and payable, the Executive and Fiscal Officer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, a Loan Agreement in substantially the form submitted to this Legislative Authority, which is hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of said Loan Agreement by such officers.

Section 11. Bond Purchase Agreement. The Executive and Fiscal Officer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, a Bond Purchase Agreement in substantially the form submitted to this Legislative Authority, which is hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of said Bond Purchase Agreement by such officers.

Section 12. Determination Pursuant to Section 165.03, Ohio Revised Code. Pursuant to Section 165.03 of the Ohio Revised Code, the Legislative Authority hereby finds and determines that the Project is a "project" as defined in Chapter 165 of the Ohio Revised Code and is consistent with the provisions of Section 13 of Article VIII, Ohio Constitution.

Section 13. Sunshine Law. This Legislative Authority hereby finds and determines that all formal actions relative to the adoption of this resolution were taken in an open meeting of this Legislative Authority, and that all deliberations of this Legislative Authority and of its committees, if any, which resulted in formal action, were taken in meetings open to the

public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

Section 14. Prevailing Rates of Wages. All wages paid to laborers and mechanics employed on the Project shall be paid at the prevailing rates of wages of laborers and mechanics for the class of work called for by the Project, which wages shall be determined in accordance with the requirements of Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates; provided that, if the Lessee undertakes, as a part of the Project, construction to be performed by its regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the date of passage of this Bond Legislation, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees.

Section 15. Election by Issuer. The Issuer hereby elects with respect to the Project Bonds to be within the limitation imposed by the provision of Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and the Executive Officer or Fiscal Officer is hereby authorized and directed to perform any and all acts and provide such information as may be required by the Secretary of the Treasury, his delegate, or the Internal Revenue Service in order to implement such election.

Section 16. Effective Date. This ordinance shall be effective from and after the earliest date permitted by law.

ADOPTED this 6th day of November, 1978

Attest:

Marilyn M. ...
Clerk of Council

Victor A. Heer
Presiding Officer

CERTIFICATE

The undersigned Clerk of Council of the City of Centerville, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 55-78, duly adopted on the 6th day of November, 1978, and that such Ordinance No. 55-78 remains in full force and effect and has not been amended or rescinded as of this date.

November 6, 1978

Marilyn M. ...
Clerk of Council
City of Centerville, Ohio