

ORDINANCE NO. C-06

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$8,000,000 VARIABLE RATE DEMAND INDUSTRIAL DEVELOPMENT REVENUE BONDS, SERIES 2006 (AMERICAN WEATHER-SEAL PROJECT) OF THE CITY OF ORRVILLE, OHIO; AUTHORIZING THE ISSUANCE OF BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT AND INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT AND OFFICIAL STATEMENT; AUTHORIZING A TAX REGULATORY AGREEMENT; AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Orrville, Ohio (the "Issuer"), by virtue of the laws of the State of Ohio, including Article VIII, Section 13 of the Constitution of Ohio and Chapter 165 of the Ohio Revised Code, is authorized and empowered among other things (a) to make loans to assist in the acquisition, construction, equipping and installation of an industrial manufacturing facility, within the boundaries of the Issuer, (b) to issue and sell its revenue bonds to provide moneys for such loan and (c) to enact this ordinance and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, the Issuer's Community Improvement Corporation ("CIC") has certified to the Issuer that the Project is in accordance with the plan for the industrial, commercial, distribution and research development of the Issuer heretofore prepared and approved by the CIC and confirmed by the Issuer pursuant to Chapter 165 and Section 1724.10, Ohio Revised Code; and

WHEREAS, this Issuing Authority has, based on the representations of the Borrower (as defined below), determined and does hereby confirm that the Project, consisting of the acquisition, construction, equipping and installation of a vinyl window manufacturing facility and related equipment to be located on a twenty-five acre parcel of land just south of Lot 59-1379 in Orrville, Ohio, Wayne County, Ohio, will create or preserve jobs and employment opportunities and will promote the economic welfare of the people of the State of Ohio, and those of the Issuer, through the issuance of revenue bonds in the aggregate principal amount not to exceed \$8,000,000 (the "Series 2006 Bonds") and will be acting in the manner consistent with and in furtherance of the provisions of the laws of the State of Ohio, particularly Article VIII, Section 13 of the Constitution of the State of Ohio and Chapter 165 of the Ohio Revised Code, as amended (the "Act");

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Orrville, Ohio, as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Indenture of Trust with respect to the Series 2006 Bonds (the "Indenture") between the Issuer and LaSalle Bank National Association and its successors in trust, as trustee (the "Trustee"), a substantially final form of which is on file with this Council.

Any reference herein to the Issuer, or to any officers or members 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.

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. Determination of Issuer. Pursuant to Section 165.03 of the Act, and based upon the representations of the Borrower, this Issuing Authority hereby finds and determines that the Project is a "project" as defined in the Act, and is consistent with the provisions of the Section 13 of Article VIII, Ohio Constitution. This Issuing Authority hereby further determines that the Issuer shall and does hereby elect to have the provisions as to the \$10,000,000 limit in Section 144 (a)(4) of the Internal Revenue Code of 1986, as amended (the "Code"), apply to the Series 2006 Bonds.

Section 3. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Series 2006 Bonds for the purposes of acquiring, constructing, equipping and installing the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Loan Agreement (the "Agreement") between the Issuer and American Weather-Seal Company, an Iowa corporation (the "Borrower"). The Series 2006 Bonds shall be designated "Variable Rate Demand Industrial Development Revenue Bonds, Series 2006 (American Weather-Seal Company Project)". The maximum amount of Series 2006 Bonds to be outstanding at any one time is \$8,000,000. The Issuer may also issue, sell and deliver Additional Bonds on a parity with the Series 2006 Bonds for the purposes and in the manner provided in the Indenture.

Section 4. Terms and Execution of the Bonds. The Series 2006 Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Series 2006 Bonds shall mature as provided in the Indenture, and have such terms, bear such interest (not to exceed 15% per annum), and be subject to mandatory and optional redemption as provided in the Indenture. This Issuing Authority hereby directs the Remarketing Agent to fix and establish the interest rate in effect from time to time on the Series 2006 Bonds in the manner and pursuant to the provisions of the Indenture. The Series 2006 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of its Mayor and Director of Finance. In case any officer whose signature or a facsimile thereof shall appear on the Series 2006 Bonds shall cease to be such officer before the issuance or delivery of the Series 2006 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Series 2006 Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, in an aggregate principal amount of not to exceed \$8,000,000, shall represent the approved form of Series 2006 Bonds of the Issuer.

Section 5. Sale of the Bonds. The Series 2006 Bonds are being purchased pursuant to Bond Purchase Agreement and hereby awarded, at the purchase price set forth, and on the terms and conditions described, in the Bond Purchase Agreement with respect to the Series 2006 Bonds (the "Purchase Agreement") among the Issuer, the Borrower and the Underwriter (as defined in the Agreement). The City Council members of the Issuing Authority, the Mayor, the Director of Finance and the Clerk of the Issuing Authority are authorized and directed to make on behalf of the Issuer the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Series 2006 Bonds to the Underwriter, and to take all steps necessary to effect due execution and delivery to the Underwriter of the Series 2006 Bonds (or temporary bonds delivered in lieu of definitive Series 2006 Bonds until their preparation and delivery can be effectuated) under the terms of this Bond Legislation, the Purchase Agreement, the Agreement and the Indenture. It is hereby determined that the price for and the terms of the Series 2006 Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the Issuer and consistent with all legal requirements.

Section 6. Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Series 2006 Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Series 2006 Bonds are delivered to the Underwriter, so that they will not constitute arbitrage bonds under Section 148 of the Code. The Director of Finance or any other officer having responsibility with respect to the issuance of the Series 2006 Bonds, is authorized and directed, alone or in conjunction with the Borrower or any officer, employee, consultant or agent of the Borrower, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2006 Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder. In its performance of these covenants, and other covenants of the Issuer pertaining to federal income tax laws, the Issuer may rely upon the written advice of nationally recognized bond counsel which is provided to the Borrower and to the Trustee.

Section 7. Authorization of Agreement, Indenture, Tax Regulatory Agreement, Bond Purchase Agreement, Official Statement and All Other Documents to be Executed by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Series 2006 Bonds as the same shall become due and payable, the Mayor and the Director of Finance are authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Indenture, Agreement, Tax Regulatory Agreement and Bond Purchase Agreement in substantially the forms submitted to the Issuer, 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 such

Indenture, Agreement, Tax Regulatory Agreement and Bond Purchase Agreement by such officers.

The Issuer consents to the use and distribution of a draft Official Statement and a final Official Statement relating to the original issuance of the Series 2006 Bonds, substantially in the form of the Official Statement on file with this Council with changes therein to reflect the terms of the Series 2006 Bonds established by this Bond Legislation and the Indenture, and any amendments thereof or supplements thereto.

The Issuer has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any statements in the Official Statement or any amendments thereof or supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Underwriter, the Project, the Borrower or LaSalle Bank National Association (the "Bank"), or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or the Bank or contained otherwise in the Official Statement.

Each City Council member of the Issuing Authority, the Mayor and the Director of Finance are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams LLP, as Bond Counsel, in the form approved by the Director of Law, in order to effect the issuance of the Series 2006 Bonds and the intent of this Bond Legislation. The Clerk of the Issuing Authority, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Series 2006 Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Series 2006 Bonds.

Section 8. 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 Principal, Premium and Interest. The Issuer will, solely from the sources herein or in the Indenture provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Series 2006 Bonds on the dates, at the places and in the manner provided herein, in the Indenture and in the Series 2006 Bonds.

(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 Series 2006 Bonds, the Agreement, Tax Regulatory Agreement, the Bond Purchase Agreement and Indenture, and in all proceedings of the Issuer pertaining to the Series 2006 Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Series 2006 Bonds will be, duly authorized by the laws of the State of Ohio, including particularly and without limitation the Act, to issue the Series 2006 Bonds and to execute the Agreement, the Indenture, the Tax Regulatory Agreement and the Bond Purchase Agreement, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Series 2006 Bonds in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Series 2006 Bonds and execution and delivery of the Agreement, the Indenture, the Tax Regulatory

Agreement, the Bond Purchase Agreement and all other documents to be executed by it in connection with the issuance of the Series 2006 Bonds, have been or will be duly and effectively taken; and that the Series 2006 Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, the Indenture, the Agreement, the Tax Regulatory Agreement, the Bond Purchase Agreement and each Series 2006 Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Series 2006 Bonds, is binding upon each 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 Series 2006 Bonds 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 and 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.

Section 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Legislation, or in any Series 2006 Bond, or in the Agreement, the Indenture, the Tax Regulatory Agreement or the Bond Purchase Agreement, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Series 2006 Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Series 2006 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Series 2006 Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2006 Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, the Indenture, the Tax Regulatory Agreement, the Bond Purchase Agreement and the issuance of the Series 2006 Bonds.

Section 10. No Debt or Tax Pledge. Anything in this Bond Legislation, the Indenture, the Series 2006 Bonds or any other agreement or instrument to the contrary notwithstanding, neither this Bond Legislation, the Series 2006 Bonds, the Indenture, the Agreement nor the Bond Purchase Agreement shall represent or constitute a debt or pledge of the faith and credit of the taxing power of the Issuer, and each Series 2006 Bond shall contain on the face thereof a statement to that effect. Nothing herein shall be deemed to prohibit the Issuer, of its own volition, from using, to the extent it may be lawfully authorized to do so, any other resources or revenues for the fulfillment of any of the terms, conditions or obligations of the Indenture, this Bond Legislation or the Series 2006 Bonds.

Section 11. Section 147(f) of the Code. That this Council, as the “applicable elected representative” of the City of Orrville, Ohio for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds in one or more series in an aggregate principal amount not to exceed \$8,000,000 pursuant to the Act. The Project will be located on a twenty-five acre parcel of land just south of Lot 59-1379 in Orrville, Ohio. The proceeds of the Bonds will be used to

finance a portion of the cost of the acquisition, construction, equipping and installation of the Project, which will be a building and other improvements on real estate to be a vinyl window manufacturing facility. The initial owner, operator or manager of the Project is American Weather-Seal Company.

Section 12. Prevailing, Rates of Wages. All laborers and mechanics employed on the Project shall be paid at the prevailing rates of wages of laborers and mechanics for the classes 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 Borrower or other non-public user beneficiary of the Project undertakes, as a part of the Project, acquisition, construction, rehabilitation, equipping and installation to be performed by their regular bargaining unit employees who are covered under a collective bargaining agreement which was in existence prior to the commitment instrument undertaking to issue the Series 2006 Bonds, the rate of pay provided under the applicable collective bargaining agreement may be paid to such employees.

Section 13. Severability. If any section, paragraph or provision of this Bond Legislation shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Bond Legislation.

Section 14. Sunshine Law. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation were taken in an open meeting of this Issuer, and that all deliberations of this Issuing Authority and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with the law, including Section 121.22, Ohio Revised Code.

Section 15. Emergency Clause. This Bond Legislation is hereby declared to be an emergency measure for the immediate preservation of the public peace, health, safety and general welfare of the inhabitants of the Issuer, the emergency being the urgent necessity of assisting the Borrower to proceed with the Project, thereby creating or preserving jobs, increasing tax revenues of the Issuer and contributing to the economic welfare of the Issuer; wherefore, this Bond Legislation shall take effect and be in force immediately upon its passage by this Council.

PASSED this _____ day of _____ 2006.

ATTEST

SIGNED

Michelle Hedberg
Clerk of Council

David Handwerk
President of Council

APPROVED AS TO FORM

Daniel R. Lutz
Director of Law

APPROVED

Dennis R. Steiner
Mayor

CERTIFICATE

The undersigned Clerk of Council of the City of Orrville, Ohio, hereby certifies the foregoing is a true copy of Ordinance No. _____ duly passed at a meeting of said Council on the 6th day of March 2006, together with an extract of minutes of such meeting to the extent pertinent to the passage of such Ordinance.

_____, 2006

Clerk of Council of the
City of Orrville, Ohio