

ORDINANCE NO. T-08

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$1,500,000 AGGREGATE PRINCIPAL AMOUNT OF CITY OF ORRVILLE, OHIO HEALTH FACILITIES REVENUE BONDS, SERIES 2008 (ORRVILLA, INC. PROJECT), FOR THE PURPOSE OF REFUNDING CERTAIN HEALTH FACILITIES REVENUE BONDS AND OTHER INDEBTEDNESS PREVIOUSLY ISSUED AND INCURRED TO ASSIST ORRVILLA, INC. IN FINANCING A PORTION OF THE COSTS OF CONSTRUCTING AND ACQUIRING CERTAIN HOSPITAL FACILITIES WITHIN THE CITY, PAYING FOR CERTAIN ADDITIONAL CAPITAL EXPENDITURES, AND PAYING FOR THE COSTS ASSOCIATED WITH THE ISSUANCE OF THE SERIES 2008 BONDS, AUTHORIZING THE EXECUTION AND DELIVERY OF A BASE LEASE AND LEASE AND AN ASSIGNMENT TO THE ORIGINAL PURCHASER OF THE BONDS AND ANY OTHER DOCUMENTS OR INSTRUMENTS IN CONNECTION WITH THE ISSUANCE OF THOSE BONDS, AUTHORIZING AND APPROVING RELATED MATTERS, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Orrville, Ohio (the "City"), a municipal corporation and political subdivision in and of the State of Ohio (the "State"), is authorized and empowered by virtue of its Charter and the laws of the State, including without limitation, Chapter 140 of the Ohio Revised Code (as enacted or amended from time to time, the "Act"), and by the Constitution of the State, among other things: (i) to acquire, construct, expand, renovate, furnish, equip and otherwise improve "hospital facilities" as defined in the Act, and to acquire interests in real estate, including without limitation, improvements situated thereon comprising hospital facilities; (ii) issue its revenue bonds for the purpose of financing and refinancing the "costs of hospital facilities"; as defined in the Act and to refinance revenue bonds previously issued for that purpose; (iii) to enter into lease agreements with "nonprofit hospital agencies," as defined in the Act, for the operation of those hospital facilities and to provide revenues to pay the principal and purchase price upon tender of, and the interest and any premium on, those revenue bonds; (iv) to secure those revenue bonds by (a) an assignment, including the assignment, pledge and transfer thereby of "hospital receipts," as defined in the Act, including without limitation, rental payments required to be made by nonprofit hospital agencies, and (b) the assignment and transfer to the trustee of certain rights of the Issuer with respect to its leasehold interests and (v) to enact this Ordinance and execute and deliver the documents and instruments hereby approved, all upon the terms and conditions provided herein and therein; and

WHEREAS, by Ordinance No. 80-92, adopted by this Board on October 19, 1992, the City issued its \$1,400,000 Health Facilities Revenue Bonds, Series 1992 (The OrrVilla, Inc. Project) (the "Series 1992 Bonds") for the purpose of paying "costs of hospital facilities," as defined by the Act, including the costs associated with acquiring, constructing, installing, and equipping an independent and assisted living facility, which constitutes "hospital facilities" as defined in the Act (collectively, the "Existing Project"); and

WHEREAS, OrrVilla, Inc. an Ohio nonprofit corporation and a “nonprofit hospital agency,” as defined in the Act (“OrrVilla”) has requested that the City issue revenue bonds pursuant to the Act (the “Series 2008 Bonds”) for the purpose of refinancing the Series 1992 Bonds and to refinance additional indebtedness (the “Additional Debt”) incurred in connection with the construction of the Existing Project, and to pay costs of certain improvements to the Existing Project, including an elevator, backup generator, new telephone system, updated fire alarm system, carpeting and furniture (collectively, the “Project”); and

WHEREAS, in connection with the issuance of the Series 2008 Bonds, OrrVilla will convey to the City a leasehold interest in its existing hospital facilities located within the boundaries of the City at 333 East Sycamore Street (the “Leased Premises”), by the execution of the Base Lease between OrrVilla, as base lessor, and the City, as base lessee (the “Base Lease”), and the City will convey to OrrVilla a leasehold interest in the Leased Premises under a lease between the City, as lessor, and OrrVilla, as lessee (the “Lease”), in consideration of rental and other payments required to be made by OrrVilla under the Lease in such amounts and at such times as are necessary to pay principal of and interest and any premium on the Series 2008 Bonds; and

WHEREAS, forms of the Base Lease and Lease have been placed on file with the Clerk of this Council; and

WHEREAS, in order to so assist OrrVilla and thereby to better provide for the health and welfare of the people of the State and the City, by enhancing the availability, efficiency and economy of hospital facilities and the services rendered thereby, this Council has determined to issue, sell and deliver the Series 2008 Bonds pursuant to this Ordinance, for the purpose of financing and refinancing a portion of the costs of the Project and paying certain costs of issuing the Series 2008 Bonds;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Orrville, Wayne County, Ohio, that:

Section 1: This Council finds and determines, based upon representations of OrrVilla, that it is necessary to, and the City shall, issue, sell, and deliver, as provided and authorized herein and in accordance with and pursuant to the authority of its Charter, the Act and the Ohio Constitution, the Series 2008 Bonds in the aggregate principal amount that shall be determined in the Certificate of Award (defined below), but in any event not to exceed \$1,500,000, for the purpose of refunding the Series 1992 Bonds and refinancing the Additional Debt, and to pay costs of certain improvements to the Existing Project, including an elevator, backup generator, new telephone system, updated fire alarm system, carpeting and furniture and to pay certain costs of issuing the Series 2008 Bonds. This Board further finds and determines that the issuance of the Series 2008 Bonds and the refinancing of the Series 1992 Bonds and the Additional Debt will better provide for the health and welfare of the residents of the City and State by enhancing the availability, efficiency, and economy of the hospital facilities, as defined by the Act and the services rendered thereby which are available to or for the service of the general public without discrimination by reason of race, creed, color, or national origin.

Section 2: The Series 2008 Bonds shall be designated “City of Orrville, Ohio Health Facilities Revenue Bonds, Series 2008 (OrrVilla, Inc. Project)” or as may be otherwise provided in the Certificate of Award.

The Series 2008 Bonds shall be issued and secured under the terms of this Ordinance and shall be signed by the Mayor and Director of Finance, in the name of the City and in their official capacities, provided that one of those signatures may be facsimile.

The Series 2008 Bonds shall be (i) issuable only in fully registered form and substantially as set forth in the Certificate of Award; (ii) dated as of their date of issuance and delivery or other such date as may be specified in the Certificate of Award; (iii) payable in such manner and at such time or times and at such place or places as set forth in the Series 2008 Bonds and (iv) payable in 180 monthly payments of principal and interest as set forth in the Certificate of Award.

The Series 2008 Bonds shall bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, and such interest shall be payable on the first business day of each month (each an “Interest Payment Date”). The Series 2008 Bonds shall bear interest as follows: (i) the interest rate shall be fixed for the initial sixty-month period at the rate of 4.35% per year from the issuance date, and thereafter, the interest rate shall be adjusted on each fifth anniversary date of the issuance date (each a “Change Date”) in the manner set forth in the Series 2008 Bonds and the Certificate of Award, provided that the interest rate shall not increase or decrease by more than 2.00% on any Change Date, and provided further that the interest rate shall not be less than 3.00%.

Section 3: The Series 2008 Bonds shall be sold at par value at private sale to the Commercial and Savings Bank (the “Original Purchaser”) by the Director of Finance in accordance with the law and the provisions of this Ordinance. It is determined hereby that the purchase price for, and the manner of sale and the terms of, the Series 2008 Bonds, as provided in this Ordinance and the Certificate of Award are consistent with all legal requirements and will carry out the public purposes of the Act.

The Mayor and the Director of Finance (each, an “Authorized Official”), are hereby authorized, and at least one such Authorized Official is hereby directed, to execute one or more certificates, at the same or different times, and such certificates supplemental thereto (collectively, the “Certificate of Award”), in order to determine and state, or to approve, as applicable, the aggregate principal amount of the Series 2008 Bonds to be issued, the interest rate to be borne initially by the Series 2008 Bonds, the date or dates of the Series 2008 Bonds, the maturity date or dates of the Series 2008 Bonds, the purchase price and the amount of any original issue discount with respect to the Series 2008 Bonds, the allocation of the proceeds of the Series 2008 Bonds, if necessary or appropriate, as between the purposes for which they are issued, and any other matter that the executing Authorized Official or Officials determine to be necessary or appropriate, consistent with this Ordinance, to more fully effectuate the intent of this Ordinance.

The Authorized Officers are authorized and directed to make the necessary arrangements with the Original Purchaser to establish the date, location, procedures, and conditions for the delivery of the Series 2008 Bonds to the Original Purchaser and to take all steps necessary to

effect the due execution, authentication and delivery of the Series 2008 Bonds to the Original Purchaser under the terms of this Ordinance and the Certificate of Award.

Section 4: This Council authorizes and approves the acceptance by the City from OrrVilla of the leasehold interest in the real and personal property comprising the Leased Premises under and as described in the Base Lease, and the lease of the Leased Premises to OrrVilla under the Lease. This Council determines that the lease of the Leased Premises to the City, and the lease thereof back to OrrVilla, under the terms and conditions of the Base Lease and the Lease, respectively, will further the public purpose of better providing for the health and welfare of the residents of the City and of the State, by enhancing the availability, efficiency, and economy of hospital facilities and the services rendered thereby, so that the hospital facilities and the services rendered thereby are available to or for the service of the general public without discrimination by reason of race, creed, color or national origin.

Section 5: The proceeds derived from the sale of the Series 2008 Bonds (including, without limitation, any interest accrued on the Series 2008 Bonds) shall be allocated and deposited as set forth in the Certificate of Award. All funds, accounts, and subaccounts contemplated by the Certificate of Award to be created are hereby authorized and directed to be created and may be used, without further legislative action, for the purposes specified in the Certificate of Award.

Section 6: The Series 2008 Bonds shall be special obligations of the City and, except as otherwise provided thereunder, the principal of and the interest and any premium on, and any other obligations relating to, the Series 2008 Bonds shall be equally and ratably payable solely from the sources set forth herein.

To provide for such security and for the payment directly to the Original Purchaser of the portion of the rental payments to be paid under the Lease by OrrVilla in respect of the principal of and interest and any premium on, and payment under the Lease to be made by OrrVilla in respect of certain other obligations relating to, the Series 2008 Bonds, this Council authorizes, confirms, and approves the assignment to the Original Purchaser of all of the City's rights under the Base Lease and the Lease, except for the Unassigned Rights (as defined in the Lease), including its rights in the hospital receipts, including the rental payments, all as provided in the Lease, and the Assignment of Rights Under Lease, from the City to the Original Purchaser (the "Assignment"), which Assignment hereby is approved and shall be substantially in the form now on file with the Clerk of this Council, subject to modification in accordance with Section 8 of this Ordinance.

Anything in this Ordinance or the Series 2008 Bonds to the contrary notwithstanding, the Series 2008 Bonds do not and shall not represent or constitute general obligations, debt, bonded indebtedness or a pledge of the faith and credit of the City, the State, or any other political subdivision thereof and further, nothing herein or therein gives the holders or owners of the Series 2008 Bonds, and they do not have, the right to have excises, ad valorem, or other taxes levied by the City, or by the State or the taxing authority of any other political subdivision, for the payment of the principal of, and interest or premium on, or any other obligations relating to the Series 2008 Bonds. The Series 2008 Bonds shall contain a statement to that effect and to the effect that the Series 2008 Bonds are payable solely from any money paid by OrrVilla pursuant to

the Lease or obtained by the Original Purchaser upon the exercise of rights and remedies under the Assignment and the Lease. Nothing in the Series 2008 Bonds or the documents securing them, however, shall be deemed to prohibit the City from using, of its own volition, to the extent that it is authorized by law to do so, any other resources for the fulfillment of any of the terms or conditions of, or its obligations under, the Series 2008 Bonds.

Section 7: In addition to the other covenants by the City in this Ordinance, the Base Lease, the Lease and the Assignment, the City further covenants and agrees as follows:

The City is, and upon delivery of the Series 2008 Bonds will be, duly authorized by its Charter, the laws of the State, particularly and without limitation to the Act, and the Ohio Constitution, to issue the Series 2008 Bonds, to execute and deliver, as applicable, the Base Lease, the Lease and the Assignment and such other instruments and documents to which it is a party (collectively, the "City Documents"), to provide the security for payment of the principal of and interest and any premium, in the manner and to the extent set forth herein and in the Lease as authorized by this Council. All actions on the part of the City for the issuance of the Series 2008 Bonds and the execution and delivery of City Documents and such other instruments and documents have been or will be duly and effectively taken. The Series 2008 Bonds shall be valid and enforceable special obligations of the City according to the terms thereof. Each duty of the City and of its officers and employees undertaken pursuant to the Series 2008 Bonds and the City Documents is a duty specifically enjoined by law pursuant to Section 140.06(J), Ohio Revised Code, upon the City and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for the enforcement by writ of mandamus.

In connection with the issuance of the Series 2008 Bonds, and certain tax matters related thereto, each Authorized Official is authorized, and at least one such Authorized Official is directed, acting alone or together, or with any other officer, employee or agent of, or consultant to, the City, or with OrrVilla and any officer, employee or agent of, or consultant to, OrrVilla, to sign an appropriate tax compliance agreement on behalf of the City, for inclusion in the transcript of proceedings for the Series 2008 Bonds, setting forth the reasonable expectations of the City regarding the amount and use of the proceeds of the Series 2008 Bonds and the facts, estimates and circumstances on which those expectations are based, such certificate to be premised on the reasonable expectations and the facts, estimates and circumstances on which those expectations are based and other facts and circumstances relevant to the tax treatment of interest on those Series 2008 Bonds, as provided by OrrVilla, all as of the date of delivery and payment for the Series 2008 Bonds.

Subject to the limitation that any obligation of the City created by or arising out of this Ordinance shall not be a general debt on its part but shall be payable solely out of the rentals, revenues and other income, charges and moneys realized from the use, lease, sale, or other disposition of the Leased Premises, the proceeds derived from the sale of the Series 2008 Bonds and the amounts payable by OrrVilla, the City covenants that it will take, or require to be taken, all actions that may be required of the City for the interest on the Series 2008 Bonds to be and to remain excluded from gross income for federal income tax purposes and from treatment as an

item of tax preference for purposes of the alternative minimum tax imposed on individuals and corporations under the Code, and that it will not take or authorize to be taken any actions that would adversely affect those exclusions under the provisions of the Code. Each Authorized Official, the Clerk of Council or any other officer having responsibility for issuing the Series 2008 Bonds, is authorized and directed, acting alone or together, to take any and all actions and to make or give in conjunction with or at the request of any officer, employee, or agent of, or consultant to, OrrVilla, any election, selection, designation, choice, consent, approval or waiver on behalf of the City with respect to the Series 2008 Bonds as the City is permitted or required to make or give under the federal income tax laws including, without limitation, any of the elections available under or pursuant to Section 148 of the Code.

The Clerk of this Council shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk, of all proceedings had with reference to the issuance of the Series 2008 Bonds, together with such information from the records of the City as is necessary to determine the regularity and validity of the issuance of the Series 2008 Bonds.

The City shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the City Documents. Nothing herein or in the City Documents shall be construed as requiring the City to operate the Leased Premises under the Base Lease or the Lease or to use any moneys from any source other than the rental payments, or other money made available under the Lease with respect to payment of principal of or interest or any premium on, or the purchase price upon tender of, the Series 2008 Bonds.

Section 8: After a public hearing concerning the issuance of the Series 2008 Bonds heretofore held on the date of passage of this Ordinance, this Council hereby approves, for the purpose of Section 147(f) of the Code and as the “applicable elected representative” of the City under that Section, the issuance of the Series 2008 Bonds.

Section 9: To provide for the issuance and sale of the Series 2008 Bonds, the Authorized Officials are hereby authorized, and at least one such Authorized Official is hereby directed, to execute, acknowledge and deliver, for and in the name of and on behalf of the City, each City Document, in substantially the respective form thereof on file with the Clerk of this Council. Each City Document is approved with any changes therein that are not inconsistent with this Ordinance, are not substantially adverse to the City, are permitted by the Act, and are approved by the Authorized Official or Officials executing the respective City Document. The approval of those changes by such Official or Officials, and the character of those changes as not being substantially adverse to the City, shall be evidenced conclusively by the execution of the respective City Documents by such Official or Officials. The Finance Director, as fiscal officer of the City, is authorized to give any certifications that may be required under Ohio Revised Code Sections 5705.41 and 5705.44 with respect to any of the City Documents, and the Rental Payments pursuant to the Lease are hereby appropriated for that purpose.

Section 10: Each Authorized Official and the Clerk of this Council, acting alone or together with any other such persons, is authorized and directed to execute, deliver, and, if applicable, file, and to approve for and in the name and on behalf of the City, any certifications, assignments and other instruments and documents that are necessary or appropriate to

consummate the transactions contemplated in the City Documents and the Series 2008 Bonds. Those certifications and other instruments and documents include, without limitation, an appropriate information report under Section 149(e) of the Code, and any other applications, certifications, forms, or statements necessary or advisable under the Code or otherwise to consummate those transactions, and a certification by the Clerk of this Council of the transcript of proceedings relating to the issuance of the Series 2008 Bonds.

Section 11: Consistent with the provisions of the Lease, the Base Lease and the Lease may be amended, at any time and from time to time, to effect the release of and removal from the leasehold estate created by the Lease and the Base Lease of any part of or interest in the Leased Premises to OrrVilla or others, and, in addition, this Council hereby confirms its approval of any conveyance by OrrVilla, subject to the Base Lease and the Lease, an interest in the Leased Premises to another entity so long as, following such conveyance, OrrVilla retains an interest in the Leased Premises that is sufficient for OrrVilla to perform all of the obligations to be performed by the lessee under the Lease.

No further action of this Council shall be required to approve, authorize or effect the release or removal of all or any portion of the Leased Premises or any conveyance by OrrVilla to another entity of an interest in the Leased Premises, as contemplated by this Ordinance and the provisions of the Lease, and each Authorized Official is hereby authorized, and at least one such Authorized Official is hereby directed, if requested by OrrVilla, without further action of this Council, to execute, acknowledge and deliver, for and in the name and on behalf of the City, any and all documents or instruments necessary or appropriate to approve, authorize or effect such release, removal or conveyance.

Section 12: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 13: This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety of the City, and for the further reason that this ordinance must be immediately effective so that the Series 2008 Bonds herein authorized can be sold and delivered to make their proceeds available which is necessary to enable the City to meet its obligations in connection with such funds which are needed to protect the health and welfare of the residents of the City by providing safe and adequate hospital facilities; wherefore, this ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed this _____ day of _____, 2008.

President of Council

Attest:

Clerk of Council

Approved:

Mayor