

ORDINANCE NO. C-65-80

ACCEPTING AND APPROVING THE BOND PURCHASE PROPOSAL OF ZAPPALA & COMPANY, INC. AND AUTHORIZING AND DIRECTING PURSUANT THERETO THE ISSUANCE OF \$2,685,000, AGGREGATE PRINCIPAL AMOUNT, OF INDUSTRIAL DEVELOPMENT FIRST MORTGAGE REVENUE BONDS, SERIES A 1980, K mart CORPORATION - TENANT AND GUARANTOR; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE INSTALLMENT SALE AGREEMENT, THE FIRST MORTGAGE INDENTURE, THE CONSTRUCTION ADVANCE AGREEMENT, THE DISPOSITION AGREEMENT, AND THE OFFICIAL STATEMENT IN CONNECTION THEREWITH; AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF SAID BONDS; APPOINTING THE CENTRAL TRUST COMPANY, N.A. AS TRUSTEE AND REQUESTING SAID TRUSTEE TO AUTHENTICATE SAID BONDS; AUTHORIZING INVESTMENTS BY THE TRUSTEE; AUTHORIZING APPROVAL OF THE LEASE, ACCEPTING THE GUARANTY AGEEMENT, AUTHORIZING AN ASSIGNMENT OF THE INSTALLMENT SALE AGREEMENT, AND CONSENTING TO THE COLLATERAL ASSIGNMENT OF THE LEASE; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF ALL OTHER RELATED DOCUMENTS; AND AUTHORIZING ALL OTHER NECESSARY ACTION.

WHEREAS, the City of Grove City, Ohio (the "City"), heretofore adopted a Resolution finding and determining that the financing of a certain commercial facility of Stringtown Road Associates, Ltd. (the "Investor Developer" and "Landlord") for use by the K mart Corporation (the "Tenant") complies with the purposes and provisions of Chapter 165, "Industrial Development Bonds Act", Section 165.01 et seq., of the Ohio Revised Code, as amended (the "Act"), and that such financing will create or preserve jobs and employment opportunities, and improve the economic welfare of the people of the City and the State of Ohio, and has executed an Agreement to Issue Bonds dated as of September 4, 1979;

WHEREAS, the Investor Developer heretofore submitted its Application for Approval of the Stringtown Road Associates, Ltd. Project (the "Project") to the Grove City Area Community Improvement Corporation (the "CIC") and the City received from the CIC its certification that said Project is in accordance with the plan for the industrial, commercial, distribution and research development of this City as prepared by the CIC and heretofore approved by the Council of the City, and also, prior to the delivery of the below mentioned Bonds, the City has caused a written notice to be mailed by certified mail to the Director of the Ohio State Department of Economic and Community Development and by registered mail to all of the other required State Commissions and Boards advising of the issuance of said Bonds; and

WHEREAS, the City heretofore determined to provide long-term permanent financing for the Project and its related costs by issuing \$2,685,000 in aggregate principal amount of its bonds to be designated as "Industrial Development First Mortgage Revenue Bonds, Series A 1980, K mart Corporation - Tenant and Guarantor" (the "Bonds"), to be issued under and pursuant to an Open-End First Mortgage Indenture, dated as of September 1, 1980 (the "Indenture"), with The Central Trust Company, N.A. of Cincinnati, Ohio (the "Trustee"), and as secured by an Installment Sale Agreement, dated as of September 1, 1980 (the "Installment Sale Agreement"), with the Investor Developer, and a Collateral Assignment of the Lease of the Project between the Investor Developer, as the Landlord, and K mart Corporation, as the Tenant; and

WHEREAS, Zappala & Company, Inc. (the "Managing Underwriters"), have offered to purchase said Bonds and have heretofore presented to the City its Bond Purchase Proposal (the "Bond Purchase Proposal") relating thereto; and

WHEREAS, certain actions are required to be taken by this Council as a prerequisite to the issuance and sale of said Bonds,

NOW THEREFORE, BE IT ORDAINED by the Council of Grove City, Ohio:

Section 1. Approval of the Project. It is hereby determined that (a) the Project is a project as defined in the Act and is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution; (b) the utilization of the Project is in furtherance of the purposes of the Act and will benefit the people of the City and of the State of Ohio by creating jobs and employment opportunities and improving the economic welfare of the people of the City and of said State; and (c) the provision of assistance in the financing of costs of acquiring, constructing, enlarging, installing and equipping the Project, including the financing thereof, will require the issuance, sale and delivery of the \$2,685,000 Industrial Development First Mortgage Revenue Bonds, Series A 1980, K mart Corporation - Tenant and Guarantor, under and pursuant to the Indenture, and hereafter may require the City'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 and in the Indenture.

Section 2. Acceptance and Approval of Bond Purchase Proposal. The Bond Purchase Proposal, dated as of September 4, 1980, from Zappala & Company, Inc., which has heretofore been presented to this Council, is hereby ratified, accepted and approved.

Section 3. Approval of the Installment Sale Agreement, Indenture, Construction Advance Agreement, Disposition Agreement, and Official Statement. The form of the Installment Sale Agreement between the City and the Investor Developer, the form of the Indenture between the City and the Trustee, the form of the Construction Advance Agreement between the Trustee, the Investor Developer and the Managing Underwriters, as approved by the City, the form of Disposition Agreement between the City, the Trustee and the K mart Corporation, and the form of Official Statement with respect to the Bonds (executed copies of which shall be incorporated herein by reference only and shall be kept on file with the Clerk of Council), are hereby approved in substantially the forms presented to this meeting, and are hereby directed to be in such final forms as the Director of Law shall approve, and the Mayor, the Director of Finance, and the Clerk of Council are hereby authorized and directed to execute and deliver, and the Director of Finance is hereby authorized and directed to execute and affix the City seal to, and to attest, said documents in substantially said final approved forms and upon the terms and conditions therein set forth, with such changes therein as such officers and Director of Law shall approve, such approval to be conclusively evidenced by said officers' execution thereof.

Section 4. Appointment of Trustee. The City hereby appoints The Central Trust Company, N.A. of Cincinnati, Ohio, to be the Trustee under the Indenture.

Section 5. Issuance of the Bonds. The issuance under the Act of the Bonds is hereby authorized and directed substantially in the forms presented to this meeting. The facsimile signatures of the Mayor and the Director of Finance are hereby authorized and directed to be printed on the face of said Bonds, the facsimile seal of the City is hereby adopted and authorized to be imprinted thereon, and the facsimile signature of the Director of Finance of the City is also authorized and directed to be printed on the coupons appertaining to said Bonds. Any of said officers is further hereby authorized and directed to deliver said Bonds to the Trustee for authentication under the Indenture as hereinafter authorized and, when said Bonds have been authenticated, to deliver them or cause them to be delivered to the Managing Underwriters pursuant to the Bond Purchase Proposal against receipt of the purchase

price therefor, and to deposit the amount so received into the Construction Fund as provided in the Indenture.

Section 6. Terms of the Bonds. The forms, principal amount, numbers, maturities, provisions for redemption of, and the rates of interest on, the Bonds shall be as set forth in the Bond Purchase Proposal and in the Indenture herein approved, and shall be substantially in the forms presented to this meeting.

The aforesaid Bonds shall be issued for the purpose of providing long-term permanent financing for the costs of acquiring, constructing and equipping the Project for the Stringtown Road Associates, Ltd. - K mart Corporation Project, as more particularly set forth and described in the Indenture and in the Installment Sale Agreement incorporated herein by reference, which Bonds are limited obligations of the City and will be payable as to principal and interest and premium (if any) solely from the lease payments to be made by the K mart Corporation as the Tenant under the Lease, as collaterally assigned by the Investor Developer to the Trustee, or the guarantee payments if required to be made by the K mart Corporation as Guarantor under the Guaranty Agreement, or as otherwise provided in the Indenture. Neither the State of Ohio nor any political subdivision thereof nor the City shall be obligated to pay principal of or premium, if any, or the interest on the Bonds or other costs incident thereto except from the above-mentioned sources pledged therefor and neither the faith and credit nor the taxing power of the State of Ohio or any political subdivision thereof is pledged to the payment of the principal of or premium, if any, or interest on the Bonds or any other costs incident thereto. The issuance of the Bonds shall not, directly or indirectly or contingently, obligate the City to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in the Bonds or in the Indenture or the proceedings of the City authorizing the Bonds shall be construed to authorize the City to create an indebtedness of the City within the meaning of the Constitution or statutes of the State of Ohio. The Bonds do not constitute an indebtedness of the City or a loan of credit thereof within the meaning of any Constitutional or statutory provision.

Section 7. Authentication of the Bonds. The Trustee is hereby requested to manually authenticate the Bonds and to deliver the same and the coupons attached thereto to or upon the order of the Mayor.

Section 8. Investment of Funds. The Trustee shall be, and by virtue of this ordinance, and without further authorization from the City, is hereby directed and requested to invest and reinvest, subject to the directions from time to time of the Managing Underwriters during the Construction Period, and thereafter subject to the directions from time to time of the Investor Developer, all moneys available therefor in any Fund held by it pursuant to the aforesaid Indenture, which, by the terms of said Indenture, may be invested, and to deposit and redeposit such moneys in such funds as may be permitted by the said Indenture, all subject to the terms and limitations contained in said Indenture, as appropriate.

Section 9. Approval and Acceptance of the Guaranty Agreement. The City hereby approves and accepts the Guaranty Agreement from the K mart Corporation as the Guarantor on behalf of all Bondholders, and authorizes and directs that the appropriate officers shall execute and deliver said Guaranty Agreement.

Section 10. Assignment of Installment Sale Agreement. The appropriate officers of the City are hereby authorized and directed to assign all right, title and interest of the City in the Installment Sale Agreement to the Trustee as security for the Bonds, and to acknowledge the same to be the act and deed of the City.

Section 11. Approval of the Lease and Consent to the Collateral Assignment of the Lease. The City hereby approves the Lease between the Investor Developer, as the Landlord, and the K mart Corporation, as the Tenant, and hereby consents to and approves of the assignment of the Investor Developer's interests in the Lease with the K mart Corporation, as the Tenant, in the form of the Assignment of the Landlord's Interests in the Lease as Collateral Security, dated as of September 1, 1980, as made to the Trustee as collateral security for the Bonds, and authorizes and directs that the appropriate officers shall execute the necessary documentation to approve said Collateral Assignment of the Lease.

Section 12. Prevailing Wages. Pursuant to the provisions of Section 165.031, Ohio Revised Code, and subject to the provisions of any other applicable law, it is hereby specified that all wages paid to laborers and mechanics employed on the Project shall be paid at not less than the prevailing rates of wages for 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, however, that this specification shall not apply if the Federal Government or any of its Agencies furnish by loan or grant all or any part of the funds used in connection with the Project and prescribes predetermined minimum wages to be paid to such laborers and mechanics (provided that should a nonpublic user beneficiary of the Project undertake, as 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 commitment instrument authorizing issuance of the Bonds, then the rate of pay provided under said collective bargaining agreement may be paid to such employees).

Section 13. Arbitrage Bonds. The City hereby covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for such Bonds so that the Bonds will not constitute arbitrage bonds under Section 103(c) of the Internal Revenue Code and the regulations prescribed under that Section. The Director of Finance or any other officer having responsibility for issuance the Bonds is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the City, or any officer or employee of the Investor Developer, for inclusion in the transcript of proceedings, to set forth the reasonable expectations of the City, based on the facts, estimates and circumstances provided by the Investor Developer, all on the date of delivery and payment for such Bonds, regarding the amount and use of the proceeds of the Bonds pursuant to said Section 103(c) and regulations thereunder. The Clerk of Council shall furnish to the Trustee and the Managing Underwriters a true transcript, certified by him, of all proceedings had with reference to the issuance of the Bonds along with such other information from the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 14. Authorizing All Other Necessary Action. The City hereby elects to have the limitation on capital expenditures specified by Section 103(b)(6)(D) of the Internal Revenue Code of 1954 applied to the issuance of the Bonds. The appropriate officers of the City are hereby further authorized and directed to execute and deliver all such certifications, financing statements, assignments, instruments and other documents and to take all such other actions as may be in the opinion of Bond Counsel necessary or appropriate, including the execution of an appropriate Statement of Election and delivery thereof to the Internal Revenue Service, in order to effectuate the execution and delivery of the Indenture the Installment Sale Agreement, the aforesaid Bond Purchase Proposal, and the issuance and sale of the Bonds, all in accordance with the foregoing Sections hereof.

Section 15. Indenture as a Contract. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract which shall be binding between the City of Grove City and the Holders of the Series A 1980 Bonds to be issued hereunder, and after the issuance of said Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such Holders so long as any of said Bonds or the interest thereon remains unpaid.

Section 16. Compliance with Open Meeting Requirements. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of said Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

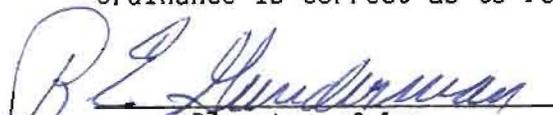
Section 17. Effective Date: This ordinance shall take effect and be in force at the earliest time permitted by law.

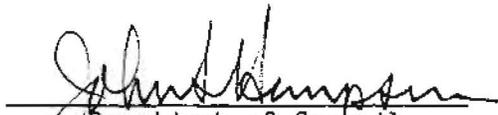
Submitted: October 6, 1980

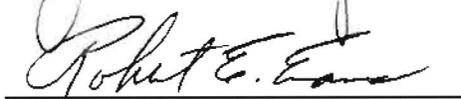
Passed: October 20, 1980

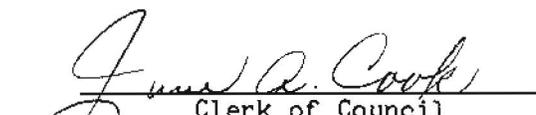
Effective: November 19, 1980

I hereby certify that this Ordinance is correct as to Form:

  
Director of Law

  
President of Council

  
Mayor

  
Clerk of Council