

ORDINANCE NO. 57,000

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF UPPER BERN TOWNSHIP, BERKS COUNTY, PENNSYLVANIA, AUTHORIZING AND DIRECTING ISSUANCE OF A GENERAL OBLIGATION NOTE IN THE PRINCIPAL AMOUNT OF \$240,000 ("NOTE") PURSUANT TO THE LOCAL GOVERNMENT UNIT DEBT ACT (53 PA. C.S.A. §8001 ET SEQ.), TO REFUND A \$50,000 SMALL BORROWING FOR CAPITAL PURPOSES MADE ON MAY 10, 2000 TO FINANCE COSTS OF A PROJECT (DEFINED BELOW), AND TO FINANCE CONTINUING COSTS OF DESIGNING, CONSTRUCTING AND INSTALLING A MUNICIPAL SEWER PROJECT; DETERMINING THAT SAID NOTE SHALL BE SOLD AT NEGOTIATED SALE; DETERMINING THAT SUCH DEBT SHALL BE NONELECTORAL DEBT OF THIS TOWNSHIP; ACCEPTING A BID FOR PURCHASE OF SAID NOTE AT NEGOTIATED SALE, AND AWARDED SUCH NOTE AND SETTING FORTH RELATED PROVISIONS; PROVIDING THAT SUCH NOTE, WHEN ISSUED, SHALL BE A GENERAL OBLIGATION NOTE OF THIS TOWNSHIP; FIXING THE SUBSTANTIAL FORM, DENOMINATION, DATE, MATURITY DATE, INTEREST RATES, INTEREST PAYMENT DATES, REGISTRATION PRIVILEGES, PLACE OF PAYMENT OF PRINCIPAL AND INTEREST, REDEMPTION PROVISIONS AND TAX FREE PROVISIONS OF SAID NOTE; AUTHORIZING EXECUTION, ATTESTATION AND AUTHENTICATION OF SAID NOTE; PROVIDING COVENANTS RELATED TO DEBT SERVICE APPLICABLE TO SAID NOTE AS REQUIRED BY SUCH ACT AND THE PENNSYLVANIA CONSTITUTION AND PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THIS TOWNSHIP IN SUPPORT THEREOF; CREATING A SINKING FUND IN CONNECTION WITH SAID NOTE AS REQUIRED BY SUCH ACT; APPOINTING A SINKING FUND DEPOSITARY; PROVIDING A COVENANT TO INSURE PROMPT AND FULL PAYMENT OF ALL OBLIGATIONS OF SAID NOTE WHEN DUE; AUTHORIZING AND DIRECTING SPECIFIED OFFICERS OF THIS TOWNSHIP TO DO AND PERFORM CERTAIN SPECIFIED, REQUIRED OR APPROPRIATE ACTS AND THINGS; SETTING FORTH THAT SAID NOTE HAS BEEN SOLD AT NEGOTIATED SALE; DECLARING THAT THE DEBT TO BE INCURRED IS WITHIN THE LIMITATION IMPOSED BY SUCH ACT UPON THE INCURRING OF SUCH DEBT BY THIS TOWNSHIP; PROVIDING CERTAIN COVENANTS RELATED TO CONTINUING DISCLOSURE BY THIS TOWNSHIP; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN SO FAR AS THE SAME SHALL BE INCONSISTENT HERewith; AND PROVIDING WHEN THIS ORDINANCE SHALL BECOME EFFECTIVE.

TEXT OF ORDINANCE

WHEREAS, the Township of Upper Bern, Berks County, Pennsylvania (the "Township"), is a second class township existing under laws of the Commonwealth of Pennsylvania (the "Commonwealth") and is a Local Government Unit, as that term is defined in the Local Government Unit Debt Act, as codified by Act No. 177 of 1996 (53 Pa. C.S.A. §8001 et seq.) (the "Act"); and

WHEREAS, The Township undertaken a project to design, construct, install and operate a public sewer system; and

WHEREAS, The Township, acting by and through its Board of Supervisors ("Board of Supervisors"), has determined to issue a general obligation note, to be sold at negotiated sale, pursuant to the Act, to be dated as of July 15, 2000, in the principal amount of \$240,000.00, with proceeds from the sale thereof to be used (a) to refund a \$50,000.00 small borrowing for capital purposes made by the Township on May 10, 2000 which was used to fund initial costs of a "Project" (as defined below), and to fund ongoing costs and expenses incurred and to be incurred in connection with the "Project" including, without limitation, professional fees incurred in connection therewith, construction costs therefor and costs and expenses incurred in connection with the issuance of the debt obligations required to finance the "Project"; and

WHEREAS, Bernville Bank, N.A. (the "Purchaser") has submitted a bid for purchase of the debt obligation; and such bid has been opened, read and considered as provided for in the Act; and

WHEREAS, The Board desires to accept the bid of the Purchaser, to award the debt obligation to the Purchaser and to incur nonelectoral debt in the principal amount of \$240,000.00, pursuant to provisions of the Act.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Board of Supervisors of the Township, as follows:

Section 1. Description of the "Project". The debt is to be incurred, in accordance with the Act, to refund a \$50,000.00 small borrowing made for capital purposes made by the Township on May 10, 2000 (which had been used to fund initial costs of the design of a municipal sewer project described in this Section), to pay for various costs incurred to design, construct, install and operate a municipal sewer project ("Project") including, without limitation, professional fees incurred in connection with the Project, construction costs of the Project and costs and expenses incurred in connection with the issuance of the Note. A realistic estimate of the estimated remaining useful life of the Project is specified to be not less than forty (40) years.

Section 2. Aggregate Principal Amount of Note. The Note ("Note") shall be issued in principal amount of \$240,000.00, to be dated as of July 15, 2000, and to be designated generally as the "General Obligation Note - 2000".

Section 3. Electoral, Nonelectoral or Lease Rental Debt. The Board of Supervisors of this Township determines that the debt to be incurred pursuant to this Ordinance, as evidenced by the Note, shall be nonelectoral debt of this Township.

Section 4. Authorization to File Debt Statement. The Chairman or Vice Chairman of the Board of Supervisors of the Township, which shall include their duly qualified successors in office, if applicable, is authorized and directed:

(a) to prepare, to verify and to file the debt statement required by Section 8110 of the Act;

(b) to prepare or have prepared and to file, as required and if necessary, with the Department of Community and Economic Development (the "Department") of the Commonwealth, statements required by Section 8024 of the Act which are necessary to qualify any lease rental debt or nonelectoral debt of the Township, which is subject to exclusion as subsidized debt, for exclusion from the appropriate debt limit of the Township as subsidized debt;

(c) to prepare, execute and file the application with the Department, together with a complete and accurate transcript of proceedings relating to the incurring of debt, of which debt the Note, upon issue, will be evidence, as required by Section 8111 of the Act;

(d) to pay or cause to be paid to the Department all proper filing fees required by the Act in connection with the foregoing; and

(e) to take other required, necessary and/or appropriate action, including, without limiting the generality of the foregoing, execution and delivery of necessary and appropriate certificates, receipts, affidavits and other documents necessary and desirable in connection with delivery of the Note to the Purchaser.

Section 5. Exclusion of Note as Subsidized or Self-Liquidation Debt.
Intentionally Omitted.

Section 6. General Obligation Note. The Note, when issued, will be a general obligation Note of this Township.

Section 7. Covenant to Pay Note. As provided the Act, the following covenants of the Township shall be enforceable specifically as to the amounts of the debt service of the Note for each fiscal year of the Township in which such sums are payable. The Township covenants to and with the Purchaser and each registered owner of the Note, pursuant to this Ordinance, that:

(a) the Township shall include in its budget for each fiscal year during which the Note is payable the amount of the debt service on the Note due and payable for such fiscal year,

(b) shall appropriate such sums from its general revenues for the payment of the debt service for such fiscal year and, for such budgeting, appropriation and payment, the Township shall and does pledge, irrevocably, its full faith, credit and taxing power, and

(c) shall duly and punctually shall pay or shall cause to be paid from its sinking fund or general revenues the principal of, and interest on, the Note at the dates and places and in the manner stated in the Note according to the true intent and meaning thereof.

Section 8. Form of Note. The form of Note shall be substantially as set forth on Exhibit "A".

Section 9. Schedule of Stated Principal Maturity. The Schedule of Stated Principal Maturity requires that the unpaid principal balance of the Note be repaid in full on or before (a) a refunding of the Note (anticipated to occur within six (6) months after its issuance) or (b) twenty-four (24) months after the date of its issuance, whichever first occurs.

Section 10. Manner of Sale. In compliance with Section 8107 and Section 8161 of the Act, the Board of Supervisors of the Township has determined that a private sale of the Note by negotiation rather than public sale of the Note is in the best interest of the Township. Therefore, an acceptable proposal for the purchase of the Note having been received from The Purchaser, the Note is hereby awarded and sold to The Purchaser in accordance with its proposal to purchase the Note at par; provided the Note is dated the date of delivery thereof to the Purchaser and is in the form set forth in Section 8 and Exhibit "A" of this Ordinance; and further provided that the proceedings have been approved by the Department of Community and Economic Development ("Department") as required under the provisions of the Act.

Section 11. Creation of Sinking Fund. There is created, pursuant to Section 8221 of the Act, a sinking fund for the Note, to be known as "Sinking Fund - General Obligation Note - 2000", which sinking fund shall be administered in accordance with applicable provisions of the Act and into which funds shall be deposited for prompt and full payment of all obligations of the Note when due. The Township covenants to make payments out of the sinking fund created pursuant to this Section 11 or out of any other of its revenues or funds, at such times and in the annual amounts, as shall be sufficient for prompt and full payment of all obligations of the Note when due.

Section 12. Additional Taxes Due on Note. Intentionally Omitted.

Section 13. Authorization to Engage Sinking Fund Depository. The Chairman or Vice Chairman of the Board of Supervisors of the Township is authorized and directed to contract with The Purchaser for its services as sinking fund depository in connection with the sinking fund created pursuant to Section 11 and in accordance with the provisions of Section 8106 of the Act.

Section 14. Additional Authorizations for Lease Rental Debt. Intentionally Omitted.

Section 15. Additional Authorizations for Revenue or Guaranteed Revenue Debt. Intentionally Omitted.

Section 16. Debt Limitation Imposed by Section 8022 of the Act. It is declared that the debt to be incurred hereby is within the limitation imposed by Section 8022 of the Act upon the incurring of such debt by the Township.

Section 17. Authorization of Proper Officers of the Township. The Chairman or Vice Chairman of the Board of Supervisors of the Township is authorized and directed to deliver the Note, upon execution and authentication thereof as provided for herein, to the Purchaser, but only upon receipt of proper payment of the balance due therefor, and only after the Department has certified its approval pursuant to Section 8204 of the Act.

Section 18. Appointment of Note Counsel. The Township hereby appoints James R. Fegley, Esquire, and Kozloff Stoudt, Professional Corporation, as its Note Counsel for this issue representing the interests of the Township through Closing and, pursuant to further resolution, for such post-Closing services as may be required.

Section 19. Covenants as to Compliance with Federal Tax Law.

(a) The Township covenants that it will not invest or reinvest any proceeds derived from the Note, the effect of which investment would cause the Note to become obligations, the interest on which does not remain excludible from gross income under the Internal Revenue Code of 1986, as amended.

(b) Notwithstanding any other provisions contained herein, the Township shall expend proceeds derived from the sale of the Note in the manner and at the times required under Section 103 and Sections 141 to 150, inclusive, of the Internal Revenue Code of 1986, as amended, which failure to so expend would cause the Note to be "arbitrage Note", within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, or to become obligations, the interest on which does not remain excludible from gross income under the Internal Revenue Code of 1986, as amended.

(c) The Township shall timely execute and file whatever reports and documents and make such rebates as may be necessary to assure that the Note is not an "arbitrage Note" and that the interest on the Note will remain excludible from gross income under the Internal Revenue Code of 1986, as amended.

(d) Reference to the Internal Revenue Code of 1986, as amended, herein shall mean and include the Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings thereunder and corresponding provisions of any Federal tax laws from time to time proposed or enacted and at the time applicable or proposed to be applicable.

(e) The Township shall follow the advice of counsel with respect to any such investments, expenditures and the filing of reports and related actions in order to assure compliance with the provisions of this Section 18.

Section 20. Covenants as to "Qualified Tax Exempt Obligation".

(a) The Township hereby determines for purposes of the Internal Revenue Code of 1986, as amended, that the Note shall be and hereby is designated as a "qualified tax exempt obligation" as defined in Section 265(b)(3)(B) of the Code, to the extent the Note are acquired by any "financial institution", as defined in Section 265(b)(5) of the Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings thereunder and corresponding provisions of any Federal tax laws from time to time proposed or enacted and at the time applicable or proposed to be applicable.

(b) The Township hereby reasonably anticipates that the total amount of qualified tax exempt obligations (other than private activity Notes) which will be issued by it and all subordinate entities during the calendar year 1998 will not exceed \$10,000,000, within the meaning of Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings thereunder and corresponding provisions of any Federal tax laws from time to time proposed or enacted and at the time applicable or proposed to be applicable.

(c) The Township hereby represents that it is a qualified small issuer within the meaning of Section 265(b)(3)(C) of the Internal Revenue Code of 1986, as amended.

Section 21. Advertisement of Ordinance. The action of the proper officers and the advertising of a summary of this Ordinance as required by law in the Reading Eagle-Times, a newspaper of general circulation, is ratified and confirmed. The advertisement in said paper of the enactment of this Ordinance is hereby directed within fifteen (15) days following the day of final enactment.

Section 22. Severability of Ordinance Provisions. In the event any provision, section, sentence, clause or part of this Resolution shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Township that such remainder shall be and shall remain in full force and effect.

Section 23. Repeal of Inconsistent Ordinances All ordinances or parts of ordinances, insofar as the same shall be inconsistent herewith, shall be and the same expressly are repealed.

Section 24. Effectiveness of this Ordinance. This Ordinance shall become effective in accordance with Section 8003 of the of the Act.

Duly and finally enacted and ordained this 7th day of June, 2000 by the Board of Supervisors of the Township of Upper Bern, Berks County, Pennsylvania, in lawful session duly assembled.

UPPER BERN TOWNSHIP BOARD OF SUPERVISORS

By: John P. Messner
John P. Messner, Chairman

By: Paul L. Mogel, Sr.
Paul L. Mogel, Sr.

By: Tim Rentschler
Tim Rentschler