

Ordinance No. 91-07

Passed July 9, 2007

7/3/07
(Finance & Property)

ORDINANCE NO. 91-07

An ordinance authorizing the issuance of an amount not to exceed \$18,500,000 of healthcare facilities revenue bonds to assist St. Luke Lutheran Home for the Aging and St. Luke Lutheran Community-Portage Lakes in financing and refinancing costs of a project and declaring an emergency.

WHEREAS, the City of North Canton, Ohio (the "Issuer"), by virtue of the laws of the State of Ohio, including Chapter 140 of the Ohio Revised Code (the "Act") and its Charter, is authorized and empowered (a) to issue its bonds for the purpose of assisting in financing costs for the acquiring, constructing, improving and equipping of "hospital facilities" as defined in the Act, (b) to enter into a lease agreement to evidence such indebtedness and to provide for "revenues", as defined in said Section 140.01, sufficient to pay the principal of, premium, if any, and interest on such bonds (c) to secure such bonds by a pledge and assignment of revenues, and (d) to enact this Bond Legislation and to enter into the Base Leases, the Lease Agreements, the Indenture, the Tax Regulatory Agreement, and the Purchase Agreement, all as defined below; and

WHEREAS, St. Luke Lutheran Home for the Aging ("St. Luke-NC") and St. Luke Lutheran Community-Portage Lakes ("St. Luke-PL" and collectively with St. Luke-NC, the "Lessees") have requested that the Issuer issue revenue bonds pursuant to the Act for the purpose of paying and refinancing "costs of hospital facilities", as defined in the Act, including the payment of, and the reimbursement of moneys applied by the Lessees for, the costs of acquiring, constructing, improving and equipping "hospital facilities" as defined in the Act and more specifically described in the Lease Agreements (the "Project") and advance refunding the Issuer's Health Care Facilities Revenue Refunding Bonds, Series 1997A and Series 1997B (St. Luke Lutheran Home for the Aging Project) dated March 25, 1997 in the aggregate original principal amount of \$8,460,000 (the "Prior Bonds"); and

WHEREAS, the "hospital facilities" owned by St. Luke-PL are located in Summit County Ohio ("Summit County"), and in order to permit the Issuer to issue its bonds in connection with those facilities, the Issuer must enter into a public hospital agencies agreement with Summit County under which Summit County will appoint the Issuer as Summit County's agent for the purpose of issuing bonds to finance the St. Luke-PL portion of the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF NORTH CANTON, COUNTY OF STARK, STATE OF OHIO, THAT:

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

"Act" means Chapter 140 of the Ohio Revised Code, as enacted and amended.

"Additional Bonds" means Additional Bonds issued in accordance with the Indenture.

"Alternate Letter of Credit" means an irrevocable letter of credit which complies with the requirements of the Indenture.

"Base Leases" means the two Base Leases between each of the Lessees and the Issuer, as amended or supplemented.

"Bond Fund" means the Bond Fund created in the Indenture.

"Bond Legislation" means (a) as to the Series 2007 Bonds, this ordinance; (b) as to an issue of Additional Bonds, the legislation described in clause (a) to the extent applicable and the legislation providing for the issuance of such Additional Bonds; and (c) as to Bonds when Additional Bonds are outstanding, the

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legislation described in clause (a) and the legislation providing for the issuance of additional Bonds, all as amended or supplemented.

"Bonds" means the Series 2007 Bonds and any Additional Bonds.

"Clerk" means the Issuer's Clerk of Council.

"Closing Date" means the date of delivery of and payment for the Series 2007 Bonds.

"Code" means the Internal Revenue Code of 1986, as amended. References to the Code and sections of the Code shall include applicable regulations and proposed regulations thereunder and any successor provisions to such sections, regulations or proposed regulations.

"Cooperative Agreement" means the Public Hospital Agencies Agreement between the Issuer and Summit County under which Summit County will appoint the Issuer as Summit County's agent for the purpose of issuing the portion of the Series 2007 Bonds financing the St. Luke- PL portion of the Project.

"Debt Service" means, for any time period, the amounts due (whether at maturity, on any Interest Payment Date, by redemption or by acceleration) as principal of, premium, if any, and interest on the Bonds.

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

"Holder" means as to any Bond, the person in whose name such Bond is registered on the Register.

"Indenture" means the Trust Indenture, between the Issuer and the Trustee, as amended or supplemented, providing for the issuance of the Bonds.

"Interest Payment Date(s)" means the Interest Payment Dates for the Series 2007 Bonds as defined in the Indenture.

"Issuer" means the City of North Canton, Ohio, a city and political subdivision duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter.

"Lease Agreements" means the two Lease Agreements, between each of the Lessees and the Issuer, as amended or supplemented.

"Lessees" means St. Luke-NC and St. Luke-PL.

"Letter of Credit" means the Original Letter of Credit or any Alternate Letter of Credit.

"Letter of Credit Bank" means FirstMerit Bank, N.A., a national banking association organized and existing under the laws of the United States of America, as the Issuer of the Original Letter of Credit, or the entity issuing any Alternate Letter of Credit, and their respective successors or assigns.

"Mayor" means the Mayor of the Issuer.

"Original Letter of Credit" means the irrevocable, direct-pay letter of credit issued by the Letter of Credit Bank in connection with the original issuance of the Series 2007 Bonds.

"Prior Bonds" means the Issuer's Health Care Facilities Revenue Refunding Bonds, Series 1997A and Series 1997B (St. Luke Lutheran Home for the Aging Project) dated March 25, 1997 in the aggregate original principal amount of \$8,460,000.

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"Project" means the property described in the Lease Agreements as comprising the Project, constituting "hospital facilities" as defined in the Act.

"Project Fund" means the Project Fund created in the Indenture.

"Project Purposes" means acquiring, constructing, installing and equipping the Project, owned and to be owned by the Lessees and used to provide nursing home and assisted living care or any related or subsequent uses as are permitted by the Lease Agreements or the Act.

"Purchase Agreement" means the Bond Purchase Agreement between the Issuer, the Lessees, and the Underwriter.

"Register" means the register or other books maintained by the Registrar for registration, transfer, and exchange of the Bonds.

"Registrar" means the entity (originally the Trustee) acting as the Registrar with respect to the Bonds pursuant to the provisions of the Indenture, or any successor Registrar as provided in the Indenture.

"Revenues" means (a) the Basic Rent required to be paid by the Lessees under the Lease Agreements, (b) any other money received by the Issuer or the Trustee from the lease, sale, or other disposition of the Project, except Additional Payments, as defined in the Lease Agreements, (c) proceeds received by the Issuer or the Trustee from any insurance, condemnation award, or guaranty with respect to the Project, (d) all money and investments in the Bond Fund, (e) pending disbursement, money and investments in the Project Fund and the Issuance Costs Fund, and (f) income and profit from the investment of (a) through (e).

"Series 2007 Bonds" means the City of North Canton, Ohio, Variable Rate Health Care Facilities Revenue Bonds, Series 2007 (St. Luke Lutheran Community Project) issued in an amount not to exceed \$18,500,000 authorized in Section 3 hereof.

"St. Luke-PL" means St. Luke Lutheran Community-Portage Lakes, an Ohio non-profit corporation.

"St. Luke-NC" means St. Luke Lutheran Home for the Aging, an Ohio non-profit corporation.

"Summit County" means Summit County, Ohio.

"Tax Regulatory Agreement" means the Tax Regulatory Agreement, among the Issuer, the Lessees, and the Trustee, as amended or supplemented.

"Trustee" means The Bank of New York Trust Company, N.A., a national banking association organized and existing under the laws of the United States of America, its successors or assigns, and any other successor trustee as determined or designated pursuant to the Indenture.

"Underwriter" means NatCity Investments, Inc., its successors or assigns.

Any reference herein to the Issuer, to this Council, 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 or the Charter of the Issuer shall include such section or provision or chapter as from time to time may be amended, modified, revised, supplemented, or superseded; provided, that no such change in the Constitution or laws shall be deemed applicable by reason of

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this provision if such change would in any way constitute an impairment of the rights or obligations of the Issuer, the Lessees, the Trustee, or a Holder under this Bond Legislation under the Indenture or with respect to the Bonds.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa. The terms "hereof", "herein", "hereby", "hereto", "hereunder", and similar terms, mean this Bond Legislation as a whole and not any particular section or subsection. Words of the masculine and neuter genders shall be deemed and construed to include correlative words of the masculine, feminine and neuter genders.

Section 2. Determinations of Council; Authorization of Cooperative Agreement. Based upon representations from the Lessees, this Council makes the following determinations:

- (a) the Project constitutes "hospital facilities" as defined in the Act;
- (b) the current use and proposed use of the Project is in furtherance of the purposes of the Act and will benefit the people of the Issuer, of Summit County and of the State of Ohio by enhancing the availability, efficiency and economy of "hospital facilities" and the service rendered thereby and by facilitating hospital facilities to be available to or for the service of the general public without discrimination by reason of race, creed, color or national origin; and
- (c) the provision of assistance in financing costs of the Project will require the issuance, sale and delivery of the Series 2007 Bonds in a principal amount not to exceed \$18,500,000, and hereafter may require the Issuer's best efforts to issue, sell and deliver Additional Bonds for the purposes set forth in the Indenture.

In addition, this Council authorizes the Cooperative Agreement with Summit County, substantially in the form of the Participating Public Hospital Agencies Agreement now on file with the Clerk.

Section 3. Authorization and Terms of Series 2007 Bonds.

- (a) Purpose and Designation. The Issuer shall issue, sell and deliver the Series 2007 Bonds in the principal amount not to exceed \$18,500,000 for the purpose of assisting the Lessees in the financing of costs of acquiring, constructing, installing and equipping the Project for the Project Purposes and advance refunding the Prior Bonds. The Series 2007 Bonds shall be designated City of North Canton, Ohio, Variable Rate Health Care Facilities Revenue Bonds, Series 2007 (St. Luke Community Project) and shall be in the principal amount as designated in a certificate of the Mayor or the Finance Director.
- (b) Form and Numbering. The Series 2007 Bonds shall be initially issued in fully registered form, shall be exchangeable in the manner and on the terms provided in the Indenture, and shall be numbered as determined by the Trustee. The Series 2007 Bonds shall be in the denominations permitted or required by the Indenture, shall be dated as provided in the Indenture and shall be in the form set forth in Exhibit A of the Indenture.
- (c) Date, Maturity and Interest Rates. The Series 2007 Bonds shall be dated the Closing Date, shall mature on the date or dates and shall bear interest from their dates, payable on each Interest Payment Date, as provide in the Indenture.
- (d) Redemption of Bonds. The Series 2007 Bonds shall be subject to optional redemption, extraordinary optional redemption, and mandatory redemption, all as defined and set forth in the Indenture. The terms,

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conditions, manner and the times for the various types of redemption are provided in the Indenture. The Issuer hereby authorizes the Lessees to act as its agent in directing optional redemption of the Series 2007 Bonds at the times and in the manner determined by the Lessees.

- (e) Tender Provisions. The Series 2007 Bonds shall contain the optional and mandatory tender provisions as are provided in the Indenture.
- (f) Payment. Debt Service on the Series 2007 Bonds shall be payable as provided in the Indenture.
- (g) Execution. The Series 2007 Bonds shall be executed on behalf of the Issuer by the Mayor and the Finance Director, provided that either or both of such signatures may be by facsimile.
- (h) Registrar. The Trustee shall be the initial Registrar and may resign, be removed, or a successor Registrar may be appointed, all according to the provisions of the Indenture.

Section 4. Security for the Bonds. To the extent provided in, and except as otherwise permitted under the Indenture, the Bonds shall be equally and ratably (a) payable solely from the Revenues, and (b) secured by the pledge of the Revenues and the assignment of and grant of a security interest in the Lease, except for Unassigned Rights as defined in the Lease. The Bonds shall be further secured by the Letter of Credit and the proceeds therefrom and may be paid from the proceeds of the Letter of Credit.

This Issuer will accept the lease of the Leased Premises from the Lessees under the Base Leases and will lease the Leased Premises back to the Lessees in accordance with the Lease Agreements.

Anything in this Bond Legislation or the Bonds to the contrary notwithstanding, neither this Bond Legislation, the Bonds, the Lease Agreement nor the Indenture shall constitute a general obligation debt, bonded indebtedness or a pledge of the faith and credit of the Issuer, and further, nothing gives the owners of the Bonds, and they do not have, the right to have excises, ad valorem or other taxes levied by the Issuer for the payment of Debt Service on the Bonds, and each Bond shall contain on the face thereof a statement to that effect and that such Bond is payable solely from the Revenues; provided, 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 the terms, conditions or obligations of the Indenture, this Bond Legislation or the Bonds.

Section 5. Sale of the Series 2007 Bonds. The Series 2007 Bonds shall be sold in accordance with the terms of the Purchase Agreement. The Mayor or the Finance Director are authorized and directed to make the necessary arrangements with the Underwriter to establish the date, location, procedure and conditions for the delivery of the Series 2007 Bonds, and to take all steps necessary to effect due execution, authentication and delivery of the Series 2007 Bonds under the terms of this Bond Legislation and the Indenture to the extent not provided in the Purchase Agreement. This Council determines that the price for and the terms of the Series 2007 Bonds and of the sale thereof, all as provided in this Bond Legislation and the Purchase Agreement, are in the best interest of the Issuer and in compliance with all legal requirements.

Section 6. Allocation of Proceeds of the Series 2007 Bonds. The proceeds of the sale of the Series 2007 Bonds shall be deposited as provided in the Indenture and used as provided in the Lease Agreements.

Section 7. Documents and Transcripts. In order to secure the payment of the Debt Service as the same shall become due and payable, the Mayor and the Finance Director,

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or either of them, in the name and on behalf of the Issuer, are hereby authorized and directed to execute and deliver the Base Leases, the Lease Agreements, the Indenture, the Tax Regulatory Agreement, the Cooperative Agreement, and the Purchase Agreement in substantially the forms submitted to this Council, 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 such officers. The approval of such changes by such officers, and that such changes are not substantially adverse to the Issuer, shall be conclusively evidenced by their execution of such instruments.

The Mayor, the Finance Director and the Clerk, as appropriate, are hereby further authorized and directed to execute such certifications, financing statements, assignments and instruments as are, in the opinion of bond counsel to the Issuer, necessary or appropriate to perfect the pledges set forth herein and in the Indenture and to consummate the transactions provided for herein, in the Base Leases, the Lease Agreements, the Indenture, the Tax Regulatory Agreement, the Cooperative Agreement, and the Purchase Agreement.

The Issuer consents to the use and distribution of a Preliminary Offering Circular and a final Offering Circular, in substantially the form submitted to and now on file with the Issuer, in connection with the issuance, sale and delivery of the Series 2007 Bonds. However, the Issuer has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any statements in the Preliminary Offering Circular, the Offering Circular or any other written materials used in connection with the offer and sale of the Series 2007 Bonds or in any way relating to the Project, the Lessees, the Letter of Credit Bank or the Underwriter.

The Clerk, or other appropriate officer of the Issuer, shall furnish to the Trustee a true transcript of proceedings, certified by the Clerk or said officer, of all proceedings had with reference to the issuance of the Series 2007 Bonds along with such information from the records as is necessary to determine the regularity and validity of the issuance of the Series 2007 Bonds.

Section 8. Federal Tax Matters.

- (a) Bond Approval. Solely for the purpose of Code Section 147(f), this Council approves the Series 2007 Bonds.
- (b) Arbitrage and Federal Guarantees. The Mayor or the Finance Director, alone or in conjunction with the other, are hereby authorized and directed to provide such certificates and to take such other action as may be necessary and requested by the Lessees in order to comply with the Issuer's covenants relating to arbitrage and federal guarantees.
- (c) Average Maturity of Bonds. The Mayor or the Finance Director are authorized to certify, which certificate shall be based on certifications supplied by the Lessees for the benefit of the Issuer, that in accordance with Code Section 147(b), the average maturity of the Series 2007 Bonds does not exceed 120% of the average reasonably expected economic life of the Project.
- (d) Information Reporting. The Mayor or the Finance Director are authorized and directed to execute and file such documents, including any forms prescribed by the Internal Revenue Service, as are necessary in the opinion of bond counsel to the Issuer, to comply with the information reporting requirements of Code Section 149(e).
- (e) Bond Registration. In compliance with Code Section 149(a), the Series 2007 Bonds shall only be issued as fully registered bonds as provided in the Indenture.

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- (f) Identification of Qualified Hedge Contract. At the written request of the Lessees, the Mayor and Finance Director, or either of them, are authorized and directed to execute and file such documents, as are necessary in the opinion of bond counsel to the Issuer, to identify any interest rate hedge contract relating to the Series 2007 Bonds on the books and records of the Issuer, as required by Treas. Reg. §1.148-4(h).
- (g) Public Hearing. The Mayor, the Finance Director, the Clerk or any other official or employee of the Issuer is authorized to hold a public hearing as requested by the Lessees in connection with the issuance of the Series 2007 Bonds, as required by Code Section 147(f).

Section 9. Issuer to Use Best Efforts to Issue Series 2007 Bonds. This Council agrees and covenants that the Issuer will use its best efforts to effect the issuance of the Series 2007 Bonds, subject to compliance with the applicable requirements of the Internal Revenue Code of 1986, as amended, and the Act.

Section 10. Compliance with Open Meeting Requirements. This Council finds and determines that all formal actions of this Council or committees concerning and relating to the enactment of this Bond Legislation were taken in an open meeting of this Council or committees, 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 the law, including Section 121.22 of the Ohio Revised Code.

Section 11. Emergency and Effective Date. This Bond Legislation is determined to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the Issuer and for the further reason that this Bond Legislation must be immediately effective in order that the benefits of the Project may be available to the residents of the Issuer at the earliest possible time; wherefore, this Bond Legislation shall take effect and be in full force from and after its passage, provided it receives the affirmative vote of at least six members of this Council; otherwise, it shall take effect from and after the earliest period allowed by law.

North Canton, Ohio
Adopted: July 9, 2007


MAYOR

SIGNED: July 11, 2007

ATTEST:

CLERK OF COUNCIL