

North Canton City Council  
Finance and Property Committee

Ordinance No. 66 – 2014

An ordinance authorizing the issuance and sale of an amount not to exceed \$7,500,000 in principal amount of City of North Canton, Ohio Healthcare Facilities Revenue Bonds, Series 2014 (St. Luke Lutheran Community Project), for the purpose of financing costs of hospital facilities; authorizing the signing and delivery of a Base Lease, Lease, and a Trust Agreement to provide for the issuance of, and securing the payment of bond service charges payable on, the bonds; authorizing the signing and delivery of a Bond Purchase Agreement in connection with the sale of the bonds and of certain other documents and instruments in connection with, and the taking of actions necessary or desirable to effect the issuance of, the bonds; and authorizing and approving related matters, and declaring an emergency.

WHEREAS, the City, a municipal corporation and political subdivision established under the laws of the State of Ohio (the "City"), 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 its Bonds, (c) to secure the Bonds by a pledge and assignment of revenues, (d) to secure those revenue bonds by a Trust Agreement and pledge of those revenues, and (e) to enact this Bond Legislation and to enter into the Base Lease, the Lease Agreement, the Tax Agreement, the Bond Purchase Agreement, and the other documents and instruments hereby approved, all as defined below; and

WHEREAS, St. Luke Lutheran Home for the Aging (the "Company"), an Ohio nonprofit corporation, has requested that the City issue its revenue bonds (the "Bonds") pursuant to the Act to assist the Company in providing funds to (a) finance the costs of the acquisition, construction, improvement and equipping of a 43-unit, approximately 41,760 square foot, two-story addition to the existing nursing home owned and operated by the Company at 200 Applegate St. N.E., North Canton, Ohio 44720, and (b) pay the issuance costs of the Bonds.

NOW, THEREFORE, BE IT 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 or Trust Agreement, 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 Revised Code.

**"Assignment"** means the Assignment of Rights Under Lease, dated as of even date with the Trust Agreement, from the City, as assignor, to the Trustee, as assignee, as amended or supplemented from time to time.

**"Base Lease"** means the Base Lease, dated as of even date with the Trust Agreement, between the Company, as lessor, and the City, as lessee, as amended or supplemented from time to time.

**"Bond Documents"** means the Base Lease, the Lease, the Trust Agreement, the Assignment, the Bond Purchase Agreement and the Tax Agreement.

**"Bond Fund"** means each Bond Fund created under the Trust Agreement and held by the Trustee.

**“Bond Legislation”** means this ordinance adopted by the City providing for the issuance of the Bonds and the approval of the Bond Documents and related matters, as that ordinance may from time to time be amended or supplemented.

**“Bond Purchase Agreement”** means the Bond Purchase Agreement, providing for the sale of the Bonds between and among the Original Purchaser, the Company, and the City.

**“Bond Service Charges”** means, for any period or payable at any time, the principal of (whether on an Interest Payment Date, at stated maturity, by mandatory sinking fund redemption, if any, by acceleration or otherwise) and premium, if any, and interest on the Bonds for that period or due and payable at that time as the case may be.

**“Bonds”** means the \$7,500,000 Healthcare Facilities Revenue Bonds, Series 2014 (St. Luke Lutheran Community Project), issued by the City pursuant to this Bond Legislation and the Trust Agreement.

**“City”** means the City of North Canton, Ohio, a municipal corporation and political subdivision of the State of Ohio.

**“Clerk”** means the City’s Clerk of Council.

**“Closing Date”** means the date of delivery of and payment for the Bonds.

**“Code”** means the Internal Revenue Code of 1986, the Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a section of the Code includes any applicable successor section or provision and such applicable Regulations, rulings, announcements, notices, procedures and determinations pertinent to that section.

**“Company”** means St. Luke Lutheran Home for the Aging, an Ohio nonprofit corporation and a nonprofit hospital agency, as defined in the Act, and its lawful successors and assigns, including without limitation any surviving, resulting, or transferee corporation or entity, as permitted under the Lease.

**“Director of Finance”** means the Director of Finance of the City.

**“Guaranty”** means the Guaranty Agreement, dated as of even date with the Trust Agreement, between the Company, The Waterford at St. Luke, St. Luke Lutheran Community-Portage Lakes, St. Luke Foundation, St. Luke Lutheran Community, and the Trustee, as amended or supplemented from time to time.

**“Holder”** means the Person in whose name a Bond is registered on the Register.

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

**“Interest Payment Date(s)”** means the Interest Payment Dates for the Bonds as defined in the Trust Agreement.

**“Lease”** means the Lease Agreement, dated of even date with the Trust Agreement, between the City, as lessor, and the Company, as a Co-Borrower and the lessee, and St. Luke Lutheran Community-Portage Lakes, The Waterford at St. Luke, and St. Luke Foundation, each an Ohio

nonprofit corporation and a “nonprofit hospital agency” as defined in the Act, as Co-Borrowers, as amended or supplemented.

“**Mayor**” means the Mayor of the City.

“**Original Purchaser**” means PNC Bank National Association, as the initial purchaser of the Bonds.

“**Project**” means the Project Facilities and the Project Site, including, as applicable, the interests of the City in and to the Project, and constituting a “project” as defined by the Act.

“**Project Facilities**” means the hospital facilities generally identified in Exhibit A of the Lease, including any additions, improvements, modifications, substitutions, and renewals thereof, and further includes other facilities and uses as are permitted by the Act and the Lease.

“**Project Fund**” means the Project Fund created in the Trust Agreement.

“**Project Site**” means the real estate described in Exhibit B of the Lease, together with any additions thereto and less any removals therefrom, in the manner and to the extent provided in the Lease and the Trust Agreement.

“**Rental Payments**” means the amounts required to be paid by the Company to the Trustee pursuant to the Lease and the Assignment.

“**Revenues**” means: (a) Rental Payments, (b) amounts held in, or for the credit of, the Special Funds, (c) all amounts payable to the Trustee with respect to Bond Service Charges on the Bonds (d) all other rentals, revenue, income, charges and money received or to be received by the City, or the Trustee for the account of the City, from the lease, sale or other disposition of the Project and (e) all income and profit from the investment of the Rental Payments and the Special Funds and such other money. The term “Revenues” does not include any money or investments in the Rebate Fund, the Bond Purchase Fund, or the Issuance Expenses Fund.

“**Tax Agreement**” means the Tax Regulatory Agreement, relating to the Bonds, by and between the City, the Company, and the Trustee, as amended or supplemented from time to time.

“**Trust Agreement**” means the Trust Agreement securing the Bonds, between the City and the Trustee, as amended or supplemented from time to time.

“**Trustee**” means the Trustee under the Trust Agreement, originally The Huntington National Bank, a national banking association duly organized and validly existing under the laws of the United States of America, and any successor Trustee, as determined or designated under the Trust Agreement.

Any reference herein to the City, 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 City 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 this provision if such change would in any way constitute an impairment of the rights or obligations of the City, the Company, the Trustee, or a Holder under this Bond Legislation, under the Trust Agreement, 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. Findings and Determinations. Based upon the representations of the Company, 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 City 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 Bonds in a principal amount not to exceed \$7,500,000.

Section 3. Authorization of the Bonds. The City determines it to be necessary, and the City shall issue, sell, and deliver the Bonds for the purpose of assisting the Company in providing funds to pay the "costs of hospital facilities" as provided and authorized herein and in the Act and in the Trust Agreement. The Project shall be leased to the Company pursuant to the Lease.

Section 4. Bond Documents. The Bonds shall be issued under the terms of the Trust Agreement between the City and the Trustee, as trustee, provided that another bank or trust company may be selected to serve as trustee if the Company determines that it is in the best interest of the Company and not prejudicial to the City or the Holders, and the Mayor approves that bank or trust company as Trustee as evidenced by the signing of the Trust Agreement. The Project will be leased by the Company, as lessor, to the City, as lessee, pursuant to the Base Lease and in consideration for the City's issuance of the Bonds. The Project will be leased back to the Company, as lessee, by the City, as lessor, pursuant to the Lease and in consideration of the Company's agreements, among others, to maintain the Project as required by the Lease and to pay Bond Service Charges in amounts sufficient to pay the principal of, and any premium and the interest on, the Bonds. The City will assign its rights under the Base Lease and the Lease to the Trustee for the security of the Bonds pursuant to the Assignment. Payment of the Bond Service Charges will be guaranteed under the Guaranty. If the Bonds are issued in more than one series, the above documents may be prepared for each such series, and references herein to those documents include the documents for each series of Bonds.

Section 5. Terms of Bonds.

(a) Generally. The Bonds shall be issued in an aggregate principal amount not to exceed \$7,500,000 or in such lesser amount as shall be specified in the Bond Purchase Agreement between the Original Purchaser, the City, and the Company. The Bonds shall be issued only in fully registered form, shall be numbered in such manner as determined by the Trustee in order to distinguish each Bond from any other Bond, shall be in the authorized denominations and shall be dated and designated, all as provided in the Trust Agreement. The Bonds, the certificate of authentication, and the form of assignment shall be substantially in the respective forms thereof set forth in Exhibit A to the Trust Agreement. The Bonds shall be negotiable instruments in accordance with the Act and shall express on their faces the purpose for which they are issued and such other statements or legends as may be required by law. The Bonds may be issued under a book entry system as and to the extent provided in the Trust Agreement. The Mayor or the Director of Finance of the City is authorized and directed to sign the necessary documents relating to that book entry system. The Bonds shall be signed by the Mayor and the Director of Finance in their official capacities (provided that either or both of those signatures may be facsimiles).

- (b) Interest Rates and Maturities. The Bonds shall mature in the years and principal amounts, shall bear interest in the years they are outstanding at the rates per year, and shall be payable as to principal and interest on the dates, all as provided in the Trust Agreement; provided that the maturity of the Bonds shall not exceed 40 years, the weighted average interest rate for the Bonds shall not exceed 25% (except as required under any bank, credit, liquidity or similar agreement).
- (c) Redemption Terms. The Bonds of one or more maturities may be term bonds subject to mandatory redemption prior to maturity pursuant to the mandatory sinking fund requirements of the Trust Agreement, on the dates and in the years and principal amounts as provided in the Trust Agreement. The Bonds are subject to optional redemption prior to maturity, on the dates, in the years, and at the redemption prices (expressed as a percentage of the principal amount redeemed), plus accrued interest to the redemption date, all as set forth in the Trust Agreement. The Bonds shall be subject to extraordinary optional redemption and optional and mandatory tender for purchase prior to maturity as provided in the Trust Agreement.

Section 6. Sale of Bonds. At the time of the signing of the Bond Purchase Agreement setting forth the final terms of the Bonds, the Mayor or the Director of Finance each is authorized and directed to award and sell the Bonds to the Original Purchaser at the purchase price established in and in accordance with the terms and provisions of the Bond Purchase Agreement. The purchase price so established shall be not less than 97% of an amount equal to the aggregate principal amount of the Bonds, less any original issue discount, plus (ii) any accrued interest on the aggregate principal amount of the Bonds from the date of the Bonds to the date of payment for the Bonds by the Original Purchaser. The original issue discount, if any, shall not exceed 10% with respect to any maturity of the Bonds, except for Bonds issued as capital appreciation bonds as set forth in the Bond Purchase Agreement and in accordance with the provisions of the Trust Agreement. Mayor or the Director of Finance is authorized and directed to sign, acknowledge, and deliver, in the name of and on behalf of the City, the Bond Purchase Agreement in substantially the form presented to the City, which instrument is hereby approved, with such changes, to be approved by the Mayor or the Director of Finance signing the same on behalf of the City, as are required by the terms of the Bonds, not inconsistent with this ordinance and not substantially adverse to the City as may be permitted by the Act. The approval of such changes by the Mayor or Director of Finance, and that such are not substantially adverse to the City, shall be conclusively evidenced by the signing of the Bond Purchase Agreement.

The Mayor or Director of Finance each is authorized and directed to make the necessary arrangements on behalf of the City to establish the date, location, procedure, and conditions for the delivery of the Bonds to the Original Purchaser, and to take all steps necessary to effect due signing, authentication, and delivery to the Original Purchaser of the Bonds under the terms of this ordinance, the Bond Purchase Agreement, and the Trust Agreement. It is determined that the purchase price to be paid by the Original Purchaser and the terms of the Bonds, and the sale thereof, all as provided for in this ordinance, are in the best interest of the State and the City and in compliance with all legal requirements and will carry out the public purposes specified in the Act.

Section 7. Security for Bonds. To the extent provided in and except as otherwise permitted by the Trust Agreement, (i) the Bonds shall be special obligations of the City and the Bond Service Charges thereon shall be payable equally and ratably solely from the Revenues, as defined and provided in the Trust Agreement and being generally the Rental Payments to be made by the Company to the Trustee pursuant to the Base Lease and the Lease and the Assignment, and the money and investments in the Special Funds established under the Trust Agreement and held by the Trustee, and (ii) the payment of Bond Service Charges shall be secured by an assignment of and grant of a security interest in the Revenues and the assignment of the Lease (save for the Unassigned Rights thereunder) pursuant to the Trust Agreement and the Assignment. The Bonds may be further secured by a policy of municipal bond insurance or a letter of credit (or other credit, liquidity or similar agreement) if so provided in the Bond

Purchase Agreement and the Trust Agreement. The Mayor or the Director of Finance are authorized to enter into such insurance or credit agreements if so requested by the Company.

Notwithstanding anything to the contrary in this ordinance, the Bonds, or the Trust Agreement, the Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit of the City, the State, or of any political subdivision thereof, and the Holders have no right to have taxes levied by the General Assembly of the State, the City or the taxing authority of any political subdivision of the State for the payment of the Bond Service Charges. Nothing herein shall be deemed, however, to prohibit, or require, the City, of its own volition, from using to the extent lawfully authorized to do so any other resources for the fulfillment of any of the terms, conditions, or obligations of the Trust Agreement, this Bond Legislation, or any of the Bonds.

Section 8. Funds and Allocation of Bond Proceeds to Funds. The Trust Agreement creates the Bond Fund and the Improvement Fund as Special Funds to be held by the Trustee and included in the Revenues given as security for the Bonds. The Trust Agreement further creates the Issuance Expenses Fund and the Rebate Fund as funds to be held by the Trustee but not to be included in the Revenues given as security for the Bonds. The amount paid under the Bond Purchase Agreement as the purchase price for the Bonds shall be received and receipted on behalf of the City by the Trustee and transferred to the Trustee whereupon it shall be allocated, deposited, and credited by the Trustee in accordance with the Trust Agreement.

Section 9. Covenants and Agreements of City. In addition to the other covenants and agreements of the City in this ordinance and the Trust Agreement, the City covenants and agrees as set forth in this section.

(a) Arbitrage Provisions and City Information Return. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. Any of the Chairman, Vice Chairman, the Secretary, or Assistant Secretary, alone or in conjunction with any other officer, employee, or agent of or consultant to the Company, shall give an appropriate certificate of the City that sets forth the reasonable expectations of the City regarding the amount and use of the proceeds of the Bonds, the facts, estimates, and circumstances on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds, including the Tax Agreement.

The City covenants that it: (i) will take, or require to be taken, all actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The Mayor or Director of Finance are hereby authorized and directed to take any and all actions and make or give such reports and certifications as may be appropriate to assure such exclusions of that interest.

(b) Transcript of Proceedings. The City shall furnish to the Original Purchaser a true transcript of proceedings for the Bonds along with such information for the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

Section 10. Direct Placement. As the Bonds are being placed directly with the Original Purchaser, an Offering Circular relating to the original issuance of the Bonds will not be prepared by the Company.

Section 11. Bond Documents of the City. To provide for the issuance and sale of the Bonds and the consummation of the transactions to be consummated thereby, the Mayor or the Director of Finance each is authorized and directed to sign, acknowledge, and deliver, in the name and on behalf of the City, the Bond Documents, all in substantially the forms herewith presented to the City. Those instruments are approved with changes therein not inconsistent with this Bond Legislation and not substantially adverse to the City that are permitted by the Act and shall be approved by the Mayor or the Director of Finance signing the same on behalf of the

City; provided that the approval of those changes by the Mayor or the Director of Finance, and their character as not being substantially adverse to the City, shall be conclusively evidenced by the signing of those instruments. The final form of those documents shall be included in the transcript of proceedings and filed with the City.

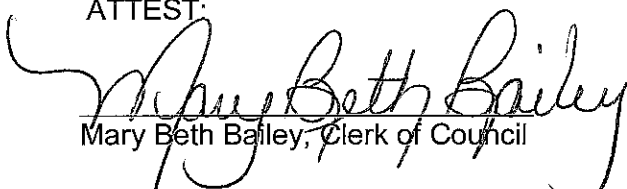
- Section 12. Other Documents and Actions. The Mayor, the Director of Finance, or the Clerk, as appropriate, each is further authorized and directed to sign, and the City shall enter into, any certifications, financing statements, assignments, other documents, and instruments, and to take such actions as are, in the opinion of Bond Counsel, necessary or appropriate to perfect the assignments set forth in the Trust Agreement and to consummate the transactions contemplated by this Bond Legislation, the Trust Agreement, and the Lease, including the marketing and sale of the Bonds. The Mayor or the Director of Finance, as appropriate, each is further authorized to take any actions on behalf of the City that are required or permitted to be taken by the City under or pursuant to the Bond Documents during the period those Bond Documents are in effect. Bond Counsel is hereby authorized to date or redate all certificates and other documents, including but not limited to those set forth in Section 11 and this Section 12, to be included in the transcript of proceedings.
- Section 13. The City to Use Best Efforts to Issue Bonds. This Council agrees and covenants that the City will use its best efforts to effect the issuance of the Bonds, subject to compliance with the applicable requirements of the Internal Revenue Code of 1986, as amended, and the Act.
- Section 14. 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 open meetings 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 15. Emergency and Effective Date. This Bond Legislation is hereby determined to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the City and for the further reason that this Bond Legislation must be immediately effective in order that the Company will be able to take advantage of favorable financing rates that will benefit the Project and the Company's charitable healthcare activities within the City, and in order that the additional job opportunities and improved healthcare facilities relating to the Project will be available to the residents of the City at the earliest possible time; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in full force immediately upon its adoption by Council and approval by the Mayor. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 25 day of August 2014.

  
David Held, Mayor

Signed: 8/25, 2014

ATTEST:

  
Mary Beth Bailey, Clerk of Council