

ORDINANCE NO. 1540 AC CMS

AN ORDINANCE AMENDING SECTION 5 OF ORDINANCE NO. 983 AC CMS, PASSED NOVEMBER 19, 1973, AUTHORIZING THE EXECUTION OF A SUPPLEMENTAL INDENTURE OF TRUST PURSUANT TO SUCH AMENDMENT, AND DECLARING AN EMERGENCY.

WHEREAS, this Council by Ordinance No. 983 AC CMS, passed November 19, 1973, authorized the issuance, sale and delivery of \$3,410,000 1973 Series Hospital Revenue Refunding Bonds (the "Refunding Bonds") of the City, relating to the Allen Memorial Hospital Project, which Bonds are secured by an Indenture of Trust, dated December 1, 1973, under which AmeriTrust Company, Cleveland, Ohio (formerly The Cleveland Trust Company), is Trustee (the "Trustee"); and

WHEREAS, the Refunding Bonds were issued for the purpose of refunding the City's \$3,100,000 Hospital Improvement Revenue Bonds, originally issued as of December 1, 1970, secured by an Indenture of Trust, dated as of December 1, 1970, under which BancOhio National Bank, Columbus, Ohio (formerly The Ohio National Bank of Columbus), is Trustee (the "Outstanding Issue Trustee"); and

WHEREAS, upon request of the Allen Memorial Hospital (the "Hospital") it is necessary to clarify certain provisions of said Ordinance No. 983 AC CMS and to confer upon both the Trustee and the Outstanding Issue Trustee certain additional rights, powers and authority; and

WHEREAS, this Council has been informed by the Hospital and its Financial Advisor that the amendment set forth below will permit the Outstanding Issue Trustee to reinvest certain moneys now held by the Outstanding Issue Trustee, thereby creating additional funds for Project purposes as defined in Ordinance No. 735 AC CMS, passed November 16, 1970, authorizing the 1970 Hospital Improvement Revenue Bonds referred to above, but in no way diminishing or modifying the rights of the holders of said 1970 Hospital Improvement Revenue Bonds, thereby preserving such rights in a manner which is absolute and inviolate;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio:

Section 1. That Section 5 of Ordinance No. 983 AC CMS, passed November 19, 1973, as it was passed, be and the same is hereby amended to read as follows:

"Section 5. Proceeds of Refunding Bonds. The proceeds from the sale of the Refunding Bonds shall, subject to the release of the 1970 Trust Indenture, be used and disposed of as follows: (a) the portion representing accrued interest shall be delivered to the Outstanding Issue Trustee

for the purposes of Section 1002(a) of the 1970 Trust Indenture; and (b) the entire balance of such proceeds shall be, immediately and contemporaneously with the receipt of such proceeds, invested in direct obligations of the United States which have been certified by an independent public accounting firm of national reputation to be of such maturities and interest payment dates and to bear such interest (provided that such interest shall produce the highest practicable yield as shall not exceed the adjusted yield on the Refunding Bonds except that the portion of such proceeds which represents less than a major portion thereof as determined in accordance with proposed Section 1.103-13(b)(11), as set forth in the Federal Register of May 3, 1973, of the regulations under the Internal Revenue Code of 1954, as amended, shall be invested so as to produce the highest practicable yield without respect to the yield on the Refunding Bonds) as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom be sufficient (together with moneys held by such Trustee and the optional paying agent of the Outstanding Issue, The Oberlin Savings Bank Company, Oberlin, Ohio) for the payment, at their maturity or redemption date, of the principal amount of the Outstanding Issue, together with the redemption premium payable on December 1, 1983 and thereafter (which are called for redemption by Section 6 of this Ordinance) and interest accrued and to accrue to the date of maturity or redemption. Such direct obligations shall be delivered, immediately and contemporaneously with the acquisition thereof, to the Outstanding Issue Trustee. The release of the 1970 Trust Indenture by the Outstanding Issue Trustee shall be pursuant to and subject to the applicable provisions of Article Ten of such Indenture. Council hereby finds and determines that such investment is the most advantageous in yield and maturity date for the provision of necessary refunding moneys and to accomplish the maximum feasible savings benefits to the Municipality, taking into consideration the provisions of Section 103(d) of the Internal Revenue Code of 1954, as amended, and regulations thereunder. Such direct obligations of the United States and moneys, if any, in addition thereto shall be held by such Outstanding Issue Trustee, in trust for and irrevocably committed to the payment of the aforesaid principal, interest and redemption premium of the Outstanding Issue. The Municipality shall also pay to such Trustee of the Outstanding Issue, or provide for the use by it of funds of the Municipality now held in trust with respect to the Outstanding Issue, an amount sufficient to provide for the payment of all fees and charges of such Trustee and the said paying agent due or to become due through the date on which the last of the Outstanding Issue will be retired. Subject to the provisions of Section 1004 of the 1970 Trust Indenture, any unclaimed moneys held by such Outstanding Issue Trustee and paying agent upon the request of the Municipality shall be transferred to the Trustee of the Refunding Bonds and shall be credited to such special fund or funds referred to in Section 8 of the Ordinance as may be designated by the Fiscal Officer at the time of such request.

"If the balance of the proceeds of the Refunding Bonds referred to in clause (b) of this section should exceed the amount required for the acquisition of the necessary amount of the aforesaid direct obligations

of the United States, the balance not so required for such purpose shall be transferred to the Rental Reserve Fund provided for in Section 7 of this Ordinance.

"At any time, and from time to time, the Outstanding Issue Trustee shall, but only upon written direction of the Fiscal Officer of the Municipality, surrender for redemption all or such portion of the direct obligations of the United States acquired pursuant to Clause (b) of the first paragraph of this section, for immediate and contemporaneous reinvestment of all or a portion thereof, as indicated in such direction, in other direct obligations of the United States, provided that prior to such reinvestment: (i) such Outstanding Issue Trustee shall receive a certification by an independent public accounting firm of national reputation that the proposed reinvestment in direct obligations of the United States will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom, be sufficient for the payment, at their maturity or redemption date, of the then outstanding bonds of the Outstanding Issue, together with the redemption premium payable on December 1, 1983 and thereafter (which Outstanding Issue is called for redemption by Section 6 of this Ordinance) and interest accrued and to accrue to the date of maturity or redemption; and (ii) such Outstanding Issue Trustee shall be satisfied that such aggregate investments bear the highest practicable yield taking into consideration the provisions of Section 103(c) (formerly Section 103(d)) of the Internal Revenue Code of 1954, as amended, and the valid regulations thereunder. In the event of a realization of moneys by the Outstanding Issue Trustee due to any such redemption and such reinvestment, which moneys are not required for investment in direct obligations of the United States as aforesaid, such moneys shall be first applied by the Outstanding Issue Trustee to pay all of its costs and expenses related to such redemption, reinvestment, certification or otherwise, and any balance thereafter remaining shall be paid into a special account established hereby and held by the Trustee, to be known as the "Reinvestment Earnings Account," but in the name of the Municipality. The moneys held in the Reinvestment Earnings Account shall first be used to pay all remaining costs and expenses related to such transaction, redemption, reinvestment, certification or otherwise. Such moneys shall then be invested in Eligible Investments until used, paid to the Hospital, and applied solely to pay costs of the Project as defined in Ordinance No. 735 AC CMS, passed November 16, 1970, pursuant to written requests by the Fiscal Officer of the Municipality.

"The Municipality hereby covenants that it will restrict, and take such actions as are reasonably necessary to require the Outstanding Issue Trustee, to restrict, the use of the proceeds of the Refunding Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of the delivery of and payment for such bonds so that the Refunding Bonds will not constitute arbitrage bonds under Section 103(c) of the Internal Revenue Code and the regulations prescribed under that section. The fiscal officer or any other officer, including the Clerk of this Council, having responsibility with

respect to the issuance of the Refunding Bonds is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, or consultant of the Municipality, or the Outstanding Issue Trustee, to give an appropriate certificate on behalf of the Municipality, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations regarding the amount and use of the proceeds of the Refunding Bonds pursuant to said Section 103(c) and regulations thereunder. The Clerk of this Council shall furnish to the purchaser of the Refunding Bonds a true transcript of the proceedings, certified by her, of all proceedings had with reference to the issuance of such bonds along with such other information from the records as is necessary to determine the regularity and validity of the issuance of such bonds."

Section 2. That Section 5 of Ordinance No. 983 AC CMS, passed November 19, 1973, as it was passed, is hereby repealed.

Section 3. That nothing herein contained shall in any way rescind, repeal, modify or amend the covenants and actions taken by the City in said Ordinance No. 983 AC CMS, particularly Section 6 thereof, which were, are and will be absolute and inviolate.

Section 4. That the City Manager and City Auditor be and the same are hereby authorized and directed to execute a Supplemental Indenture of Trust with Ameritrust Company, to be dated as of October 1, 1980, in substantially the form now on file in the office of the Clerk of Council, to carry into effect the provisions of this Ordinance and such officers and any other officers of the City as shall be required are hereby authorized and directed to do all things, take all other actions, and make such certifications as are necessary to carry into effect the amendment set forth herein and the transaction requested by the Hospital.

Section 5. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this 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 6. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of this City, and for the further reason that the immediate effectiveness of this Ordinance is necessary so that prompt amendment of such Ordinance No. 983 AC CMS can occur to clarify certain provisions thereof and confer additional rights, powers and authority upon said Outstanding Issue Trustee and Trustee to evidence the provisions and intentions of such Ordinance which are essential parts of the financing of the improvements to the premises being leased to the Hospital, all

of which are required to preserve and protect the health of the residents of the City; wherefore, this ordinance shall be in full force and effect from and immediately after its passage.

Passed: October 13, 1980

James F. Long
Chairman of Council

Attest:

Eugene F. Smith
Clerk of Council

Posted: October 14, 1980