

ORDINANCE NO. 99-21 AC CMS

AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF REAL ESTATE ACQUISITION BONDS, SERIES 1999, OF THIS CITY, IN THE AGGREGATE PRINCIPAL AMOUNT OF \$356,250, FOR THE PURPOSE OF PAYING A PORTION OF THE COSTS OF ACQUIRING REAL ESTATE AND THE BUILDINGS THEREON LOCATED AT 270 AND 272 SOUTH MAIN STREET, AND DECLARING AN EMERGENCY.

WHEREAS, this Council has concluded that it is necessary and proper to acquire certain real estate and the buildings thereon for municipal purposes and is in the process of approving and entering into a Purchase Agreement with Arthur H. Clark and Ada L. Clark for the purchase of that property; and

WHEREAS, pursuant to that Agreement a portion of the purchase price for that property is to be paid in three installments; and

WHEREAS, in order to evidence those installments it is necessary for this Council to authorize the issuance of bonds; and

WHEREAS, this Council has requested that the Auditor, as fiscal officer of this City, certify the estimated life or period of usefulness of the property described in Section 1 and the maximum maturity of the Bonds described in Section 1; and

WHEREAS, the Auditor has certified that the estimated life or period of usefulness of the property described in Section 1 is at least five years and that the maximum maturity of the Bonds herein authorized is thirty years;

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

Section 1. It is necessary and in the best interests of the City to issue bonds of this City in the aggregate principal amount of \$356,250 for the purpose of paying a portion of the costs of acquiring real estate and the buildings thereon located at 270 and 272 South Main Street (the "Bonds"). The Bonds shall be designated "Real Estate Acquisition Bonds, Series 1999" and shall be issued in one lot and only as fully registered bonds. Anticipatory securities have not been issued in anticipation of the issuance of the Bonds.

Section 2. The Bonds shall be dated as of their date of issuance and shall be issued in denominations of \$118,750 each. The Bonds shall mature in the principal amounts of \$118,750 each on June 30, 1999, December 31, 1999 and June 30, 2000, and each Bond shall bear interest at the rate of 3% per annum payable at maturity.

The Bonds shall be subject to redemption prior to stated maturity in whole or in part at the sole discretion of the City. Prepayment prior to maturity of all or a portion of the Bonds shall be made by deposit with the Bond Registrar designated pursuant to Section 4 hereof of the principal amount of the Bonds to be prepaid together with interest accrued thereon to the date of prepayment. The City's right of prepayment shall be exercised by mailing a notice of prepayment, stating the date of prepayment and the name and address of the Bond Registrar, by certified or registered mail to the original purchaser of the Bonds not less than seven days prior to the date of that deposit, unless that notice is waived by the original purchaser of the Bonds. If moneys for prepayment are on deposit with the Bond Registrar on the specified prepayment date following the giving of that

notice (unless the requirement of that notice is waived as stated above), interest on the principal amount prepaid shall cease to accrue on the prepayment date, and upon the request of the Auditor the original purchaser of the Bonds shall arrange for the delivery of the Bonds at the designated office of the Bond Registrar for prepayment and surrender and cancellation.

Section 3. The Bonds shall be signed by the City Manager and the Auditor in the name of the City of Oberlin and in their official capacities, provided that either or both of those signatures may be a facsimile. The Bonds shall be numbered as determined by the Auditor, and shall express upon their faces the purpose, in summary terms, for which they are issued and that they are issued pursuant to Chapter 133 of the Revised Code, this Ordinance and the Charter of the City. No Bond shall be valid or obligatory for any purpose or shall be entitled to any security or benefit under the Bond proceedings unless and until the certificate of authentication printed on the Bond is signed by the Bond Registrar as authenticating agent. Authentication by the Bond Registrar shall be conclusive evidence that the Bond so authenticated has been duly issued, signed and delivered under, and is entitled to the security and benefit of, the Bond proceedings. The certificate of authentication may be signed by any authorized officer or employee of the Bond Registrar, or by any other person acting as an agent of the Bond Registrar and approved by the Auditor on behalf of the City. The same person need not sign the certificate of authentication on all of the Bonds.

Section 4. The Auditor of the City is hereby appointed to act as the authenticating agent, bond registrar, transfer agent and paying agent for the Bonds (the "Bond Registrar").

Section 5. The debt charges on the Bonds shall be payable in lawful money of the United States of America without deduction for the services of the Bond Registrar as paying agent. Principal of and interest on the Bonds shall be payable when due upon presentation and surrender of the Bonds at the office of the Bond Registrar.

Section 6. So long as any of the Bonds remain outstanding, the City will cause the Bond Registrar to maintain and keep at its office all books and records necessary for the registration, exchange and transfer of Bonds as provided in this section (the Bond Register). Subject to the provisions of Section 8, the person in whose name a Bond is registered on the Bond Register shall be regarded as the absolute owner of that Bond for all purposes of the Bond proceedings. Payment of or on account of the debt charges on any Bond shall be made only to or upon the order of that person; neither the City nor the Bond Registrar shall be affected by any notice to the contrary, but the registration may be changed as provided in this section. All such payments shall be valid and effectual to satisfy and discharge the City's liability upon the Bond, including interest, to the extent of the amount or amounts so paid.

Any Bond may be exchanged for Bonds of any authorized denomination upon presentation and surrender at the office of the Bond Registrar, together with a request for exchange signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. A Bond may be transferred only on the Bond Register upon presentation and surrender of the Bond at the office of the Bond Registrar together with an assignment signed by the registered owner or by a person legally empowered to do so in a form satisfactory to the Bond Registrar. Upon exchange or transfer, the Bond Registrar shall complete, authenticate and deliver a new Bond or Bonds of any authorized denomination or denominations requested by the owner equal in the aggregate to the unmatured principal amount of the Bond surrendered and bearing interest at the same rate and maturing on the same date.

If manual signatures on behalf of the City are required, the Bond Registrar shall undertake the exchange or transfer of Bonds only after the new Bonds are signed by the authorized officers of the City. In all cases of Bonds exchanged or transferred, the City shall provide for the signing and the Bond Registrar shall authenticate and deliver Bonds in accordance with the provisions of the Bond proceedings. The exchange or transfer shall be without charge to the owner,

except that the City and Bond Registrar may make a charge sufficient to reimburse them for any tax or other governmental charge required to be paid with respect to the exchange or transfer. The City or the Bond Registrar may require that those charges, if any, be paid before the procedure is begun for the exchange or transfer. All Bonds issued and authenticated upon any exchange or transfer shall be valid obligations of the City, evidencing the same debt, and entitled to the same security and benefit under the Bond proceedings, as the Bonds surrendered upon that exchange or transfer.

Section 7. In accordance with this Ordinance, the Bonds shall be and hereby are awarded and sold at private sale to Ada L. Clark and Arthur H. Clark, or their designees, at a price equal to par, which will be evidenced by the exchange of the Bonds for the necessary instruments conveying the aforesaid property to the City. The City Manager and the Auditor, as appropriate, are each authorized and directed to sign any transcript certificates, financial statements and other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance.

Section 8. There shall be levied on all taxable property in the City, in addition to all other taxes, a direct tax annually during the period the Bonds are outstanding in an amount sufficient to pay the debt charges on the Bonds when due, which tax shall not be less than the interest and sinking fund tax required by Section 11 of Article XII of the Ohio Constitution. The tax shall be within the ten-mill limitation prescribed by law shall be and is ordered computed, certified, levied and extended upon the tax duplicate and collected by the same officers, in the same manner and at the same time that taxes for general purposes for each of those years are certified, levied, extended and collected, and shall be placed before and in preference to all other items and for the full amount thereof. The proceeds of the tax levy shall be placed in the Bond Retirement Fund, which is irrevocably pledged for the payment of the debt charges on the Bonds when and as the same fall due.

Section 9. The City covenants that it will use, and will restrict the use and investment of, the proceeds of the Bonds in such manner and to such extent as may be necessary so that (a) the Bonds will not (i) constitute private activity bonds, arbitrage bonds or hedge bonds under Section 141, 148 or 149 of the Internal Revenue Code of 1986, as amended (the "Code"), or (ii) be treated other than as bonds to which Section 103 of the Code applies, and (b) the interest thereon will not be an item of tax preference under Section 57 of the Code.

The City further covenants that (a) it will take or cause to be taken such actions that may be required of them for the interest on the Bonds to be and to remain excluded from gross income for federal income tax purposes, (b) it will not take or authorize to be taken any actions that would adversely affect that exclusion and (c) it, or persons acting for it will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purposes of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate payments to the federal government, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of those proceeds and, as applicable, of property financed with such proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code.

The Bonds are hereby designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code. In that connection, the City hereby represents and covenants that it and the City, together with all their subordinate entities or entities that issue obligations on their behalf, or on behalf of which the City issues obligations, in or during the calendar year in which the Bonds are issued, (i) have not issued and will not issue tax-exempt obligations designated as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code, including the Bonds, in an aggregate amount in excess of \$10,000,000, and (ii) have not issued, do not reasonably anticipate issuing, and will not issue, tax-exempt obligations (including the Bonds, but excluding obligations, other than qualified 501(c)(3) bonds as defined in Section 145 of the Code, that are private activity bonds as defined in Section 141 of the Code and excluding refunding obligations

that are not advance refunding obligations as defined in Section 149(d)(5) of the Code) in an aggregate amount exceeding \$10,000,000, unless the City first obtains a written opinion of nationally recognized bond counsel that such designation or issuance, as applicable, will not adversely affect the status of the Bonds as "qualified tax-exempt obligations". Further, the Council represents and the City covenants that, during any time or in any manner as might affect the status of the Bonds as "qualified tax-exempt obligations", they have not formed or participated in the formation of, or benefited from or availed themselves of, any entity in order to avoid the purposes of subparagraph (C) or (D) of Section 265(b)(3) of the Code, and will not form, participate in the formation of, or benefit from or avail themselves of, any such entity. The City further represents that the Bonds are not being issued as part of a direct or indirect composite issue that combines issues or lots of tax-exempt obligations of different issuers.

The Auditor, as fiscal officer of this City, or any other officer of the City having responsibility for the issuance of the Bonds is hereby authorized (a) to make or effect any election, selection, designation, choice, consent, approval or waiver on behalf of the City or the City with respect to the Bonds as the City is permitted or required to make or give under the federal income tax laws, including, without limitation thereto, any of the elections provided for in Section 148(f)(4)(C) of the Code or available under Section 148 of the Code, for the purpose of assuring, enhancing or protecting the favorable tax treatment or status of the Bonds or interest thereon or assisting compliance with requirements for that purpose, reducing the burden or expense of such compliance, reducing the rebate amount or payments or penalties, or making payments of special amounts in lieu of making computations to determine, or paying, excess earnings as rebate, or obviating those amounts or payments, as determined by that officer, which action shall be in writing and signed by the officer, (b) to take any and all other actions, make or obtain calculations, make payments, and make or give reports, covenants and certifications of and on behalf of this City, as may be appropriate to assure the exclusion of interest from gross income and the intended tax status of the Bonds, and (c) to give one or more appropriate certificates of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of the interest on and the tax status of the Bonds.

Section 10. The Clerk of Council is directed to deliver a certified copy of this Ordinance to the County Auditor of Lorain County.

Section 11. This Council determines that all acts and conditions necessary to be performed by the Council and the City or to have been met precedent to and in the issuing of the Bonds in order to make them legal, valid and binding general obligations of the City of Oberlin have been performed and have been met, or will at the time of delivery of the Bonds have been performed and have been met, in regular and due form as required by law; that the full faith and credit and general property taxing power (as described in Section 8) of the City are pledged for the timely payment of the debt charges on the Bonds; and that no statutory or constitutional limitation of indebtedness or taxation will have been exceeded in the issuance of the Bonds; and that the Bonds are being authorized and issued pursuant to Chapter 133 of the Revised Code, the Charter of the City and this Ordinance.

Section 12. This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public in compliance with the law.

Section 13. This Ordinance is declared 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 Ordinance is required to be immediately effective in order to issue and deliver the Bonds,

which is necessary to provide a portion of the funds necessary to purchase the aforesaid property in a timely fashion; wherefore, this Ordinance shall be in full force and effect immediately upon its passage.

Passed: 3/15, 1999 (E)

Thomas M. Baumann
Chair of Council

Attest: Eugene F. Simon
Clerk of Council

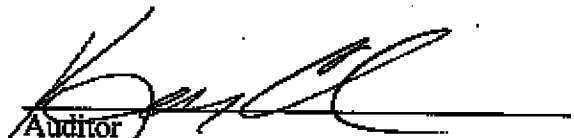
Posted: 3/18, 1999

FISCAL OFFICER'S CERTIFICATE

TO THE COUNCIL OF THE CITY OF OBERLIN, OHIO:

The undersigned, as fiscal officer of the City of Oberlin, Ohio, hereby certifies in connection with your proposed issue of bonds for the purpose of paying a portion of the costs of acquiring real estate and the buildings thereon located at 270 and 272 South Main Street, as follows:

1. The estimated life or period of usefulness of the property described above is at least five years; and
2. The maximum maturity of the bonds proposed to be issued is thirty years.


Auditor
City of Oberlin, Ohio

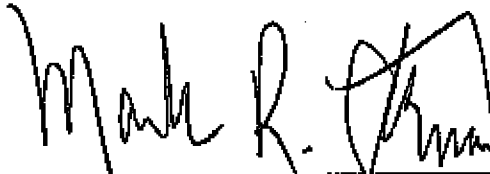
Dated: March 15, 1999

CERTIFICATE OF FILING*State of Ohio)**) ss**Lorain County)*

I, Mark R. Stewart, the duly elected, qualified and acting Auditor in and for the County and State aforesaid, do hereby certify that Eugene F. Simon, the duly elected/appointed, qualified and acting Clerk of Council and for said City of Oberlin of Lorain County, Ohio and ex-officio Fiscal Officer for said District, has this day officially filed in the office of the Auditor of Lorain County a certified copy of Ordinance No. 99-21 AC CMS providing for the issuance and sale of Real Estate Acquisition Bonds, Series 199, of the City, in the aggregate principal amount of \$356,250, for the purpose of paying a portion of the costs of acquiring real estate and the buildings thereon located at 270 and 272 South Main Street.

WITNESS my hand and Official Seal at Elyria, Ohio this 22nd of March 1999.

(Seal)



County Auditor in and for Lorain County, Ohio