

ORDINANCE NO. 2000-146

AN ORDINANCE DETERMINING THE NECESSITY OF AND AUTHORIZING THE ISSUANCE AND SALE OF HEALTH CARE FACILITIES REVENUE BONDS, SERIES 2000 (GNMA COLLATERALIZED - MCV HEALTH CARE FACILITIES, INC. PROJECT) IN A PRINCIPAL AMOUNT NOT TO EXCEED \$4,400,000; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT OF LEASE AND A SUBLEASE IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE TO SECURE THE BONDS; AUTHORIZING EXECUTION OF A BOND PURCHASE AGREEMENT WITH RESPECT TO THE BONDS; AUTHORIZING A PRELIMINARY AND FINAL OFFICIAL STATEMENT AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND DECLARING AN EMERGENCY.

WHEREAS, all words and terms used herein with initial capital letters and not herein defined shall have the meanings assigned to them in the Indenture herein authorized; and

WHEREAS, this Council has determined to authorize the issuance of Health Care Facilities Revenue Bonds, Series 2000 (GNMA Collateralized – MCV Health Care Facilities, Inc. Project) (the “Bonds”) of the City of Mason, Ohio (the “City”), for the purpose of assisting MCV Health Care Facilities, Inc., an Ohio nonprofit corporation (the “Borrower”) by (1) financing and/or refinancing certain costs of the acquisition, construction and equipping of (i) an existing approximately 61-unit (122 bed) licensed residential care facility (the “Project”), (ii) an existing licensed rest home/nursing care facility which includes approximately 30 assisted living units licensed for 60 beds and 31 skilled nursing care units licensed for 62 beds (the “Nursing Home Facility”) and (iii) a new approximately 20 room, 22-bed special care (Alzheimer’s) facility (the “Special Care Facility”), including certain facilities functionally related to the foregoing facilities (collectively, the “Facilities”), all constituting “hospital facilities,” as that term is defined in Section 140.01 of the Ohio Revised Code, located in Mason, Ohio, owned and operated by the Borrower; and (2) paying certain costs and expenses incurred in connection with the issuance of the Bonds; and

WHEREAS, the financing and refinancing of such costs, including refunding and retiring certain outstanding indebtedness incurred to finance such costs (the “Outstanding Indebtedness”), will be in the best interests of the City and will provide hospital facilities at the lowest possible cost to service the residents of the City, which hospital facilities are and will be available for the service of the general public without discrimination by reason of race, creed, color or national origin; and

WHEREAS, this Council is authorized by Chapter 140, Ohio Revised Code, to issue hospital facilities revenue bonds for the aforesaid purposes; and

WHEREAS, this Council has determined to authorize the Bonds and to award the sale of the Bonds to Lancaster Pollard & Co., Inc. (the “Underwriter”); and

WHEREAS, the City will acquire a leasehold interest in the Facilities, and will sublease the Facilities to the Borrower, an Ohio 501(c)(3) non profit corporation no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has authority to operate hospital facilities; and

WHEREAS, the Borrower has arranged for the Bonds to be secured by a mortgage-backed security (the “GNMA Security”) guaranteed as to timely payment of principal and interest by the Government National Mortgage Association (“GNMA”), which GNMA Security will be issued with respect to a mortgage loan (the “Mortgage Loan”) to be made to the Borrower by LPC Mortgage Company (the “Lender”), which Mortgage Loan will be insured by the Federal Housing Administration (“FHA”) and will enable the Borrower to secure the funds to accomplish the foregoing purposes; and

WHEREAS, it is necessary in connection with the issuance of the Bonds to provide for the authorization of the following documents:

- (1) A Trust Indenture (the "Indenture") between the Issuer and Chase Manhattan Trust Company, National Association, as trustee (the "Trustee");
- (2) An Agreement of Lease (the "Lease") with respect to the Facilities between the Issuer and the Borrower;
- (3) A Sublease (the "Sublease") with respect to the Facilities among the Issuer, the Borrower, the Trustee and the Lender;
- (4) A Tax Regulatory Agreement (the "Tax Regulatory Agreement") among the Issuer, the Borrower and the Trustee;

WHEREAS, it is necessary in connection with the issuance of such Bonds to also provide for the authorization of a Bond Purchase Agreement with respect to the Bonds and distribution of a Preliminary and Final Official Statement for the Bonds and to authorize certain other documents in connection with the issuance of the Bonds; and

WHEREAS, the Bonds shall constitute conduit obligations and shall not represent or constitute a debt or pledge of any faith and credit or the taxing power of the State of Ohio or any political subdivision thereof, including the City, and nothing in this Ordinance, the Bonds, or the Indenture shall represent or constitute a general obligation, debt, bonded indebtedness or a pledge of the full faith and credit of the State of Ohio or the City and further, nothing therein or herein gives the Holders of any Bonds, and they do not have, the right to have excises, ad valorem taxes or other taxes levied by this Council or the City, or by the State of Ohio or the taxing authority of any other political subdivision, for the payment of Bond Service Charges (as defined in the Indenture); and

WHEREAS, no agreement or obligation contained in the Bonds or documents herein authorized shall be deemed to be an agreement or obligation of any member of this Council, or any present or future appointed or elected official, officer, employee, servant, legal counsel, subcontractor or agent of the City in his or her individual capacity, and neither this Council nor any officer thereof executing any Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance thereof, and no member of this Council, or any present or future elected or appointed official, employee, servant, legal counsel, subcontractor or agent of the City shall incur any personal liability or liability in their capacity with the City with respect to any other action taken by him or her pursuant to the Bonds or the documents herein authorized;

NOW, THEREFORE, BE IT ORDAINED by The Council of The Municipality of Mason, State of Ohio:

SECTION 1. That for the purpose of better providing for the health and welfare of the people of the State of Ohio by enhancing the availability, efficiency and economy of hospital facilities and facilitating the refinancing of 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, this Council hereby determines that the Bonds shall be issued pursuant to Section 140.06, Ohio Revised Code. The Bonds shall be issued only in fully registered form, in denominations of \$5,000 or any integral multiples thereof, in the principal amount of not to exceed \$4,400,000 for the purposes set forth in the preambles hereto. Such Bonds shall be designated City of Mason, Ohio, Health Care Facilities Revenue Bonds, Series 2000 (GNMA Collateralized – MCV Health Care Facilities, Inc. Project). The Bonds shall be issued in the form and denomination and shall be executed, dated, be subject to redemption prior to maturity on the dates and at the prices (provided that the earliest optional redemption date shall not be later than December 20, 2010 and the redemption price for the Bonds called for redemption on the earliest optional redemption date shall not be greater than 103%), bear interest at a weighted average interest rate not to exceed six and nine tenths percent (6.90%) per annum, and be payable on the dates and in the amounts as provided in the Indenture and the Bond Purchase Agreement. The Bonds shall be sold to the Underwriter at a purchase price of not less than 98% of the par amount of the Bonds. The approval of the final Bond terms, not in excess of those set forth herein, will be evidenced by execution by the City Manager and the Finance Director of the Bond Purchase Agreement. The Bonds shall be retired by maturity or anticipatory sinking fund redemption over a period not to exceed 36 years or at stated maturity of not later than December 20, 2036 as set forth in the Indenture, hereinafter authorized.

The Bonds shall be executed by the City Manager and the Finance Director of the Issuer, provided that any or all of such signatures may be facsimiles, and the seal of the Issuer shall be affixed thereto or impressed or reproduced thereon. In case any officer whose signature or a

facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the issuance, authentication or delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until that time.

SECTION 2. That the Bonds shall be payable at the designated corporate trust office of the Trustee, or any successor trustee.

SECTION 3. That each of the Bonds authorized hereby shall bear on its face a statement that the Bonds are not general obligations, debt or bonded indebtedness of the City or the State of Ohio or any political subdivision thereof, and the holders or owners of the Bonds are not given the right, and have no right, to have excises or taxes levied by the City or the State of Ohio or any political subdivision thereof, for the payment of the bond service charges on such Bonds and that the right to such payment is limited to the revenues and special funds pledged for such purpose under the Indenture.

The rent and other amounts payable to the Issuer under the Sublease are hereby pledged to the payment of the Bonds in the manner and to the extent provided in the Sublease and the Indenture.

The Bonds shall constitute conduit obligations and shall not represent or constitute a debt or pledge of any faith and credit or the taxing power of the State of Ohio or any political subdivision thereof, including the City, and nothing in this Ordinance, the Bonds, or the Indenture shall represent or constitute a general obligation, debt, bonded indebtedness or a pledge of the full faith and credit of the State of Ohio or the City and further, nothing therein or herein gives the Holders of any Bonds, and they do not have, the right to have excises, ad valorem taxes or other taxes levied by this Council or the City, or by the State of Ohio or the taxing authority of any other political subdivision, for the payment of Bond Service Charges (as defined in the Indenture).

No agreement or obligation contained in the Bonds or documents herein authorized shall be deemed to be an agreement or obligation of any member of this Council, or any present or future appointed or elected official, officer, employee, servant, legal counsel, subcontractor or agent of the City in his or her individual capacity, and neither this Council nor any officer thereof executing any Bond shall be liable personally on such Bond or be subject to any personal liability or accountability by reason of the issuance thereof, and no member of this Council, or any present or future elected or appointed official, employee, servant, legal counsel, subcontractor or agent of the City shall incur any personal liability or liability in their capacity with the City with respect to any other action taken by him or her pursuant to the Bonds or the documents herein authorized.

SECTION 4. That the City Manager and the Finance Director be and they are hereby authorized and directed to execute, enter into and deliver on behalf of the City, the Indenture with the Trustee, in substantially the form presented to this Council and on file with the Clerk of Council, and the Trust Estate as therein defined shall be pledged and the other agreements, covenants and promises therein made on behalf of the City shall be conclusively binding upon the City and in full force and effect from and after delivery of the aforesaid Bonds to their purchasers pursuant to the terms of the Indenture. The Indenture shall be subject to such changes, insertions and omissions as may be approved by the officer or officers executing the Indenture, which approval shall be conclusively evidenced by the execution of the Indenture as aforesaid.

SECTION 5. That the City Manager and the Finance Director and the Trustee are hereby authorized and directed to do all the acts and things required of them by the provisions of the Bonds and the Indenture to the end that full and complete performance of all of the terms, covenants and agreements of the Bonds and Indenture shall be effected, including taking all actions necessary to complete the sale of the Bonds under the "Blue Sky" laws of any jurisdiction; provided that the City shall not be required to submit to service of process or qualify to do business in connection with any such "Blue Sky" action in any state except Ohio.

SECTION 6. That this Council hereby determines that the leasing of the Facilities from the Borrower and the subleasing of the Facilities to the Borrower, which will operate the Facilities, providing health care to the general public without discrimination by reason of race, creed, color or national origin, and the financing and refinancing of the Facilities, including the refunding and retirement of the Outstanding Indebtedness, is undertaken for and will serve the public purpose of better providing for the health and welfare of the people of the State of Ohio by enhancing the availability, efficiency and economy of hospital facilities and the services rendered thereby.

SECTION 7. That the City Manager and the Finance Director be and they are hereby authorized and directed to execute, enter into and deliver, on behalf of the City the Lease with the Borrower and, if requested, the Lender, to acquire a leasehold interest in the Facilities. The Lease shall be substantially in the form presented to this Council and on file with the Clerk of this Council, subject to such changes, insertions and omissions as may be approved by the officer or officers executing the Lease, which approval shall be conclusively evidenced by the execution of the Lease as aforesaid. It is hereby determined that the Lease will promote the public purpose stated in Section 140.02, Ohio Revised Code, and the City will be duly benefited thereby.

SECTION 8. That the City Manager and the Finance Director be and they are hereby authorized and directed to execute, enter into and deliver on behalf of the City the Sublease with the Borrower and, if requested, the Lender. The Sublease shall be substantially in the form presented to this Council and on file with the Clerk of this Council, subject to such changes, insertions and omissions as may be approved by the City Manager and Finance Director, which approval shall be conclusively evidenced by the execution of the Sublease as aforesaid. It is hereby determined that the Sublease will promote the public purpose stated in Section 140.02, Ohio Revised Code, and the City will be duly benefited thereby. In particular, it is hereby determined that the proceeds of the Bonds will be used, pursuant to the Sublease, to effect the refunding and retiring of the Outstanding Indebtedness including acquisition of a credit facility, the GNMA Security, from the Lender, which will loan that acquisition price to the Borrower, which will make those proceeds available to finance and refinance costs of the Facilities, including refunding and retiring the Outstanding Indebtedness, and pay costs of issuance of the Bonds, all to fulfill the purposes set forth in the preambles hereto, and that such use of the proceeds of the Bonds fulfills the public purpose of Chapter 140, Ohio Revised Code and the City will be duly benefited thereby.

SECTION 9. That the City Manager and the Finance Director be and they are hereby authorized and directed to execute, enter into and deliver on behalf of the City the Bond Purchase Agreement providing for the sale of the Bonds substantially in the form heretofore presented to this Council by the Underwriter, so long as the terms of purchase contained therein are within the guidelines established in Section 1 of this Ordinance. The execution and delivery of the Bond Purchase Agreement by the officer or officers executing the Bond Purchase Agreement shall be conclusive evidence of the authorization by this Council of such purchase price, principal amount, maturities, sinking fund requirements, redemption provisions and interest rate or rates on the Bonds.

SECTION 10. That this Council hereby covenants that it will, upon the advice of Bond Counsel, direct the Trustee and/or the Borrower, as applicable, to restrict the use of the proceeds of the Bonds hereby authorized in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended (the "Code") and the regulations prescribed thereunder. The Manager, Finance Director, Clerk of this Council or any other officer having responsibility with respect to the issuance of the Bonds is authorized and directed to give an appropriate certificate on behalf of the City, on the date of delivery of the Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of Section 148 of the Code and regulations thereunder. The City Manager and the Finance Director are authorized to execute, enter into, and deliver on behalf of the City, the Tax Regulatory Agreement in connection with the certifications authorized herein, in substantially the form presented to this Council and on file with the Clerk of Council. The Tax Regulatory Agreement shall be subject to such changes, insertions and omissions as may be approved by the officer or officers executing the Tax Regulatory Agreement, which approval shall be conclusively evidenced by the execution.

SECTION 11. That the Preliminary Official Statement with respect to the Bonds, a draft copy of which is on file with the Clerk of Council, is hereby approved. The use and distribution of the Preliminary Official Statement by the Underwriter and the Borrowers prior to the date of passage of this Ordinance is hereby expressly ratified and confirmed.

SECTION 12. That the City Manager and the Finance Director are hereby authorized to execute and deliver on behalf of the City a final Official Statement for the Bonds, which final Official Statement shall be substantially in the form of the Preliminary Official Statement approved and authorized in Section 12 of this Ordinance modified to reflect terms included in the Bond Purchase Agreement.

The City has not confirmed, and assumes no responsibility for, the accuracy, completeness or sufficiency of any of the statements in the Preliminary Official Statement or the

final Official Statement or any supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating in any way to the hospital facilities described therein, the Borrower and its affiliates, the Borrower's and its affiliates' management, operations, organization, history or financial condition, or with respect to the FHA mortgage insurance and related documents, FHA, the GNMA Security, GNMA or the Underwriter.

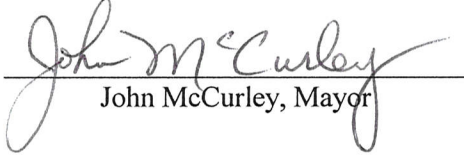
SECTION 13. That the appropriate officers of the City, be and they hereby are authorized to execute and deliver on behalf of the City such other certificates, documents, financing statements and instruments in connection with the issuance and public sale of the Bonds as may be required, necessary or appropriate, including, without limitation, any documents which are necessary or appropriate in order to ensure compliance of the Bonds with the Code and including letters of representation to The Depository Trust Company, New York, conveyances of title to real and personal property, terminations of financing statements and other releases of security interests in property and cancellations of leases and releases of any prior leases, subleases, assignments and indentures. Such documents including the ones specifically authorized hereby, shall be subject to such changes, insertions and omissions as may be approved by the City Manager and the Finance Director, alone or together, after consultation with the Director of Law, which approval shall be conclusively evidenced by the execution thereof by the proper officers of the City.

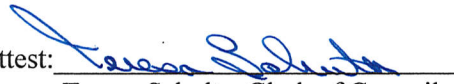
SECTION 14. That a public hearing was held on September 25, 2000 with respect to the proposed issuance of the Bonds, and this Council, as the applicable elected representative of the City for purposes of Section 147(f) of the Code hereby approves the issuance of the Bonds in the maximum principal amount of \$4,400,000, the proceeds of which will be used for the purposes set forth in the recitals hereto. The Facilities are located at 411 Western Row Road, Mason, Ohio, and its primary user is and will be the Borrower.

SECTION 15. That it is found and determined 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 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 16. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the City and its inhabitants for the reason that the immediate issuance and sale of the Bonds herein authorized is necessary to utilize favorable current interest rates and enable the City to provide for the timely refunding of Outstanding Indebtedness and assist in containing health care costs and to provide improved hospital facilities to the residents of the City and therefore continue to assure the health and safety of the residents of the City, and in order to assure compliance with the commitment for federal mortgage insurance which the Borrower has received; therefore, this Ordinance shall take effect and be in force from and immediately after its adoption.

ADOPTED this 25th day of September, 2000

  
John McCurley, Mayor

Attest:   
Teresa Schulte, Clerk of Council

I do hereby certify that this is a true and correct copy of Ordinance No. 2000-146  
adopted on September 25, 2000.

  
Clerk of Council