

DELIVERED NOV 04 2021

CITY OF MIDDLEBURG HEIGHTS, OHIO

ORDINANCE NO. ~~2021~~- 88

Introduced by: Mr. Meany and Mr. Grech

AN ORDINANCE AUTHORIZING A FIRST AMENDMENT TO THE AMENDED AND RESTATED MASTER LEASE PURCHASE AND SUBLEASE PURCHASE AGREEMENT, AMONG FIFTH THIRD BANK, NATIONAL ASSOCIATION, FIFTH THIRD COMMERCIAL FUNDING, INC., THE CITY OF MIDDLEBURG HEIGHTS, OHIO AND SOUTHWEST GENERAL HEALTH CENTER; AUTHORIZING A REVISED SCHEDULE OF PAYMENTS, A TAX COMPLIANCE CERTIFICATE AND AGREEMENT; AUTHORIZING OTHER DOCUMENTS AND RELATED ACTIONS IN CONNECTION WITH SUCH TRANSACTION; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Middleburg Heights, Ohio (the "City"), a political subdivision in and of the State of Ohio (the "State"), is authorized and empowered by virtue of the laws of the State, including without limitation, Chapter 140 of the Ohio Revised Code (the "Act"), among other things: (a) to acquire, construct, furnish and equip "hospital facilities" as defined in the Act; (b) to enter into agreements to provide for financing the "costs of hospital facilities" to be leased to a "nonprofit hospital agency", as defined in the Act, and to secure payments to be made under those agreements by the assignment of the rent, revenues and other income derived from the lease of hospital facilities to a nonprofit hospital agency; and (c) to adopt this Ordinance, to enter into the First Amendment, the Revised Schedule of Payments, and the Tax Agreement, as hereinafter defined, and to sign and deliver certain other documents and instruments upon the terms and conditions provided herein and therein; and

WHEREAS, pursuant to Ordinance No. 2012-77, the City entered into an Amended and Restated Master Lease Purchase and Sublease Purchase Agreement (the "Prior Lease Obligations") dated as of November 1, 2012, by and among the City, Fifth Third Bank, National Association, as successor to Fifth third Bank, a state banking corporation (the "Lessor") and Southwest General Health Center (the "Sublessee") in order to refinance (a) the costs of acquiring, constructing, equipping and installing real and personal property improvements at Southwest General Health Center (the "Project"), all of which acquisition consisted of paying costs of acquiring, constructing, improving and equipping "hospital facilities", as defined in the Act, and (b) paying the costs of issuance relating to such financing, including the costs of any credit enhancement; and

WHEREAS, at this time, the City has been informed by the Sublessee and the Lessor that the Sublessee, a non-profit corporation which has received a determination from the Internal Revenue Service that it is an entity described in Section 501(c)(3) of the Internal Revenue Code, and the Lessor seek to modify certain terms and the Prior Lease Obligations including: (a) modifying the existing interest rate mode on the Prior Lease Obligations to a different interest rate mode, and (b) assigning the Prior Lease Obligations to Fifth Third Commercial Funding, Inc. as Lessor/Assignee; and

WHEREAS, pursuant to the Act and in response to the request of Sublessee, it is necessary to authorize a First Amendment to the Prior Lease Obligations (the "First Amendment"), an amendment to Schedule of Payments Number 1 and Schedule of Payments Number 2 to the Prior Lease Obligations (the "Revised Schedule of Payments"), a Tax Compliance Certificate and Agreement (the "Tax Agreement"), and all other related documents hereinafter identified;

NOW, THEREFORE, BE IT ORDAINED by the City Council (the "Council") of the City of Middleburg Heights, Cuyahoga County, Ohio, that:

SECTION 1. Determinations of the Council. The City finds and determines, based on information provided by the Sublessee, that the proposed modifications to the Prior Lease Obligations will advance the purposes of the Act, including better providing for the health and welfare of the residents of the City and the State by enhancing the availability, efficiency and economy of hospital facilities so that hospital facilities and the services rendered thereby continue to be available to or for the services of the general public without discrimination by reason of race, creed, color or national origin and at the lowest possible cost.

SECTION 2. Authorization and Terms of the First Amendment. Pursuant to the laws of the State of Ohio and under the guidance of Section 103, Sections 141 – 150, and Section 1001, all of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.1001-3 (collectively, the "Internal Revenue Code Provisions"), this Council hereby finds and determines, based on the representations of the Sublessee that the modifications to the Prior Lease Obligations and resulting deemed reissuance of the Prior Lease Obligations is consistent with the provisions of Chapter 140 of the Ohio Revised Code and the aforementioned tax code provisions.

As a result of a change in the interest rate mode, the lease obligations reissued under the First Amendment are treated as currently refunding the Prior Lease Obligations for federal tax purposes. The Prior Lease Obligations, as amended by the First Amendment, and Revised Schedule of Payments are considered reissued (the "Amended Lease Obligations") in a principal amount that reflects any principal payments made between the date of issuance of the Prior Lease Obligations and the date of issuance of the Amended Lease Obligations. With the exception of the First Amendment, the Revised Schedule of Payments, and the tax documentation for the current reissuance and this Ordinance, all documents and legislation related to the Prior Lease Obligations will remain in full force and take effect with the effectiveness of the Amended Lease Obligations.

In connection with the deemed current refunding of the Prior Lease Obligations, this Council hereby determines that it is appropriate to execute and deliver (i) the First Amendment, (ii) Revised Schedule of Payments; (iii) the Tax Agreement; and (iv) Internal Revenue Service Form 8038 and any other certificates or documents required to accomplish the proposed modifications to the Prior Lease Obligations.

The Mayor, the Director of Finance, and the Clerk (the "Authorized Signers") are authorized and directed to make the necessary arrangements on behalf of the City to take all steps necessary to effect due signing and delivery on behalf of the City of the First Amendment and other documents and certificates related thereto under the terms of this Ordinance.

SECTION 3. Security for Lease Obligations. To the extent provided in and except as otherwise permitted by the First Amendment, the Revised Schedule of Payments, the Tax Agreement and all documents and legislation related to the Prior Lease Obligations and Amended Lease Obligations, the City's obligations thereunder, including the Prior Lease Obligations as amended by the First Amendment, shall be special obligations of the City and shall be payable solely from the Revenues, as defined and provided in those documents and being generally the Rental Payments to be made by the Sublessee pursuant to the First Amendment, the Revised Schedule of Payments, and the Tax Agreement.

The Prior Lease Obligations, First Amendment and the Revised Schedule of Payments do not and shall not represent or constitute a general obligation, debt, bonded indebtedness or a pledge of the faith and credit of the City, the State or any other political subdivision thereof. The Lessor shall not have the right to have excises, ad valorem or other taxes levied by this Council or the City, or by the State or the taxing authority of any other political subdivision for the payment of the Rental Payments. The Amended Lease Obligations shall contain a statement to that effect and to the effect that the Rental Payments are payable solely from the Revenues.

SECTION 4. Covenants and Agreements of the City. In addition to the other covenants of the City in this Ordinance and in the First Amendment, the Revised Schedule of Payments, and the Tax Agreement, the City further covenants and agrees as follows:

(a) Authority and Actions. The City is, and upon delivery of the First Amendment, the Revised Schedule of Payments, and the Tax Agreement, will be, duly authorized by the laws of the State, particularly and without limitation the Act, to sign and deliver the First Amendment, the Revised Schedule of Payments, the Tax Agreement, and other instruments and documents in connection therewith to which it is a party. All actions on the part of the City for the signing and delivery of the First Amendment, Revised Schedule of Payments, the Tax Agreement and such other instruments and documents have been or will be duly and effectively taken. The First Amendment, the Revised Schedule of Payments, and the Tax Agreement will be valid, binding and enforceable special obligations of the City according to the terms thereof. Each duty of the City and of its officers and employees undertaken pursuant to the First Amendment, the Revised Schedule of Payments, and the Tax Agreement is a duty specifically enjoined by law pursuant to Section 140.06(J), Ohio Revised Code, upon the City and each of those officers and employees having authority thereunder or by provision of law to perform the duty, resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(b) Federal Tax Matters. To the extent within its power and control, the City (i) will take, or require to be taken, all actions known by the City to be required of it for the interest component of the Rental Payments to be and remain excluded from gross income of holders for federal income tax purposes and from treatment as an item of tax preference for purposes of the alternative minimum tax under the Code, and (ii) will not knowingly take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The Authorized Signers 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.

(c) Further Assurances. The City shall, at the expense of the Sublessee, do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the documents to which the City is a party. Nothing herein or in the documentation to which the City is a party shall be construed as requiring the City to operate the Project or to use any moneys from any source other than Revenues or the special funds.

(d) Transcript. The Clerk of Council shall, at the expense of the Sublessee, furnish to the Lessor/Assignee a true transcript all proceedings that occurred with respect to the Amended Lease Obligations.

SECTION 5. Lease Documents. To provide for the First Amendment, the Revised Schedule of Payments, and the Tax Agreement and the consummation of the transactions contemplated thereby, the Authorized Signers, independently or collectively, are each authorized and directed to sign, acknowledge and deliver, in the name and on behalf of the City the First Amendment, the Revised Schedule of Payments, and the Tax Agreement, in substantially the form on file with this Counsel. The First Amendment, the Revised Schedule of Payments, and the Tax Agreement shall be approved with changes therein not inconsistent with this Ordinance and not substantially adverse to the City that are permitted by the Act and shall be approved by any or all of the Authorized Signers; provided that the approval of those changes by any or all of the Authorized Signers and their character as not being substantially adverse to the City, shall be conclusively evidenced by his/her signing of that instrument.

SECTION 6. Other Documents and Actions. Any of the Authorized Signers, as appropriate, are each further authorized and directed to sign any certifications, financing statements, assignments, other documents and instruments and to take such actions as are necessary or appropriate to consummate the transactions contemplated by this Ordinance. The Authorized Signers, as appropriate, are each 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 First Amendment, the Revised Schedule of Payments, the Tax Agreement and any other documents entered into pursuant to this Ordinance during the period the First Amendment, the Revised Schedule of Payments, the Tax Agreement, and any other such documents are in effect.

The Director of Finance of the City is authorized to give any certifications that may be required under Sections 5705.41 and 5705.44, Ohio Revised Code, with respect to any of the documents to which the City is a party, and any moneys to be paid to the City under the First Amendment, the Revised Schedule of Payments, and the Tax Agreement are hereby appropriated for that purpose.

All costs and expenses of the City associated with this Ordinance shall be paid by the Sublessee.

SECTION 7. Compliance with Open Meeting Requirements. It is hereby 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 actions were in meetings open to the

public, in compliance with all legal requirements including Chapter 107 of the Codified Ordinances and Section 121.22 of the Ohio Revised Code.

SECTION 8. Declaring an Emergency. This Ordinance is hereby declared to be an emergency measure, immediately necessary for the preservation of the public peace, health and safety of the citizens of the City because without the timely reissuance of the Amended Lease Obligations, the City materially increases the risk of inadequately providing "hospital facilities" (as defined in the Act) in a timely and efficient manner, thereby increasing the risk of adversely impacting the public peace, health and safety of the citizens of the City. Therefore, this Ordinance shall take effect and be in force immediately upon its passage and approval by the Mayor.

PASSED 11-9-21

[Signature]
PRESIDENT OF COUNCIL

ATTEST:

M Meade
CLERK OF COUNCIL

PRESENTED TO MAYOR 11-10-21

APPROVED ON: 11-10-21

[Signature]
MAYOR

	YEAS	NAYS
BORTOLOTTO	<u>Abstain</u>	_____
ALI	<u>x</u>	_____
SAGE	<u>x</u>	_____
MEANY	<u>x</u>	_____
MCGREGOR	<u>x</u>	_____
FERENCE	<u>x</u>	_____
GRECH	<u>x</u>	_____

I, Mary Ann Meade Clerk of the Council of the City of Middleburg Hts., Ohio, hereby certify that Ord. 2021-88 adopted by the Council of the City of Middleburg Hts., on 11/9/21 was posted for a period of fifteen days, beginning 11/11/21 and remained so posted for fifteen days at the two posting places as designated by Charter.

Mary Ann Meade
Clerk

CERTIFICATE

I, Mary Ann Meade Clerk of Council of the City of Middleburg Heights, Ohio, do hereby certify that the foregoing is a true and accurate copy of Ord. 2021-88 passed on the 9th day of November 2021 by said Council.

Mary Ann Meade
Clerk of Council