

County Council of Cuyahoga County, Ohio

Resolution No. R2014-0053

<p>Sponsored by: County Executive FitzGerald/ Department of Development</p> <p>Co-sponsored by: Councilmembers Hairston and Jones</p>	<p>A Resolution authorizing the issuance of not-to-exceed \$39,900,000.00 County of Cuyahoga, Ohio Health Care Facilities Revenue Refunding Bonds, Series 2014 (The A.M. McGregor Home Project) for the purpose of refunding the outstanding principal amount of County of Cuyahoga, Ohio Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2009 (The A.M. McGregor Home Project), Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2010A (The A.M. McGregor Home Project) and Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2010B (The A.M. McGregor Home Project) that were issued to provide funds to assist The A.M. McGregor Home in financing costs of certain “hospital facilities” within the boundaries of the County; providing for the pledge of revenues for the payment of those bonds; authorizing the execution and delivery of a trust indenture, a lease agreement, a sublease and a bond purchase agreement; authorizing and approving related matters; and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, the County of Cuyahoga, Ohio (the “Issuer”), a county and political subdivision duly organized and validly existing under the laws of the State of Ohio (the “State”) and its Charter, is authorized and empowered, by virtue of the laws of the State, including without limitation, Chapter 140, Ohio

Revised Code (the "Act"), to (i) acquire, construct, improve and equip "hospital facilities" (as such term is defined in the Act), and to acquire by lease real estate within the boundaries of the Issuer and interests therein, including without limitation, improvements situated thereon comprising hospital facilities; (ii) issue its revenue bonds for the purpose of paying the "costs of hospital facilities" (as such terms are defined in the Act), within the boundaries of the Issuer, including refunding obligations previously issued for that purpose; (iii) enter into lease agreements and supplemental lease agreements to provide for revenues to pay the principal of and interest and any premium on those revenue bonds; (iv) secure those revenue bonds by a trust indenture and supplemental trust indentures, by the pledge and assignment of its rights under a lease agreement and supplemental lease agreements, by a pledge of and lien on the hospital receipts and by an absolute and irrevocable assignment of certain funds to be held by the trustee under that trust indenture and those supplemental trust indentures; and (v) enact this resolution and to sign and deliver necessary documents in connection therewith upon the terms and conditions provided herein; and

WHEREAS, this Council of the County of Cuyahoga, Ohio (this "Council"), pursuant to the foregoing authority and at the request of, and based upon the representations of The A.M. McGregor Home (the "Corporation"), has determined that it is willing to authorize the issuance and sale of revenue refunding bonds pursuant to the Act to assist the Corporation in financing and refinancing the costs of acquiring, constructing, equipping and improving "hospital facilities" by refunding (i) the outstanding principal amount of the County's \$30,000,000 Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2009 (The A.M. McGregor Home Project) (the "Series 2009 Bonds"); (ii) the outstanding principal amount of the County's \$3,435,000 Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2010A (The A.M. McGregor Home Project) (the "Series 2010A Bonds"); and (iii) the outstanding principal amount of the County's \$8,630,000 Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2010B (The A.M. McGregor Home Project) (the "Series 2010B Bonds"; the Series 2009 Bonds, the Series 2010A Bonds and the Series 2010B Bonds, collectively, the "Outstanding Bonds");

WHEREAS, the proceeds of Series 2009 Bonds and the Series 2010A Bonds were used to refund certain prior bonds issued by the County in 2001 to assist the Corporation in financing the costs of certain "hospital facilities", namely the construction of a new nursing home at the Corporation's East Cleveland location (the "2001 Project");

WHEREAS, the proceeds of the Series 2010B Bonds were issued to refund certain prior bonds issued by the County in 2004 to assist the Corporation in financing the costs of certain "hospital facilities", namely the construction of a new assisted living facility at the Corporation's East Cleveland location (the

“Series 2004 Project”; the 2001 Project and the 2004 Project, collectively, the “Project”); and

WHEREAS, the Issuer, at the request of and based on the representations of the Corporation, has determined to assist the Corporation in refinancing the costs of the Project by issuing \$39,900,000 in maximum aggregate principal amount of Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds of the Issuer to be known as “Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2014 (The A.M. McGregor Home Project)” (the “Series 2014 Bonds”) to be issued pursuant to a Trust Indenture (the “Indenture”), between the Issuer and the Trustee (as defined in Section 1 hereof), and to provide the proceeds thereof to the Corporation pursuant to a Lease (the “Lease”) and a Sublease (the “Sublease”), each between the Issuer and the Corporation;

WHEREAS, the Series 2014 Bonds shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the Issuer, the State or any political subdivision thereof, and the holders of the Series 2014 Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the Issuer, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Series 2014 Bonds will be payable solely from the rentals, revenues, and other income, charges, and moneys as are pledged for their payment in accordance with the bond proceedings;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this resolution, the following terms used in this resolution have the following meanings unless the context or use clearly indicates another meaning or intent (with other capitalized terms having the meanings ascribed thereto by the Indenture or the Sublease):

“Bond Counsel” means Thompson Hine LLP.

“Bond Fund” means the Bond Fund created in the Indenture.

“Bond Purchase Agreement” means the Bond Purchase Agreement to be entered into between the Issuer, the Corporation, the Underwriter, and, if required by the Underwriter, the Letter of Credit Provider, providing for the purchase of the Series 2014 Bonds by the Underwriter.

“Code” means the Internal Revenue Code of 1986, as amended from time to time. References to the Code and Sections of the Code include relevant applicable regulations and proposed regulations thereunder and under the Internal

Revenue Code of 1954, as amended, and any successor provisions to those Sections, regulations or proposed regulations and, in addition, all revenue rulings, announcements, notices, procedures and judicial determinations under the foregoing applicable to the Series 2014 Bonds.

“Letter of Credit” means, with respect to the Series 2014 Bonds, the Letter of Credit issued as described in the Indenture.

“Letter of Credit Provider” means The Northern Trust Company, as provider of the Letter of Credit.

“Preliminary Offering Circular” means the Preliminary Offering Circular or other preliminary offering document for the Series 2014 Bonds authorized by Section 5 of this resolution.

“Offering Circular” means the final Offering Circular or other final offering document for the Series 2014 Bonds authorized by Section 5 of this resolution.

“Remarketing Agent” means the Remarketing Agent appointed pursuant to Section 11 of this resolution and the Indenture.

“Revenues” means the “Revenues” as defined in the Indenture, including, without limitation, moneys to be received by the Trustee under or pursuant to the Letter of Credit.

“Trustee” means, the entity that initially acts as trustee under the Indenture or such other entity as meets the qualifications set forth in the Indenture for a successor Trustee.

“Underwriter” means The Northern Trust Company, as the original purchaser of the Series 2014 Bonds pursuant to the Bond Purchase Agreement.

Section 2. Determinations of the Issuer. This Council hereby finds and determines, based upon the representations of the Corporation, that the Project is consistent with the purposes of the Act by duly benefiting the Issuer and the State and by providing for the health and welfare of the people of the Issuer and the State by enhancing the availability, efficiency and economy of hospital facilities and services and making such hospital facilities and services available to or for the service of the general public without discrimination by reason of race, creed, color or national origin. This Council hereby further determines that: (a) based on the representations of the Corporation and advice of Bond Counsel, the provision of assistance in the refinancing of a portion of the costs of the Project will require the issuance, sale and delivery of the Series 2014 Bonds; (b) based on the advice of Bond Counsel, the issuance of the Series 2014 Bonds is consistent with the provisions of the Act; and (c) following reasonable notice, and

prior to the adoption of this resolution, a public hearing was held with respect to the issuance of the Series 2014 Bonds as required by Section 147(f) of the Code.

Section 3. Authorization of the Series 2014 Bonds. This Council, based on the representations of the Corporation, determines it to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and in the Indenture and pursuant to the authority of the Act, the Series 2014 Bonds in the maximum aggregate principal amount of \$39,900,000 for the purpose of assisting the Corporation in refinancing a portion of the costs of the Project by refunding the Outstanding Bonds, and, if applicable, paying certain costs of issuing the Series 2014 Bonds. The Series 2014 Bonds shall be designated “County of Cuyahoga, Ohio Adjustable Rate Demand Health Care Facilities Revenue Refunding Bonds, Series 2014 (The A.M. McGregor Home Project),” and shall be executed by the manual or facsimile signature of the County Executive or his designee.

Section 4. Terms and Provisions of the Series 2014 Bonds. The Series 2014 Bonds (i) shall be issued only in fully registered form, substantially in the form set forth in Exhibit A to the Indenture; (ii) shall be exchangeable for Series 2014 Bonds of authorized denominations, as provided in the Indenture; (iii) shall be numbered from R-1 upwards or in such other manner as the Trustee may direct; (iv) shall be in such authorized denominations as are permitted by the Indenture; (v) shall be subject to optional and mandatory redemption, or purchase in lieu of redemption, and optional and mandatory tender for purchase, in the amounts, upon the conditions, and at the times and prices set forth in the Indenture; (vi) shall be payable in such manner and at such time or times and at such place or places as set forth in the Indenture; (vii) shall be dated as of the date of their original issuance; and (viii) shall mature on the date or dates set forth in the Indenture, the final maturity date of which shall be no later than June 1, 2049; provided, however, that, pursuant to the provisions of the Indenture, the Series 2014 Bonds shall be originally issued to the Depository for use in a Book Entry System.

The Series 2014 Bonds shall be issued in the maximum aggregate principal amount of \$39,900,000 or such lesser amount as is provided for in the Indenture. The Series 2014 Bonds shall bear interest at a Weekly Rate, a Long-Term Rate, a Bank Rate, a Fixed Rate or a Pledged Bond Rate, all as provided in the Series 2014 Bonds and in the Indenture; provided, however, that in no event will the interest rate on the Series 2014 Bonds exceed maximum rate, if any, specified in the Indenture. The Series 2014 Bonds will bear interest initially at the Weekly Rate (or such other Interest Rate Mode as may be set forth in the Bond Purchase Agreement) as established in the Indenture upon the advice of the Corporation and the Underwriter, and the Remarketing Agent shall establish the applicable interest rate during each Interest Rate Period from time to time as provided in the Indenture. Interest rate periods and determination methods may be changed by the Corporation as described in the Indenture.

In addition to the terms specified herein, the Indenture shall contain such other terms or provisions as are approved by or on behalf of the Issuer and which the officer or officers of the Issuer executing such Indenture determine to be appropriate or necessary, consistent with this resolution, to more fully effectuate the intent of this resolution, such execution and delivery of said documents being conclusive evidence of such approval and determination.

Section 5. Sale of the Series 2014 Bonds. The Series 2014 Bonds are being purchased pursuant to the Bond Purchase Agreement in accordance with the terms and conditions described in the Bond Purchase Agreement at a purchase price specified in the Bond Purchase Agreement of not less than 98% of the principal amount thereof, plus accrued interest to the date of delivery, if any. The County Executive, the Clerk of this Council and the Fiscal Officer are authorized and directed, alone or together, upon the advice of bond counsel, for and in the name and on behalf of the Issuer, to make the necessary arrangements with the Underwriter to establish the date, location, procedure and conditions for the delivery of the Series 2014 Bonds to the Underwriter, and to take all steps necessary to effect due execution, authentication and delivery to the Underwriter of the Series 2014 Bonds under the terms of this resolution, the Indenture and the Bond Purchase Agreement. It is determined by the Issuer that the terms of the Series 2014 Bonds and of the sale thereof, including the purchase price thereof, all as authorized in this resolution and the Indenture, and based upon the advice of Bond Counsel, are in compliance with all legal requirements.

The Issuer consents to the use and distribution of any Preliminary Offering Circular relating to the Series 2014 Bonds, if deemed necessary or advisable by the Underwriter, and the use and distribution of a final Offering Circular, substantially in the form of the draft Offering Circular now on file with the Issuer, and the use and distribution of any amendments or supplements thereto not adverse to the Issuer, in each case subject to the approval of the County's legal officer. The Issuer has not confirmed, and assumes no responsibility for, the accuracy, sufficiency, completeness or fairness of any statements (i) in any Preliminary Offering Circular or the final Offering Circular or any supplements thereto, other than, to the extent provided in the Bond Purchase Agreement, the statements and information therein relating to the Issuer under the caption "THE COUNTY" or (ii) in any reports, financial information, offering or disclosure documents or other information in any way relating to the Project, the Corporation, the Depository or the Underwriter.

Section 6. Allocation of Proceeds of the Series 2014 Bonds. Proceeds from the sale of the Series 2014 Bonds shall be delivered and deposited in accordance with the terms of the Indenture for refunding of the Prior Bonds and, if applicable, the payment of costs of issuance of the Series 2014 Bonds in accordance with the terms of the Sublease.

Section 7. Security for the Series 2014 Bonds. To the extent provided in, and except as otherwise permitted under the Indenture, the Series

2014 Bonds shall be equally and ratably payable solely from the Revenues. To secure the payment of Bond Service Charges, all right, title and interest of the Issuer in and to all moneys and investments in the Bond Fund and all of the Issuer's rights and remedies under the Sublease (except for the Unassigned Rights) have been duly and validly pledged to the Trustee by the Indenture.

Anything in this resolution, the Series 2014 Bonds or the Indenture to the contrary notwithstanding, the Series 2014 Bonds do not and shall not represent or constitute a debt or pledge of the faith and credit of the Issuer or the State or any political subdivision thereof, and the owners of the Series 2014 Bonds have no right to have taxes levied by the General Assembly of the State or the taxing authority of any political subdivision of the State, including the Issuer, for the payment of the principal of or interest or any premium on the Series 2014 Bonds or any other costs of the Project, but such Series 2014 Bonds are payable solely from the Revenues, and the Series 2014 Bonds shall contain a statement to that effect and to the effect that the Series 2014 Bonds are payable solely from the Revenues.

Section 8. Covenants and Agreements of the Issuer. In addition to the other covenants and agreements of the Issuer in this resolution, the Sublease and the Indenture, the Issuer hereby makes the following covenants and agreements:

(a) Arbitrage Provisions and Information Return. The Issuer covenants that in the Sublease it will require the Corporation to restrict the use of the proceeds of the Series 2014 Bonds in such manner and to such extent as may be necessary so that the Series 2014 Bonds will not constitute arbitrage bonds under Sections 103(b)(2) and 148 of the Code. The members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Series 2014 Bonds, are authorized and directed to give:

(i) an appropriate certificate of the Issuer prepared by Bond Counsel and approved by the County's legal officer, for inclusion in the transcript of proceedings for the Series 2014 Bonds, setting forth the reasonable expectations of the Issuer regarding the amount and use of all of the proceeds of the Series 2014 Bonds, the facts, circumstances and estimates on which those expectations are based and other facts and circumstances relevant to the tax treatment of interest on the Series 2014 Bonds, as provided by the Corporation, all as of the date of delivery of and payment for the Series 2014 Bonds; and

(ii) a statement setting forth the information required by Section 149(e) of the Code.

The Issuer covenants that it (i) will take or require to be taken to the extent of its power or control all actions that may be required of it for the

interest on the Series 2014 Bonds to be and to 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 members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Series 2014 Bonds, are hereby authorized and directed to take any and all actions and make or give reports and certifications, as may be appropriate to assure such exclusion of that interest.

In its performance of these covenants and other covenants of the Issuer pertaining to federal income tax laws, the Issuer may rely in good faith upon the advice of nationally recognized bond counsel which is in writing and is provided to the Trustee, the cost of which shall be paid by the Corporation.

(b) Transcript of Proceedings. The Issuer shall furnish to the Underwriter for the benefit of the purchasers of the Series 2014 Bonds a true transcript of (i) all proceedings had with reference to the issuance of the Series 2014 Bonds and (ii) any other information from the records of the Issuer that may be necessary or appropriate to determine the regularity and validity of the issuance of the Series 2014 Bonds.

Section 9. Approval of Bond Purchase Agreement, Indenture, Lease and Sublease. To provide for the issuance and sale of the Series 2014 Bonds and the consummation of the transactions contemplated herein and therein, the County Executive (or his designee) and the Fiscal Officer at the direction of the County Executive, alone or in conjunction with any of the foregoing, for and in the name and on behalf of the Issuer: to execute and deliver the Bond Purchase Agreement, in substantially the form submitted to and now on file with the Issuer and approved by the Issuer's legal officer, with such changes thereto not inconsistent with this resolution and not adverse to the Issuer and which are permitted by the Act; and to execute and deliver the Indenture, the Lease and the Sublease, each in substantially the form submitted to and now on file with the Issuer and approved by the Issuer's legal officer, with such changes thereto not inconsistent with this resolution and not adverse to the Issuer and which are permitted by the Act, and shall be approved by the officer or officers executing the Bond Purchase Agreement, the Indenture, the Lease and the Sublease and by the County's legal officer, such execution and delivery of said documents being conclusive evidence of the approval of any such changes. The Fiscal Officer is authorized to give any certifications that may be required under Ohio Revised Code Sections 5705.41 and 5705.44 with respect to any of the foregoing.

Section 10. Other Documents. The County Executive (or his designee), the President of the Council, the Fiscal Officer, the Clerk of the Council or any other officer of the County, alone or in conjunction with any of the foregoing, is authorized and directed, for and in the name and on behalf of the Issuer, to execute any undertakings, certifications, financing statements, assignments and other instruments in a form approved by the legal officer of the

Issuer or to take any and all other such actions which are necessary or appropriate to perfect the assignments set forth in the Indenture and to consummate the transactions contemplated in this resolution, the Indenture, the Lease, the Sublease and the Bond Purchase Agreement, including without limitation, the issuance of the Series 2014 Bonds and any actions that may be necessary to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12 or any filing requirements of the Code.

Section 11. Appointment of Remarketing Agent. The Northern Trust Company is hereby initially appointed as Remarketing Agent pursuant to the terms of the Indenture.

Section 12. Public Approval. It is found and determined that, following reasonable public notice and prior to the adoption of this resolution, a public hearing was held on March 11, 2014 with respect to the issuance of the Series 2014 Bonds as required by Section 147(f) of the Code. For purposes of complying with Section 147(f) of the Code, this Council, the “applicable elected representative” within the meaning of Section 147(f), hereby approves the issuance of the Series 2014 Bonds in the maximum aggregate principal amount of \$39,900,000 to refinance the costs of a health care facility, including a nursing home and assisted living facility, owned and operated by The A.M. McGregor Home and located at 14900 Private Drive, East Cleveland, Ohio 44112.

Section 13. Compliance with Open Meeting Requirements. It is found and determined that all formal actions of this Council relating to the adoption of this resolution were taken in an open meeting of this Council, and that all deliberations of this Council and of any 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 14. Effective Date. It is necessary that this Resolution become immediately effective for the usual daily operation of the County; the preservation of public peace, health, or safety in the County; and any additional reasons set forth in the preamble. Provided that this Resolution receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (1) its approval by the County Executive through signature, (2) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Cuyahoga County Charter, or (3) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Cuyahoga County Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

On a motion by Ms. Simon, seconded by Mr. Germana, the foregoing Resolution was duly adopted.

Yeas: Germana, Gallagher, Conwell, Jones, Hairston, Simon, Greenspan, Miller,
Brady and Connally

Nays: None

County Council President Date

County Executive Date

Clerk of Council Date

First Reading/Referred to Committee: February 25, 2014
Committee(s) Assigned: Economic Development & Planning

Additional Sponsorship Requested on the Floor: March 11, 2014

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