

WS 2/11/2023
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COUNTY OF DAUPHIN
Commonwealth of Pennsylvania

ORDINANCE NO. 2-2023

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE COUNTY OF DAUPHIN, PENNSYLVANIA DETERMINING TO INCUR DEBT IN THE AMOUNT NOT TO EXCEED \$1,510,000; DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT TO BE EVIDENCED BY A CERTAIN MODIFIED GUARANTEED REVENUE NOTE OF DAUPHIN COUNTY ECONOMIC DEVELOPMENT CORPORATION, A PENNSYLVANIA NONPROFIT CORPORATION AND INDUSTRIAL DEVELOPMENT AGENCY ("DCEDC"); BRIEFLY DESCRIBING THE PROJECT FOR WHICH SAID DEBT WAS ORIGINALLY INCURRED AND SPECIFYING THE REMAINING USEFUL LIFE OF SAID PROJECT; AUTHORIZING AND DIRECTING PROPER OFFICERS OF THE COUNTY TO EXECUTE, ATTEST, SEAL AND DELIVER, AS APPROPRIATE, A MODIFIED GUARANTY AGREEMENT WITH RESPECT TO THE AFORESAID MODIFIED GUARANTEED REVENUE NOTE; APPROVING THE FORM OF SAID MODIFIED GUARANTY AGREEMENT; AUTHORIZING AND DIRECTING THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF COMMISSIONERS AND THE CHIEF CLERK OF THE COUNTY TO PREPARE, VERIFY AND FILE, AS APPLICABLE, THE DEBT STATEMENT, THE BORROWING BASE CERTIFICATE TO BE APPENDED TO THE DEBT STATEMENT, AND OTHER APPROPRIATE DOCUMENTS REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT, 53 Pa. C.S. § 8001 *ET SEQ.*; GUARANTEEING PAYMENT OF THE PRINCIPAL OF AND INTEREST ON AFORESAID MODIFIED GUARANTEED REVENUE NOTE AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO; SPECIFYING THE MAXIMUM AMOUNT OF THE MODIFIED GUARANTY OBLIGATION OF THE COUNTY PURSUANT TO SUCH MODIFIED GUARANTY AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE COUNTY WITH RESPECT TO THE MODIFIED GUARANTY AGREEMENT; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO EXECUTE ALL REQUIRED, NECESSARY OR DESIRABLE CERTIFICATES AND DOCUMENTS IN CONNECTION WITH SAID LEASE RENTAL DEBT AND SAID PROJECT; AUTHORIZING PROPER OFFICERS OF THE COUNTY TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE ACTION IN CONNECTION WITH SAID PROJECT AND THE EXECUTION, DELIVERY OR ACCEPTANCE OF SAID MODIFIED GUARANTY AGREEMENT; PROVIDING FOR THE EFFECTIVENESS OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PROVISIONS OF THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ALL INCONSISTENT ORDINANCES OR RESOLUTIONS OR PARTS OF ORDINANCES OR RESOLUTIONS.

WHEREAS, the County of Dauphin, Pennsylvania (the "**County**") exists under laws of the Commonwealth of Pennsylvania (the "**Commonwealth**") and is a "local government unit," as such term is defined under the Local Government Unit Debt Act, 53 Pa. C.S. § 8001 *et seq.* (the "**Debt Act**"); and

WHEREAS, Dauphin County Economic Development Corporation (the "**Corporation**") is a nonprofit corporation organized on behalf of the County and incorporated under the Nonprofit Corporation

Law of 1988, as amended and supplemented, of the Commonwealth for the purpose of, *inter alia*, assisting and encouraging the stabilization, expansion and/or retention of jobs and businesses in the County; and

WHEREAS, the Corporation heretofore issued its Guaranteed Parking Revenue Note, Series of 2004 (Federally Taxable), in the principal amount of \$2,200,000 (the "2004 Note"), in order to finance the acquisition of two floors of a new parking garage with 88+ parking spaces located at 17 North Second Street in the City of Harrisburg, Dauphin County, Pennsylvania (the "Parking Project"); and

WHEREAS, the Corporation heretofore issued its Guaranteed Parking Revenue Note, Series B of 2018 (Federally Taxable), in the principal amount of \$1,470,000 (the "Note") to refinance the 2004 Note; and

WHEREAS, the Note was sold to Members First Credit Union (the "Bank"); and

WHEREAS, the Note was amended and restated on September 1, 2020 to extend the maturity date to November 1, 2022 and to increase the maximum principal amount from \$1,470,000 to \$1,495,000; and

WHEREAS, the Corporation, acting on its own behalf, desires to modify the Note to extend the maturity date to March 1, 2025, to increase the maximum principal amount from \$1,495,000 to \$1,510,000, and to increase the interest rate to 6.75% (the "Modified Note", and as a project, the "Modification"); and

WHEREAS, the County desires the Corporation, acting on its own behalf, to undertake the Modification, and as inducement to the Corporation to undertake the Modification, the County is willing to guarantee the full payment of the principal of and the interest on the Modified Note, when due, pursuant to a modified guaranty agreement (the "Modified Guaranty"), and the authority set forth in the Debt Act; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Dauphin, Pennsylvania, as follows:

1. The Modification and Recitals. The Board of Commissioners of the County hereby requests and authorizes the Corporation, acting on its own behalf, to proceed to undertake the Modification and the payment of all "costs" related thereto. The description of the Modification contained in the recitals to this Ordinance hereby are incorporated into this Section by reference as if set out at length. The foregoing recitals and all terms defined therein are incorporated herein, and such defined terms may hereafter be used as if set out at length.

2. Cost and Realistic Useful Life. Reasonable cost estimates have been obtained for the Modification with the assistance of financial advisors and other persons qualified by experience. The total cost of the Modification is at least \$1,510,000.

The Board of Commissioners of the County hereby determines that the remaining useful life of the Parking Project, originally financed with the 2004 Note and refinanced with proceeds of the Note, is at least eleven (11) years. The term of the Note as modified does not exceed the estimated remaining useful life of the Parking Project.

3. Incurrence of Lease Rental Debt. The Board of Commissioners of the County hereby determines to incur "debt," as such term is defined in the Debt Act, as "lease rental debt," as such term is defined in the Debt Act, for the purpose of effectuating the Modification.

4. Amount of Lease Rental Debt. The debt to be incurred, as lease rental debt, as set forth in Section 3 hereof, shall be in the maximum principal amount of \$1,510,000, and shall consist of and be evidenced by the County's execution and delivery of the Modified Guaranty, in the principal amount not to exceed \$1,510,000, pursuant to which the County agrees to guarantee the payment of principal of and interest on the Modified Note, when due. The Note shall be modified under and pursuant to a modification agreement by and between the Corporation and the Bank, and secured by, *inter alia*, the Modified Guaranty executed by the County, substantially in the form referred to in subsection 5(a) hereof.

5. The Modified Guaranty.

(a) *Authorization and Approval of Modified Guaranty.* The County shall enter into the Modified Guaranty, substantially in the form referred to in this subsection (a), with respect to the Modified Note. The Modified Guaranty shall be substantially in the form presented to this meeting, which form is approved; and a copy of the Modified Guaranty, in the form so presented to this meeting and so approved, shall be filed with the Chief Clerk of the County for inspection, at reasonable times, by interested persons requesting such inspection. A copy of the form of the Modified Guaranty is attached hereto as Exhibit A.

(b) *Execution by Proper Officers.* The Chairman or Vice Chairman of the Board of Commissioners and the Chief Clerk of the County are hereby authorized and directed to execute, attest, seal and deliver the Modified Guaranty, with such insertions, deletions and amendments as the officers of the County executing the Modified Guaranty and the Solicitor to the County shall deem necessary. The execution, attestation and delivery of the Modified Guaranty by appropriate officers of the County shall constitute conclusive evidence of such approval; Provided, however, that such execution and delivery of the Modified Guaranty shall be subject to compliance by the County with applicable provisions of the Debt Act. Said officers of the County are authorized to take all other required, necessary or desirable action in connection with the Modification and with the execution and delivery of the Modified Guaranty.

(c) *Delivery to the Bank.* The County authorizes delivery of the Modified Guaranty to the Bank for the purposes set forth therein.

6. Filing with Department of Community and Economic Development. The Chairman or Vice Chairman of the Board of Commissioners and the Chief Clerk of the County are authorized and directed to make application to the Pennsylvania Department of Community and Economic Development (the "**Department**") for approval with respect to said lease rental debt, as required by the Debt Act, and to pay or cause to be paid to the Department all proper filing fees required by the Debt Act and to take all other required and appropriate action.

Accordingly, the Chairman or Vice Chairman of the Board of Commissioners and Chief Clerk of the County are authorized and directed: (a) to prepare, verify and file with the Department, a debt statement as required by the Debt Act; (b) to prepare, execute and file with the Department the borrowing base certificate to be appended to the debt statement referred to in subparagraph (a) of this Section; (c) to prepare, execute and file the application with the Department, together with a complete and accurate transcript of the proceedings relating to the incurring of debt, of which debt the Modified Note and the Modified Guaranty, upon execution and delivery, will be evidence, as required by the Debt Act; (d) to pay or to cause to be paid to the Department all filing fees required by the Debt Act in connection with the foregoing; and (e) to take other required, necessary and/or appropriate action, and further, the same proper officers are authorized, at their discretion, hereafter to prepare and file, as required, with the Department, appropriate statements required by the Debt Act which are necessary to qualify all or a portion of lease rental debt of

the County, if any shall be subject to exclusion as self-liquidating debt, for exclusion from the appropriate debt limit of the County as such self-liquidating debt.

7. Execution of Documents. Proper officers and officials of the County are hereby authorized and directed to execute, attest and deliver any and all necessary or appropriate certificates, instruments, agreements or documents and to do any and all necessary or appropriate things in connection with the transactions hereby contemplated, including, without limitation, fulfilling the requirements of the terms and conditions approved by the Corporation with respect to the Modified Note.

8. Guaranty Covenant. The County hereby guarantees the full payment of the principal of and interest on the Modified Note and in furtherance thereof covenants and agrees with the holder from time to time of the Modified Note that if the Corporation shall fail to pay the full amount of the principal of and interest on the Modified Note when the same becomes due and payable, at the time and place, under the terms and conditions, and in the manner prescribed in the Modified Note, the County will pay the full amount of such principal and interest to the holder of the Modified Note.

The County covenants to and with the holder of the Modified Note, from time to time, that, subject to the terms and conditions of and as set forth more fully in the Modified Guaranty, the County (a) shall include the amounts payable in respect of the Modified Guaranty for each fiscal year in which such sums are payable in its budget for that year, (b) shall appropriate such amounts from its general revenues for the payment of such payment, and (c) shall duly and punctually pay or cause to be paid from any of its revenues or funds the amount payable in respect of the Modified Guaranty, at the dates and place and in the manner stated therein, according to the true intent and meaning thereof. The County pledges its full faith, credit and taxing power for such budgeting, appropriation and payment in respect of the Modified Guaranty. For the purpose of complying with the covenants of this Section, the County shall, subject to the terms and conditions hereof and of the Modified Guaranty, budget the amounts set forth in Exhibit B hereto for the fiscal year in which such amounts are payable and shall appropriate and shall pay, in the manner provided in the Modified Guaranty, such amounts. This covenant shall be specifically enforceable in accordance with the Debt Act.

In the event that the County is obligated to make payments under the Modified Guaranty, the maximum amounts required to be paid thereunder, if and as necessary on an annual basis, from the general revenues of the County, shall be as set forth on Exhibit B hereto. Exhibit B is incorporated herein by reference with the same force and effect as if fully set forth in the text hereof. If at any time the County is required to make any payment under the Modified Guaranty, the proper officers of the County are hereby authorized and directed to do so.

9. General Authorization. Proper officers of the County are authorized and directed to execute all documents and to take such other action as may be necessary to carry out the intent and purposes of this Ordinance and the undertakings of the County under the Modified Guaranty.

10. Effective Date. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

11. Severability. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the County that the remainder of the Ordinance shall remain in full force and effect.

12. Repealer. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

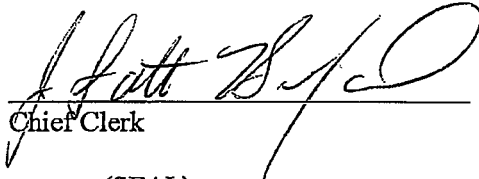
DULY ENACTED AND ORDAINED this 1st day of February, 2023, by the Board of Commissioners of the County of Dauphin, Pennsylvania, in lawful session duly assembled.

COUNTY OF DAUPHIN
Commonwealth of Pennsylvania



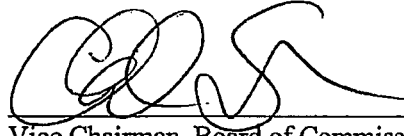
Chairman, Board of Commissioners

ATTEST:



Chief Clerk

(SEAL)



Vice Chairman, Board of Commissioners



Secretary, Board of Commissioners