

AN ORDINANCE OF THE COUNTY OF SOMERSET, NEW JERSEY, AUTHORIZING THE GUARANTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON NOT TO EXCEED \$5,750,000 AGGREGATE PRINCIPAL AMOUNT OF COUNTY GUARANTEED LEASE REVENUE NOTES/BONDS (BOROUGH OF NORTH PLAINFIELD PROJECT) ISSUED BY THE SOMERSET COUNTY IMPROVEMENT AUTHORITY FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY THEREFOR AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Somerset County Improvement Authority (the "*Authority*"), a public body corporate and politic constituting an instrumentality of the State of New Jersey (the "*State*") established and created under the provisions of the County Improvement Authorities Law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State and the acts amendatory thereof and supplemental thereto (the "*Act*"), is authorized pursuant to the terms of the Act to provide public facilities, as such term is defined therein, within the County of Somerset, New Jersey (the "*County*"), including the financing of the acquisition of same; and

WHEREAS, the Borough of North Plainfield, in the County of Somerset, New Jersey (the "*Borough*"), desires to acquire certain property from a private owner commonly known as 641 Somerset Street and designated as Block 110, Lot 2.14 (comprising 12.2± acres) (the "*Open Space Lot*"), and Block 110, Lots 2.02 through 2.13 (comprising 2.13± acres) (the "*Affordable Housing Lots*"; and together with the Open Space Lot, the "*Property*"), on the Borough's Tax Assessment Maps and the existing buildings and structures thereon; and

WHEREAS, upon acquisition of the Property, the Authority will demolish and remove such buildings and structures located thereon (such acquisition and demolition are hereinafter referred to as the "*Project*"); and

WHEREAS, the Open Space Lot will be utilized by the Borough as a public park and the Affordable Housing Lots will be utilized by the Borough to make provision for affordable housing; and

WHEREAS, the County will contribute \$3,000,000 from its Open Space Trust Fund to assist with the acquisition of the Open Space Lot and the demolition and removal of any buildings thereon (the "*County Contribution*"); and

WHEREAS, the County Contribution will be available at the time of closing on the Open Space Lot and, as such, no moneys will need to be borrowed to cover the County's share in anticipation of its receipt; and

WHEREAS, the Borough has requested the Authority's assistance in financing the Project as described herein; and

WHEREAS, the Authority has agreed to finance the Project on behalf of the Borough through the issuance of bonds and any notes issued in anticipation thereof; and

WHEREAS, the Project constitutes a "public facility" as such term is defined in the Act; and

WHEREAS, in order to finance the acquisition of the Project, the Authority will issue bonds in one or more series, including renewals/refundings, if any, in an aggregate principal amount not to exceed \$5,750,000, to be designated as "County Guaranteed Lease Revenue Bonds, Series 2019 (Borough of North Plainfield Project)" (inclusive of any project notes (including renewals/refundings) issued in anticipation thereof, the "*Obligations*"), with such further designation and in accordance with the terms of a resolution of the Authority entitled, "Resolution Authorizing the Issuance of County Guaranteed Lease Revenue Bonds (Borough of North Plainfield Project) of the Somerset County Improvement Authority and

Determining Other Matters Related Thereto" (together with any amendments thereof or supplements thereto in accordance with the terms thereof, the "*General Bond Resolution*"); and

WHEREAS, the Authority will use proceeds from the sale and issuance of the Obligations to, among other things, acquire the Project and, simultaneously therewith, enter into a lease purchase agreement with the Borough to be dated as of the first day of the month of issuance of the Obligations (together with any amendments thereof or supplements thereto in accordance with its terms, the "*Lease Agreement*"), pursuant to which the Authority will lease the Project to the Borough for its use; and

WHEREAS, pursuant to the Act, specifically Section 35 thereof (N.J.S.A. 40:37A-78), the Authority is authorized to enter into and perform any lease or other agreement, including the Lease Agreement, with the Borough for the lease to or use by the Borough of all or any part of any public facility, including the Project, on any terms and conditions that may be agreed upon by the Borough and the Authority; and

WHEREAS, the Obligations shall be secured by valid and binding general obligation lease payments of the Borough under the Lease Agreement, in scheduled lease payment amounts sufficient to pay in a timely manner the principal and redemption premium, if any, of and interest on the Obligations; and

WHEREAS, the Authority and the Borough have requested that the County unconditionally guaranty the payment of the principal of (including sinking fund installments, if any) and interest on the Obligations to finance the Project; and

WHEREAS, to provide an inducement to the prospective purchasers of the Obligations to purchase same and to provide additional security to the holders thereof, the County will, in accordance with N.J.S.A. 40:37A-80, fully, unconditionally and irrevocably guaranty the payment of the principal of (including sinking fund installments, if any) and interest on the Obligations in an aggregate principal amount not to exceed \$5,750,000 in accordance with the terms of this guaranty ordinance of the County to be finally adopted by the Board of Chosen Freeholders as evidenced by a guaranty agreement by and among the County, the trustee in connection with the Obligations and the Authority (the "*County Guaranty Agreement*") and by a guaranty certificate (collectively, the "*County Bond Guaranty*") to be executed by an authorized County representative on the face of the Obligations, all pursuant to Section 37 of the Act (N.J.S.A. 40:37A-80); and

WHEREAS, in accordance with Section 13 ("*Section 13*") of the Act (N.J.S.A. 40:37A-56), prior to the issuance of the Obligations, the Authority will have made a detailed report to the Board of Chosen Freeholders, which report will include, without limitation, the Obligations, the General Bond Resolution and the Lease Agreement (collectively, the "*Financing Documents*").

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF SOMERSET, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), AS FOLLOWS:

Section 1. The recitals are fully incorporated herein by this reference.

Section 2. This guaranty ordinance shall be adopted by the Board of Chosen Freeholders in the manner provided for adoption of a bond ordinance as provided in the Local Bond Law, N.J.S.A. 40A:2-1 *et seq.*, as amended and supplemented (the "*Local Bond Law*").

Section 3. Pursuant to and in accordance with the terms of the Act, specifically Section 37 thereof (N.J.S.A. 40:37A-80), the County is hereby authorized to and hereby shall fully, unconditionally and irrevocably guaranty the punctual payment of the principal of (including sinking fund installments, if any) and interest on the Obligations, including renewals/refundings, if any, in an aggregate principal amount not to exceed \$5,750,000, which Obligations are to be issued to finance the Project as described in the recitals hereto, on such terms and conditions as may be agreed to by and between the County and the Authority in the Financing Documents and in such other documents related thereto and as are reflected in this guaranty ordinance and in the guaranty certificate on the face of each Obligation. Notwithstanding the provisions of any other Financing Document, upon the endorsement of the

Obligations referred to in Section 4 below, the County shall be fully, unconditionally and irrevocably obligated to pay the principal of (including sinking fund installments, if any) and interest on the Obligations in the same manner and to the same extent as in the case of bonds issued by the County and, accordingly, the County shall be unconditionally and irrevocably obligated to levy *ad valorem* taxes upon all the taxable property within the County for the payment thereof without limitation as to rate or amount when required under the provisions of applicable law. This unconditional and irrevocable guaranty of the County effected hereby to pay the principal of (including sinking fund installments, if any) and interest on the Obligations when due in accordance with the terms hereof and of the Financing Documents prepared in connection with the issuance of the Obligations may not be waived, set-off or otherwise abrogated by any action or inaction of the Authority or the County or for any other reason. The full faith and credit of the County are hereby pledged for the full and punctual performance of the County Bond Guaranty.

Section 4. The Freeholder Director is hereby authorized and directed to execute by manual or facsimile signature an endorsement on each of the Obligations evidencing the County Bond Guaranty by the County as to the punctual payment of the principal of (including sinking fund installments, if any) and interest on the Obligations. The endorsement on each Obligation shall be in substantially the following form, and absent the fully executed endorsement in such following form on any such Obligation, such Obligation shall not be entitled to the benefits of the County Bond Guaranty:

"GUARANTY OF THE COUNTY OF SOMERSET, NEW JERSEY

The payment of the principal of (including sinking fund installments, if any) and interest on the within Bond shall be fully, irrevocably and unconditionally guaranteed by the County of Somerset, New Jersey (the "*County*"), in accordance with the provisions of N.J.S.A. 40:37A-80 and the guaranty ordinance of the County finally adopted pursuant thereto and any guaranty agreement executed by the County in connection therewith, and the County is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of (including sinking fund installments, if any) and interest on this Bond, and, if necessary, the County shall levy *ad valorem* taxes upon all the taxable property within the County without limitation as to rate or amount in order to make such payments.

IN WITNESS WHEREOF, the County has caused this County Bond Guaranty to be executed by the manual or facsimile signature of its Freeholder Director, all as of the date of the within Bond.

COUNTY OF SOMERSET, NEW JERSEY

By: _____
Freeholder Director"

The Freeholder Director, the Deputy Freeholder Director or the Director of Finance is hereby further authorized to execute such other certificates or agreements relating to the County Bond Guaranty that may be required by the Authority to comply with the terms of the financing documents relating to the Obligations, including, without limitation, (i) any agreements or certificates detailing the time and method that payment under this guaranty ordinance shall be made by the County, (ii) any letters of representations or similar undertakings to be executed in connection with the sale of the Obligations, setting forth certain representations, warranties and covenants of the County as an inducement to the purchaser of the Obligations, (iii) any certificates deeming "final" (for the purposes of Rule 15c2-12 of the Securities and Exchange Commission) any preliminary or final Official Statements of the Authority relating to the Obligations and (iv) any note/bond purchase agreement executed in connection with the sale of the Obligations. Such further agreements, instruments or certificates shall not abrogate the County's responsibilities hereunder.

Section 5. The following additional matters are hereby found, determined and declared by the County:

(a) This guaranty ordinance may be adopted notwithstanding any statutory or other debt limitations, including, particularly, any limitation or requirement under or pursuant to the

Local Bond Law, but the aggregate principal amount of the Obligations that shall be entitled to the benefits of the County Bond Guaranty, being an amount not to exceed \$5,750,000, shall, after their issuance, be included in the gross debt of the County for the purpose of determining the indebtedness of the County under or pursuant to the Local Bond Law.

(b) The principal amount of Obligations entitled to the benefits of the County Bond Guaranty and included in the gross debt of the County shall be deducted, and is hereby declared to be and to constitute a deduction, from such gross debt under and for all the purposes of the Local Bond Law (i) from and after the time of issuance of the Obligations until the end of the fiscal year beginning next after the completion of the Project, and (ii) in any annual debt statement filed pursuant to the Local Bond Law as of the end of said fiscal year or any subsequent fiscal year if the revenues or other receipts or moneys of the Authority relative to the Project in such year are sufficient to pay its expenses of operation and maintenance in such year and all amounts payable in such year on account of the principal of (including sinking fund installments, if any) and interest on all such Obligations, all bonds of the County issued as provided in Section 36 of the Act (N.J.S.A. 40:37A-79) and all bonds of the Authority issued under the Act.

Section 6. The following matters are hereby determined, declared, recited and stated:

(a) The maximum principal amount of Obligations of the Authority that are hereby and hereunder fully, unconditionally and irrevocably guaranteed as to the punctual payment of the principal thereof (including sinking fund installments, if any) and interest thereon is \$5,750,000; the maximum principal amount of Obligations of the Authority that may be outstanding at any one time is \$5,750,000; and the maximum estimated cost of the Project to be financed in accordance with the transactions contemplated hereby is \$5,750,000.

(b) The purpose described in this guaranty ordinance is not a current expense of the County, and no part of the cost thereof has been or shall be assessed on property specially benefited thereby.

(c) The Obligations shall mature within thirty (30) years from the date of issue.

(d) A supplemental debt statement of the County has been duly made and filed in the office of the Deputy Clerk of the Board of Chosen Freeholders, and a complete executed duplicate thereof has been filed in the office of the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, and such debt statement shows that while the gross debt of the County, as defined in the Local Bond Law, is increased by this guaranty ordinance by the amount of the Obligations issued by the Authority, which amount shall not exceed \$5,750,000, upon the satisfaction of the conditions set forth in N.J.S.A. 40:37A-80, in accordance with the provisions of the Act, the net debt of the County is not increased, and the obligation of the County authorized by or incurred pursuant to the terms of this guaranty ordinance is permitted by an exception to the debt limitations of the Local Bond Law, which exception is contained in the Act, so long as the payment obligations of the County hereunder are not called upon.

(e) Other than the publication requirements set forth below, all other items to be contained in a bond ordinance adopted pursuant to the Local Bond Law are hereby determined to be inapplicable to the County's guaranty of the Obligations hereby.

Section 7. To the extent the Authority determines that it is in the best interest of the Authority and the Borough, the Authority is hereby authorized to finance the Project as separate issues through one or more separate series of Obligations consisting of project notes and bonds that in the aggregate shall not exceed \$5,750,000. Such series of Obligations (consisting of project notes and bonds) shall be entitled to the benefits of the County Bond Guaranty in an aggregate amount not to exceed \$5,750,000.

Section 8. The County hereby covenants and agrees to comply with the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended and supplemented (the "Rule"), including the secondary market disclosure requirements contained therein, and agrees to covenant to such compliance in the County Guaranty Agreement. The Freeholder Director, the

Deputy Freeholder Director, the Director of Finance and any other authorized County representative are each hereby authorized and directed to execute and deliver a continuing disclosure agreement to the Authority and the other parties thereto (the "*Continuing Disclosure Agreement*"), to prepare operating data and financial information for inclusion in the Authority's preliminary and final Official Statements, to approve and "deem final" the Authority's preliminary and final Official Statements (to the extent the information contained therein relates to the County), to execute and deliver all certificates, documents and agreements to the Authority and any other applicable party in connection therewith and to file budgetary, financial and operating data on an annual basis and notices of certain enumerated events as required to comply with and in accordance with the provisions of the Rule and the Continuing Disclosure Agreement.

Section 9. To the extent one or more series of the Obligations (or any portion thereof) are not issued in 2019, references herein to "2019" may without any further action be changed to the year of issuance of such Obligations and all dates related to such year of issuance shall be automatically adjusted.

Section 10. A public hearing shall be held on this guaranty ordinance on February 26, 2019 at 6:30 p.m. in the County Building, 20 Grove Street, Somerville, New Jersey 08876.

Section 11. The Clerk of the Board of Chosen Freeholders is hereby directed to publish and post notice of this guaranty ordinance as required by law.

Section 12. Upon the adoption hereof, the Clerk of the Board of Chosen Freeholders shall forward certified copies of this guaranty ordinance to the Freeholder Director, County Counsel, the chief administrator of the Authority, Bond Counsel to the Authority, Matthew D. Jessup, Esq., of McManimon, Scotland & Baumann, LLC, and County Bond Counsel.

Section 13. Pursuant to Section 13, the County hereby consents to the undertaking of the financing of the Project by the Authority in connection with the acquisition and lease purchase of the Project in an amount not to exceed \$5,750,000.

Section 14. If any part(s) of this guaranty ordinance shall be deemed invalid, such part(s) shall be severed and the invalidity thereof shall not affect the remaining parts of this guaranty ordinance.

Section 15. All capitalized words and terms used but not defined in this guaranty ordinance shall have the meanings ascribed to such words and terms, respectively, in the preambles hereto.

Section 16. This guaranty ordinance shall take effect at the time and in the manner provided by applicable law.

I, Kathryn Quick, Deputy Clerk of the Board of Chosen Freeholders of the County of Somerset in the State of New Jersey, do hereby certify that the foregoing is a true copy of a Resolution adopted by said Board of Chosen Freeholders at its regularly convened meeting of February 12, 2019.

Kathryn Quick, Deputy Clerk of the Board