

COMMISSIONERS ORDINANCE NO. O-2019-020

AN ORDINANCE OF THE BOARD OF COMMISSIONERS OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING THE ISSUANCE OF UP TO \$16,050,000 INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2019A (CPX OMV, LLC PROJECT) OF THE CITY OF NEWPORT, KENTUCKY, THE PROCEEDS OF WHICH SHALL BE USED TO PAY THE COSTS OF THE ACQUISITION, CONSTRUCTION, INSTALLATION, AND EQUIPPING OF FACILITIES TO BE USED FOR RECREATION AND CULTURAL ACTIVITIES, TO BE LOCATED WITHIN THE CITY OF NEWPORT, KENTUCKY, AND LEASED TO CPX OMV, LLC; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LEASE AGREEMENT APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT, IN LIEU OF TAXES AGREEMENT; AND ASSIGNMENTS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Newport, Kentucky (the "Issuer"), by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes (the "Act"), is authorized and empowered among other things (a) to assist in defraying the cost of the acquisition, construction, installation, and equipping of an "industrial building," as defined in § 103.200 of the Kentucky Revised Statutes, within the boundaries of the Issuer, (b) to issue and sell its negotiable revenue bonds to provide such moneys and (c) to enact this Ordinance and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS the Board of Commissioners of the Issuer (the "Issuing Authority") has determined and does hereby confirm that the acquisition, construction, equipping, and installation of real property, real property improvements, and personal property collectively constituting a recreational, cultural, concert, and public events venue to be located in the 4th Street/Central Avenue Development Area within the jurisdictional limits of the Issuer (the "Project") for the benefit of CPX OMV, LLC (the "Company") will promote the economic welfare of the people of the Commonwealth of Kentucky, relieve conditions of unemployment, and encourage the increase of industry in the Commonwealth of Kentucky, and that the issuance by the Issuer of industrial revenue bonds in an aggregate principal amount of up to \$16,050,000 pursuant to the Act to finance all or a portion of the costs of the Project (the "Series 2019A Bonds") will further promote the foregoing goals of the Act;

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF NEWPORT, KENTUCKY, AS FOLLOWS:

SECTION I

Definitions. All defined terms used herein and those not otherwise defined herein shall have the respective meanings given to them in the Lease Agreement (the “Lease Agreement”) between the Issuer and the Company, relating to the Series 2019A Bonds.

Any reference herein to the Issuer or the Issuing Authority, or to any officers or members thereof, shall include those which succeed to their functions, duties, or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof,” “hereby,” “hereto,” “hereunder,” and similar terms, mean this Ordinance.

SECTION II

Determinations of Issuer. Pursuant to the Act, the Issuing Authority hereby affirms that the Project constitutes an “industrial building” as defined in the Act and is consistent with the provisions of §§ 103.200 to 103.285 of the Act; that such industrial building consists of an industrial building and related personal property related to an activity, business, or industry for recreation or cultural activities, suitable for use by the Company within the meaning of the Act, as set forth in § 103.200(1)(e) of the Act; and that such industrial building is to be financed with the proceeds of the Series 2019A Bonds pursuant to the provisions of §§ 103.200 to 103.285 of the Act.

SECTION III

Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell, and deliver, as provided herein and pursuant to the authority of the Act, the Series 2019A Bonds for the purposes of financing the acquisition, construction, renovation, and equipping of the Project, including costs incidental thereto, all in accordance with the provisions of the Lease Agreement. The Series 2019A Bonds shall be designated “Industrial Building Revenue Bonds, Series 2019A (CPX OMV, LLC Project).” The maximum amount of Series 2019A Bonds to be outstanding at any one time is no greater than \$16,050,000.

SECTION IV

Terms and Execution of the Bonds. The Series 2019A Bonds shall be issued in the forms and denominations, shall be numbered, dated, and payable as provided in the Bond Purchase Agreement hereinafter defined. The Series 2019A Bonds shall mature as provided in the Bond Purchase Agreement, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Bond Purchase Agreement. This Issuing Authority hereby fixes and establishes the interest rate in effect from time to time on the Series 2019A Bonds in the manner and pursuant to the provisions of the Bond Purchase Agreement. The Series 2019A Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and City Clerk. In case any officer whose signature or a facsimile thereof shall appear on the Series 2019A Bonds shall cease to be such officer before the issuance or delivery of the Series 2019A Bonds,

such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Series 2019A Bonds described at this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Bond Purchase Agreement, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Bond Purchase Agreement, shall represent the approved form of Series 2019A Bonds of the Issuer.

SECTION V

Sale of the Bonds. In accordance with a written request, addressed to the Mayor from the Company, that the sale of the Series 2019A Bonds be made privately upon a negotiated basis, the Series 2019A Bonds are hereby awarded to First Financial Bank (the "Purchaser") at the purchase price set forth, and on the terms and conditions described, in the Bond Purchase Agreement with respect to the Series 2019A Bonds (the "Bond Purchase Agreement") among the Issuer, the Company, the Purchaser, and First Financial Bank, as servicing agent (the "Servicing Agent"). The Mayor and City Clerk are authorized and directed to make on behalf of the Issuer the necessary arrangements to establish the date, location, procedure, and conditions for the delivery of the Series 2019A Bonds to the Purchaser, and to take all steps necessary to effect due execution and delivery to the Purchaser of the Series 2019A Bonds (or temporary bonds delivered in lieu of definitive Series 2019A Bonds until their preparation and delivery can be effectuated) under the terms of this Ordinance, the Bond Purchase Agreement, and the Lease Agreement. It is hereby determined that the price for and the terms of the Series 2019A Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the Issuer and consistent with all legal requirements.

SECTION VI

Authorization of Lease Agreement, Assignments, Bond Purchase Agreement, PILOT Agreement, and All Other Documents to be Executed by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Series 2019A Bonds as the same shall become due and payable, the Mayor and City Clerk are authorized to execute, acknowledge, and deliver in the name and on behalf of the Issuer, the Lease Agreement, Assignments, and Bond Purchase Agreement in the forms submitted or described to the Issuer, which are hereby approved, which shall be consistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. In order to provide for the payment of certain ad valorem taxes that would become due and payable from the Company if the transactions contemplated by the Bonds were not undertaken, the Mayor and City Clerk are authorized to execute, acknowledge, and deliver in the name and on behalf of the Issuer, an Agreement In Lieu of Taxes (the "PILOT Agreement") in the form submitted or described to the Issuer, which is hereby approved. The approval of such documents by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of

such Lease Agreement, Assignments, Bond Purchase Agreement, and PILOT Agreement by such officers.

The Mayor and City Clerk are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates, deeds and other instruments that may be necessary or appropriate in the opinion of Dinsmore & Shohl LLP, as Bond Counsel, in order to effect the issuance of the Series 2019A Bonds and the intent of this Ordinance. The City Clerk, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Series 2019A Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Series 2019A Bonds.

SECTION VII

Covenants of Issuer. In addition to other covenants of the Issuer in this Ordinance, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from the sources herein or in the Bond Purchase Agreement provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Series 2019A Bonds on the dates, at the places and in the manner provided herein, in the Bond Purchase Agreement and in the Series 2019A Bonds.

(b) Performance of Covenants, Authority, and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations, and provisions contained in the Series 2019A Bonds, Lease Agreement, Bond Purchase Agreement, PILOT Agreement, and Assignment, and in all proceedings of the Issuer pertaining to the Series 2019A Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Series 2019A Bonds will be, duly authorized by the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the Series 2019A Bonds and to execute the Lease Agreement, the Assignment, the Bond Purchase Agreement, and the PILOT Agreement, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Series 2019A Bonds in the manner and to the extent herein and in the Bond Purchase Agreement set forth; that all actions on its part for the issuance of the Series 2019A Bonds and execution and delivery of the Lease Agreement, the Assignment, the Bond Purchase Agreement, the PILOT Agreement and all other documents to be executed by it in connection with the issuance of the Series 2019A Bonds, have been or will be duly and effectively taken; and that the Series 2019A Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Ordinance, the Assignment, the Lease Agreement, the Bond Purchase Agreement, the PILOT Agreement and each Series 2019A Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Series 2019A Bonds, is binding upon each officer of the Issuer as may from time to time have the authority under law to take

such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Series 2019A Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

SECTION VIII

No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Series 2019A Bond, or in the Lease Agreement, the Assignment, the Bond Purchase Agreement or the PILOT Agreement, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Series 2019A Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Series 2019A Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Series 2019A Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2019A Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Lease Agreement, the Assignment, the Bond Purchase Agreement and the PILOT Agreement and the issuance of the Series 2019A Bonds.

SECTION IX

No Debt or Tax Pledge. The Series 2019A Bonds do not constitute an indebtedness of the Issuer within the meaning of the Constitution of the Commonwealth of Kentucky. The Series 2019A Bonds shall be payable solely from the revenues and security interests pledged for their payment as provided in the Series 2019A Bonds, and neither moneys raised by taxation nor any other general or special revenues of the Issuer shall be obligated or pledged for the payment of principal of, premium (if any) or interest on the Series 2019A Bonds.

SECTION X

Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION XI

Open Meetings Law. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Issuing Authority, and that all deliberations of this Issuing Authority and of its

committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION XII

Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation, and publication of a summary hereof.

SECTION XIII

That this Ordinance shall be signed by the Mayor, attested to by the City Clerk, recorded, published and effective upon publication.

PASSED: First reading August 19, 2019
PASSED: Second reading September 23, 2019

Jerry R. Peluso, Mayor

ATTEST:

Amy B. Able, City Clerk

PUBLISHED: Online on the City website, www.newportky.gov, with URL reference published in the Campbell County Recorder the 3rd of October, 2019, as statutorily allowable under Section 143 of HB 487 approved in 2018 by the Kentucky Legislature and became law on April 27, 2018.