

COMMISSIONERS ORDINANCE NO. O-2019-022

AN ORDINANCE OF THE CITY OF NEWPORT, KENTUCKY AUTHORIZING THE ISSUANCE OF UP TO \$15,000,000 PRINCIPAL AMOUNT OF CITY OF NEWPORT, KENTUCKY TAX INCREMENT REVENUE BONDS (CPX NEWPORT COMMERCIAL DEVELOPMENT, LLC PROJECT); AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCING AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX REGULATORY AGREEMENT; AND OTHER DOCUMENTS AND TAKING OTHER RELATED ACTION.

WHEREAS, the City of Newport, Kentucky (the "Issuer") is specifically authorized and empowered by Sections 103.200 et seq. of the Kentucky Revised Statutes (the "Act") to issue its revenue bonds to assist in the financing of "buildings" or "industrial buildings," as those terms are defined in KRS 103.200, including any related financing costs, reserve funds, capitalized interest and other related costs and contingencies with respect thereto; and

WHEREAS, Corporex Companies, LLC, a Kentucky limited liability company ("Corporex") and a related company, CPX Newport Commercial Development, LLC, a Kentucky limited liability company (the "Company"), the Issuer and the City of Newport Finance Department (the "Obligor") have determined to finance the development of the 4th Street/Central Avenue Development Area (the "Development Area"), which, among other things, provides for the development of a parking garage (the "Project"), which constitutes "off-street parking facilities;" and

WHEREAS, Corporex, through the Company, has evidenced a desire to have the costs of the Project and other financing costs incident to the authorization, sale and issuance thereof, financed with the proceeds of the issuance and sale by the Issuer of City of Newport, Kentucky Tax Increment Revenue Bonds, Series 2019 (CPX Newport Commercial Development, LLC Project) (the "Bonds") in one or more series; and

WHEREAS, (a) the Bonds will not constitute a general obligation, debt or bonded indebtedness or liability of the Issuer or of the Commonwealth of Kentucky or any agency or political subdivision thereof under the Constitution of the Commonwealth of Kentucky or the pledge of the faith and credit of the Issuer, the Commonwealth of Kentucky or any agency or political subdivision thereof or give rise to a general obligation or liability of, or a charge against, the general credit or taxing powers of the Issuer, the Commonwealth of Kentucky or any agency or political subdivision thereof, (b) the holders or owners thereof will not have the right to have taxes or excises levied by the Issuer, the Commonwealth of Kentucky or any agency or political subdivision thereof for the payment of principal of and any premium and interest on the Bonds, and (c) the only security pledged for the Bonds will be the independent revenues from a Financing Agreement between the Issuer and the Obligor (the "Financing Agreement"); and

WHEREAS, it is necessary and proper in connection with the financing of the Project, in accordance with the Act, that the Issuer (a) authorize the issuance of the Bonds for the purposes described herein, (b) authorize the execution and delivery of a Financing Agreement

with the Company, (c) authorize the execution and delivery of a Trust Indenture (the "Trust Indenture") to secure the Bonds, (d) authorize the execution and delivery of a tax regulatory agreement (the "Tax Regulatory Agreement") with respect to the excludability of interest on the Bonds from gross income for federal income tax purposes, (e) authorize the negotiated sale of the Bonds under the terms of a bond purchase and/or bond placement agreement (the "Purchase Agreement"), and (f) authorize the execution and delivery of related documents;

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

SECTION I

For the purposes set forth in the preamble, there is hereby resolved, authorized and directed the authorization, execution, sale, delivery and issuance of "City of Newport, Kentucky Tax Increment Revenue Bonds (CPX Newport Commercial Development, LLC Project)," to be dated as of the date and with an appropriate series designation as set forth in the Trust Indenture, hereinafter authorized, and in an aggregate principal amount of up to \$15,000,000, which may be issued in one or more series, taxable and tax-exempt, in the form and content, with any additional series designations, subject to the terms and specifications, to mature, to be subject to redemption and to bear interest, all as provided in the Trust Indenture.

SECTION II

The Mayor and City Clerk of the Issuer (which, together with any other person as may be authorized by resolution are referred to as "Designated Officers") are hereby authorized, empowered and directed to execute and deliver on behalf of the Issuer the Financing Agreement, which Financing Agreement shall be in the form required by the Act, to be completed and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

SECTION III

The Designated Officers are hereby separately authorized to serve as the Authorized Issuer Representative for the purposes of the Financing Agreement and the Trust Indenture herein authorized.

SECTION IV

In order to provide for the authorization for, and to secure the Bonds to be issued pursuant to the Act, to make or finance a loan to the Company to finance the Project and pay necessary expenses incident thereto, and to prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, accepted and held, Designated Officers are hereby separately authorized, empowered and directed to execute and deliver, on behalf of the Issuer, the Trust Indenture between the Issuer and a corporate trustee to be identified in the Trust Indenture, as Trustee for the Bonds (the "Trustee"), which Trust Indenture shall be in the form required by the Act, to be completed and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

SECTION V

In order to provide for the excludability of interest on all or a portion of the Bonds from gross income for federal income tax purposes, the Designated Officers are hereby authorized, empowered and directed to execute and deliver, on behalf of the Issuer, one or more Tax Regulatory Agreements among the Issuer, the Trustee and the Company, each such Tax Regulatory Agreement to be in the form deemed appropriate by bond counsel, to be completed by bond counsel and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

SECTION VI

The Issuer hereby covenants that it will restrict the use of the proceeds of any Bonds, the interest on which is to be excludable from gross income of the holders thereof for federal income tax purposes, hereby authorized in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute "arbitrage bonds" under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as amended, and the regulations prescribed thereunder. The Designated Officers are authorized and directed to give an appropriate certificate on behalf of the Issuer in reliance upon the Company, on the date of delivery of said Bonds for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

SECTION VII

In order to provide for the sale of the Bonds at a private, negotiated sale, the Designated Officers are hereby separately authorized and directed to execute and deliver on behalf of the Issuer, the Purchase Agreement providing for the sale of the Bonds, which Purchase Agreement shall be in a form required by the Act, to be completed and approved by the officer executing the same, such approval to be conclusively evidenced by such execution.

SECTION VIII

The Designated Officers, for and on behalf of the Issuer, either together or individually, are hereby authorized, empowered and directed to effect the execution and delivery of the Financing Agreement, the Trust Indenture, the Tax Regulatory Agreement, and the Purchase Agreement, the performance of all obligations of the Issuer under and pursuant to the Financing Agreement, the Trust Indenture, the Tax Regulatory Agreement, the Purchase Agreement, the issuance, execution and delivery of the Bonds, and the performance of all other actions of whatever nature necessary to effect and carry out the authority conferred by this Ordinance and by the Financing Agreement, the Trust Indenture, the Tax Regulatory Agreement, and the Purchase Agreement. The Designated Officers are hereby further authorized, empowered and directed for and on behalf of the Issuer to execute all customary papers, letters, documents, certificates, forms or other instruments that may be required for the carrying out and effectuation of the authority conferred by this Ordinance, the Financing Agreement, the Trust Indenture, the Tax Regulatory Agreement, and the Purchase Agreement or to evidence said authority, including but not limited to financing statements and

other security documents, and to exercise and otherwise take all action necessary to the full realization of the rights, accomplishments and purposes of the Issuer under the Trust Indenture, and the Financing Agreement including, without limitation, the determination of the interest rate or rates, maturity dates and redemption provisions with respect to the Bonds, and to discharge all of the obligations of the Issuer under the Trust Indenture, the Financing Agreement, and the Tax Regulatory Agreement.

SECTION IX

The provisions of this Ordinance are hereby declared to be severable and, if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

SECTION X

No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future officer, member, employee or agent of the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, as such, either directly or through the Issuer or the Commonwealth of Kentucky or any agency or political subdivision thereof, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such officers, members, employees or agents as such shall be expressly waived and released as a condition of and consideration for the adoption of this Ordinance and the issuance of such Bonds.

SECTION XI

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.