

TOWNSHIP OF UPPER DEERFIELD

ORDINANCE 872

GUARANTY ORDINANCE OF THE TOWNSHIP OF UPPER DEERFIELD, IN THE COUNTY OF CUMBERLAND, STATE OF NEW JERSEY FULLY, UNCONDITIONALLY AND IRREVOCABLY SECURING THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THOSE CERTAIN TOWNSHIP GUARANTEED LEASE REVENUE BONDS (UPPER DEERFIELD BOARD OF EDUCATION PROJECT), SERIES 2025 AND ANY NOTES ISSUED IN ANTICIPATION THEREOF IN AN AMOUNT NOT TO EXCEED \$4,000,000 TO BE ISSUED BY THE CUMBERLAND COUNTY IMPROVEMENT AUTHORITY FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY THEREFOR AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH

WHEREAS, the Township of Upper Deerfield, in the County of Cumberland, New Jersey (the “Township”) and the Upper Deerfield Township School District (the “School District”) have asked the County of Cumberland (the “County”) and the Cumberland County Improvement Authority (the “Authority”) to assist with the financing of the School District’s Pre-K Expansion Plan (the “Project”); and

WHEREAS, in January of 2024 the Educational Facilities Construction and Financing Act (N.J.S.A. 18A:7G-1, *et seq.*) (the “Act”) was amended, in part, to allow a school district to enter into an agreement with a county improvement authority to finance the construction of a school facilities project; and

WHEREAS, pursuant to the Act, a board of education of a school district seeking to finance a school facilities project under the Act, such as the Project, may enter into an agreement with a county improvement authority to construct such school facilities project and to issue bonds to finance such a project, with such bonds being eligible for State of New Jersey (the “State”) debt service aid; and

WHEREAS, to accomplish such a school project under the Act, the school district may lease its lands or facilities to the improvement authority, which may then construct the school facilities project, and then lease the schools facilities project to the county, which shall then lease it to the school district for so long as the county improvement authority bonds are outstanding. The school district lease payments under such lease shall be sufficient to pay all debt services on the county improvement authority bonds issued to fund the school facilities project that remains after the application of any State debt service aid paid on those bonds, the school district lease payments shall be binding and, the full amount of annual school district lease payment obligations shall be included in each school budget adopted over the life of the bonds. When the bonds issued by the county improvement authority are no longer outstanding, the schools facilities project shall be solely vested in the school district. The school district shall be responsible for the operation, maintenance, and improvement of the school facility upon the completion of the school facilities project; and

WHEREAS, pursuant to N.J.S.A 40:37A-80, a municipality may unconditionally guaranty the punctual payment of the principal of and interest on any bonds of an authority; and

WHEREAS, the County and the Authority have each hereby agreed to finance the Project through the Authority, and to such ends, the Authority has agreed to issue its Township Guaranteed Lease Revenue Bonds (Upper Deerfield Board of Education Project), Series 2025 in an amount not to exceed \$4,000,000 (the “Bonds”); and

WHEREAS, the Bonds will be secured by a lease and agreement by and between the School District and the Authority, leasing the applicable school facility to the Authority, and pursuant to which the Authority will construct the Project and issue the Bonds to finance such construction. Simultaneously, the Authority will enter into a lease with the County, pursuant to which the Authority will lease the school facility to the County

and the County will make lease payments to the Authority in an amount equal to the debt services on the Bonds. The County will then enter into a lease agreement with the School District, pursuant to which the County leases the school facility back to the School District and the School District will be required to make lease payments to the County in an amount equal to the debt service on the Bonds; and

WHEREAS, the Township has determined to unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on the Bonds in an amount not to exceed \$4,000,000 by the adoption of this guaranty ordinance (the "Township Guaranty"); and

WHEREAS, in addition to the Township Guaranty, which shall at all times serve as the primary Guaranty, the County may also provide its own, separate and additional guaranty with respect to the payment of principal of and interest on the Bonds (the "County Guaranty"), and, as set forth herein above, the County Guaranty shall be at all times be subordinate and secondary to the Township Guaranty; and

NOW, THEREFORE, BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UPPER DEERFIELD, IN THE COUNTY OF CUMBERLAND, STATE OF NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) AS FOLLOWS:

Section 1. This guaranty ordinance shall be adopted by the Township Committee of the Township of Upper Deerfield, in the County of Cumberland, State of New Jersey 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"). All matters set forth in the preambles hereto are hereby incorporated into the body of this ordinance and made part hereof, as if set forth at length herein.

Section 2. Pursuant to and in accordance with the terms of the Act, N.J.S.A 40:37A-80 thereof, the Township is hereby authorized to and hereby shall unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on the Bonds, including renewals and refundings thereof, if any, in an aggregate principal amount not exceeding \$4,000,000 to be issued for the purpose of financing the costs of the Project as further described in the preambles hereof, such Bonds to be dated, be in such form, mature, bear such rate or rates of interest and be otherwise as provided or established in the resolution or resolutions of the Authority authorizing the issuance of the Bonds and consistent with the provisions of the Act. Any Bonds which are no longer considered outstanding under the resolution of the Authority authorizing the issuance of the Bonds shall not be considered outstanding for the purpose of this ordinance. The full faith and credit of the Township are hereby pledged for the full and punctual performance of its payment obligations under this ordinance. As a condition of the guaranty provided hereunder by the Township, the School District/School Board shall, as required by applicable statute, include in its annual budget for each year the Bonds are outstanding, an amount sufficient to cover all debt service amounts due and owing on the Bonds in each such year. Furthermore the Township shall not, aside from the obligation to guaranty payment of the principal of and interest on the Bonds, have any other obligations of any type under any lease agreement or other similar agreement entered into by the School District with the Authority and/or the County, or any other party relating in any way to the Bonds or the Project.

Section 3. Upon endorsement of Bonds referred to in Section 4 below, the Township shall be unconditionally and irrevocably obligated to pay the principal of and interest on the Bonds in the same manner and to the same extent as in the case of obligations issued by the Township and, accordingly, the Township shall be unconditionally and irrevocably obligated to levy *ad valorem* taxes upon all taxable property within the Township for the payment thereof without limitation as to rate or amount to the extent payment of the Bonds is not otherwise provided. To the extent permitted by applicable law, in the event that the instant guaranty is at any time called upon, the Township shall be entitled to determine the order and priority of funding sources available to the Township to effectuate the Township's guaranty obligations hereunder, provided however that nothing set forth in this ordinance shall negate or reduce the Township's ultimate obligation to fully, irrevocably and unconditionally guaranty the payment of principal of and interest on, the Bonds.

Section 4. The Mayor is hereby authorized and directed to execute on each of the Bonds, by manual or facsimile signature, language evidencing such guaranty by the Township of the punctual payment of the

principal of and interest thereon. The Township Guaranty shall be in substantially the following form:

**“GUARANTY OF THE TOWNSHIP OF UPPER DEERFIELD, IN
THE COUNTY OF CUMBERLAND, STATE OF NEW JERSEY**

The payment of the principal of and interest on the within Bonds shall be fully, irrevocably and unconditionally guaranteed by the Township of Upper Deerfield, in the County of Cumberland, State of New Jersey (the “Township”) in accordance with the provisions of N.J.S.A 40:11A-22(e) and the guaranty ordinance of the Township finally adopted pursuant thereto, and the Township is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of and interest on this Bond, and, if necessary, the Township shall levy *ad valorem* taxes upon all the taxable property within the Township without limitation as to rate or amount in order to make such payment.

IN WITNESS WHEREOF, the Township has caused this Guaranty to be executed by the manual or facsimile signature of its mayor, all as of the date of the within Obligation.

**TOWNSHIP OF UPPER DEERFIELD, IN THE COUNTY OF CUMBERLAND,
STATE OF NEW JERSEY**

By: _____
_____, Mayor”.

Section 5. The Mayor and Chief Financial Officer are each hereby authorized to enter into, execute and deliver in the name of the Township and on its behalf, all certificates, agreements, and documents necessary to effectuate the Township Guaranty and issue the Bonds, including, but not limited to, a preliminary official statement, official statement, Guaranty Agreement (the “Guaranty Agreement”), continuing disclosure agreement(s), and other items as may be necessary and setting forth such matters with respect to the guaranty authorized by this ordinance as the Mayor and Chief Financial Officer (after consultation with Bond Counsel and Corporation Counsel to the Township) deems appropriate, and the Township Clerk is hereby authorized to attest to the signature of the Mayor and Chief Financial Officer and to affix the seal of the Township to the Guaranty Agreement.

Section 6. It is hereby found, determined and declared by the Township Committee that:

(a) This guaranty ordinance may be adopted notwithstanding any statutory debt or other limitations, including particularly any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of the Bonds which shall be entitled to the benefits of this guaranty ordinance, being an amount not to exceed \$4,000,000, shall after their issuance, be included in the gross debt of the Township for the purpose of determining the indebtedness of the Township under or pursuant to the Local Bond Law.

(b) The principal amount of Bonds entitled to the benefits of this guaranty ordinance and included in the gross debt of the Township 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 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 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 and interest on all such guaranteed Bonds, and all obligations of the Township issued as provided in the Local Bond Law.

Section 7. The following matters are hereby determined, declared, recited and stated:

(a) The maximum principal amount of Bonds which are hereby and hereunder guaranteed as to the punctual payment of the principal thereof and interest thereon is and the maximum estimated cost of the Project to be financed in accordance with the transaction contemplated hereby is \$4,000,000.

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

(c) A supplemental debt statement of the Township will be duly made and filed in the office of the Clerk of Township, and a complete executed duplicate thereof shall be filed by such Clerk in the office of the Director of the Division of Local Government Services in the Department of Community Affairs of the State, 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 an amount not exceeding \$4,000,000 in accordance with the provisions of the Act, the net debt of the Township is not increased, and the obligation of the Township 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.

(d) 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 Township's guaranty of the Bonds hereby.

Section 8. This guaranty and consent ordinance shall take effect upon the Authority's receipt of positive findings from the Local Finance Board regarding the issuance of bonds or project notes by the Authority.

Section 9. The Township Clerk is hereby directed to publish, forward and post notice of this ordinance as required by law.

Section 10. Upon the adoption hereof, the Township Clerk shall forward certified copies of this ordinance to the Bond Counsel to the Authority, Bond Counsel to the Township, the Executive Director of the Authority and the Mayor of the Township.

Section 11. This guaranty ordinance shall take effect 20 days after the first publication thereof after final adoption, as provided by the Local Bond Law.

James Crilley, Chairman

Adopted: December 19, 2024

Attested:

Roy J. Spoltore, Township Clerk

First Reading: November 7, 2024

Publication: November 13, 2024

Publication of Final Adoption: December 26, 2024