



**UNION COUNTY BOARD OF CHOSEN FREEHOLDERS**

ORDINANCE NUMBER: *791-2017*  
 DATE OF INTRODUCTION: *12/7/2017*  
 DATE OF ADOPTION:

12/7/2017

**AN ORDINANCE OF THE COUNTY OF UNION, STATE OF NEW JERSEY AUTHORIZING THE GUARANTY OF THE PAYMENT OF THE PRINCIPAL OF AND INTEREST ON NOT EXCEEDING \$24,000,000 AGGREGATE PRINCIPAL AMOUNT OF COUNTY-GUARANTEED LEASE REVENUE BONDS, SERIES 2017 (ROSELLE BOARD OF EDUCATION EARLY CHILDHOOD LEARNING CENTER PROJECT), ISSUED BY THE UNION COUNTY IMPROVEMENT AUTHORITY FOR THE PURPOSE OF PROVIDING ADDITIONAL SECURITY THEREFOR AND DETERMINING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the Union County Improvement Authority (the "Authority") has been duly created by resolution of the Board of Chosen Freeholders (the "Board") of the County of Union, State of New Jersey (the "County"), duly adopted June 5, 1986, as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with 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"); and

WHEREAS, the County has created the Authority for the express purpose, among other things, of facilitating the development and financing of public facilities and development projects within the County; and

WHEREAS, pursuant to the terms of the Act, the Authority is authorized to provide public facilities, within the County, including the financing of the acquisition of same; and


WHEREAS, the Borough of Roselle, New Jersey (the "Borough") has acquired from the Board of Education of the Borough (the "Board of Education") a long-term ground leasehold interest in a parcel of land located at Block 1105, Lot 10 on the official tax map of the Borough pursuant to a Lease dated as of April 28, 2014, as amended and supplemented to date, and as may be further amended and supplemented hereafter (the "Lease"), together with Block 1105, Lot 22 on the official tax map of the Borough owned by the Borough (collectively, the "Land"), the Land will be used for the express purpose of, among other things, implementing the design, development, finance, construction, maintenance and operation of an early childhood development center (the "BOE Facilities"); and

**NO SUFFICIENCY  
OF FUNDS REQUIRED**

Continued...

*Erickson 12/7/2017*

INTRODUCTION				RECORD OF VOTE				FINAL ADOPTION							
FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP	FREEHOLDER	Aye	Nay	Abs	Pass	Ord.	Sec	NP
CARTER	X							CARTER							
ESTRADA		X						ESTRADA							
HUDAK	X							HUDAK							
JALLOH							X	JALLOH							
KOWALSKI	X					X		KOWALSKI							
MIRABELLA	X				X			MIRABELLA							
WRIGHT	X							WRIGHT							
GRANADOS VICE CHAIRMAN							X	GRANADOS VICE CHAIRMAN							
BERGEN CHAIRMAN	X							BERGEN CHAIRMAN							

APPROVED AS TO FORM  COUNTY ATTORNEY	I hereby certify the above is an original ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.
	_____ CLERK

	I hereby certify this is a true copy of a ordinance adopted by the Board of Chosen Freeholders of the County of Union on the aforementioned date.
	_____ CLERK

**WHEREAS**, the BOE Facilities constitute a "public facility" as such term is defined in the Act; and

**WHEREAS**, in order to finance the costs of the BOE Facilities, the Board of Education has requested that the Authority finance the undertaking of the BOE Facilities through the issuance of the Authority's bonds; and

**WHEREAS**, to assist the Board of Education with the financing of such costs, the Authority has determined to issue its bonds in one or more series in an aggregate principal amount not to exceed \$24,000,000, to be designated as "County Guaranteed Lease Revenue Bonds, Series 2017 (Roselle Board of Education Early Childhood Learning Center Project)" (the "Bonds") 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, Series 2017 (Roselle Board of Education Early Childhood Learning Center Project) of the Union County Improvement Authority and Determining Other Matters Related Thereto" (together with any amendments thereof or supplements thereto in accordance with the terms thereof, the "Bond Resolution"); 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 with the Board of Education for the lease to or use by the Board of Education of all or any part of any public facility on any terms and conditions which may be agreed upon by the Board of Education and the Authority; and

**WHEREAS**, pursuant to a Lease Agreement between the Authority and the Board of Education ("BOE Lease"), the Authority will construct the BOE Facilities upon the Land and will, upon completion, lease the BOE Facilities to the Board of Education for a term of years coterminous with the term of the Bonds; and

**WHEREAS**, pursuant to the BOE Lease, the Board of Education shall be required to make scheduled lease payments ("Lease Payments") in the amounts and at the times necessary to pay, in full, the principal and redemption premium, if any, of and interest on the Bonds, which Lease Payments shall be subject to annual appropriation by the Board of Education constituting current expenditures of the Board of Education and shall not constitute a general obligation or other indebtedness of the Board of Education nor a mandatory charge or requirement against the Board of Education in an ensuing budget year beyond the then current budget year; and

**WHEREAS**, to provide further security for the payment of the Bonds, the Authority and the Board of Education have requested that the County unconditionally guaranty the payment of principal of and interest on the Bonds to finance the BOE Facilities; and

**WHEREAS**, to provide an inducement to the prospective purchasers of the Bonds to purchase same and to provide security to the holders thereof, and in accordance with *N.J.S.A. 40:37A-80* the County has agreed, subject to the satisfaction of the preconditions set forth in this guaranty ordinance, that the principal of and interest on the Bonds shall be fully, unconditionally and irrevocably guaranteed in an aggregate principal amount not to exceed \$24,000,000 pursuant to the terms of: (i) this guaranty ordinance of the County to be finally adopted by the Board (the "County Guaranty"), (ii) a guaranty agreement by and between the County and the Authority (the "County Guaranty Agreement"), and (iii) a guaranty certificate (collectively, the "Bond Guaranty") to be executed by the Chairman of the Board of Chosen Freeholders ("Chairman") on the face of each Bond, all pursuant to Section 37 ("Section 37") of the Act (*N.J.S.A. 40:37A-80*); and

**WHEREAS**, at the request of the County, the Authority shall explore the economic feasibility of bond insurance for the Bonds and, in the event such bond insurance is procured, such bond insurance shall be in first position to satisfy the payment of principal of and interest on the Bonds in the event the Board of Education shall fail to make a Lease Payment under the BOE Lease, and further in the event such bond insurance fails to satisfy the payment of principal of and interest on the Bonds, the Bond Guaranty shall secure such obligation; 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 Bonds, the Authority will have made a detailed report to the Board, which report will include, without limitation, the Bond Resolution, the Bonds, and the BOE Lease (collectively, the "Financing Documents").

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF UNION STATE OF 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 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 of the Act (*N.J.S.A. 40:37A-80*), and subject to the preconditions set forth in this guaranty ordinance, the County is hereby authorized to and hereby shall fully, unconditionally and irrevocably guaranty the punctual payment of the principal of and interest on, calculated on a tax-exempt basis, the Bonds in an aggregate principal amount not exceeding \$24,000,000, which Bonds are to be issued to finance the BOE Facilities 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 Bond. Upon the endorsement of the Bonds referred to in Section 4 below, the County shall be fully, 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 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. The full faith and credit of the County are hereby pledged for the full and punctual performance of said Bond Guaranty.

**SECTION 4** The Chairman shall, by manual or facsimile signature, and is hereby authorized and directed to execute an endorsement on each of the Bonds evidencing this Bond Guaranty by the County as to the punctual payment of the principal of and interest on the Bonds. The endorsement on each Bond shall be in substantially the following form, and absent the fully executed endorsement in such following form on any such Bond, such Bond shall not be entitled to the benefits of this guaranty ordinance:

**"GUARANTY OF THE COUNTY OF UNION, STATE OF NEW JERSEY**

The payment of the principal of and interest on the within Bond shall be fully, irrevocably and unconditionally guaranteed by the County of Union, State of 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 the County is fully, irrevocably and unconditionally liable for the payment, when due, of the principal of 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 payment.

**IN WITNESS WHEREOF**, the County has caused this Bond Guaranty to be executed by the manual or facsimile signature of its Chairman of the Board of Chosen Freeholders, all as of the date of the within Bond.

**COUNTY OF UNION, STATE OF NEW JERSEY**

By: \_\_\_\_\_  
"Chairman of the Board of Chosen Freeholders"

The Chairman is hereby further authorized and directed to negotiate, with the advice of counsel and professional staff to approve, execute or acknowledge such other certificates or agreements relating to this full, irrevocable and unconditional Bond Guaranty that may be required in connection with the Authority's issuance of the Bonds, including, without limitation, the County Guaranty Agreement. Such further agreement or certificate shall not in any manner relieve the County from its obligations 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 Bonds that shall be entitled to the benefits of this Bond Guaranty, being an amount not to exceed \$24,000,000, 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 Bonds entitled to the benefits of this 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 Bonds until the end of the fiscal year beginning next after the completion of the BOE Facilities, 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 BOE Facilities 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 Bonds, 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.

(c) The provision by the County of the Bond Guaranty authorized pursuant to this guaranty ordinance shall be subject to and conditioned upon the satisfaction of the following:

(i) the final, non-appealable resolution of any and all outstanding legal matters derived from or related to that certain legal action originally filed in the Law Division of the Superior Court of New Jersey, Union Vicinage under docket number UNN-L-003068-17 and titled Anthony Esposito v. Borough of Roselle, et al., satisfactory evidence of which shall be provided to the County prior to the execution and delivery by the County of, among other things, the Guaranty Agreement and the County's guaranty endorsement upon the Bonds; and

(ii) the inclusion of specific terms and provisions in the BOE Lease necessary and required to appropriately mitigate against and limit a call upon the Bond Guaranty authorized by this guaranty ordinance to include, but be not limited to, covenants, representations and warranties of the Board of Education related to, among other things, (A) appropriation of funds in each budget year of the Board of Education to pay, in full, the Lease Payments under the BOE Lease, (B) restriction of funds so appropriated for Lease Payments for use and payment of Lease Payments, (C) limitation and preclusion from purchasing, leasing, renting or procuring functionally similar real or personal property to that of the BOE Facilities in the event funds are not appropriated by the Board of Education to make Lease Payments and the BOE Lease is thereafter default or terminated, and (D) designating and characterizing the BOE Facilities as essential to the governmental purpose of the Board of Education to provide educational services, it being understood that the final form of such BOE Lease (inclusive of the matters set forth in this Section 5(c)(ii)) shall have been reviewed and approved by County Counsel, the County's Bond Counsel, and any other special counsel or professional advisors engaged by the County, and presented to the Board prior to the provision of the County Guaranty authorized by this guaranty ordinance.

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

(a) The maximum principal amount of Bonds (including one or more series of bonds and/or notes issued in anticipation thereof) of the Authority that are hereby and hereunder fully, unconditionally and irrevocably guaranteed as to the punctual payment of the principal thereof and interest thereon is \$24,000,000; the maximum principal amount of Bonds (including one or more series of bonds and/or notes issued in anticipation thereof) of the Authority that may be outstanding at any one time is \$24,000,000; and the maximum estimated cost of the BOE Facilities to be financed in accordance with the transaction contemplated hereby is \$24,000,000.

(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 Bonds 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 Clerk of the Board, 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 Bonds issued by the Authority,

which amount shall not exceed \$24,000,000, 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) 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 Bonds hereby.

**SECTION 7.** The County hereby covenants and agrees to comply with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended and supplemented, including the secondary market disclosure requirements contained therein, and agrees to covenant to such compliance in the County Guaranty Agreement. The Chairman or any other Authorized County Representative are each hereby authorized and directed to execute and deliver the Continuing Disclosure Agreement to the Authority, approve and "deem final" the Preliminary and Final Official Statements of the Authority to the extent the information contained therein relates to the County and to execute and deliver all certificates, documents and agreements to the Authority 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.

**SECTION 8.** To the extent one or more series of the Bonds are not issued in 2017, references herein to "2017" may without any further action be changed to the year of issuance of such Bonds and all dates related to such year of issuance shall be automatically adjusted.

**SECTION 9.** A public hearing shall be held on this ordinance on \_\_\_\_\_, 2017 at \_\_\_\_\_ pm at the Union County Administration Building, 10 Elizabethtown Plaza #6, Elizabeth, New Jersey 07202,

**SECTION 10.** The Clerk of the Board is hereby directed to publish and post notice of this ordinance as required by law.

**SECTION 11.** Upon the adoption hereof, the Clerk of the Board shall forward certified copies of this ordinance to the County Manager, County Counsel, the Executive Director of the Authority, Bond Counsel to the Authority, Matthew D. Jessup, Esq., of McManimon, Scotland & Baumann, LLC. and Bond Counsel to the County, Parker McCay P.A.

**SECTION 12.** Pursuant to *N.J.S.A. 40:37A-56*, and subject to the satisfaction of the provisions of Section 5(c) above, the County hereby consents to the undertaking of the construction of the BOE Facilities by the Authority, the execution of the BOE Lease by and between the Authority and the Board of Education, and the issuance of the Bonds by the Authority in an amount not to exceed \$24,000,000.

**SECTION 13.** This guaranty ordinance shall take effect at the time and in the manner provided by law.