

Authorizing the issuance and sale of not to exceed \$7,875,000 Housing Revenue Bonds (Franklin Station Apartments Project) to provide funds for acquiring, constructing, equipping and improving an affordable rental housing complex; and authorizing and approving related matters. (Commissioners)

WHEREAS, the County of Franklin, Ohio (the "*Issuer*"), a county and political subdivision in and of the State of Ohio (the "*State*"), is authorized and empowered by virtue of the laws of the State, including without limitation, Article VIII, Section 16, Ohio Constitution and Section 133.51, Ohio Revised Code, among other things: (i) to acquire, refinance, finance, construct, improve and equip real and personal property as a senior housing complex; (ii) to issue its revenue bonds for the purpose of paying the costs thereof; (iii) to enter into a loan agreement to provide for the loan of the proceeds of and revenues to pay the principal of and interest and any premium on those revenue bonds; (iv) by the pledge and assignment of payments made to it under the loan agreement; and (v) to adopt this Resolution, to enter into the Agreement, the Regulatory Agreement and the Bond Purchase Agreement, all as hereinafter defined, to authorize the use and distribution of the Official Statement (as hereinafter defined) and to execute and deliver certain other statements, documents and instruments upon the terms and conditions provided in this Resolution and those documents and instruments; and

WHEREAS, this Board of County Commissioners (the "*Board*") of the Issuer, pursuant to the foregoing authority and at the request of Franklin Station, LLC, a limited liability company organized under the laws of the State (the "*Borrower*"), has determined that it is willing to authorize the issuance and sale of the Issuer's Housing Revenue Bonds, Series 2011 (Franklin Station Apartments Project) in the maximum principal amount of \$7,875,000 to finance costs of acquiring, constructing, improving and equipping privately owned real and personal property as 100-unit rental apartment complex to be known as Franklin Station located in the Franklinton neighborhood of Columbus, Ohio (the "*Project*"), and to operate the Project as an affordable supportive housing complex for low income senior, homeless, disabled and handicapped individuals and in connection with that issuance and sale, to adopt this Resolution, to enter into the Agreement and the Regulatory Agreement, and to execute and deliver certain other statements, documents and instruments upon the terms set forth in this Resolution and those documents and instruments; and

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WHEREAS, the Borrower has advised the Issuer that it intends to provide a portion of the financing of the Project by the use of federal income tax credits under Section 42 of the Internal Revenue Code of 1986, as amended and this Board wishes to acknowledge that advice;

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Franklin, Ohio, that:

Section 1. Definitions. In addition to the words and terms defined elsewhere in this Resolution, or by reference to the Agreement, unless the context or use indicates clearly another meaning or intent:

"*Act*" means Section 16 of Article VIII, Ohio Constitution, Section 133.51, Ohio Revised Code, and this Resolution.

"*Agreement*" means the Loan Agreement dated as of the same date with the Bonds, between the Issuer and the Borrower, as amended or supplemented from time to time.

"*Bond Counsel*" means the firm of Squire Sanders (US) LLP or another firm of attorneys nationally recognized as having expertise with respect to the validity of obligations of states, political subdivisions and other public bodies and the treatment for federal income taxation of interest on those obligations.

"*Bond Service Charges*" means, for any period of or payable at any time, the principal of and premium, if any, and interest on the Bonds for that period or payable at that time whether due at maturity or upon redemption or acceleration.

"*Bonds*" means the Housing Revenue Bonds, Series 2011 (Franklin Station Apartments Project) of the Issuer authorized in this Resolution in a maximum principal amount not to exceed \$7,875,000.

"*Borrower*" means Franklin Station, LLC, a limited liability company duly organized validly existing under the laws of the State, and its lawful successors and assigns, to the extent permitted by the Agreement.

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“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations (whether proposed, temporary or final) under that Code and the statutory predecessor of the Code, and any official rulings and judicial determinations under the foregoing applicable to the Bonds.

“Holder” or “Holder of a Bond” means the Person in whose name a Bond is registered, and shall initially mean the Original Purchaser.

“Interest Payment Date” or “Interest Payment Dates” shall have the meaning given to that term in the Agreement.

“Issuer Documents” means this Resolution, the Agreement, the Regulatory Agreement, and the Tax Agreement; provided that when reference is made to the execution and delivery of the Issuer Documents, the reference with respect to this Resolution means instead its adoption.

“Loan” means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

“Loan Payments” means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and the Agreement.

“Note” means the promissory note of the Borrower, dated as of the same date with the Bonds initially issued, in the form attached to the Agreement as Exhibit A, evidencing the obligation of the Borrower to make Loan Payments.

“Original Purchaser” means Red Capital Partners, LLC.

“Person” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, public or governmental bodies, other legal entities and natural persons.

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"Regulatory Agreement" means the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of the same date with the Agreement, among the Issuer, the Borrower and the Original Purchaser.

"Revenues" means (a) the Loan Payments, (b) the Cash Collateral (as defined in the Agreement), (c) funds on deposit in the Negative Arbitrage Reserve Account (as defined in the Agreement), (d) any other funds or collateral received or to be received by the Issuer or the Holder for the account of the Issuer in respect of repayment of the Loan and (e) all income and profit from the investment of the foregoing moneys.

"State" means the State of Ohio.

"Tax Agreement" means the Tax Certificate and Agreement, dated as of the same date with the Bonds, among the Issuer, the Borrower and the Original Purchaser.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa. The terms "hereof", "hereby", "herein", "hereto", "hereunder", "hereinafter" and similar terms refer to this Resolution; and the term "hereafter" means after, and the term "heretofore" means before, the date of passage of this Resolution. Words of any gender include the correlative words of the other genders, unless the sense indicates otherwise.

The captions and headings in this Resolution are solely for convenience of reference and in no way define, limit or describe the scope or intent of any Sections, subsections, paragraphs, subparagraphs or clauses hereof.

Section 2. Authorization of the Bonds; Public Approval. This Board finds and determines that (A) it is necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the Act, the Bonds in an aggregate principal amount not to exceed \$7,875,000, for the purpose of providing funds to pay (i) costs of

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acquiring, financing, constructing, improving and equipping the Project and (ii) certain expenses incurred in connection with the issuance of the Bonds, and (B) the Project and the financing thereof by the issuance of the Bonds will enhance the availability of adequate housing in the State and improve the economic and general well-being of the people of the State.

This Board, as the "applicable elected representatives" of the Issuer for purposes of Section 147(f) of the Code, hereby approves the issuance of the Bonds in the maximum aggregate face amount of \$7,875,000. This Board also determines that, following reasonable notice, and prior to passage of this Resolution, a public hearing was held with respect to the issuance of the Bonds, as required by Section 147(f) of the Code.

Section 3. Terms and Provisions of the Bonds.

(a) General. The Bonds shall (i) be designated "County of Franklin, Ohio, Housing Revenue Bonds, Series 2012 (Franklin Station Apartments Project)", (ii) be issuable only in fully registered form and initially in Book Entry Form and substantially as set forth in Exhibit A to the Agreement, (iii) be exchangeable only for Bonds of the same maturity and authorized denominations, as provided in the Agreement, (iv) be in denominations of not less than \$100,000 and any integral multiple of \$100 in excess thereof, (v) bear interest, payable on each Interest Payment Date, from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from their date, and (vi) be dated as of their date of delivery to the Original Purchaser.

Bond Service Charges on the Bonds shall be payable as provided in the Agreement.

The Bonds shall be signed by at least two members of the Board of County Commissioners in their official capacities (provided that any or all of those signatures may be facsimiles).

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(b) Maturities, Interest Rates and Redemption Terms.

The Bonds shall mature in the year or years and in the principal amounts and shall bear interest at the rates per year, and be subject to optional and mandatory redemption prior to maturity all as set forth in the Agreement.

Section 4. Sale of the Bonds. The Bonds are sold and awarded to the Original Purchaser in accordance with the terms of this Resolution and the Agreement at the purchase price of par, as set forth in the Agreement. It is determined hereby, based upon the advice of Bond Counsel and the representations of the Original Purchaser, that the purchase price and the manner of sale and the terms of the Bonds, as provided in this Resolution and the Agreement, are consistent with all legal requirements and will carry out the public purposes of the Act.

Any member of this Board is authorized and directed, alone or together with any other member or with the County Auditor or the Clerk of this Board, to make the necessary arrangements with the Original Purchaser to establish the date, location, procedures and conditions for the delivery of the Bonds to the Original Purchaser and to take all steps necessary to effect due execution, authentication and delivery of the Bonds to the Original Purchaser under the terms of this Resolution and the Agreement.

Section 5. Loan and Terms Thereof. This Board authorizes and approves the loan of the Bond proceeds by the Issuer to the Borrower pursuant the terms of the Agreement, and the Regulatory Agreement, each substantially in the form now on file with the Clerk of this Board, with any changes therein which are not inconsistent with this Resolution and not adverse to the Issuer, and as are permitted by the Act and approved on behalf of the Issuer by the officer or officers signing the Agreement and by the Issuer's legal counsel. Based upon the representations of the Borrower, this Board finds and determines that the loan under the terms and conditions of the Agreement and the Regulatory Agreement will further the public purpose of the Act.

Section 6. Allocation of Proceeds of Bonds and Transfer of Funds. The proceeds of the sale of the Bonds (including, without limitation,

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interest accrued thereon) shall be allocated and deposited as set forth in the Agreement.

All funds, accounts and subaccounts contemplated in the Agreement to be created are authorized and directed to be created and shall be used without further legislative action for the purposes specified in the Agreement.

Section 7. Security for the Bonds. The Bonds shall be special obligations of the Issuer and (a) the Bond Service Charges on the Bonds shall be equally and ratably payable solely from the pledged revenues described in the Agreement, and (b) the payment of Bond Service Charges on the Bonds shall be secured by (i) a pledge of and lien on the Revenues and (ii) the Note. All Loan Payments shall be paid by the Borrower directly to the Original Purchaser or subsequent holder of the Bonds.

Anything in this Resolution, the Bonds or the Agreement to the contrary notwithstanding, the Bonds do not and shall not represent or constitute a general obligation, debt or bonded indebtedness of the Issuer, and further, nothing in this Resolution or the Bonds shall give the Holders of the Bonds, and they do not and shall not have, the right to have excises, ad valorem taxes or other taxes levied by this Board or the Issuer, or by the State or the taxing authority of any other political subdivision, for the payment of Bond Service Charges on the Bonds. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the Revenues, amounts payable pursuant to the Agreement and the Note.

Section 8. Covenants and Agreements of Issuer. In addition to the other covenants of the Issuer herein and in the Issuer Documents, the Issuer further covenants and agrees as follows:

(a) Authority and Actions. The Issuer is, and upon delivery of the Bonds will be, duly authorized by the laws of the State, particularly and without limitation the Act, to issue the Bonds, to execute and deliver the Issuer Documents and other instruments and documents

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to which it is a party, to provide the security for payment of the Bond Service Charges on the Bonds in the manner and to the extent set forth in this Resolution, all as authorized by this Board. All actions on the part of the Issuer for the issuance of the Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents as are authorized herein have been or will be duly and effectively taken. The Bonds will be valid and enforceable special obligations of the Issuer according to their terms. Each duty of the Issuer and of its officers and employees undertaken pursuant to the Bonds and the Issuer Documents is binding upon the Issuer and each of those officers and employees having authority thereunder or by provision of law to perform the duty, and resulting from an office, trust or station, within the meaning of Section 2731.01, Ohio Revised Code, providing for enforcement by writ of mandamus.

(b) Arbitrage Provisions; Transcript. The Issuer covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. Any member of this Board, the County Auditor or the Clerk of this Board or any other officer of the Issuer having responsibility for the issuance of the Bonds, alone or in conjunction with the Borrower or any officer, employee, agent of or consultant to the Borrower, shall give an appropriate certificate of the Issuer for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the Issuer regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, and other facts and circumstances relevant to the tax treatment of interest on the Bonds.

The Issuer covenants that it (i) will take, or require to be taken, all actions that may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes under the Code, and (ii) will not take or authorize to be taken any actions that would adversely affect that exclusion. The appropriate officers of the Issuer are hereby authorized and directed to take any and all actions and make or give such reports and certifications as may be appropriate to assure such exclusions of that interest. The Issuer

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hereby authorizes the Borrower to file, on behalf of the Issuer, any forms or reports required under the Code.

In its performance of these covenants, and other covenants of the Issuer pertaining to federal income tax laws, the Issuer may rely upon the written advice of Bond Counsel which is provided to the Borrower.

The Clerk of this Board shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk of this Board, of all proceedings had with reference to the issuance of the Bonds, together with such information from the records as is necessary to determine the regularity and validity of the issuance of the Bonds.

(c) Further Assurances. The Issuer shall do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as requiring the Issuer to operate the Project or to use any moneys from any source other than Revenues or the Bond and Project Funds.

Section 9. Issuer Documents. To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, any member of this Board, alone or in conjunction with any other member of this Board or with the County Auditor or the Clerk of this Board, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the Issuer, each Issuer Document in substantially the respective forms thereof submitted to this Board.

The Issuer Documents are approved with changes which are not inconsistent with this Resolution which are not adverse to the Issuer, which are permitted by the Act, and which are approved by the officer or officers executing the respective Issuer Documents and the Issuer's legal counsel. The approval of those changes by the officer or officers and the character of those changes, as not being adverse to the Issuer, shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by the officer or officers and the Issuer's legal counsel.

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The members of the Board, the Auditor (as the Issuer's fiscal officer), the Clerk and other appropriate officials of the Issuer are each separately authorized to take any and all actions and to execute such financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Bond Counsel, in order to effect the issuance of the Bonds, the financing of the Project and the intent of this Bond Legislation. The Clerk of the Board or other appropriate officer of the Issuer shall certify a true transcript of all proceedings had with respect to the issuance of the Bonds, along with such information from the records of the Issuer as is necessary as advised by Bond Counsel, to determine the regularity and validity of the issuance of the Bonds.

Section 10. Other Documents. Any member of this Board, alone or in conjunction with any of the foregoing, are authorized and directed to execute, deliver and, if applicable file, for and in the name and on behalf of the Issuer, any certifications, financing statements, assignments and other instruments and documents, which are necessary or appropriate to perfect the assignments contemplated in the Agreement and to consummate the transactions contemplated in the Issuer Documents and the Bonds. Those certifications and other instruments and documents include, without limitation, appropriate certificates under Sections 103 and 148 of the Code, reports on Form 8038, any other certifications and forms necessary or advisable under the Code and certifications by the Clerk of this Board of the transcript of proceedings relating to the issuance of the Bonds. The Borrower is hereby authorized and directed, upon the request or direction of the Issuer, to file any such certifications or instruments that require filing.

Section 11. Tax Credit Allocation. This Board hereby preliminarily finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, this Board has relied exclusively upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by this Board

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or the Issuer as to the feasibility or viability of the Project. This Board hereby authorizes and directs any member of this Board to make the foregoing determination again for and on behalf of this Board at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Ohio Housing Finance Agency ("OHFA") and either written representations of the Borrower or of the OHFA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under OHFA's qualified allocation plan. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under OHFA's qualified allocation plan.

Section 12. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, or in any Bond, or in the Issuer Documents, 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 or employee as such, past, present, or future, of the Issuer, including any member of the Board of Issuer Commissioners, 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 Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the 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 or employee, 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 Borrower or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Issuer Documents and the issuance of the Bonds.

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Section 13. Compliance with Open Meeting Requirements. This Board hereby finds and determines that all formal actions of this Board concerning and relating to the adoption of this resolution were adopted in an open meeting of this Board, and that all deliberations of this Board and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22, Ohio Revised Code.

Section 14. Effective Date. This resolution shall be in full force and take effect immediately upon its adoption.

Prepared by: Robert Labes, Bond Counsel
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