

## RESOLUTION 2022-33

A RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF AMENDMENTS RELATING TO THE ELIMINATION OF THE LONDON INTERBANK OFFERED RATE (LIBOR); AND AUTHORIZING AND APPROVING RELATED MATTERS.

WHEREAS, the \_\_\_\_\_ is party to various loan agreements and has issued various series of bonds (collectively, the “County Agreements”) bearing interest at rates calculated using a formula based on the London Interbank Offered Rate (“LIBOR”);

WHEREAS, on March 5, 2021, the Financial Conduct Authority (“FCA”), the regulatory supervisor of LIBOR’s administrator in the United States, announced in a public statement the future cessation or loss of representativeness of LIBOR, currently scheduled for June 30, 2023;

WHEREAS, due to the future cessation of the use of LIBOR, (i) on December 30, 2021, the Internal Revenue Service released final regulations providing for a safe harbor for rate modifications to a “qualified rate”, identified as the secured overnight financing rate (“SOFR”), and (ii) Congress provided for the replacement of LIBOR with SOFR, and for a safe harbor for persons who select SOFR as the LIBOR replacement under existing contracts, which legislation was signed into law on March 15, 2022 as a part of the omnibus spending bill;

WHEREAS, the parties to the \_\_\_\_\_ Agreements need to provide for a replacement for LIBOR and such changes will be effected through the execution of various amendments (the “Amendments”) and such supplemental tax or other certificates if and as required in connection with the Amendments (the “Supplemental Certificates”); and

WHEREAS, in order to effectuate the above, it is necessary, desirable and in the best interests of the \_\_\_\_\_ to authorize the execution and delivery of the Amendments and Supplemental Certificates;

NOW THEREFORE, BE IT RESOLVED by the \_\_\_\_\_ of the \_\_\_\_\_, Ohio:

*Section 1.* That all of the recitals contained in the preambles to this Resolution are full, true and correct, and are hereby incorporated into this Resolution by this reference.

*Section 2.* That the \_\_\_\_\_ is hereby authorized to enter into the Amendments to effect the modification of interest rates from LIBOR to SOFR; that the \_\_\_\_\_ Executive or the \_\_\_\_\_ Executive’s designee (each, an “Authorized Officer”), be, and each of them hereby is, authorized, empowered and directed to approve, upon the advice and counsel of the Law Director and the Fiscal Officer, and to execute the Amendments in the name, for and on behalf of the \_\_\_\_\_, and thereupon to cause the Amendments to be delivered to the other parties

thereto in the form as the Authorized Officer executing the Amendment on behalf of the \_\_\_\_\_ shall approve, his or her execution thereof to constitute conclusive evidence of such approval; that when the Amendments are executed, and delivered on behalf of the \_\_\_\_\_ as hereinabove provided, the Amendments shall be binding on the \_\_\_\_\_; that from and after the execution and delivery of the Amendments, the officers, employees and agents of the \_\_\_\_\_ are hereby authorized, empowered and directed to do all such acts and things and to execute all such documents as may be necessary to carry out and comply with the provisions of the Amendments as executed.

*Section 3.* That any of the Authorized Officers, or the Law Director and Fiscal Officer of the \_\_\_\_\_ be, and each of them hereby is, authorized to execute and deliver such documents, Supplemental Certificates, and undertakings of the \_\_\_\_\_ and to take such other actions as may be required in connection with the execution, delivery and performance of the Amendments authorized by this Resolution, including without limitation the signing of IRS Form 8038 and the filing thereof with the Internal Revenue Service if required by Bond Counsel.

*Section 4.* That all acts of the officers, employees and agents of the \_\_\_\_\_ which are in conformity with the intent and purposes of this Resolution, whether heretofore or hereafter taken or done, be, and the same hereby are, in all respects, ratified, confirmed and approved.

*Section 5.* It is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were taken in an open meeting of this Council, and that all deliberations of this Council that resulted in such formal actions were in meetings open to the public, in compliance with the law.

*Section 6.* That this Resolution shall take effect and be in force immediately upon its adoption.

*Section 7.* It is found and determined that all formal proceedings and actions of this Board concerning and relating to the passage 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 actions, were in meetings open to the public in compliance with all legal requirements, including Section 121.22, of the Ohio Revised Code.

**Ayes: 8**

**Nays: 0**

**Abstain: 0**

**Adopted: 12/13/2022**

  
Brad Mullins, Chairman

  
Tom Brown, Executive Director

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**AMENDMENT  
(HARDWIRED FALLBACK – BOND TRANSACTIONS)**

This Amendment (Hardwired Fallback – Bond Transactions) (this “Amendment”) is entered into and effective as of \_\_\_\_\_, 2022 (the “Effective Date”), by and among West Side Deutscher Frauen Verein (the “Borrower”), the Lorain Port Authority (the “Issuer”), The Huntington National Bank, as successor trustee (the “Trustee”) and The Huntington National Bank, as successor purchaser (the “Purchaser”).

**RECITALS**

A. Borrower, Altenheim Properties, Inc., The Altenheim Foundation, Inc. and Purchaser are parties to that certain Funding Agreement dated as of November 28, 2012 (the “Funding Agreement”).

B. The parties desire to amend the Funding Agreement, the Bond dated November 28, 2012 (the “Bond”), and the Trust Indenture dated as of November 1, 2012 between The Huntington National Bank, as successor Trustee (“Trustee”) and the Issuer, as amended by the First Supplemental Trust Indenture dated as of October 9, 2018, between the Trustee and the Issuer (together, the “Indenture” and collectively with the Bond and the Funding Agreement, the “Original Agreements”) to provide for modifications to the Original Agreements pursuant to this Amendment.

C. Capitalized terms used in this Amendment but not defined in this Amendment have the meaning given to them in the Original Agreements.

**NOW, THEREFORE**, the parties agree as follows:

**1. Benchmark Replacement Setting.** Notwithstanding anything to the contrary herein or in any other Bond Document (any Hedging Agreement shall be deemed not to be a “Bond Document” for purposes of this Section):

(a) Replacing USD LIBOR. On March 5, 2021 the Financial Conduct Authority (“FCA”), the regulatory supervisor of USD LIBOR’s administrator (“IBA”), announced in a public statement the future cessation or loss of representativeness of the 1-month USD LIBOR tenor setting. On the earlier of (i) the date that the 1-month USD LIBOR tenor has either permanently or indefinitely ceased to be provided by IBA or have been announced by the FCA pursuant to public statement or publication of information to be no longer representative and (ii) the Early Opt-in Effective Date, if the then-current Benchmark is USD LIBOR, the Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Bond Document in respect of any setting of such Benchmark on such day and all subsequent settings without any amendment to, or further action or consent of the Borrower or the Issuer.

(b) Replacing Future Benchmarks. Upon the occurrence of a Benchmark Transition Event, the Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder and under any Bond Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided by the Purchaser to the Borrower and the Issuer without any amendment to this Agreement or any other Bond Document, or further action or consent of the Borrower or

the Issuer. At any time that the administrator of the then-current Benchmark has permanently or indefinitely ceased to provide such Benchmark or such Benchmark has been announced by the regulatory supervisor for the administrator of such Benchmark pursuant to public statement or publication of information to be no longer representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored, the Borrower may revoke any pending request for an advance of bond proceeds, conversion of interest rate mode or extension of the existing interest rate mode that would bear interest by reference to such Benchmark until the Borrower's receipt of notice from the Purchaser that a Benchmark Replacement has replaced such Benchmark, and, failing that, the Borrower will be deemed to have converted any such pending request into a request for an advance of bond proceeds, conversion of interest rate mode or extension of the existing interest rate mode that accrues interest at a variable rate of interest per annum equal to Prime plus     %.

(c) Benchmark Replacement Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Purchaser will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Bond Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of the Borrower or the Issuer.

(d) Notices; Standards for Decisions and Determinations. The Purchaser will promptly notify the Borrower and the Issuer in writing of (i) the implementation of any Benchmark Replacement and (ii) the effectiveness of any Benchmark Replacement Conforming Changes. Any determination, decision or election that may be made by the Purchaser pursuant to this Section, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its sole discretion and without consent from the Borrower or the Issuer, except, in each case, as expressly required pursuant to this Section. In connection with the replacement of any Benchmark, the Purchaser and the Issuer shall, upon the request of the Purchaser, receive an Opinion of Bond Counsel with respect to the Benchmark Replacement. All costs and expenses (including attorneys' fees) incurred by Purchaser in exercising its rights under this Section shall be paid by the Borrower.

(e) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including Term SOFR or USD LIBOR), then the Purchaser may remove any tenor of such Benchmark that is unavailable or non-representative for Benchmark (including Benchmark Replacement) settings and (ii) the Purchaser may reinstate any such previously removed tenor for Benchmark (including Benchmark Replacement) settings.

(f) Hedging Agreements. In the event a Benchmark Transition Event or an Early Opt-in Election, as applicable, occurs during a period in which the Borrower has a Hedging Agreement in effect that is intended to hedge the interest rate on the Bonds, Purchaser may, at the same time, endeavor to conform the benchmark index replacement under this Section titled "Benchmark Replacement Setting" with the corresponding benchmark replacement adjustments to such Hedging Agreement, including selecting clause (1)(b) under the Benchmark Replacement definition as the first alternative and adjusting timing and frequency of determining rates and

making payments, start dates and termination dates, interest calculation periods and interest calculation settlement dates, all to the extent necessary to preserve the intended economic relationship between this Agreement and such Hedging Agreement.

(g) Definitions.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if the then-current Benchmark is a term rate, any tenor for such Benchmark that is or may be used for determining the length of an Interest Period or (y) otherwise, any payment period for interest calculated with reference to such Benchmark, as applicable, pursuant to this Agreement as of such date.

“Benchmark” means, initially, USD LIBOR; provided that if a replacement of the Benchmark has occurred pursuant to this Section titled “Benchmark Replacement Setting”, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate. Any reference to “Benchmark” shall include, as applicable, the published component used in the calculation thereof.

“Benchmark Replacement” means, for any Available Tenor:

(1) For purposes of clause (a) of this Section, the first alternative set forth below that can be determined by the Purchaser:

- (a) the sum of: (i) Term SOFR and (ii) 0.11448% (11.448 basis points) for an Available Tenor of one-month’s duration, or
- (b) the sum of: (i) Daily Simple SOFR and (ii) the spread adjustment selected or recommended by the Relevant Governmental Body for the replacement of the tenor of USD LIBOR with a SOFR-based rate having approximately the same length as the interest payment period specified in clause (i) of this Section; and

(2) For purposes of clause (b) of this Section, the sum of (a) the alternate benchmark rate and (b) an adjustment (which may be a positive or negative value or zero), in each case, that has been selected by Purchaser as the replacement for such Available Tenor of such Benchmark giving due consideration to any evolving or then-prevailing market convention, including any applicable recommendations made by the Relevant Governmental Body, for U.S. dollar-denominated syndicated or bilateral credit facilities at such time;

provided that, if the Benchmark Replacement as determined pursuant to clause (1) or (2) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Bond Documents.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes to this Agreement or the other Bond Documents (including changes to the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length

of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that Purchaser decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Purchaser in a manner substantially consistent with market practice (or, if the Purchaser decides that adoption of any portion of such market practice is not administratively feasible or if the Purchaser determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Purchaser decides is reasonably necessary in connection with the administration of this Agreement and the other Bond Documents).

“Benchmark Transition Event” means, with respect to any then-current Benchmark other than USD LIBOR, the occurrence of a public statement or publication of information by or on behalf of the administrator of the then-current Benchmark, the regulatory supervisor for the administrator of such Benchmark, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark, a resolution authority with jurisdiction over the administrator for such Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark, announcing or stating that (a) such administrator has ceased or will cease on a specified date to provide all Available Tenors of such Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark or (b) all Available Tenors of such Benchmark are or will no longer be representative of the underlying market and economic reality that such Benchmark is intended to measure and that representativeness will not be restored.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Purchaser in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for bilateral business loans; provided, that if the Purchaser decides that any such convention is not administratively feasible for the Purchaser, then the Purchaser may establish another convention in its reasonable discretion.

“Early Opt-in Effective Date” means, with respect to any Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Borrower and the Issuer, so long as the Purchaser has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Borrower, written notice of objection to such Early Opt-in Election from the Borrower.

“Early Opt-in Election” means the occurrence of:

- (1) a determination by the Purchaser that at least five (5) currently outstanding U.S. dollar-denominated syndicated or bilateral credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as a benchmark rate (and such credit facilities are identified in the notice to the Borrower and the Issuer described in clause (2) below and are publicly available for review), and

- (2) the election by the Purchaser to trigger a fallback from USD LIBOR and the provision by the Purchaser of written notice of such election to the Borrower and the Issuer.

“Floor” means the benchmark rate floor provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to USD LIBOR or if initially not provided, then zero percent (0.00%).

“Prime” means the rate of interest publicly announced from time to time by the Purchaser (or by the Servicer, as defined in the Funding Agreement, on the Purchaser’s behalf) as its “prime rate”, which rate may not be the lowest or most favorable rate then being charged commercial borrowers or others by the Purchaser. Any change in the Prime Rate announced by as aforesaid shall take effect at the opening of business on the day specified in the public announcement of such change. Notwithstanding the foregoing, if the Prime Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“Relevant Governmental Body” means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

“SOFR” means a rate per annum equal to the secured overnight financing rate for such Business Day published by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate) on the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org> (or any successor source for the secured overnight financing rate identified as such by the administrator of the secured overnight financing rate from time to time).

“Term SOFR” means, for the applicable corresponding tenor, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“USD LIBOR” means the London interbank offered rate for U.S. dollars.

**2. Conditions Precedent to Effectiveness.** As a condition precedent to the effectiveness of this Amendment, there shall exist or the Borrower shall provide or cause to be provided the following:

- (a) Execution and delivery by the parties of this Amendment;
- (b) A certificate of the Borrower's secretary or assistant secretary: (a) attaching thereto the organizational documents of the Borrower as being true and complete and in full force and effect on the date thereof; (b) attaching thereto copies of the evidence of full force and effect or good standing and a resolution authorizing this Amendment; and (c) certifying the names and signatures of the incumbent officers of the Borrower authorized to sign, on behalf of the Borrower;
- (c) A certified resolution of the Board of the issuer of the Bonds approving this Amendment;

(d) An Opinion of Bond Counsel that this Amendment will not have an adverse effect on the tax status of the Bonds and for purposes of the opinion requirement of Section 1(d) of this amendment, the opinion referred to in this Section 2(d) shall satisfy that requirement with respect to replacing USD LIBOR pursuant to Section 1(a) of this Amendment;

(e) The Purchaser shall have received such other certificates, resolutions, proof of incumbency, other legal opinions, documents, instruments, diligence review searches and items as the Purchaser shall reasonably request and/or require; and

(f) Payment of fees and expenses of the parties including the fees and expenses of bond counsel.

**3. Original Agreements in Effect.** All terms and conditions of the Original Agreements remain in full force and effect except as expressly modified herein. Use of the term “Agreement” in Section 1 of this Amendment refers to the “Original Agreements” as amended by this Amendment. Without limiting any other term or provision in the Original Agreements and in addition thereto, the Borrower represents and warrants to the Purchaser as follows: (i) the covenants, representations and warranties of the Borrower as set forth in the Original Agreements are hereby made again as of the date hereof and are true and correct as of the date hereof; (ii) no Event of Default has occurred, and there is no Event of Default in existence; (iii) there has not occurred any event that, with the passage of time or the giving of notice, or both, would constitute an Event of Default, and there is no such event in existence; (iv) the Borrower has no offsets against any amounts due the Purchaser or any of the Purchaser's affiliates or defenses against enforcement of the Original Agreements with respect to any matter; and (v) the Borrower has all requisite corporate power and authority to execute, deliver and fully perform all of the terms and conditions of this Amendment and all other agreements, documents and instruments contemplated hereby. All representations and warranties contained in the Original Agreements shall survive the execution and delivery of this Amendment.

**4. Expenses.** The Borrower agrees to pay to the Purchaser and the Issuer, as additional consideration for this Amendment, all costs and expenses incurred by the Purchaser and the Issuer (including, without limitation, reasonable attorneys' fees) in connection with the preparation, execution and delivery of this Amendment and all matters related hereto.

**5. Miscellaneous Provisions.** The titles or captions of sections and paragraphs in this Amendment are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Amendment. The Borrower agrees to execute and deliver to the Purchaser such additional documents and to take all such further actions as the Purchaser may reasonably require in order to reflect the amendments to the Original Agreements effected by this Amendment. This Amendment may be executed in any number of counterparts, each of which shall constitute one and the same instrument. Receipt of an executed signature page to this Amendment by facsimile or other electronic transmission shall constitute effective delivery thereof. Electronic records of executed instruments maintained by the Purchaser shall be deemed to be originals. The Recitals set forth in the forepart of this Amendment are true and correct and are an integral part of this Amendment. This Amendment constitutes the entire understanding of the parties with respect to the subject matter hereof and any prior agreements, whether written or oral, with respect thereto are superseded hereby. This Amendment is governed by the laws of the



State of Ohio. The Issuer is signing this Amendment at the request of the Borrower and the Purchaser. The terms of the Bonds and the other Original Agreements are modified to reflect and permit the transitions reflected in Section 1 above. In connection with this Amendment, the Issuer shall have the same rights, immunities and privileges as are provided to each of them in the Original Agreements. **ALL PARTIES TO THIS AMENDMENT HEREBY WAIVE THE RIGHT TO ANY JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY.**

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**IN WITNESS WHEREOF**, the parties have executed this Amendment and this Amendment shall be effective as of the Effective Date.

**BORROWER:**

WEST SIDE DEUTSCHER FRAUEN VEREIN

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**PURCHASER:**

THE HUNTINGTON NATIONAL BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

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**IN WITNESS WHEREOF**, the parties have executed this Amendment and this Amendment shall be effective as of the Effective Date.

**ISSUER:**

LORAIN PORT AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TRUSTEE:**

THE HUNTINGTON NATIONAL BANK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_