

ORDINANCE NO. 226.21

AN ORDER OF THE FISCAL COURT OF THE COUNTY OF KENTON, KENTUCKY, AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED HOME OFFICE PAYMENT AGREEMENT, A FIRST SUPPLEMENTAL TRUST INDENTURE, A GROUND LESSOR ESTOPPEL, A COLLATERAL ASSIGNMENT, A SUBORDINATION AGREEMENT, A BOND PLEDGE AGREEMENT, A FIRST AMENDMENT TO AGREEMENT OF LEASE, QUIT-CLAIM DEEDS TO RESOLVE ENCROACHMENTS AND OTHER RELATED DOCUMENTS RELATING TO THE \$37,345,000 COUNTY OF KENTON, KENTUCKY, TAXABLE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2020, (TAPESTRY RIDGE PROJECT) TO FACILITATE THE REFINANCE OF THE LOAN RELATED TO THE PROJECT, AND MERGER OF THE TENANT WITH A NEW ENTITY, AND AUTHORIZING THE EXECUTION OF A LEASEHOLD MORTGAGE WITH A FEE JOINDER, AND RELATED DOCUMENTS IN ACCORDANCE THEREWITH, AND TAKING OTHER ACTIONS IN FURTHERANCE THEREOF

WHEREAS, the County of Kenton, Kentucky (the “Issuer” or the “County”) by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, issued its \$37,345,000 County of Kenton, Kentucky, Taxable Industrial Building Revenue Bonds, Series 2020 (Tapestry Ridge Project) (the “Bonds”) to provide financing for the acquisition and construction of the Tapestry Ridge (the “Project”), with the Project being leased by the Issuer to CIP API Tapestry of the Ridge LLC, a Delaware limited liability company (the “Tenant” or “Tapestry”); and

WHEREAS, the Bonds were issued to assist in the financing, acquisition and construction of the Tapestry Ridge Project, which involved the construction of a new multi-family residential development referred to as Tapestry Ridge (the “Project”); and

WHEREAS, the Bonds were issued subject to the provisions of an Agreement In Lieu of Taxes (the “PILOT Agreement”) among the County, the City of Covington, Kentucky, the Covington Independent School District, the Kenton County School District and Arlington Properties, Inc, an Alabama corporation, as predecessor-in-interest to Tapestry which PILOT Agreement has been assigned to Tapestry; and

WHEREAS, Tapestry plans to merge into a new entity, Passco Covington Ridge DST, a Delaware statutory Trust (“Passco”)

WHEREAS, the Bonds and Project are subject to an Agreement of Lease (the “Lease”) entered into by and between the County and Tapestry, dated October 1, 2020, and recorded in KC 52, Page 364 of the records of the Kenton County Clerk at Covington, Kentucky; and

WHEREAS, the Project is also subject to a loan and mortgage in favor of Truist Bank, a North Carolina banking corporation, dated October 29, 2020 and recorded in KCM 118, Page 562 of the records of the Kenton County Clerk at Covington, Kentucky (the “Truist Loan”); and

WHEREAS, Passco plans to refinance the Truist Loan and grant a new leasehold mortgage with a fee joinder by the County in favor of Keybank National Association, a national banking association (the “Lender”); and

WHEREAS, the ALTA Survey applicable to the Project shows several encroachments with adjacent property owners and the Lender has requested those encroachments (the “Property Encroachments”) be eliminated; and

WHEREAS, the Tenant has requested the County to execute quit-claim deeds with several adjoining property owners to resolve the Property Encroachments; and

WHEREAS, the merger of Tapestry into Passco will necessitate the execution of various documents by the County to authorize new Bond to be issued to Passco and related matters.

NOW, THEREFORE, BE IT ORDERED AND RESOLVED BY THE COUNTY OF KENTON, KENTUCKY, as follows:

1. That the County Judge/Executive and Fiscal Court Clerk are hereby authorized to execute and deliver a First Supplemental Trust Indenture related to the Bonds.
2. That to facilitate the refinance of the Truist Loan and related to the merger with Passco, the County Judge/Executive and Fiscal Court Clerk are hereby authorized to execute and deliver, a consent to a Ground Lessor Estoppel Certificate, a Collateral Assignment in favor of the Lender, a Bond Pledge Agreement, and Subordination Agreement, a Joinder Agreement to the mortgage with the Lender, a First Amendment to the Lease, an Amended and Restated Home Office Payment Agreement, and other related amendments and other documents, including other reasonable lender documents that may be required.
3. That the County Judge/Executive and Fiscal Court Clerk are authorized to execute other commercially reasonable documents and instruments relating to the Bonds, including instructions to the Trustee to cancel the existing Bond issued to Tapestry and to issue a new bond certificate in the name of the new entity to Passco.
4. The County Judge/Executive is hereby authorized to execute, along with the Tenant, quit-claim deeds with adjacent property owners to the Project, as determined by the Tenant, to resolve the Property Encroachments.

5. That any approvals granted or documents authorized by this Order shall be conditioned on the County having no responsibility for the payment of any loan, bonds or other costs related to the Project.
6. That except as modified herein the Bonds shall remain in full force and effect.

That this Order shall be signed by the County Judge/Executive, attested to by the Fiscal Court Clerk, recorded and be effective upon adoption.

ADOPTED: _____, 2024.

KRIS KNOCHELMANN
COUNTY JUDGE/EXECUTIVE

ATTEST: _____
SUE KAISER, FISCAL COURT CLERK

CERTIFICATE

I, Sue Kaiser, Fiscal Court Clerk for the County of Kenton, Kentucky (the “County”), certify that the foregoing is a true copy of Order No _____ adopted by the Fiscal Court of the County on the ____ day of _____, 2024, that all actions taken in connection with the Order were in compliance with the requirements of KRS 61.800 to 61.850, and that said Order is now in full force and effect, all as appears from the official records of the County in my custody and under my control.

Witness my hand as Fiscal Court Clerk this ____ day of _____, 2024.

Sue Kaiser, Fiscal Court Clerk