

# County Council of Cuyahoga County, Ohio

## Resolution No. R2011-0101

Sponsored by: <b>County Executive FitzGerald/ Department of Development</b>	<b>A Resolution</b> authorizing the issuance and sale of Self-supporting Housing Revenue Bonds in an amount not-to-exceed \$6,500,000.00 for Famicos Doan Classroom LLC for the purpose of rehabilitating, improving and equipping a senior housing facility for low and moderate income seniors; authorizing the execution and delivery of a Loan Agreement, Bond Purchase Agreement, Trust Indenture and Tax Regulatory Agreement; authorizing and approving the use and distribution of a disclosure document; approving related matters; and declaring the necessity that this Resolution become immediately effective.
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**WHEREAS**, the County of Cuyahoga, Ohio (the “*County*”), 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 of the Ohio Constitution and Section 133.51 of the Ohio Revised Code (collectively, the “*Act*”), among other things, to: (i) acquire, finance, refinance, construct, renovate, improve and equip real and personal property to provide for senior housing and multifamily housing; (ii) issue its revenue bonds for the purpose of paying the costs thereof; (iii) 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) secure those revenue bonds by the pledge and assignment of payments made to it under the loan agreement, and (v) adopt this Resolution, to enter into the Issuer Documents (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 Council of the County of Cuyahoga, Ohio (the “*Council*”), pursuant to the foregoing authority and at the request of, and based upon the representations of, Famicos Doan Classroom LLC, an Ohio limited liability company (the “*Borrower*”), has determined that it is willing to authorize the issuance and sale of the County’s Housing Revenue Bonds, Series 2011 in the maximum principal amount of \$6,500,000 to finance costs of rehabilitating, improving and equipping real and personal property located in the City of Cleveland to be used as an affordable senior housing facility containing approximately 45 units, to be owned by the Borrower (the “*Project*”), and in connection with that issuance and sale, to adopt this Resolution, to enter into the

Issuer Documents 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

**WHEREAS**, the Bonds will be issued pursuant to the provisions of the Act and a Trust Indenture (the “*Indenture*”), by and between the County and The Huntington National Bank, as trustee (the “*Trustee*”); and

**WHEREAS**, the operation of the Project will be subject to the provisions of a Tax Regulatory Agreement by and among the County, the Trustee, and the Borrower (the “*Regulatory Agreement*”) and other tax-related agreements which are intended to ensure the excludability of interest on the Bonds from the gross income of the owners of the Bonds for federal income tax purposes; and

**WHEREAS**, the Bonds shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Bonds will be payable solely from revenues of the Project and other monies available to the Borrower; and

**WHEREAS**, providing for the financing of the Project will confer a public benefit and serve the public interest by lowering the cost of maintaining, and expanding available housing opportunities for low and moderate income senior residents in the County, all in accordance with, and in furtherance of, the purposes of the Act.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF CUYAHOGA COUNTY, OHIO:**

**SECTION 1. Definitions and Interpretations.** All words and terms used herein as defined words and terms but not otherwise defined herein shall have the respective meanings given to them in the Indenture unless the context or use clearly indicates another or different meaning or intent:

“*Authorized Denominations*” means a denomination of \$5,000 or any whole multiple thereof.

“*Bond Counsel*” means the firm of Squire, Sanders & Dempsey (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 Purchase Agreement*” means the Bond Purchase Agreement among the Issuer, the Borrower and the Original Purchaser in connection with the sale and delivery of the Bonds.

“*Code*” means the Internal Revenue Code of 1986, the Treasury Regulations (whether temporary or final) under that Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding any of the foregoing, all as and to the extent applicable. Unless otherwise indicated, reference to a section of the Code includes any applicable successor section or provision and the applicable Treasury Regulations, rulings, announcements, notices, procedures and determinations pertinent to that section.

“*County Executive*” means the County Executive of the County.

“*Depository*” means any securities depository that is a clearing agency under federal law operating and maintaining, with its participants or otherwise, a book entry system to record ownership of book entry interests in the Bonds, and to effect transfers of book entry interests in the Bonds, and includes and means initially The Depository Trust Company (a limited purpose trust company), New York, New York.

“*Loan Agreement*” means the Loan Agreement, dated as of the date of the Indenture, between the County and the Borrower.

“*Fiscal Officer*” means the Fiscal Officer of the County.

“*Issuer Documents*” means the Indenture, the Loan Agreement, the Regulatory Agreement, the Assignment, if any, and the Bond Purchase Agreement.

“*Original Purchaser*” means The Sturges Company, Dublin, Ohio.

Any reference to this Council, the County or to its members or officers, or to other public officers, boards, commissions, departments, institutions, agencies, bodies or entities, shall include those which succeed to their functions, duties or responsibilities by operation of law and also those who at the time may legally act in their place.

Any reference to a section or provision of the Ohio Constitution or the Ohio Revised Code or other laws of the State shall include such section, provision and laws as may from time to time be amended, modified, revised or superseded, provided that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the County, the Holders, the Trustee, this Resolution, the Bonds, or any other instrument or document entered into in connection with any of the foregoing.

**SECTION 2. Authorization of the Bonds.** Based upon the representations of the Borrower, this Council finds and determines that (A) it is necessary to, and the County shall, issue, sell and deliver, as provided and authorized herein and pursuant to the Act, self-supporting housing revenue bonds (the “Bonds”) of the County in an aggregate principal amount not to exceed \$6,500,000, for the purpose of paying (i) costs of rehabilitating, improving and equipping the Project, (ii) interest to accrue on the Bonds from their date and during the estimated construction and renovation period of the Project, and (iii) certain costs associated with the issuance of the Bonds; and (B) the Project and the financing thereof by the issuance of the Bonds will further the public purpose of better providing adequate housing in this County and the State and improving the economic and general well-being of the people of the County and the State. The Bonds shall be designated “County of Cuyahoga, Ohio Housing Revenue Bonds, Series 2011 (Doan Classroom Apartments Project).”

**SECTION 3. Terms and Provisions of the Bonds**

(a) Bond Terms. The Bonds shall (i) be issuable only in fully registered form and substantially as set forth in the Indenture; (ii) be exchangeable only for Bonds of the same series in Authorized Denominations, as provided in the Indenture; (iii) be numbered in a manner determined by the Trustee which will distinguish each Bond of a series from each other Bond of that series; (iv) be dated as set forth in the Indenture, provided that such date shall not be later than December 31, 2011; (v) bear interest 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 of delivery, at the rates set forth in the Indenture, provided that the rates for the Bonds shall not exceed 7% per year (computed on a 360-day per year basis); (vi) payable on the interest payment dates set forth in the Indenture and the Indenture; (vii) be subject to optional redemption, extraordinary optional redemption and mandatory redemption, including mandatory sinking fund redemption, in accordance with the Indenture; and (viii) mature, subject to prior redemption as set forth above, on the dates set forth in the Indenture, the final maturity date of which shall not exceed 30 years from their date of delivery.

(b) Method of Payment; Paying Agents. The principal of and any premium and interest on the Bonds (the “*Bond Service Charges*”) shall be payable as provided in the Indenture without deduction for the services of any paying agent. The Trustee initially shall be paying agent for the Bonds and may designate additional paying agents as provided in the Indenture.

(c) Execution. The Bonds shall be signed by the County Executive. Neither the County Executive, the members of this Council nor any person executing the Bonds shall be liable personally on the Bonds by reason of issuance thereof. In case the County Executive shall cease to be in office before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until after that time.

(d) Book-Entry System. The Bonds are permitted, but not required, to be issued to the Depository for holding in a book-entry system as provided in the Indenture, as the official(s) or member(s) executing and delivering the Indenture shall approve in the manner described in and under authority of Section 8 hereof.

#### **SECTION 4. Sale of the Bonds.**

(a) Generally. The Bonds are sold and awarded to the Original Purchaser on such terms that are in accordance with the Act, are authorized or not inconsistent with this Resolution, are not materially adverse to the County, and as are provided for or specified in the Bond Purchase Agreement. The purchase price for the Bonds may not be less than 98% of the aggregate principal amount of the Bonds (or, if the Bonds are sold at any original issue discount, 98% of the amount resulting from the subtraction of the aggregate net original issue discount from the aggregate original principal amount of the Bonds), plus any interest accrued on Bonds from their date to their delivery date. The original issue discount, if any, shall not exceed in the aggregate 5%. The County Executive, or the Fiscal Officer at the direction of the County Executive, are authorized and directed to execute the Bond Purchase Agreement, in order to provide for the definitive terms and terms of sale and award to the Original Purchaser of the Bonds as provided in this Resolution, but in any event not later than December 31, 2011. The Bond Purchase Agreement shall not be inconsistent with this Resolution, and shall be approved by the County Executive, or the Fiscal Officer at the direction of the County Executive, their execution of the Bond Purchase Agreement to constitute conclusive approval, and a finding that the terms are not materially adverse to the County, on behalf of the County.

The County Executive, the Clerk of this Council and the Fiscal Officer are authorized and directed, alone or together, to make the necessary arrangements, as directed by the Trustee and upon the advice of Bond Counsel, with the Original Purchaser to establish the date, location, procedure and conditions for the delivery of the Bonds to the Original Purchaser. The County Executive is further authorized and directed to make the necessary arrangements for the printing of the Bonds and the execution, authentication and delivery of the Bonds to the Original Purchaser under the terms of this Resolution, the Indenture and the Bond Purchase Agreement.

(b) Official Statement. The County hereby consents to the use and distribution by the Original Purchaser of an offering document, in its preliminary and final forms, relating to the original issuance of the each series of Bonds. Except to the extent described in the Bond Purchase Agreement, the County has not confirmed, and assumes no responsibility for, the truthfulness, accuracy, completeness, sufficiency or fairness of any statements in the offering document, in its preliminary and final forms, or any amendments thereof or supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Original Purchaser, the Lender, the Trustee, the Project, the Borrower or the history, businesses, properties, organization,

management, financial condition, market area or any other matter relating to the Borrower or contained otherwise in the offering document, or with respect to the Depository, any federally insured mortgage loan program, any investment agreements and the providers thereof, or the Original Purchaser.

**SECTION 5. Loan and Terms Thereof.** This Council authorizes and approves the loan of the Bond proceeds by the County to the Borrower pursuant to the terms of the Indenture, the Loan Agreement and the Regulatory Agreement, each substantially in the form now on file with the Clerk of this Council, to assist in financing the Project.

**SECTION 6. Security for the Bonds.** The Bonds shall be special, limited obligations of the County and the principal of and any premium and the interest on the Bonds shall be (i) payable solely from the revenues pledged therefor in the Indenture and (ii) secured by the trust estate identified in the Indenture.

Anything in this Resolution or the Bonds to the contrary notwithstanding, the Bonds do not and shall not represent or constitute a general obligation, debt or bonded indebtedness, or a pledge of moneys raised by taxation or the faith and credit of the County, the State or any political subdivision thereof, and the holders of the Bonds shall not be given and shall not have any right to have excises or taxes levied by this Council or the County, or the State or the taxing authority of any political subdivision thereof, for the payment of bond service charges or any other costs of the Project, and the Bonds will be payable solely from revenues of the Project and other monies available to the Borrower. The Bonds shall contain a statement to that effect and to the effect that the Bonds are payable solely from the sources specified in the Indenture and any amounts received by the Trustee pursuant to the Indenture and the Assignment, if any, and from any other moneys paid by the Borrower or obtained by the Trustee upon the exercise of rights and remedies under the Loan Agreement or Indenture.

**SECTION 7. Covenants and Agreement of County.** In addition to the other covenants of the County set forth in this Resolution and the Issuer Documents, the County further covenants and agrees as follows:

(a) Authority and Actions. The County 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 to which it is a party, to provide the security for payment of the principal of and any premium or interest on the Bonds solely in the manner and from the sources and to the extent set forth herein, all as authorized by this Council and upon the advice of Bond Counsel. All actions on the part of the County for the issuance of the Bonds and the execution and delivery of the Issuer Documents and such other instruments and documents have been or will be duly and effectively taken. The Bonds will be valid and enforceable special obligations of the County according to the terms thereof. Each duty of the County and of its officers and employees undertaken pursuant to the

Bonds and the Issuer Documents, is a duty specifically enjoined by law upon the County and each of those officers and employees having authority thereunder or by provision of law to perform the duty, 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 and Tax Compliance Provisions; Transcript. Upon the advice of Bond Counsel and to the extent within its authority and control, the County will restrict the use of the proceeds of the Bonds in such manner and to such extent as is necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The members of this Council, the County Executive, the Fiscal Officer or the Clerk of this Council or any other officer of the County having responsibility for the issuance of the Bonds, alone or in conjunction with the Borrower or any officer, employee or agent of or consultant to the Borrower, shall give an appropriate certificate of the County for inclusion in the transcript of proceedings for the Bonds setting forth the reasonable expectations of the County regarding the amount and use of all of 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 the interest on the Bonds.

Upon the advice of Bond Counsel, and to the extent within its authority and control, the County (i) will take, or require to be taken, all actions that are required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (ii) will not knowingly take or authorize to be taken any actions that would adversely affect that exclusion under the provisions of the Code. The members of this Council, the County Executive, the Fiscal Officer and the Clerk of this Council and any other appropriate officers 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.

In its performance of these covenants, and other covenants of the County pertaining to federal income tax laws, the County may rely upon the advice of Bond Counsel.

The Clerk of this Council shall furnish to the Original Purchaser a true transcript of proceedings, certified by the Clerk, 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. To the extent within its authority and control, the County shall do all things and take all actions on its part necessary to comply with the obligations, duties and responsibilities on its part under the Issuer Documents. Nothing herein or in the Issuer Documents shall be construed as requiring the County to operate the Project or to use any moneys from any source other than those provided in the Indenture and the Loan Agreement.

**SECTION 8. Issuer Documents.** To provide for the issuance and sale of the Bonds and the consummation of the transactions contemplated herein, the County Executive and the Fiscal Officer at the direction of the County Executive, alone or in conjunction with any of the foregoing, are authorized and directed to execute, acknowledge and deliver, for and in the name and on behalf of the County, each Issuer Document, in substantially the respective forms thereof submitted to and approved by this Council and the County's legal officer. The Issuer Documents are approved with any changes therein which are not inconsistent with this Resolution, are not adverse to the County, are permitted by the Act, and are approved by the member or members or officer or officers executing the respective Issuer Documents and by the County's legal officer. The approval of those changes by such member or members or officer or officers, and the character of those changes as not being adverse to the County, shall be evidenced conclusively by the execution and delivery of the respective Issuer Documents by such member or members or officer or officers. The Fiscal Officer is authorized to give any certifications that may be required under Ohio Revised Code Sections 5705.41 and 5705.44 with respect to any of the Issuer Documents.

**SECTION 9. Other Documents.** The County Executive, the President of the Council, the Fiscal Officer, the Clerk of the Council or any other officer of the County, 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 County, any certifications, financing statements, assignments and other instruments and documents which are, in the opinion of the County's legal officer and Bond Counsel to the County, necessary or appropriate to perfect the assignments contemplated in the Indenture or the Loan Agreement and to consummate the transactions contemplated in the Issuer Documents, including the issuance of the Bonds. Those certifications and other instruments and documents include, without limitation, one or more reports on IRS Form 8038 (including Forms 8038-R and 8038-T), any other certifications and forms necessary or advisable under the Code and a certification by the Clerk of this Council 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 County, to file any such certifications or instruments that require filing.

**SECTION 10. Acknowledgement of Assignment.** The County acknowledges that pursuant to the Assignment, the County will assign without recourse its rights under the Indenture and Loan Agreement to the Trustee, except for Unassigned Issuer's Rights (as defined in the Loan Agreement).

**SECTION 11. Prevailing Wage Rates.** All laborers and mechanics employed on the Project shall, in accordance with policies heretofore established by the County, be paid at the residential prevailing rates of wages of laborers and mechanics for the classes of work called for by the Project, which wages shall be determined in accordance with the requirements of Section 176.05 and Chapter 4115, Ohio Revised Code, for determination of prevailing wage rates.



The Borrower shall comply, and shall require compliance by all contractors or subcontractors working on the installation of the Project, with all applicable requirements of Section 176.05 and Sections 4115.03 through 4115.16, Revised Code, including, without limitation obtaining or causing to be obtained, from the State its determination of the prevailing rates of wages to be paid for the class of work called for by the Project, and ensuring that all contractors and subcontractors receive notification of changes in prevailing wage rates as required under Section 4115.05, Revised Code. Concurrently with issuance of the Bonds and at such times as the County requests, the Borrower shall be required to provide the County with evidence, satisfactory to the County, that there has been compliance with the foregoing agreements. None of the requirements of this Section shall be applicable to the Borrower unless the Bonds are issued. The requirements of this Section are subject to preemption by any controlling federal law.

**SECTION 11. Tax Credit Allocation.** This Council 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 Council has relied exclusively upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by this Council or the Issuer as to the feasibility or viability of the Project. This Council hereby authorizes and directs any member of this Council to make the foregoing determination again for and on behalf of this Council 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 the Bonds, or in the Issuer Documents, or under any judgment obtained against the County 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 County, including any member of the Council, either directly or through the County, or otherwise, for the payment for or to the County or any receiver thereof, or for or to the Holder, or otherwise, of any sum that may be due and unpaid by the County 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 County or any receiver thereof, or for or to the Borrower or the Holder, 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.

**SECTION 14.** A public hearing of this Council shall be held at the Chambers of the Council of Cuyahoga County, 1274 W. 3<sup>rd</sup> Street, Cleveland, Ohio 44113, on the 21 day of March, 2011 at 3:30 p.m., local time, for the purpose of hearing objections and/or public comment on the issuance said bonds.

**SECTION 15.** Open Meeting This Council hereby finds and determines that all formal actions of this Council and its committees concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council 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 16. Effective Date.** This Resolution shall be in full force and effect immediately upon the signature of the County Executive, provided this Resolution receives the affirmative vote of eight members elected to Council. It is hereby determined to be necessary that this Resolution become immediately effective in order that the project may proceed in a timely manner.

On a motion by Mr. Schron, seconded by Mr. Germana, the foregoing Resolution was duly adopted.

Yeas: Gallagher, Schron, Conwell, Jones, Connally, Rogers, Simon, Greenspan, Miller, Brady and Germana

Nays: None

_____	_____
County Council President	Date
_____	_____
County Executive	Date
_____	_____
Clerk of Council	Date

First Reading/Referred to Committee: March 8, 2011  
Committee Assigned: Economic Development & Planning

Public Hearing: March 21, 2011 at 3:30 p.m. in Council Chambers located at the Justice Center

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