

ORDINANCE NO. 105-2014

AN ORDINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, AUTHORIZING THE ISSUANCE OF UP TO \$14,550,000 PRINCIPAL AMOUNT OF “LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2014 (TRANSYLVANIA UNIVERSITY PROJECT), THE PROCEEDS OF WHICH SHALL BE LOANED TO TRANSYLVANIA UNIVERSITY TO FINANCE THE COSTS OF CONSTRUCTING AND EQUIPPING TWO NEW STUDENT DORMITORIES TO BE LOCATED AT 416 W. 4TH STREET, LEXINGTON, KENTUCKY 40508, WHICH FACILITIES ARE TO BE OWNED AND UTILIZED BY THE UNIVERSITY IN FURTHERANCE OF THE EDUCATIONAL PURPOSES OF THE UNIVERSITY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT AND TAX REGULATORY AGREEMENT; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the Lexington-Fayette Urban County Government (the “Issuer”), by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, is authorized and empowered among other things: (a) to make a loan to assist in defraying the cost of financing the acquisition, construction, installation and equipping of an “industrial building,” as defined in § 103.200 of the Kentucky Revised Statutes, within the boundaries of the Issuer; (b) to issue and sell its negotiable revenue bonds to provide moneys for such loan; and (c) to enact this Ordinance and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, the Urban County Council of the Issuer (the “Issuing Authority”) has determined and does hereby confirm that the acquisition, construction, installation and equipping of the Project, as hereinafter defined, is with respect to a Project to be utilized in furtherance of the educational purposes of Transylvania University (the “University”), which Project has and will promote the welfare of the people of the Commonwealth of Kentucky, promote reconversion to a peacetime economy, relieve conditions of unemployment, aid in the rehabilitation of returning veterans, encourage the increase of industry in the Commonwealth of Kentucky, promote the economic welfare of the people of the Issuer, create or preserve jobs and employment opportunities and assist in the development of industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in an aggregate principal amount not to exceed \$14,550,000 (the “Series 2014 Bonds”) will be acting in a manner consistent with and in furtherance of the provisions of the laws of the Commonwealth of Kentucky, particularly Chapter 103 of the Kentucky Revised Statutes (the “Act”);

NOW, THEREFORE, BE IT ORDAINED BY THE LEXINGTON-FAYETTE URBAN COUNTY COUNCIL, AS FOLLOWS:

SECTION 1. Incorporation of Preambles. That the preambles of this Ordinance be incorporated as an integral part of this Ordinance, to the same extent as if repeated herein verbatim, it being declared that the statements of fact set forth in such preambles are true and accurate in all respects.

SECTION 2. Definitions. All defined terms used herein and those not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement between the Issuer and the University (the "Agreement"), relating to the Series 2014 Bonds.

Any reference herein to the Issuer or the Issuing Authority, or to any officers or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Ordinance.

SECTION 3. Determination of Issuer. Pursuant to the Act, this Issuing Authority hereby finds and determines that the Project is an "industrial building" as defined in the Act and is consistent with the provisions of §§ 103.200 to 103.285 of the Act; that such industrial building consists of an industrial building suitable for use by the University, which constitutes a nonprofit educational institution within the meaning of the Act, in furtherance of the educational purposes of the University, as set forth in § 103.200(1)(d) of the Act; and that such industrial building has been, or is to be financed with the proceeds of the Series 2014 Bonds pursuant to the provisions of §§103.200 to 103.285 of the Act.

The Issuing Authority, as the "applicable elected representative" of the Issuer for purposes of § 147(f) of the Code, hereby approves the issuance of the Series 2014 Bonds in the maximum aggregate face amount of \$14,550,000, the proceeds of which will be used to finance the Project as follows:

The Project consists of financing the costs of constructing and equipping two new student dormitories to be located at 416 W. 4th Street, Lexington, Kentucky 40508 on the campus of the University, which facilities are to be owned and utilized by the University in furtherance of its educational purposes.

SECTION 4. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Series 2014 Bonds for the purposes of making a loan to the University to finance the costs of acquiring, constructing, installing and equipping the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Agreement. The Series 2014 Bonds shall be designated "Industrial Building Revenue Bonds, Series 2014 (Transylvania University Project)." The maximum amount of Series 2014 Bonds to be outstanding at any one time is \$14,550,000.

SECTION 5. Terms and Execution of the Bonds. The Series 2014 Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Bond Purchase Agreement hereinafter defined. The Series 2014 Bonds shall mature as provided in the

Bond Purchase Agreement, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Bond Purchase Agreement. This Issuing Authority hereby fixes and establishes the interest rate in effect from time to time on the Series 2014 Bonds in the manner and pursuant to the provisions of the Bond Purchase Agreement. The Series 2014 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and Urban County Council Clerk, and the seal of the Issuer may be impressed or printed on the Series 2014 Bonds. In case any officer whose signature or a facsimile thereof shall appear on the Series 2014 Bonds shall cease to be such officer before the issuance or delivery of the Series 2014 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Series 2014 Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Bond Purchase Agreement, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Bond Purchase Agreement, in an aggregate principal not to exceed \$14,550,000, shall represent the approved form of Series 2014 Bonds of the Issuer.

SECTION 6. Sale of the Bonds. In accordance with a written request, addressed to the Mayor from the University, that the sale of the Series 2014 Bonds be made privately upon a negotiated basis, the Series 2014 Bonds are hereby awarded to U.S. Bank National Association (the "Purchaser") at the purchase price set forth, and on the terms and conditions described, in the Bond Purchase Agreement with respect to the Series 2014 Bonds (the "Bond Purchase Agreement") among the Issuer, the University, the Purchaser and U.S. Bank National Association, as servicing agent (the "Servicing Agent"). The Mayor and Urban County Council Clerk are authorized and directed to make on behalf of the Issuer the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Series 2014 Bonds to the Purchaser, and to take all steps necessary to effect due execution and delivery to the Purchaser of the Series 2014 Bonds (or temporary bonds delivered in lieu of definitive Series 2014 Bonds until their preparation and delivery can be effectuated) under the terms of this Ordinance, the Bond Purchase Agreement and the Agreement. It is hereby determined that the price for and the terms of the Series 2014 Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the Issuer and consistent with all legal requirements.

SECTION 7. Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Series 2014 Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Series 2014 Bonds are delivered to the Purchaser, so that they will not constitute arbitrage bonds under § 148 of the Internal Revenue Code (the "Code"). The Mayor or any other officer having responsibility with respect to the issuance of the Series 2014 Bonds, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2014 Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said § 148 of the Code and regulations thereunder.

SECTION 8. Authorization of Agreement, Bond Purchase Agreement, Tax Regulatory Agreement and All Other Documents to be Executed by the Issuer. In order to better secure the

payment of the principal of, premium, if any, and interest on the Series 2014 Bonds as the same shall become due and payable, the Mayor and Urban County Council Clerk are authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Loan Agreement (the "Agreement"), Tax Regulatory Agreement and Bond Purchase Agreement in substantially the forms to be submitted to and approved by the Commissioner of Finance of the Issuer, which are hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of such Agreement, Tax Regulatory Agreement and Bond Purchase Agreement by such officers.

The Mayor and Urban County Council Clerk are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates, deeds and other instruments that may be necessary or appropriate in the opinion of Peck, Shaffer & Williams, a division of Dinsmore & Shohl LLP, as Bond Counsel, in order to effect the issuance of the Series 2014 Bonds and the intent of this Ordinance. The Urban County Council Clerk, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Series 2014 Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Series 2014 Bonds.

SECTION 9. Covenants of Issuer. In addition to other covenants of the Issuer in this Ordinance, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from the sources herein or in the Bond Purchase Agreement or Agreement provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Series 2014 Bonds on the dates, at the places and in the manner provided herein and in the Series 2014 Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Series 2014 Bonds, Agreement, Bond Purchase Agreement and Tax Regulatory Agreement, and in all proceedings of the Issuer pertaining to the Series 2014 Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Series 2014 Bonds will be, duly authorized by the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the Series 2014 Bonds and to execute the Agreement, the Tax Regulatory Agreement and the Bond Purchase Agreement, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Series 2014 Bonds in the manner and to the extent herein and in the Series 2014 Bonds set forth; that all actions on its part for the issuance of the Series 2014 Bonds and execution and delivery of the Agreement, the Bond Purchase Agreement, the Tax Regulatory Agreement and all other documents to be executed by it in connection with the issuance of the Series 2014 Bonds, have been or will be duly and effectively taken; and that the Series 2014 Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Ordinance, the Agreement, the Bond Purchase Agreement, the Tax Regulatory Agreement and each Series 2014 Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Series 2014 Bonds, is binding upon each officer of the Issuer as may from time to time have the

authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Series 2014 Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

SECTION 10. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Series 2014 Bond, or in the Agreement, the Tax Regulatory Agreement or the Bond Purchase Agreement, 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 as such, past, present, or future, of the Issuer, 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 Series 2014 Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Series 2014 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, 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 owner or any holder of any Series 2014 Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2014 Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, the Tax Regulatory Agreement and the Bond Purchase Agreement and the issuance of the Series 2014 Bonds.

SECTION 11. No Debt or Tax Pledge. THE SERIES 2014 BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF THE CONSTITUTION OF THE COMMONWEALTH OF KENTUCKY. THE SERIES 2014 BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES AND SECURITY INTERESTS PLEDGED FOR THEIR PAYMENT AS PROVIDED IN THE SERIES 2014 BONDS, AND NEITHER MONEYS RAISED BY TAXATION NOR ANY OTHER GENERAL OR SPECIAL REVENUES OF THE ISSUER SHALL BE OBLIGATED OR PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE SERIES 2014 BONDS.

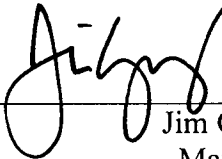
SECTION 12. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 13. Open Meetings Law. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Issuing Authority, and that all deliberations of this Issuing Authority and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 14. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation and publication of a summary hereof.

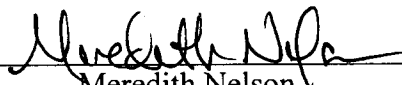
INTRODUCED AND GIVEN FIRST READING at a duly convened meeting of Urban County Council of Lexington-Fayette Urban County Government on the 28th day of August, 2014.

INTRODUCED AND GIVEN FIRST AND SECOND READING, ENACTED AND ADOPTED at a duly convened meeting of Urban County Council of Lexington-Fayette Urban County Government held on the 11th day of September, 2014, signed by the Mayor, attested under seal by the Clerk of Urban County Council, and ordered to be published, filed and indexed as provided by law.



Jim Gray
Mayor

ATTEST:



Meredith Nelson
Urban County Council Clerk

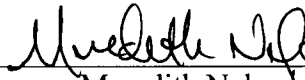
PUBLISHED: September 18, 2014 - 1t

CERTIFICATE

I, the undersigned, Urban County Council Clerk of Lexington-Fayette Urban County Government, do hereby certify that the foregoing Ordinance is a true and complete copy of a certain Ordinance duly adopted by the Urban County Council of said Lexington-Fayette Urban County Government at a lawfully convened meeting of the Urban County Council of Lexington-Fayette Urban County Government held on September 11, 2014.

I do hereby further certify that said Ordinance has not been amended, modified, superseded or repealed and that same remains in full force and effect as of the date of this Certificate.

WITNESS my hand as of this 15th day of September, 2014.

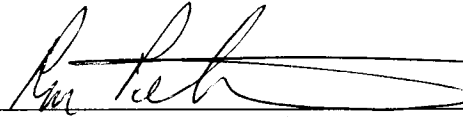


Meredith Nelson
Urban County Council Clerk

CERTIFICATE

I do hereby certify that the title to this enactment contains an accurate synopsis of the contents thereof and may be used to satisfy the reading and publication requirements of law.

**PECK, SHAFFER & WILLIAMS,
A DIVISION OF DINSMORE & SHOHL LLP**



Roger L. Peterman