

RESOLUTION NO. \_\_\_\_\_ - 2021

A RESOLUTION OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, GIVING PRELIMINARY APPROVAL OF AN INDUSTRIAL REVENUE BOND FINANCING FOR ASTANA LLC, AND ANY AFFILIATES OR ASSIGNEES THEREOF; AUTHORIZING INITIATION OF THE ACQUISITION, CONSTRUCTION, EQUIPPING, AND INSTALLATION OF AN INDUSTRIAL PROJECT; AGREEING TO UNDERTAKE THE ISSUANCE OF ONE OR MORE SERIES OF INDUSTRIAL REVENUE BONDS AT THE APPROPRIATE TIME OR TIMES; AUTHORIZING THE EXECUTION AND DELIVERY OF A MEMORANDUM OF AGREEMENT AND PAYMENT IN LIEU OF TAXES AGREEMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS; AND TAKING OTHER PRELIMINARY ACTIONS.

WHEREAS, the Council of the Lexington-Fayette Urban County Government (the "*Issuer*"), has determined that the Issuer may assist Astana LLC, a Kentucky limited liability company, its affiliates and assigns (collectively, the "*Company*"), by pursuing the acquisition, construction, equipping, and installation of the Speigle Heights Redevelopment Project, an industrial project of the Company consisting of the facilities and properties described in EXHIBIT A attached hereto (collectively, the "*Project*"), and by entering into, at the appropriate time, a lease agreement with the Company (the "*Lease Agreement*") pertaining to the Project, all pursuant to the authority of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes ("*KRS*"), as amended (the "*Act*"), and in furtherance of the purposes of the Act and the ensuing public benefit to the residents of the Issuer and its environs, the Lease Agreement to be upon terms and conditions as the Act may require and as the Issuer may deem acceptable; and

WHEREAS, the Company has represented to the Issuer that the acquisition, construction, equipping, and installation of the Project, if acquired, constructed, equipped, and installed, will result in new job opportunities within the environs of the Issuer; and

WHEREAS, the Issuer is authorized by the Act to issue its industrial revenue bonds for the purpose of defraying the costs of acquiring, constructing, equipping, and installing "industrial building" facilities, which term means all real and personal properties suitable for the Project, including land, buildings, fixtures and equipment; discussions have occurred between representatives of the Company and the Issuer regarding the issuance of industrial revenue bonds by the Issuer to finance the Company's Project; it is the intention of the Issuer, and the Issuer has agreed and hereby agrees with the Company, to issue such industrial revenue bonds upon compliance by the Company with such reasonable conditions and obligations as the Issuer may require and documents incident to such bond issue or issues and upon the agreement of the Company to pay the reasonable costs and expenses of the Issuer related to or arising from such issuance from bond proceeds or other sources; and the Issuer has authorized the Company to proceed with the initiation of the acquisition, construction, equipping, and installation of the Project, subject to reimbursement of the costs of such acquisition, construction, equipping, and installation from the proceeds of the industrial revenue bonds, as and when issued; and

WHEREAS, based upon the Company's present estimate of the aggregate costs of the Project together with a reasonable allowance for contingencies and incidental costs, the Issuer proposes to issue its industrial revenue bonds in an aggregate stated principal amount up to \$39,000,000, for a term of up to forty (40) years, to pay the costs of the acquisition of the Project (the "*Bonds*"), including costs incident to the authorization, sale, and issuance of the Bonds and other financing costs, with the understanding that such amount may be increased by subsequent official action of the Issuer upon the Company's request; and the Bonds will be payable solely from payments to be made by the Company under the Lease Agreement and will not be payable from any funds or assets of the Issuer whatsoever; and

WHEREAS, due to the Project's location within the development area created by Resolution 100-83, the benefit to that area, and the other unique aspects of the Project, the Issuer is willing to suspend the operation of certain provisions of Ordinance No. 203-80 and the Industrial Revenue/Housing Bonds Policies and Guidelines of the Lexington-Fayette Urban

County Government, ratified in Ordinance No. 52-94, which prohibit the Issuer from taking title to property and leasing it back to companies/developers in order to obtain relief from ad valorem taxes typically paid on the improved property; and

**WHEREAS**, the Issuer proposes to enter into the Lease Agreement with the Company at the appropriate time under which the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of and premium, if any, and interest on the Bonds together with all trustee, paying agent, and servicing agent's fees in connection with the Bonds and any other related charges as the same come due and payable; and

**WHEREAS**, to evidence the Issuer and the Company's preliminary agreement regarding these matters the parties propose to enter into a Memorandum of Agreement substantially in the form set out in **EXHIBIT B** attached hereto (the "*Memorandum of Agreement*"), and to approve the form of each Payment in Lieu of Taxes Agreement substantially in the form set out in **EXHIBIT C** (the "*School PILOT Agreement*"), **EXHIBIT D** (the "*Library PILOT Agreement*"), **EXHIBIT E** (the "*Lextran PILOT Agreement*"), and **EXHIBIT F** (the "*Health Department PILOT Agreement*").

**NOW, THEREFORE, BE IT RESOLVED AND ORDERED BY THE COUNCIL OF THE URBAN COUNTY GOVERNMENT, AS FOLLOWS:**

**Section 1.** It is hereby found, determined, and declared that the recitals set forth above are hereby incorporated in this Section 1 by reference.

**Section 2.** It is found, determined, and declared that (a) the recitals set forth in the preambles to this Resolution, which are incorporated in Section 1 by reference, are true and correct; (b) the amount of money necessary to be provided by the Issuer through the issuance of the Bonds for the acquisition, construction, installation, and equipping of the Project will be an aggregate amount up to \$39,000,000, the Bonds to have a term of up to forty (40) years; (c) the Company has represented it intends to have sufficient financial resources to acquire, construct, install, and equip the Project and to place it in operation and to continue to operate, maintain, and insure the Project throughout the term of the Bonds, meeting when due the obligations of the Lease Agreement; and (d) sufficient safeguards shall be provided by the Lease Agreement to insure that all money provided by the Issuer from the proceeds of the sale of the Bonds will be expended, by way of direct expenditure or reimbursement, solely and only for the purposes of the Project financed thereby.

**Section 3.** It is hereby found, determined, and declared that (a) the costs of acquiring, constructing, installing, and equipping the Project will be paid out of the proceeds of the Bonds, such proceeds to be supplemented by contributions of the Company as may be necessary to complete the Company's respective Project; (b) none of the Bonds will be general obligations of the Issuer; (c) neither the Bonds nor the interest thereon shall constitute or give rise to any pecuniary liability whatsoever of the Issuer or any charge against its general credit or taxing power; (d) the Bonds and the payment of interest thereon shall be secured and payable solely by a pledge of amounts to be paid by the Company or otherwise to be available under the Lease Agreement; (e) no part of said costs will be payable out of any general funds, assets, properties, or other contributions of the Issuer; (f) the Issuer shall sell the Bonds only to the Company or an affiliated entity or assignee thereof; and (g) the Company shall pay the fees of the Issuer related to the issuance of the Bonds as specified in Ordinance 21-2021.

**Section 4.** The acquisition, construction, installation, and equipping of the Project may be initiated and undertaken or caused to be initiated and undertaken by the Company forthwith, and the Company is authorized to formulate and develop plans and specifications for the Project and to enter into such contracts and undertakings as may be required for the acquisition, construction, installation, and equipping of the Project. Payments or reimbursements to or on behalf of the Company after the receipt of the proceeds of the sale of the Bonds by the Issuer shall be made as set out in the Lease Agreement.

**Section 5.** The Project constitutes an “industrial building” as provided in KRS 103.200(1)(k) and, being located in the Downtown Development District identified by the Issuer in Resolution No. 100-83, as provided in KRS 103.200(1)(n).

**Section 6.** The Company has requested, and the Issuer hereby approves, the employment of Stoll Keenon Ogden PLLC as “Bond Counsel.” Bond Counsel is authorized and directed to take any other legal action necessary or appropriate in connection with the issuance of the Bonds.

**Section 7.** The Company is authorized and directed to take any other legal action necessary and customary in order to satisfy any prerequisites to the issuance of the Bonds. Counsel for the Issuer and its officers and officials are authorized and requested to assist the Company in any appropriate manner.

**Section 8.** The Memorandum of Agreement attached hereto as **EXHIBIT B** is hereby approved and the Mayor is hereby authorized to execute the Memorandum of Agreement on the Issuer’s behalf. With notice to and approval from the Issuer, the Company may assign its rights hereunder by assigning the Memorandum of Agreement.

**Section 9.** It is hereby acknowledged and agreed that the forms of the School PILOT Agreement, Library PILOT Agreement, Lextran PILOT Agreement, and Health Department PILOT Agreement attached hereto as **EXHIBITS C, D, E and F**, respectively, describe the agreement reached between the Issuer and the Company’s representatives regarding the Company’s obligations to make payments in lieu of taxes while the Bonds are outstanding and that upon the issuance of the Bonds, the Issuer shall direct its Mayor or its other authorized officials to execute a School PILOT Agreement, Library PILOT Agreement, Lextran PILOT Agreement and Health Department PILOT Agreement in the form attached hereto with such changes or revisions as are necessary to reflect the date, par, designation, maturity, and interest rate or rates applicable to the Bonds.

**Section 10.** No funds of the Issuer shall be expended for the costs of issuance of the Bonds or for the costs of the Project, except such as are derived from Bond proceeds.

**Section 11.** All resolutions, municipal orders, and other official actions of the Issuer or parts thereof in conflict herewith are, to the extent of such conflict, hereby rescinded.

**Section 12.** This Resolution shall be in full force and effect from and after its adoption.

*[Signature Page To Follow]*

[SIGNATURE PAGE TO INDUCEMENT RESOLUTION]

**ADOPTED** by the Urban County Council of the Lexington-Fayette Urban County Government, at a meeting held on June 24, 2021.

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Linda Gorton  
Mayor

Attest:

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Clerk, Urban County Council

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the Council of the Lexington-Fayette Urban County Government (the "*Issuer*"), and as such I further certify that the foregoing (with the attached **EXHIBITS A, B, C, D, E and F**), is a true, correct, and complete copy of a Resolution duly adopted by the Urban County Council of the Issuer at a meeting properly held on June 24, 2021, signed by the Mayor and now in full force and effect, all as appears from the official records of the Issuer in my possession and under my control.

**IN WITNESS WHEREOF**, I have hereunder set my hand as of June 24, 2021.

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Clerk, Urban County Council