

ORDINANCE NO. 062-2022

AN ORDINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, AUTHORIZING THE ISSUANCE OF THREE SERIES OF INDUSTRIAL REVENUE BONDS HAVING A COMBINED AGGREGATE PRINCIPAL AMOUNT OF UP TO \$39,000,000 AND DESIGNATED THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, KENTUCKY, INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2022A (SPEIGLE HEIGHTS REDEVELOPMENT PROJECT - ASTANA), THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, KENTUCKY, INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2022B (SPEIGLE HEIGHTS REDEVELOPMENT PROJECT - NEW CIRCLE), AND THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, KENTUCKY, INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2022C (SPEIGLE HEIGHTS REDEVELOPMENT PROJECT - NEW OCTAGON), FOR THE PURPOSE OF FINANCING AN INDUSTRIAL BUILDING PROJECT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF (A) A LEASE AGREEMENT BETWEEN THE URBAN COUNTY GOVERNMENT, AS LESSOR, AND ASTANA LLC, AS LESSEE, (B) A LEASE AGREEMENT BETWEEN THE URBAN COUNTY GOVERNMENT, AS LESSOR, AND NEW CIRCLE INVESTMENTS LLC, AS LESSEE, (C) A LEASE AGREEMENT BETWEEN THE URBAN COUNTY GOVERNMENT, AS LESSOR, AND NEW OCTAGON LIMITED LIABILITY COMPANY, AS LESSEE, (D) SEPARATE BOND PURCHASE AGREEMENTS PROVIDING FOR THE ISSUANCE, SALE, AND DELIVERY OF EACH SERIES OF THE BONDS AND PROVIDING FOR THEIR NEGOTIATED SALE, AND (E) OTHER RELATED DOCUMENTS; AND TAKING OTHER RELATED ACTIONS

WHEREAS, the Council of the Lexington-Fayette Urban County Government (the "*Issuer*"), pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "*Act*"), is authorized to issue its revenue bonds and to make the proceeds from the sale thereof available to a company to finance industrial building facilities as defined in the Act, such bonds being payable from rental payments made by such company; and, under the Act, the financing of industrial buildings constitutes a valid public purpose; and

WHEREAS, Astana LLC, a Kentucky limited liability company ("*Astana*"), proposes that the Issuer, pursuant to the Act, assist Astana to finance the costs of real property, real property improvements, including leasehold improvements, and related fixtures constituting a portion of new industrial building facilities to be utilized by Astana as a 120 to 125-room (more or less) hotel and, as related and subordinate facilities, event space, restaurant space with a rooftop bar, a spa, and other supporting amenities, including all operating equipment and machinery deemed necessary in connection therewith, such properties being hereinafter referred to collectively as the "*Astana Project*"; and

WHEREAS, New Circle Investments LLC, a Delaware limited liability company ("*New Circle*"), proposes that the Issuer, pursuant to the Act, assist New Circle to finance the costs of real property, real property improvements, and related fixtures constituting a portion of new industrial building facilities to be utilized by New Circle and Astana for restaurant space, a salon and a spa, and parking, including all operating equipment and machinery deemed necessary in connection therewith, such properties being hereinafter referred to collectively as the "*New Circle Project*"; and

WHEREAS, New Octagon Limited Liability Company, a Kentucky limited liability company ("*New Octagon*" and with New Circle and Astana, each a "*Company*" and collectively, the "*Companies*") proposes that the Issuer, pursuant to the Act, assist New Octagon to finance the costs of real property, real property improvements, and related fixtures constituting a portion of new industrial building facilities to be utilized by New Octagon as parking supporting the Astana Project and the New Circle Project, such properties being hereinafter referred to collectively as the "*New Octagon Project*"; and

WHEREAS, the New Circle Project, the Astana Project and the New Octagon Project collectively constitute the Speigle Heights Redevelopment Project by New Circle, Astana, New Octagon, and their affiliates (collectively, the "*Project*") (and the respective portions of which are more particularly described in the Lease Agreements hereinafter identified and approved); and

WHEREAS, the Project is an activity designed and constructed to be used as hotels, together with all related and subordinated facilities necessary to the operation thereof, and as an activity designed for revitalization or redevelopment of a downtown business district designated by the Issuer and qualifies for financing as an "industrial building" pursuant to Section 103.200(1)(k) and (n) of the Kentucky Revised Statutes; and

WHEREAS, the acquisition, construction, installation, and equipping of the Project is expected to promote economic development and to encourage the increase of industry within the environs of the Issuer and the Commonwealth of Kentucky; and

WHEREAS, on June 24, 2021, the Council of the Issuer adopted Resolution No. 332-2021 (the "*Inducement Resolution*") approving the industrial revenue bond financing of the Project for the benefit of Astana, and any affiliates or assignees thereof, including New Circle and New Octagon, reaffirming the Issuer's agreement in prior correspondence and discussions to undertake such financing at the appropriate time; and

WHEREAS, at the Companies' request the Issuer is prepared, pursuant to the Act, to issue three series of its industrial revenue bonds for the purposes of financing the acquisition, construction, installation, and equipping of the Project and paying costs of issuance of each series of the industrial revenue bonds, upon terms that are to be set forth in the three Lease Agreements hereinafter identified and approved; and

WHEREAS, pursuant to the provisions of Section 103.220 of the Act, the Companies have made a request in writing, that the sale of the industrial revenue bonds hereinafter identified and authorized, bearing interest as set out in the three Bond Purchase Agreements hereinafter identified and approved, shall be made upon a negotiated basis; and

WHEREAS, it is necessary and proper in the interests of the health, safety, convenience, and general welfare of the citizens, residents, and inhabitants of the Issuer and its environs that the Issuer (a) authorize the issuance of three series of industrial revenue bonds in order to finance, for the Companies' benefit, the acquisition, construction, installation, and equipping of the Project and to pay certain costs of issuance of each series of the industrial revenue bonds; (b) authorize the execution of a Lease Agreement between the Issuer, as lessor, and Astana, as lessee; (c) authorize the execution of a Lease Agreement between the Issuer, as lessor, and New Circle, as lessee; (d) authorize the execution of a Lease Agreement between the Issuer, as lessor, and New Octagon, as lessee; (e) authorize the execution of a Bond Purchase Agreement among the Issuer, Astana, the Astana Purchaser (hereinafter defined), and the Astana Servicing Agent (hereinafter defined) providing for the issuance, sale, and delivery of one series of the industrial revenue bonds by the Issuer to the Astana Purchaser; (f) authorize the execution of a Bond Purchase Agreement among the Issuer, New Circle, the New Circle Purchaser (hereinafter defined), and the New Circle Servicing Agent (hereinafter defined) providing for the issuance, sale, and delivery of one series of the industrial revenue bonds by the Issuer to the New Circle Purchaser; (g) authorize the execution of a Bond Purchase Agreement among the Issuer, New Octagon, the New Octagon Purchaser (hereinafter defined), and the New Octagon Servicing Agent (hereinafter defined) providing for the issuance, sale, and delivery of one series of the industrial revenue bonds by the Issuer to the New Octagon Purchaser; and (h) authorize the execution of other necessary or related documents and actions.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE URBAN COUNTY GOVERNMENT, AS FOLLOWS:

Section 1. For the purposes set forth in the preamble, which is incorporated as a part hereof, the Issuer, acting by and through its Council, hereby:

(a) Confirms and ratifies the Inducement Resolution and the prior discussions, correspondence, and agreements, whereby the Issuer agreed to authorize and issue bonds for the Companies in order to finance the Project.

(b) Accepts from the Companies the conveyance of the Project and the site thereof, subject to the terms and conditions contained in the instruments of conveyance and in the Lease Agreements hereinafter identified and approved.

(c) Authorizes the sale, issuance, execution, and delivery of the Lexington-Fayette Urban County Government, Kentucky, Industrial Building Revenue Bonds, Series 2022A (Speigle Heights Redevelopment Project – Astana) (the “*Astana Bonds*”), which shall be issued in the form and subject to the terms and specifications set forth in the Bond Purchase Agreement identified below governing the issuance and delivery of the Astana Bonds.

(d) Authorizes the sale, issuance, execution, and delivery of the Lexington-Fayette Urban County Government, Kentucky, Industrial Building Revenue Bonds, Series 2022B (Speigle Heights Redevelopment Project – New Circle) (the “*New Circle Bonds*”), which shall be issued in the form and subject to the terms and specifications set forth in the Bond Purchase Agreement identified below governing the issuance and delivery of the New Circle Bonds.

(e) Authorizes the sale, issuance, execution, and delivery of the Lexington-Fayette Urban County Government, Kentucky, Industrial Building Revenue Bonds, Series 2022C (Speigle Heights Redevelopment Project – New Octagon) (the “*New Octagon Bonds*”), which shall be issued in the form and subject to the terms and specifications set forth in the Bond Purchase Agreement identified below governing the issuance and delivery of the New Octagon Bonds.

(f) Authorizes the use of the proceeds of the Astana Bonds, as provided in the Astana Bond Purchase Agreement and the Astana Lease Agreement, to pay a portion of the costs of acquisition, construction, installation, and equipping of the Astana Project and to pay certain costs of issuance of the Astana Bonds.

(g) Authorizes the use of the proceeds of the New Circle Bonds, as provided in the New Circle Bond Purchase Agreement and the New Circle Lease Agreement, to pay a portion of the costs of acquisition, construction, installation, and equipping of the New Circle Project and to pay certain costs of issuance of the New Circle Bonds.

(h) Authorizes the use of the proceeds of the New Octagon Bonds, as provided in the New Octagon Bond Purchase Agreement and the New Octagon Lease Agreement, to pay a portion of the costs of acquisition, construction, installation, and equipping of the New Octagon Project and to pay certain costs of issuance of the New Octagon Bonds.

Section 2. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a certain Lease Agreement between the Issuer, as lessor of the Astana Project and the site thereof, and Astana, as lessee (the “*Astana Lease Agreement*”), which Astana Lease Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes therein as the official executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a certain Lease Agreement between the Issuer, as lessor of the New Circle Project and the site thereof, and New Circle, as lessee (the “*New Circle Lease Agreement*”), which New Circle Lease Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes therein as the

official executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a certain Lease Agreement between the Issuer, as lessor of the New Octagon Project and the site thereof, and Astana, as lessee (the "*New Octagon Lease Agreement*", together with the Astana Lease Agreement and the New Circle Lease Agreements, the "*Lease Agreements*"), which New Octagon Lease Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes therein as the official executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 5. To provide for the authorization of the Astana Bonds and to prescribe the terms and conditions upon which the Astana Bonds are to be issued, outstanding, secured, executed, accepted, and held, the Mayor is hereby authorized, empowered, and directed to execute and acknowledge on behalf of the Issuer a certain Bond Purchase Agreement (the "*Astana Bond Purchase Agreement*") among the Issuer, Astana, Astana IRB Holdings LLC, a Kentucky limited liability company, as Servicing Agent (the "*Astana Servicing Agent*"), and Astana IRB Holdings LLC, a Kentucky limited liability company, as the Purchaser of the Astana Bonds (the "*Astana Purchaser*"), and the Mayor is hereby authorized, empowered, and directed to cause the Astana Bond Purchase Agreement to be accepted and executed by the Astana Servicing Agent, hereby so appointed. The Astana Bond Purchase Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof. The Astana Bonds will be secured by a nonforeclosable statutory mortgage lien on the Astana Project as provided by Section 103.250 of the Act. The Astana Bonds will mature as to principal no later than February 1, 2062, will be subject to optional redemption and optional termination, and will bear interest payable periodically at a fixed rate, all as provided in the Astana Bond Purchase Agreement, reference to which is hereby made. The interest rate on the Astana Bonds shall in no event exceed 5.0% per annum. The sale of the Astana Bonds pursuant to the terms of the Astana Bond Purchase Agreement is hereby authorized, approved, and directed.

Section 6. To provide for the authorization of the New Circle Bonds and to prescribe the terms and conditions upon which the New Circle Bonds are to be issued, outstanding, secured, executed, accepted, and held, the Mayor is hereby authorized, empowered, and directed to execute and acknowledge on behalf of the Issuer a certain Bond Purchase Agreement (the "*New Circle Bond Purchase Agreement*") among the Issuer, New Circle, New Circle IRB Holdings LLC, a Kentucky limited liability company, as Servicing Agent (the "*New Circle Servicing Agent*"), and New Circle IRB Holdings LLC, a Kentucky limited liability company, as the Purchaser of the New Circle Bonds (the "*New Circle Purchaser*"), and the Mayor is hereby authorized, empowered, and directed to cause the New Circle Bond Purchase Agreement to be accepted and executed by the New Circle Servicing Agent, hereby so appointed. The New Circle Bond Purchase Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof. The New Circle Bonds will be secured by a nonforeclosable statutory mortgage lien on the New Circle Project as provided by Section 103.250 of the Act. The New Circle Bonds will mature as to principal no later than February 1, 2062, will be subject to optional redemption and optional termination, and will bear interest payable periodically at a fixed rate, all as provided in the New Circle Bond Purchase Agreement, reference to which is hereby made. The interest rate on the New Circle Bonds shall in no event exceed 5.0% per annum. The sale of the New Circle Bonds pursuant to the terms of the New Circle Bond Purchase Agreement is hereby authorized, approved, and directed.

Section 7. To provide for the authorization of the New Octagon Bonds (and together with the Astana Bonds and the New Circle Bonds, the "*Series 2022 Bonds*") and to prescribe the terms and conditions upon which the New Octagon Bonds are to be issued, outstanding, secured, executed, accepted, and held, the Mayor is hereby authorized, empowered, and directed to

execute and acknowledge on behalf of the Issuer a certain Bond Purchase Agreement (the "*New Octagon Bond Purchase Agreement*") and, together with the Astana Bond Purchase Agreement and the New Circle Bond Purchase Agreement, the "*Bond Purchase Agreements*") among the Issuer, New Octagon, New Octagon IRB Holdings LLC, a Kentucky limited liability company, as Servicing Agent (the "*New Octagon Servicing Agent*"), and New Octagon IRB Holdings LLC, a Kentucky limited liability company, as the Purchaser of the Series 2022 Bonds (the "*New Octagon Purchaser*", together with the Astana Purchaser and New Circle Purchaser, each a "*Purchaser*" and collectively, the "*Purchasers*"), and the Mayor is hereby authorized, empowered, and directed to cause the New Octagon Bond Purchase Agreement to be accepted and executed by the New Octagon Servicing Agent, hereby so appointed. The New Octagon Bond Purchase Agreement is hereby approved, authorized, and adopted in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof. The New Octagon Bonds will be secured by a nonforeclosable statutory mortgage lien on the New Octagon Project as provided by Section 103.250 of the Act. The New Octagon Bonds will mature as to principal no later than the February 1, 2062, will be subject to optional redemption and optional termination, and will bear interest payable periodically at a fixed rate, all as provided in the New Octagon Bond Purchase Agreement, reference to which is hereby made. The interest rate on the New Octagon Bonds shall in no event exceed 5.0% per annum. The sale of the New Octagon Bonds pursuant to the terms of the New Octagon Bond Purchase Agreement is hereby authorized, approved, and directed.

Section 8. With respect to the sale of the Astana Bonds, and upon the recommendation of Astana, the Issuer further approves, and the Mayor is authorized and directed to execute and deliver on behalf of the Issuer, a certain Assignment of Lease Agreement between the Issuer and the Astana Purchaser (the "*Astana Assignment*"), being in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on the Issuer's behalf, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 9. With respect to the sale of the New Circle Bonds, and upon the recommendation of New Circle, the Issuer further approves, and the Mayor is authorized and directed to execute and deliver on behalf of the Issuer, a certain Assignment of Lease Agreement between the Issuer and the New Circle Purchaser (the "*New Circle Assignment*"), being in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on the Issuer's behalf, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 10. With respect to the sale of the New Octagon Bonds, and upon the recommendation of New Octagon, the Issuer further approves, and the Mayor is authorized and directed to execute and deliver on behalf of the Issuer, a certain Assignment of Lease Agreement between the Issuer and the New Octagon Purchaser (the "*New Octagon Assignment*" and, together with the Astana Assignment and the New Circle Assignment, the "*Assignments*"), being in substantially the form submitted herewith, with such changes as the officer executing the same may require or approve on the Issuer's behalf, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 11. It is acknowledged that the Issuer and each Company will execute a Payment In Lieu Of Taxes Agreement (collectively, the "*PILOT Agreements*") substantially in the form previously approved by the Inducement Resolution and such PILOT Agreements contain conditions satisfactory to the Issuer requiring each such Company to make certain annual payments in lieu of property taxes on the Company's respective portion of the Project so long as the Company's respective series of the Series 2022 Bonds is outstanding.

Section 12. The Mayor, the Urban County Council Clerk, the County Attorney, and other appropriate officials of the Issuer, and each of them, for and on behalf of the Issuer, are hereby authorized, empowered, and directed to do and perform any and all things necessary to effect the execution and delivery of the Bond Purchase Agreements, the Lease Agreements, the Assignments, the PILOT Agreements, and all documents, instruments, and certificates related

thereto, the performance of all obligations and the preservation of all rights of the Issuer thereunder, the execution and delivery of the Series 2022 Bonds and the performance from time to time of all other actions of whatever nature necessary to carry out the authority conferred or contemplated by and the purposes of this Ordinance, the Bond Purchase Agreements, the Lease Agreements, the Assignments, the PILOT Agreements, and related documents, and further to approve and to execute all papers, documents, certificates, or other instruments that may be required for the carrying out and effectuation from time to time of the authority conferred by and the purpose of this Ordinance, the Bond Purchase Agreements, the Lease Agreements, the Assignments, the PILOT Agreements, the Series 2022 Bonds, and all related documents, or to evidence said authority and purposes.

Section 13. For the acquisition, construction, installation, improvement, commissioning and equipping of the Project, and the financing or future refinancing thereof, the Issuer at a Company's request shall execute, acknowledge, and deliver on behalf of Issuer any mortgage(s) or other financing statements or agreements authorized and approved by the Company and the respective Purchaser, including any collateral sharing or subordination agreements, as may be required by the Company and the respective Purchaser, without further action of the Urban County Council, provided that the terms of such mortgage(s), financing statements or agreements, or collateral sharing or subordination agreements are not inconsistent with the provisions of the Act or this Ordinance and do not create a liability of the Issuer. The approval of such mortgage(s), financing statements or agreements, or collateral sharing or subordination agreements shall be conclusively evidenced by their execution by the Mayor of the Issuer, which execution and approval are hereby authorized without further action of the Urban County Council.

Section 14. The Issuer hereby finds and affirms that the Project is located in the Downtown Development District identified by the Issuer in Resolution No. 100-83, as provided in KRS 103.200(1)(n).

Section 15. The issuance of the Series 2022 Bonds is conditioned upon the approval of the State Local Debt Officer ("SLDO") pursuant to KRS 103.2101. The Mayor of the Issuer is hereby authorized, empowered, and directed to execute, acknowledge, and deliver on behalf of the Issuer a Notification of Intent to Finance with the Department of Local Government for the Series 2022 Bonds, and the Companies, on behalf of the Issuer, are authorized, empowered, and directed to seek the approval of the SLDO.

Section 16. The Issuer shall never be required to pay from its own funds any obligations deriving from the issuance of the Series 2022 Bonds, and each series of the Series 2022 Bonds are declared to be special and limited obligations payable solely and only from the receipts derived under their respective Lease Agreements and the "**Pledged Receipts**" pledged under and defined by their respective Bond Purchase Agreements, as provided in the documents herein approved.

Section 17. The provisions of this Ordinance may be supplemented from time to time by resolution of the Urban County Council.

Section 18. The provisions of this Ordinance are hereby declared to be severable and, if any section or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

Section 19. Upon any conflict between the provisions of this Ordinance and of any prior ordinance, resolution, or parts thereof, the provisions of this Ordinance shall prevail.

Section 20. This Ordinance shall be in full force and effect from and after its adoption as provided by law. The summary of this Ordinance read at the meetings of the Urban County Council of the Issuer described below is approved for such purposes and for the purpose of publication as provided by law, and the accuracy of such summary is hereby certified.

[Signature Page To Follow]

[SIGNATURE PAGE TO SERIES 2022 BONDS ORDINANCE]

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened meeting of the Council of the Lexington-Fayette Urban County Government, Kentucky, held on June 23, 2022.

GIVEN SECOND READING AND ADOPTED at a duly convened meeting of the Council of the Lexington-Fayette Urban County Government, Kentucky, held on July 5, 2022, signed by the Mayor, ordered published in summary form, and duly enrolled as required by law.

[Seal]

Attest:



Linda Gorton
Mayor



Abigail Allan
Urban County Council Clerk

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 Clerk I further certify that the foregoing is a true, correct, and complete copy of an Ordinance duly adopted by the Urban County Council of the Issuer upon second reading at a duly convened meeting held on July 5, 2022, signed by the Mayor and now in full force and effect, all as appears from the official records of said Issuer in my possession and under my control.

IN WITNESS WHEREOF, I have hereunto set my hand this 7/16/2022.



Abigail Allan
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.

STOLL KEENON OGDEN PLLC

By: _____
Timothy J. Eifler, Esq.

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STOLL KEENON OGDEN PLLC

By:  _____
Timothy J. Eifler, Esq.