

ORDINANCE NO. ____-2012

AN ORDINANCE OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT AUTHORIZING THE ISSUANCE OF ITS INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2012 (TRANSYLVANIA UNIVERSITY PROJECT) IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$10,350,000, AND THE LOAN OF THE PROCEEDS THEREOF TO TRANSYLVANIA UNIVERSITY FOR THE PURPOSE OF FINANCING VARIOUS ADDITIONS AND IMPROVEMENTS TO THE CAMPUS OF THE UNIVERSITY; AUTHORIZING THE EXECUTION AND DELIVERY ON BEHALF OF THE URBAN COUNTY GOVERNMENT OF (1) A TRUST INDENTURE PURSUANT TO WHICH THE BONDS WILL BE ISSUED, (2) A LOAN AGREEMENT BETWEEN THE URBAN COUNTY GOVERNMENT, AS LENDER, AND TRANSYLVANIA UNIVERSITY, AS BORROWER, PROVIDING FOR LOAN REPAYMENTS SUFFICIENT TO PAY THE PRINCIPAL OF AND INTEREST ON THE BONDS AS THE SAME BECOME DUE, (3) A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS ON A NEGOTIATED BASIS, AND (4) AN OFFICIAL STATEMENT RELATING TO THE BONDS; AND TAKING OTHER RELATED ACTION.

Recitals

A. The Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky (the "Commonwealth") pursuant to Chapter 67A of the Kentucky Revised Statutes (the "Urban County Government"), is authorized under the Industrial Buildings for Cities and Counties Act, as amended, Sections 103.200 to 103.285 of the Kentucky Revised Statutes (the "Act"), to issue its industrial building revenue bonds and loan the proceeds thereof to any person to finance the costs of acquiring, constructing, and equipping an "industrial building" (as defined in the Act), including specifically land, buildings, improvements, equipment, and other facilities related to or in furtherance of the educational purposes of any nonprofit educational institution, so as to accomplish thereby the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, provided that such bonds are payable solely from the loan repayments and other revenues derived in respect of the loan and do not constitute an indebtedness of the Urban County Government within the meaning of the Constitution and laws of the Commonwealth.

B. Transylvania University (the "University"), a Kentucky nonprofit corporation and institution of higher education, has applied to the Urban County Government for (i) the issuance of industrial building revenue bonds in a principal amount of not more than \$10,350,000 for the benefit of the University (the "Bonds") under the Act, (ii) the sale of the Bonds on a private negotiated basis to J.J.B. Hilliard, W.L. Lyons, LLC. (the "Underwriter"), and (iii) the loan of the proceeds of the Bonds to the University to pay, to reimburse the University for the payment of, or to

refinance short-term indebtedness incurred by the University to pay, all or a portion of the cost of various capital projects on the campus of the University (collectively the "Project"), including the acquisition of land in the vicinity of the University's existing campus, the improvement of such land for use as athletic facilities, and various other construction and renovation projects on the University's campus.

C. Prior to the enactment of this ordinance and following published notice, the Urban County Council conducted a public hearing affording an opportunity for members of the public to express their views regarding the proposed bond issue and the nature and location of the facilities to be financed or refinanced from the proceeds thereof.

D. The Council of the Urban County Government now desires to [i] authorize the issuance of its Lexington-Fayette Urban County Government Industrial Building Revenue Bonds, Series 2012 (Transylvania University Project) in an aggregate principal amount not to exceed \$10,350,000 (the "Bonds") and the loan of the proceeds thereof to the University to finance the Project, [ii] authorize the execution and delivery on behalf of the Urban County Government of the Bond Purchase Agreement, the Indenture, the Loan Agreement, the Tax Compliance Agreement, and the Official Statement hereinafter identified, and [iii] take other related action.

E. The University desires that the sale and delivery of the Bonds be completed, if feasible, prior to July 1, 2012, so that (1) the University's financial statements for its fiscal year ending June 30, 2012 can show that its general fund expenditures for the Project have been reimbursed with the proceeds of the Bonds and (2) any market disruption around the July 4 holiday can be avoided. The University has therefore requested that the Urban County Government waive the requirement, pursuant to its Ordinance No. 52-94 and the "Industrial Revenue/Housing Bonds Policies and Guidelines of the Lexington-Fayette Urban County Government", that an inducement resolution regarding the Project and the Bonds be adopted prior to the adoption of this Bond Ordinance. The Urban County Council is willing to waive that requirement and to proceed with the adoption of this Bond Ordinance without the need for an inducement resolution.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Lexington-Fayette Urban County Government, as follows:

1. Public Purposes. The Urban County Council hereby finds and declares that the issuance of the Bonds and the loan of the proceeds thereof to the University to finance the Project will further the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein.

2. Authorization of the Bonds and the Project. For the purposes set forth in the preamble hereto, there is hereby authorized and directed:

A. the issuance, execution, sale, and delivery of the Bonds, as provided in the Bond Purchase Agreement and the Indenture hereinafter identified; and

B. the loan of the proceeds of the Bonds to the University to finance the

Project, as provided in the Indenture and the Loan Agreement hereinafter identified.

3. Authorization of Indenture. The Mayor and the Clerk of the Urban County Council are hereby authorized and directed to execute and deliver on behalf of the Urban County Government a Trust Indenture (the "Indenture") between the Urban County Government and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee (the "Trustee"), substantially in the form attached hereto as Exhibit A.

4. Authorization of Loan Agreement. The Mayor and the Clerk of the Urban County Council are hereby authorized and directed to execute and deliver on behalf of the Urban County Government a Loan Agreement (the "Loan Agreement") between the Urban County Government and the University, substantially in the form attached hereto as Exhibit B.

5. Authorization of Bond Purchase Agreement. The Mayor and the Clerk of the Urban County Council are hereby authorized and directed to execute and deliver on behalf of the Urban County Government a Bond Purchase Agreement (the "Bond Purchase Agreement") among the Urban County Government, the University, and the Underwriter, substantially in the form attached hereto as Exhibit C, providing for the sale of the Bonds upon a negotiated basis to the Underwriter.

6. Authorization of Tax Compliance Agreement. The Mayor and the Clerk of the Urban County Council are hereby authorized and directed to execute and deliver on behalf of the Urban County Government a Tax Compliance Agreement by and among the Urban County Government, the Trustee, and the University, providing for the continuing exclusion of the interest on the Bonds from gross income for federal income tax purposes, substantially in the form attached hereto as Exhibit D.

7. Authorization of Official Statement. The Official Statement to be distributed to prospective purchasers of the Bonds, substantially in the form of the Preliminary Official Statement attached hereto as Exhibit E, is hereby approved. The Mayor is hereby authorized to execute said Official Statement on behalf of the Urban County Government.

8. Waiver of Inducement Resolution. The Urban County Council hereby waives the requirement for the adoption of an inducement resolution regarding the Project and the Bonds prior to the adoption of this Bond Ordinance.

9. Further Acts and Deeds. The Mayor, the Clerk of the Urban County Council, the Commissioner of Law, and other appropriate officers and employees of the Urban County Government are hereby authorized and directed to execute, acknowledge, and deliver on behalf of the Urban County Government any and all papers, instruments, certificates, affidavits, and other documents and to do and cause to be done any and all acts and things necessary or proper for entering into and effecting this Bond Ordinance, the Bond Purchase Agreement, the Indenture, the Loan Agreement, the Tax Compliance Agreement, the Official Statement, and the Bonds, and the financing of the Project, provided that neither the Urban County Government nor any of its councilmen, officers, employees, or agents incur any general liability thereby.

10. Severability. The provisions of this ordinance are severable, and if any section, phrase, or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder of this ordinance.

11. Prior Conflicting Actions Superseded. To the extent that any ordinance, resolution, order, or part thereof is in conflict with the provisions of this ordinance, the provisions of this ordinance shall prevail and be given effect.

12. Effective Date. This ordinance shall be in full force and effect from and after its enactment and publication as provided by law.

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened regular meeting of the Lexington-Fayette Urban County Council held on May 17, 2012.

GIVEN SECOND READING AND ENACTED at a duly convened regular meeting of the Lexington-Fayette Urban County Council held on _____, signed by the Mayor as evidence of his approval, attested under seal by the Clerk of the Urban County Council, and ordered to be published in summary form, filed, and indexed as provided by law.

Attest:

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

Clerk of the Urban County Council

By _____
Mayor

CERTIFICATION

The undersigned hereby certifies that she is the duly qualified and acting Clerk of the Lexington-Fayette Urban County Council, that the foregoing is a true, correct, and complete copy of an ordinance duly enacted by the Urban County Council at a duly convened meeting held on _____, 2012, signed by the Mayor, duly filed, recorded, and indexed in my office and now in full force and effect, and that all actions taken in connection with such ordinance were in compliance with the requirements of KRS 61.810, 61.815, 61.820, and 61.823, all as appears from the official records of said Council in my possession and under my control.

WITNESS my hand and the seal of the Lexington-Fayette Urban County Government on _____, 2012.

Clerk of the Urban County Council

(SEAL)

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.

WYATT, TARRANT & COMBS, LLP

Stephen D. Berger, Esq.

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