

ORDINANCE NO. _____, SERIES 2021

AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY, AUTHORIZING EXECUTION AND DELIVERY OF (I) A THIRD SUPPLEMENTAL TRUST INDENTURE AND (II) A THIRD SUPPLEMENTAL LOAN AGREEMENT RELATED TO THE OUTSTANDING LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, KENTUCKY FIRST MORTGAGE RESIDENTIAL CARE FACILITIES REVENUE BONDS (TREYTON OAK TOWERS ECONOMIC DEVELOPMENT PROJECT) SERIES 1995B; AND AUTHORIZING RELATED ACTIONS.

SPONSORED BY: COUNCIL PRESIDENT DAVID JAMES

WHEREAS, Louisville/Jefferson County Metro Government, Kentucky (“Metro Government”), by its statutory predecessor-in-interest, the County of Jefferson, Kentucky, previously issued its outstanding Louisville/Jefferson County Metro Government, Kentucky First Mortgage Residential Care Facilities Revenue Bonds (Treyton Oak Towers Economic Development Project) Series 1995B (the “Series 1995B Bonds”); and

WHEREAS, the Series 1995B Bonds were issued under and are governed by a Trust Indenture dated as of September 1, 1982, by and between Metro Government and The Bank of New York Mellon Trust Company, N.A., in its capacity as the ultimate successor-in-interest to First National Bank of Louisville, as trustee (the “Trustee”), as amended and supplemented by a First Supplemental Trust Indenture dated as of September 1, 1988, by and between Metro Government and the Trustee, and as further amended and supplemented by a Second Supplemental Trust Indenture dated as of September 1, 1995, by and between Metro Government and the Trustee (as amended and supplemented, the “Current Indenture”); and

WHEREAS, the proceeds of the Series 1995B Bonds were loaned to The Third and Oak Corporation d/b/a Treyton Oak Towers (the “Company”) pursuant to a Loan

Agreement dated as of September 1, 1982, by and between Metro Government and the Company, as amended and supplemented by a First Supplemental Loan Agreement dated as of September 1, 1988, by and between Metro Government and the Company, and as further amended and supplemented by a Second Supplemental Loan Agreement dated as of September 1, 1995, by and between Metro Government and the Company (as amended and supplemented, the “Current Loan Agreement”); and

WHEREAS, the 1995B Bonds were issued by Metro Government as a result of a Plan of Reorganization confirmed by order of the United States Bankruptcy Court for the benefit of the Company and its creditors on August 10, 1995 (the “1995 Plan of Reorganization”); and

WHEREAS, the Series 1995B Bonds mature on June 30, 2022, and will be payable in an amount equal to the “Balloon Payment”, which is defined in the Current Indenture and the Current Loan Agreement as an amount equal to the positive difference, if any, between (i) \$15,447,390, minus (ii) the sum of (1) the aggregate contingent payments previously paid to the Owners of the 1995B Bonds pursuant to the Current Indenture and (2) all of the Indenture Trustee Expenses (as defined in the 1995 Plan of Reorganization); and

WHEREAS, the Indenture Trustee Expenses were paid in full to or on behalf of a predecessor of the current Trustee on or about March 4, 1996; and

WHEREAS, Metro Government, the Company, and the Trustee have determined that the formulation of the Balloon Payment contained in the Current Indenture and the Current Loan Agreement contains a formal defect because it requires the Trustee to apply

a non-cash offset for Indenture Trustee Expenses against the cash payment of the 1995B Bonds at their maturity; and

WHEREAS, Metro Government, the Company, and the Trustee desire to amend the definition of Balloon Payment in the Current Indenture and the Current Loan Agreement to reduce the maximum stated amount thereof, or \$15,447,390, by the amount of Indenture Trustee Expenses approved by the United States Bankruptcy Court under the 1995 Plan of Reorganization, being \$597,412.85, and to eliminate the reference to Indenture Trustee Expenses therein, and to make similar revisions wherever a reference to Indenture Trustee Expenses appears in such documents (including the form of the 1995B Bonds set forth in the Current Indenture); and

WHEREAS, such amendments are permitted without the consent of, or notice to, the holders of the 1995B Bonds by Sections 1201(a) and 1301 of the Current Indenture and Section 9.1 of the Loan Agreement; and

WHEREAS, the Issuer and the Trustee further desire to amend the Current Indenture to permit the Company to defease the 1995B Bonds in the amount of the remaining Balloon Payment during the period between September 1, 2021 and June 30, 2022, which amendment will grant or confer upon the Trustee for the benefit of the Bondholders an additional right that may lawfully be granted to or conferred upon the Trustee; and

WHEREAS, such amendment is permitted without the consent of, or notice to, the holders of the 1995B Bonds by Section 1201(b) of the Current Indenture; and

WHEREAS, in order to accomplish the purposes set forth herein, Metro Government considers it necessary and proper to (i) authorize the amendment of the

Current Indenture and the Current Loan Agreement for the purposes set out above; (ii) authorize the execution and delivery of the Third Supplemental Trust Indenture and Third Supplemental Loan Agreement hereinafter identified; (iii) authorize the execution and delivery of replacement Series 1995B Bonds in the form set forth in the Third Supplemental Trust Indenture; and (iv) take other action in connection therewith.

NOW, THEREFORE, BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

SECTION I: Incorporation of Preamble. The facts and recitations set out in the preamble of this Ordinance are adopted and incorporated as a part hereof, and the terms defined in the preamble shall have the same meanings when used herein.

SECTION II: Declaration of Purpose. Metro Government hereby finds and declares that the amendment of the Current Indenture and the Current Loan Agreement in the manner and for the purposes described in the recitals set forth herein will further the public purposes of Sections 103.200 through 103.285 of the Kentucky Revised Statutes, as amended, and is permitted by the Current Indenture and the Current Loan Agreement as described in the preamble of this Ordinance.

SECTION III: Authorization. For the purposes of providing for the amendments to the Current Indenture and the Current Loan Agreement set forth in the preamble of this Ordinance, including the amendment and restatement of the form of the Series 1995B Bonds contained within the Current Indenture, there is hereby authorized and directed:

(a) the execution and delivery of (i) a Third Supplemental Trust Indenture by and between Metro Government and the Trustee and (ii) a Third Supplemental Loan Agreement by and between Metro Government and the Company;

(b) the execution and delivery by Metro Government of replacement Series 1995B Bonds in the form set forth in the Third Supplemental Trust Indenture identified herein; and

(c) the execution and delivery on behalf of Metro Government of all customary papers, letters, documents, certificates, forms, or other instruments that may be required for the carrying out and effectuation of the authority conferred by this Ordinance or to evidence said authority.

SECTION IV: Authorization of Amendment Documents. The Mayor and the Metro Council Clerk are hereby authorized and directed to execute and deliver on behalf of Metro Government the following documents (collectively, the “Amendment Documents”), substantially in the respective forms previously submitted, reference to which is hereby made, with such changes therein as the officer(s) executing such documents on behalf of Metro Government shall approve, such approval to be conclusively evidenced by their execution and delivery thereof:

(a) A Third Supplemental Trust Indenture (the “Third Supplemental Indenture”), by and between Metro Government and the Trustee substantially in the form previously provided to Metro Government in connection with this Ordinance as Exhibit A;

(b) Replacement Series 1995B Bonds, substantially in the form provided in the Third Supplemental Indenture provided to Metro Government in connection with this Ordinance as Exhibit A; and

(c) A Third Supplemental Loan Agreement (the “Third Supplemental Loan Agreement”), by and between Metro Government and the Company, substantially in the

form previously provided to Metro Government in connection with this Ordinance as Exhibit B.

SECTION V: Authentication of Replacement Series 1995B Bonds. The Trustee is hereby requested and directed to authenticate and deliver the replacement Series 1995B Bonds to the registered holders of the Series 1995B Bonds on the date or dates directed by the Company.

SECTION VI: No Recourse on Obligations. No recourse under or upon any obligation, covenant, acceptance, or agreement contained in the documents governing the 1995B Bonds, as amended, in the Series 1995B Bonds, as amended, under this Ordinance or under any judgment obtained against Metro Government, 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 elected official, member, officer, employee, or agent, as such, past, present, or future, of Metro Government, the Commonwealth of Kentucky, or any agency or political subdivision thereof, whether directly or through Metro Government, or otherwise, for the payment for or to Metro Government or any receiver thereof, or for or to any holder of any Series 1995B Bond, as amended, or otherwise, of any sum that may be due and unpaid by Metro Government on such Series 1995B Bond, as amended. Any and all personal liability of every nature, whether at common law or in equity, or by statute or constitution, or otherwise, of any such elected official, member, officer, employee, or agent, 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 Metro Government or any receiver thereof, or for or to the owner or any holder of any Series 1995B Bond, as amended, or otherwise, of any

sum that may remain due and unpaid on the Series 1995B Bonds, as amended, shall be deemed to be and is hereby expressly waived and released as a condition of and consideration for the execution and delivery of the Amendment Documents, this Ordinance and the amendment of the Series 1995B Bonds.

The Series 1995B Bonds, as amended, do not constitute a general obligation, debt, or bonded indebtedness or liability of Metro Government, the Commonwealth of Kentucky, or any agency or political subdivision thereof under the constitution of the Commonwealth of Kentucky or give rise to a general obligation or liability of, or a charge against, the general credit or taxing powers of Metro Government, the Commonwealth of Kentucky, or any agency or political subdivision thereof, and the holders or owners thereof will not have the right to have taxes or excises levied by Metro Government, the Commonwealth of Kentucky, or any agency or political subdivision thereof for the payment of principal of and any premium and interest on the Series 1995B Bonds, as amended. Metro Government and the Commonwealth of Kentucky shall never be required to pay from their own funds any obligations deriving from the Series 1995 Bonds, as amended, or any other bonds issued for the benefit of the Company, and the Series 1995B Bonds, as amended, are declared to be special and limited obligations payable solely and only from the receipts derived under the Current Loan Agreement, as amended, and the trust estate created under the Current Trust Indenture, as amended, as provided in the documents herein approved.

SECTION VII: 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.

SECTION VIII: Supplements. The provisions of this Ordinance may be supplemented from time to time by ordinance or resolution of the Legislative Council of the Louisville/Jefferson County Metro Government.

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

SECTION X: Effective Date. This Ordinance shall be in full force and effect from and after its adoption and publication as provided by law.

Sonya Harward
Metro Council Clerk

David James
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: _____

**EXHIBIT A
TO
ORDINANCE**

FORM OF THIRD SUPPLEMENTAL TRUST INDENTURE

(See attachment)

**EXHIBIT B
TO
ORDINANCE**

FORM OF THIRD SUPPLEMENTAL LOAN AGREEMENT

(See attachment)