

**ORDINANCE NO. \_\_\_\_\_, SERIES 2018**

**AN ORDINANCE OF THE LOUISVILLE/JEFFERSON COUNTY METRO COUNCIL AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2018 (THE MARSHALL AT LOUISVILLE PROJECT) AND TAKING OTHER RELATED ACTION**

**SPONSORED BY: COUNCIL MEMBER MARIANNE BUTLER  
AND PRESIDENT DAVID JAMES**

Recitals

A. Louisville/Jefferson County Metro Government ("Metro Government") is a consolidated local government and political subdivision of the Commonwealth of Kentucky (the "Commonwealth") and as such is authorized by 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 industrial building revenue bonds for the purpose of defraying the cost of any "industrial building" (as defined in the Act), including specifically, as provided in KRS 103.200(1)(n), land, buildings, improvements, equipment, machinery, and other facilities suitable for any activity, including new construction, designed for revitalization or redevelopment of downtown business districts as designated by Metro Government, subject to the review and approval of the State Local Debt Officer (the "SLDO") pursuant to KRS 103.2101(1), in order to accomplish 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 revenues derived from the industrial building and do not constitute an indebtedness of Metro Government within the meaning of the Constitution and laws of the Commonwealth.

B. Aptitude 4<sup>th</sup> Street, LLC (the "Company"), a Kentucky limited liability company, has applied to Metro Government for (i) the issuance pursuant to the Act of industrial building revenue bonds of Metro Government in a principal amount not to exceed \$43,000,000 (the "Bonds") to defray the cost of acquiring a parcel of approximately 1½ acres at 2400 South 4<sup>th</sup> Street, Louisville, Kentucky and the construction, furnishing, and equipping thereon of a residential rental apartment complex to be known as The Marshall at Louisville and consisting of a 10-story, approximately 380,000 sq. ft. structure containing approximately 231 apartment units on the upper eight floors, a parking garage on the lower two floors containing approximately 232 parking spaces, and related tenant amenities, for rental primarily to students at the University of Louisville and other local postsecondary educational institutions who desire off-campus housing (the land, buildings, improvements, furniture, fixtures, and equipment comprising such project being hereinafter collectively referred to as the "Project") and (ii) the execution of a lease and financing agreement (the "Lease") by and between Metro Government, as lessor, and the Company, as lessee, pursuant to which the Company will make rental payments sufficient to pay the principal of, premium, if any, and interest on

the Bonds as the same become due and any other costs of Metro Government incurred in connection with the Bonds and the Project.

C. The Project is located within the Urban Services District of Metro Louisville. Metro Government has designated the Urban Services District as a “downtown business district” within the meaning of KRS 103.200(1)(n).

D. Pursuant to KRS 103.230(1), the Company has requested in writing of the Mayor of Metro Government that the sale of the Bonds be made privately upon a negotiated basis to Aptitude U of L, LLC (the "Bondholder"), a New Jersey limited liability company.

E. As a condition to the issuance of the Bonds, the Company and the Jefferson County School District (the “School District”) shall enter into a payment in lieu of tax agreement pursuant to which the Company shall make payments to the School District in amounts equal to and at the same times as the *ad valorem* taxes that would otherwise be due to the School District with respect to the Project.

F. In order to accomplish the public purposes of promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein, Metro Government considers it necessary and proper to (i) authorize the issuance and sale of the Bonds and the use of the proceeds thereof to defray the costs of the Project, (ii) authorize the acceptance of a Deed and a Bill of Sale from the Company conveying the Project to Metro Government, (iii) authorize the execution and delivery of the Bond Documents hereinafter identified, and (iv) take other related action.

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

1. Public Purposes. Metro Council hereby finds and declares that the issuance of the Bonds to defray the cost of the Project to be leased to the Company pursuant to the Lease, as herein provided, will further the public purposes of the Act by revitalizing and redeveloping a downtown business district designated by Metro Government, 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 Lease hereinafter identified;

B. the use of the proceeds of the Bonds to defray the costs of the Project to be leased to the Company pursuant to the Lease, as provided in the Lease; and

C. the execution and delivery on behalf of Metro Government of the Bond Documents hereinafter identified.

3. Applications to SLDO and KEDFA. Metro Government is hereby authorized to submit jointly with the Company applications to (i) the SLDO for review and approval of the Project pursuant to KRS 103.2101(1) and (ii) the Kentucky Economic Development Finance Authority ("KEDFA") for its approval pursuant to KRS 103.210(1) of reduced state ad valorem taxation of the Project under KRS 132.020(1)(b).

4. Authorization of Bond Documents. Subject to the prior approval of the SLDO pursuant to KRS 103.2101, the Mayor or Mayor *Pro Tem*, and the Metro Council Clerk or Deputy Metro Council Clerk, are hereby authorized and directed to execute and deliver on behalf of Metro Government the following documents (collectively, the "Bond Documents"), substantially in the respective forms attached hereto as exhibits, with such changes therein as the officers executing such documents on behalf of Metro Government shall approve, as shall be conclusively evidenced by their execution and delivery thereof:

A. Bond Purchase Agreement by and among Metro Government, the Company, and the Bondholder (Exhibit A)

B. Lease and Financing Agreement (the "Lease") by and among Metro Government, as lessor, the Company, as lessee, and the Bondholder (Exhibit B)

C. Payment in Lieu of Tax Agreement by and among Metro Government, the Company, and the School District (Exhibit C).

5. Acceptance of Deed and Bill of Sale to the Project. Metro Government is hereby authorized to accept a Deed and a Bill of Sale from the Company conveying the Project to Metro Government in consideration of Metro Government's issuance of the Bonds to defray the costs of the Project to be leased to the Company, substantially in the respective forms attached hereto as Exhibit D and Exhibit E, with such changes therein as the officers accepting such instruments on behalf of Metro Government shall approve, as shall be conclusively evidenced by their execution and delivery of the Bond Documents.

6. Further Acts and Deeds. The Mayor, the Mayor *Pro Tem*, the Metro Council Clerk, the Deputy Metro Council Clerk, and other appropriate officers and employees of Metro Government are hereby authorized and directed to execute, acknowledge, and deliver on behalf of Metro 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, delivering, and performing this ordinance, the Bond Documents, and the Bonds, provided that neither Metro Government nor any of its elected officials, officers, employees, or agents incur any general liability thereby.

7. Limited Liability. No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement therein contained against any past, present or future

elected official, officer, employee, or agent of Metro Government, as such, either directly or through Metro Government, under any rule of law or equity, statute or constitution, or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such elected officials, officers, employees, or agents as such shall be expressly waived and released as a condition of and consideration for the enactment of this ordinance and the issuance of the Bonds.

8. Bonds Not a General Obligation. THE BONDS SHALL NOT BE A GENERAL OBLIGATION OR INDEBTEDNESS OF METRO GOVERNMENT, THE COMMONWEALTH OR ANY AGENCY OR POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF THE CONSTITUTION AND THE LAWS OF THE COMMONWEALTH BUT SHALL BE PAYABLE SOLELY FROM THE LEASE PAYMENTS TO BE MADE BY THE COMPANY PURSUANT TO THE LEASE AND ANY SECURITY PLEDGED THEREFOR PURSUANT TO LEASE.

9. 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.

10. Prior Conflicting Actions Superseded. To the extent that any prior ordinance or resolution of Metro Government is in conflict with the provisions of this ordinance, the provisions of this ordinance shall prevail and be given effect.

11. 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 Louisville/Jefferson County Metro Council held on July 26, 2018.

GIVEN SECOND READING AND ENACTED at a duly convened regular meeting of the Louisville/Jefferson County Metro Council held on August 2, 2018, signed by the Mayor of Metro Government as evidence of his approval, attested under seal by the Metro Council Clerk, and ordered to be published in summary form, filed, and indexed as provided by law.

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H. Stephen Ott  
Metro Council Clerk

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David James  
President of the Council

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Greg Fischer  
Mayor

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Approval Date

APPROVED AS TO FORM AND LEGALITY:

Mike O'Connell  
Jefferson County Attorney

By: \_\_\_\_\_  
Matthew J. Golden  
Assistant County Attorney

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CERTIFICATION

The undersigned certifies that she is the duly appointed and acting Council Clerk of the Louisville/Jefferson County Metro Council, that the foregoing ordinance was duly adopted at a duly convened meeting of the Metro Council held on August 2, 2018, that all actions taken in connection with such ordinance were in compliance with the requirements of KRS 61.800 to 61.850, and that said ordinance is now in full force and effect, all as appears from the official records of Metro Government in my custody and under my control.

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Metro Council Clerk

(SEAL)

Dated: August \_\_, 2018

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