

ORDINANCE NO. 191, SERIES 2014

AN ORDINANCE OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE EXECUTION AND DELIVERY ON BEHALF OF METRO GOVERNMENT OF A FIRST MORTGAGE AND A SECOND MORTGAGE RELATING TO THE OUTSTANDING LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2008 (THE BELLAMY AT LOUISVILLE PROJECT)

Sponsored by: Councilmember David Tandy

WHEREAS, pursuant to the Industrial Buildings for Cities and Counties Act, as amended, Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes (the "Act"), for the public purposes of promoting the economic development of the Commonwealth of Kentucky (the "Commonwealth"), relieving conditions of unemployment, revitalizing or redeveloping of a downtown business district, and encouraging the increase of industry therein, Louisville/Jefferson County Metro Government ("Metro Government") (i) issued its Industrial Building Revenue Bonds, Series 2008 (The Bellamy at Louisville Project) in the principal amount of \$32,500,000 (the "Bonds"), (ii) sold the Bonds to Phenix Louisville Funding, L.P. (the "Bondholder"), a Georgia limited partnership, for a purchase price equal to the principal amount of the Bonds, to finance the costs of acquiring a tract of land located at 1501 Bellamy Place, Louisville, Kentucky, and the construction, furnishing and equipping thereon of a residential rental apartment community and the conversion of the existing landmark building on the site for use as a parking garage to serve the residential tenants (such land, buildings, improvements, furniture, fixtures, and equipment being hereinafter collectively referred to as the Project), and (iii) leased the Project to Phenix Louisville, L.P. (the "Lessee"), a Georgia limited partnership, pursuant to a Lease and Financing Agreement dated October 10, 2008 (the "Lease") by and among Metro Government, the Lessee, and the Bondholder, pursuant to which the Lessee is obligated to make rental payments directly to the Bondholder sufficient to pay the principal of and interest on the Bonds as the same become due and to pay any costs of Metro Government incurred in connection with the Bonds and the Project.

WHEREAS, prior to the execution and delivery of the Bonds and the Lease, the Lessee conveyed the real estate then comprising the Project to Metro Government, subject to a mortgage (the "Original Fee Mortgage") encumbering the Lessee's then fee interest in such real property. The Lessee executed the Original Fee Mortgage to Compass Bank (the "Original Mortgagee"), an Alabama banking corporation, to secure a loan in the principal amount of \$27,500,000 (the "Original Loan") to the Bondholder. The Bondholder is an affiliate of the Lessee organized to assist the Lessee in funding the costs of acquiring, constructing, furnishing, and equipping the Project. The Bondholder used the Original Loan and an additional amount of \$5,000,000 of its own capital to purchase the Bonds and thereby finance the Project.

WHEREAS, immediately after the execution and delivery of the Lease, the Lessee executed and delivered to the Original Mortgagee a leasehold mortgage (the "Original Leasehold Mortgage") encumbering its leasehold interest in the Project to further secure the Original Loan.

WHEREAS, the Bondholder and the Lessee now desire to refinance the Original Loan with a loan in the principal amount of \$16,250,000 (the "Loan") from Voya Retirement Insurance and Annuity Company (the "Mortgagee"), a Connecticut corporation. As a condition to making the Loan, the

Mortgagee requires that there be executed and delivered (1) a First Fee and Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing (the "First Mortgage") by and among the Lessee, as leasehold mortgagor, Metro Government, as fee mortgagor, and the Mortgagee, as mortgagee, whereby the Lessee and Metro Government grant a first mortgage lien on their respective interests in the Project to secure the Loan and (2) a Second Fee and Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing (the "Second Mortgage") by and among the Lessee, as leasehold mortgagor, Metro Government, as fee mortgagor, and the Mortgagee, as mortgagee, whereby the Lessee and Metro Government grant a second mortgage lien on their respective interests in the Project to secure a loan made by the Mortgagee to an affiliate of the Bondholder and an affiliate of the Lessee and which the Mortgagee requires, as a condition to making the Loan, to be cross-collateralized with the Loan.

WHEREAS, the First Mortgage and the Second Mortgage (collectively, the "Mortgages") provide that, notwithstanding any other provision thereof, Metro Government and its elected officials, officers, employees, and agents shall have no personal liability under the Mortgages and that the Mortgagee shall have no recourse to any assets of Metro Government other than its fee interest in the Project. The Mortgages further provide that the Lessee shall hold harmless and indemnify Metro Government and its elected officials, officers, employees, and agents from all cost, liability, and expense relating to or arising from the execution, performance, or enforcement of the Mortgages. In addition, pursuant to the Lease, Metro Government and its elected officials, officers, employees, and agents have no personal liability and Metro Government's liability is limited to its fee interest in the Project. The Lessee and the Mortgagee have advised Metro Government that its execution and delivery of the Mortgages will not subject Metro Government or its elected officials, officers, employees, and agents to any personal liability or expense and that Metro Government's liability under the Mortgages will continue to be limited to its fee interest in the Project pursuant to the Lease. **THE BONDS THAT WERE ISSUED WITH RESPECT TO THIS PROJECT, AS WELL AS THE MORTGAGES AND THE OBLIGATIONS THEREUNDER DO NOT REPRESENT OR CONSTITUTE AN INDEBTEDNESS OF LOUISVILLE METRO GOVERNMENT WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE COMMONWEALTH OR A PLEDGE OF THE FAITH AND CREDIT OF LOUISVILLE METRO GOVERNMENT. LOUISVILLE METRO GOVERNMENT SHALL NEVER BE REQUIRED TO PAY FROM ITS OWN FUNDS ANY OBLIGATIONS DERIVING FROM THE ISSUANCE OF THE BONDS ASSOCIATED WITH THIS PROJECT NOR FROM THE OBLIGATIONS UNDER THE MORTGAGES AND/OR LEASE, EXCEPT ITS FEE INTEREST IN THE PROJECT AS SET FORTH IN THE LEASE.** Metro Government is therefore willing to execute and deliver the Mortgages.

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

Section 1. Public Purposes. Metro Council hereby finds and declares that the execution and delivery of the Mortgages as hereinafter authorized will further the public purposes of the Act by facilitating the refinancing of the funding for the Project and thereby promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein.

Section 2. Authorization of Mortgages. The Mayor is hereby authorized and directed to execute and deliver on behalf of Metro Government the Mortgages in substantially the respective forms thereof attached hereto as exhibits, with such changes therein as the County Attorney shall approve, as shall be conclusively evidenced by the Mayor's execution thereof.

Section 3. Further Acts and Deeds. The Mayor, the Metro Council Clerk, the County Attorney, 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 executing and delivering the Mortgages, provided that neither Metro Government nor any of its elected officials, officers, employees, or agents incur any liability thereby.

Section 4. Effective Date. This ordinance shall be in full force and effect upon its passage and approval.

[Signatures Appear on Following Page]

INTRODUCED, SECONDED, AND GIVEN FIRST READING at a duly convened regular meeting of the Louisville/Jefferson County Metro Council held on NOVEMBER 20, 2014.

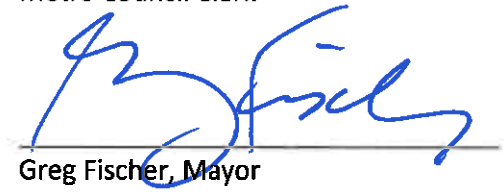
GIVEN SECOND READING AND ADOPTED at a duly convened regular meeting of the Louisville/Jefferson County Metro Council held on DECEMBER 11, 2014, signed by the Mayor of Metro Government as evidence of his approval, attested under seal by the Metro Council Clerk, and ordered to be filed and indexed as provided by law.



H. Stephen Ott
Metro Council Clerk



Jim King
President of the Metro Council



Greg Fischer, Mayor

Approved: 12/15/14
Date

APPROVED AS TO FORM AND LEGALITY: MS

Michael J. O'Connell
Jefferson County Attorney

By: 

Assistant County Attorney



CERTIFICATION OF THE CLERK

The undersigned certifies that he is the duly appointed and acting 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 DECEMBER 11, 2014, 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.



H. Stephen Ott
Metro Council Clerk

(SEAL)

Dated: December 18, 2014