

ORDINANCE NO. **BG2019 - 37**

ORDINANCE PROVIDING FOR ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS

AN ORDINANCE OF THE CITY OF BOWLING GREEN, KENTUCKY, (i) AUTHORIZING THE ISSUANCE OF ITS INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2019 (WKU STUDENT LIFE FOUNDATION, INC. PROJECT), IN ONE OR MORE SERIES, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$42,000,000, THE PROCEEDS OF WHICH SHALL BE LOANED TO THE WKU STUDENT LIFE FOUNDATION, INC. TO (i) FINANCE CAPITAL ADDITIONS AND IMPROVEMENTS AND (ii) TAKE OTHER RELATED ACTION

WHEREAS, the City of Bowling Green, Kentucky (the "City") is a city and municipal corporation and existing under the Constitution and laws of the Commonwealth of Kentucky (the "Commonwealth") and as such is authorized under the Industrial Buildings for Cities and Counties Act, Sections 103.200 to 103.285 of the Kentucky Revised Statutes, as amended (the "Act"), to issue its industrial building revenue bonds and loan the proceeds thereof to any person to finance or refinance 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 City within the meaning of the Constitution and laws of the Commonwealth; and,

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WHEREAS, WKU Student Life Foundation, Inc. (the "Foundation"), is a nonstock, nonprofit corporation which is organized and existing under the laws of the Commonwealth for the purpose, among others, of providing support to Western Kentucky University (the "University"); and,

WHEREAS, the Foundation has applied to the City for the issuance pursuant to the Act of the City's Industrial Building Revenue Bonds, Series 2019 (WKU Student Life Foundation, Inc.), in one or more series and in an aggregate principal amount not to exceed \$42,000,000 (the "Bonds") and the loan of the proceeds thereof to the Foundation to finance the construction, furnishing and equipping of two new student residence halls within the boundaries of the City to be owned and used by the Foundation (the "Project"); and,

WHEREAS, the Foundation has requested of the Board of Commissioners that the sale of the Bonds be made privately upon a negotiated basis to Regions Capital Advantage, Inc. (the "Lender"); and,

WHEREAS, prior to the enactment of this ordinance and following published notice, the Board of Commissioners 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 from the proceeds thereof; and,

WHEREAS, 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, the City considers it necessary and proper to [i] authorize the issuance of the Bonds, in one or more series, and the loan of the proceeds thereof to the Foundation to finance the costs of the Project, [ii] authorize the execution and delivery on behalf of the City of the documents hereinafter identified and the sale of the Bonds as hereinafter provided, and [iii] take other related action.

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF BOWLING GREEN, KENTUCKY, AS FOLLOWS:

1. Public Purposes. The Board of Commissioners hereby finds and declares that the issuance of the Bonds and the loan of the proceeds thereof to the Foundation to finance the costs of the Project as provided in the Loan Agreement hereinafter identified 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 Trust Indenture, which Bonds (i) shall be in a principal amount not to exceed Forty-Two Million Dollars (\$42,000,000), (ii) shall bear interest at fixed rate or rates as provided in the Trust Indenture hereafter identified and as approved as provided in Section 7 hereof, but in no event shall the interest rate exceed ten percent (10%) per annum, and (iii) shall have the maturities and be subject to redemption at the times and in the manner set forth in the Trust Indenture and as approved as provided in Sections 7 and 8 hereof; and

B. The loan of the proceeds of the Bonds to the Foundation to finance the costs of the Project, as provided in the Loan Agreement hereinafter identified.

3. Bonds are Not a Debt of the City. IT IS HEREBY FOUND, DECLARED, AND DETERMINED THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE CITY; THAT NEITHER THE BONDS NOR THE INTEREST THEREON SHALL CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE CITY OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER; BUT THAT THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE BY A PLEDGE OF AMOUNTS

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TO BE PAID BY THE FOUNDATION UNDER THE LOAN AGREEMENT AND PURSUANT TO AMOUNTS MADE AVAILABLE UNDER THAT CERTAIN MORTGAGE AND SECURITY AGREEMENT AND FROM THE DEBT SERVICE RESERVE FUND ESTABLISHED THEREFOR; THAT NO PART OF SAID COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE CITY; AND THAT NO CITY FUNDS SHALL BE EXPENDED ON THE PROJECT EXCEPT SUCH FUNDS AS ARE DERIVED FROM THE PROCEEDS OF THE BONDS.

4. Authorization of Trust Indenture. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver on behalf of the City a Trust Indenture (the "Trust Indenture") between the City and Regions Bank, as trustee (the "Trustee"), substantially in the form attached hereto as Exhibit A, with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval.

5. Authorization of Loan Agreement. The Mayor and the City Clerk are hereby authorized and directed to execute and deliver on behalf of the City a Loan Agreement (the "Loan Agreement") between the City and the Foundation substantially in the form attached hereto as Exhibit B, with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval.

6. Authorization of Tax Compliance Agreement. The Mayor is hereby authorized and directed to execute and deliver on behalf of the City a Tax Compliance Agreement (the "Tax Compliance Agreement") between the City, the Foundation and the Trustee substantially in the form attached hereto as Exhibit C, with such changes as the Mayor shall approve, the execution thereof to constitute conclusive evidence of such approval.

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7. Authorization to Approve Interest Rate. The Mayor is hereby authorized to approve on behalf of the City the interest rates to be borne by the Bonds; provided, however, that such interest rate shall not exceed ten percent (10%) per annum and are acceptable to the Foundation.

8. Authorization to Approve Other Terms of Bonds. The Mayor is hereby authorized to approve on behalf of the City the final principal amounts, terms, and maturity schedule of the Bonds, provided that (i) the final principal amount of the Bonds shall not exceed Forty-Two Million Dollars (\$42,000,000), (ii) the final maturity of any of the Bonds shall not extend beyond thirty years from the date thereof and (iii) the interest rate or rates and the maturity schedule of the Bonds is approved by the Foundation and the Lender.

9. Further Acts and Deeds. The Mayor, the City Clerk, the City Manager, the City Attorney, and other appropriate officers and employees of the City are hereby authorized and directed to execute, acknowledge, and deliver on behalf of the City 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 desirable for entering into and effecting this Bond Ordinance, the Loan Agreement, the Trust Indenture, the Tax Compliance Agreement, and the Bonds, provided that neither the City nor any of its elected officials, officers, employees, or agents incur any 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 municipal order, ordinance, resolution, order, or part thereof conflicts 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.

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13. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on August 20, 2019, and given final reading on September 3, 2019, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: September 3, 2019

APPROVED: Lee Panyin
Mayor Pro Tem, Chairman of Board of Commissioners

ATTEST: Ashley Jackson
City Clerk


SPONSORED BY: Jeffery B. Meisel, City Manager, 08/14/2019, 10:30 a.m.

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CERTIFICATION

The undersigned certifies that she is the duly appointed City Clerk of the City of Bowling Green, Kentucky, that the foregoing ordinance was duly enacted at a regular meeting of the Board of Commissioners held on September 3, 2019, on the same occasion signed by the Mayor, Chairman of the Board of Commissioners, duly filed, recorded, and indexed in my office, and that all action taken in connection with such ordinance were in compliance with the requirements of KRS 61.805 to 61.850, and that said ordinance is now in full force and effect, all as appears from the official records of said Board of Commissioners in my possession and under my control.

IN TESTIMONY WHEREOF, witness my signature as City Clerk this 3rd day of September, 2019.



City Clerk