

MARSHALL COUNTY FISCAL COURT

ORDINANCE NO. 2018-12

AN ORDINANCE AUTHORIZING THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE REFUNDING BONDS, SERIES 2018 (KENTUCKY BAPTIST ASSEMBLIES, INC. PROJECT) OF THE COUNTY OF MARSHALL, KENTUCKY, IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,600,000, THE PROCEEDS OF WHICH SHALL BE LOANED TO KENTUCKY BAPTIST ASSEMBLIES, INC. TO REFINANCE OUTSTANDING INDUSTRIAL BUILDING REVENUE BONDS ORIGINALLY ISSUED TO FINANCE AND REFINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF FACILITIES SUITABLE FOR USE IN FURTHERANCE OF THE EDUCATIONAL PURPOSES OF KENTUCKY BAPTIST ASSEMBLIES, INC. AND LOCATED WITHIN THE COUNTY OF MARSHALL, KENTUCKY AND THE COUNTY OF SHELBY, KENTUCKY; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT, TAX REGULATORY AGREEMENT, MORTGAGE AND ASSIGNMENTS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the County of Marshall, Kentucky (the "Issuer"), by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, as amended, is authorized and empowered among other things (a) to make a loan to assist in defraying the cost of financing or refinancing the acquisition, construction, installation and equipping of an "industrial building", as defined in § 103.200 of the Kentucky Revised Statutes, within the boundaries of the Issuer, (b) to issue and sell its negotiable revenue bonds to provide moneys for such loan and (c) to enact this Ordinance and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, public agencies are authorized under §§ 65.210 through 65.300, inclusive, of the Kentucky Revised Statutes, as amended (the "Interlocal Cooperation Act"), to cooperate and act jointly in exercising any and all powers, privileges, and authority capable of exercise by the public agencies in their respective individual capacities; and

WHEREAS, the Issuer and the County of Shelby, Kentucky ("Shelby County" and together with the Issuer, the "Governmental Agencies") previously authorized the issuance of the Issuer's \$5,750,000 Industrial Building Revenue Refunding and Improvement Bonds, Series 2013 (Kentucky Baptist Assemblies, Inc. Project) (the "Prior Bonds"), the proceeds of which were loaned to Kentucky Baptist Assemblies, Inc., a Kentucky nonprofit corporation (the "Borrower") for the purpose of financing and refinancing the Projects, as hereinafter defined; and

WHEREAS, the Governmental Agencies heretofore entered into an Interlocal Cooperation Agreement dated as of October 15, 2013 (the "Interlocal Agreement") to provide for the financing and refinancing of projects and the issuance of bonds for the benefit of the Borrower, including the refinancing of the Prior Bonds; and

WHEREAS, this Fiscal Court (the "Issuing Authority"), acting in accordance with the Interlocal Agreement, has determined and does hereby confirm that the Projects to be refinanced are being utilized in furtherance of the educational purposes of the Borrower, which Projects have and will promote the welfare of the people of the Commonwealth of Kentucky, promote reconversion to a peacetime economy, relieve conditions of unemployment, aid in the rehabilitation of returning veterans, encourage the increase of industry in the Commonwealth of Kentucky, promote the economic welfare of the people of the Governmental Agencies, create or preserve jobs and employment opportunities and assist in the development of industrial activities to the benefit of the people of the Governmental Agencies, and that the Issuer, by assisting with the refinancing of the Projects through the issuance of revenue bonds in an aggregate principal amount not to exceed \$4,600,000 (the "Series 2018 Bonds") will be acting in a manner consistent with and in furtherance of the provisions of the Interlocal Agreement and the laws of the Commonwealth of Kentucky, particularly Chapter 103 of the Kentucky Revised Statutes (the "Act");

NOW THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MARSHALL, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

SECTION 1. Definitions. All defined terms used herein and those not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement (the "Loan Agreement") between the Issuer and the Borrower, relating to the Series 2013 Bonds.

Any reference herein to the Issuer or the Issuing Authority, or to any officers or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Ordinance.

SECTION 2. Determination of Issuer. Pursuant to the Act, this Issuing Authority hereby finds and determines that the Project is an "industrial building" as defined in the Act and is consistent with the provisions of §§ 103.200 to 103.285 of the Act; that such industrial building consists of an industrial building suitable for use by the Borrower in furtherance of the educational purposes of the Borrower, as set forth in § 103.200(1)(d) of the Act; and that such industrial building is to be refinanced with the proceeds of the Series 2018 Bonds pursuant to the provisions of §§ 103.200 to 103.285 of the Act.

The Issuing Authority, as the "applicable elected representative" of the Issuer for purposes of § 147(f) of the Code, hereby approves the issuance of the Series 2013 Bonds in the maximum aggregate face amount of \$4,600,000, the proceeds of which will be used to refinance the outstanding Prior Bonds, the proceeds of which in turn financed and refinanced, the acquisition, construction, installation and equipping of the Project described as follows:

The Project consists of the acquisition, construction and equipping of new educational facilities located at: (i) the Jonathan Creek Camp and Conference Center, 3043 Beal Rd, Hardin, KY 42048, including but not limited to, property adjacent existing facility, two residential lodges, a 10,500 sq. ft. auditorium, high ropes recreation course; and (ii) Cedarmore Camp and Conference Center, 3083

Cedarmore Rd., Bagdad, KY 40003, including but not limited to, a 8810 square foot Dining Hall, 5490 square foot Welcome Center, maintenance building, room renovation and exterior renovation to Boone Lodge, Fields Cabin and Wallace Lodge, two residential lodges, and a water slide, which Project is and will be owned and operated by Kentucky Baptist Assemblies, Inc. and used in furtherance of its educational purposes.

The Issuer further determines and does hereby confirm that the Series 2018 Bonds are "qualified tax-exempt obligations" within the meaning of § 265(b)(3) of the Code. In compliance with § 265(b)(3)(D) of the Code, the Issuer hereby certifies that it will not designate more than \$10,000,000 of "qualified tax-exempt obligations" issued by the Issuer in calendar year 2018 as "such qualified tax-exempt obligations." The Issuer hereby further certifies that the Issuer (including all subordinate entities of the Issuer) does not reasonably anticipate issuing more than \$10,000,000 of "qualified tax-exempt obligations" during calendar year 2018.

SECTION 3. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Series 2013 Bonds for the purposes of making a loan to the Borrower to finance and refinance the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Loan Agreement. The Series 2018 Bonds shall be designated "Industrial Building Revenue Refunding Bonds, Series 2018 (Kentucky Baptist Assemblies, Inc. Project)." The maximum amount of Series 2018 Bonds to be outstanding at any one time is \$4,600,000.

SECTION 4. Terms and Execution of the Bonds. The Series 2018 Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Bond Purchase Agreement hereinafter defined. The Series 2018 Bonds shall mature as provided in the Bond Purchase Agreement, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Bond Purchase Agreement. This Issuing Authority hereby fixes and establishes the interest rate in effect from time to time on the Series 2018 Bonds in the manner and pursuant to the provisions of the Bond Purchase Agreement. The Series 2018 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Judge/Executive and Fiscal Court Clerk, and the seal of the Issuer may be impressed or printed on the Series 2018 Bonds. In case any officer whose signature or a facsimile thereof shall appear on the Series 2018 Bonds shall cease to be such officer before the issuance or delivery of the Series 2018 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Series 2018 Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Bond Purchase Agreement, is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Bond Purchase Agreement, in an aggregate principal not to exceed \$4,600,000, shall represent the approved form of Series 2018 Bonds of the Issuer.

SECTION 5. Sale of the Bonds. In accordance with a written request, addressed to the Judge/Executive from the Borrower, that the sale of the Series 2018 Bonds be made privately upon a negotiated basis, the Series 2018 Bonds are hereby awarded to U.S. Bank, National Association (the "Purchaser") at the purchase price set forth, and on the terms and conditions described, in the

Bond Purchase Agreement with respect to the Series 2018 Bonds (the "Bond Purchase Agreement") among the Issuer, the Borrower, the Purchaser and U.S. Bank, National Association, as servicing agent (the "Servicing Agent"). The Judge/Executive and Fiscal Court Clerk are authorized and directed to make on behalf of the Issuer the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Series 2018 Bonds to the Purchaser, and to take all steps necessary to effect due execution and delivery to the Purchaser of the Series 2018 Bonds (or temporary bonds delivered in lieu of definitive Series 2018 Bonds until their preparation and delivery can be effectuated) under the terms of this Ordinance, the Bond Purchase Agreement and the Agreement. It is hereby determined that the price for and the terms of the Series 2018 Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the Issuer and consistent with all legal requirements.

SECTION 6. Arbitrage Provisions. The Issuer will restrict the use of the proceeds of the Series 2018 Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Series 2018 Bonds are delivered to the Purchaser, so that they will not constitute arbitrage bonds under § 148 of the Code. The Judge/Executive or any other officer having responsibility with respect to the issuance of the Series 2018 Bonds, is authorized and directed, alone or in conjunction with any of the foregoing or with any other officer, employee, consultant or agent of the Issuer, to deliver a certificate for inclusion in the transcript of proceedings for the Series 2018 Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said § 148 of the Code and regulations thereunder.

SECTION 7. Authorization of Agreement, Mortgage, Assignment, Bond Purchase Agreement, Tax Regulatory Agreement and All Other Documents to be Executed by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Series 2018 Bonds as the same shall become due and payable, the Judge/Executive and Fiscal Court Clerk are authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Loan Agreement, Tax Regulatory Agreement, Mortgage, Assignment and Bond Purchase Agreement in substantially the forms submitted to the Issuer, which are hereby approved, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer. The approval of such changes by said officers, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of the Loan Agreement, Mortgage, Assignment, Tax Regulatory Agreement and Bond Purchase Agreement by such officers.

The Judge/Executive and Fiscal Court Clerk are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates, deeds and other instruments that may be necessary or appropriate in the opinion of Dinsmore & Shohl LLP, Bond Counsel, in order to effect the issuance of the Series 2018 Bonds and the intent of this Ordinance. The Fiscal Court Clerk, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the Series 2018 Bonds, along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Series 2018 Bonds.

SECTION 8. Covenants of Issuer. In addition to other covenants of the Issuer in this Ordinance, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from the sources herein or in the Bond Purchase Agreement provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Series 2018 Bonds on the dates, at the places and in the manner provided herein, in the Bond Purchase Agreement and in the Series 2018 Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Series 2018 Bonds, Loan Agreement, Bond Purchase Agreement, Tax Regulatory Agreement, Mortgage and Assignment, and in all proceedings of the Issuer pertaining to the Series 2018 Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Series 2018 Bonds will be, duly authorized by the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the Series 2018 Bonds and to execute the Loan Agreement, the Assignment, the Tax Regulatory Agreement, the Mortgage and the Bond Purchase Agreement, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Series 2018 Bonds in the manner and to the extent herein and in the Bond Purchase Agreement set forth; that all actions on its part for the issuance of the Series 2018 Bonds and execution and delivery of the Loan Agreement, the Assignment, the Bond Purchase Agreement, the Mortgage, the Tax Regulatory Agreement and all other documents to be executed by it in connection with the issuance of the Series 2018 Bonds, have been or will be duly and effectively taken; and that the Series 2018 Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Ordinance, the Assignment, the Loan Agreement, the Mortgage, the Bond Purchase Agreement, the Tax Regulatory Agreement and each Series 2018 Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Series 2018 Bonds, is binding upon each officer of the Issuer as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the Issuer and of its officers and employees undertaken pursuant to such proceedings for the Series 2018 Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

SECTION 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Series 2018 Bond, or in the Loan Agreement, the Assignment, the Mortgage, the Tax Regulatory Agreement or the Bond Purchase Agreement, or under any judgment obtained against the Issuer 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 officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Series 2018 Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Series 2018 Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, 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 the Issuer or any receiver thereof, or for or to the owner or any holder of any Series 2018 Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2018 Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement, Assignment, the Mortgage, the Tax Regulatory Agreement and the Bond Purchase Agreement and the issuance of the Series 2018 Bonds.

SECTION 10. No Debt or Tax Pledge. The Series 2018 Bonds do not constitute an indebtedness of the Issuer within the meaning of the Constitution of the Commonwealth of Kentucky. The Series 2018 Bonds shall be payable solely from the revenues and security interests pledged for their payment as provided in the Series 2018 Bonds, and neither moneys raised by taxation nor any other general or special revenues of the Issuer shall be obligated or pledged for the payment of principal of, premium (if any) or interest on the Series 2018 Bonds.

SECTION 11. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 12. Open Meetings Law. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Issuing Authority, and that all deliberations of this Issuing Authority and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements.

SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation and publication of a summary hereof.

INTRODUCED, SECONDED AND GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE FISCAL COURT OF THE COUNTY OF MARSHALL, KENTUCKY, HELD ON OCTOBER __, 2018.

GIVEN SECTOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE FISCAL COURT OF THE COUNTY OF MARSHALL, KENTUCKY, held on _____, 2018, on the same occasion signed by the Judge/Executive as evidence of his approval, attested by the Fiscal Court Clerk, ordered and published and filed as required by law, and declared to be in full force and effect from and after its adoption and approval according to law.

Approved:

By: _____

Judge/Executive

ATTEST:

Fiscal Court Clerk

CERTIFICATE

I, Desiree Hermosillo, Fiscal Court Clerk of the County of Marshall, Kentucky, do hereby certify that the above is a true copy of an ordinance, as adopted by the Fiscal Court at a meeting held on _____, 2018, whereat a quorum was present and voting, all as shown by the records of said County in my office.

By: _____
Fiscal Court Clerk

Dated: November ___, 2018

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