

ORDINANCE NO. 95-01_____

ORDINANCE OF THE FISCAL COURT OF MARSHALL COUNTY,
KENTUCKY, AUTHORIZING AND PROVIDING FOR THE
ISSUANCE OF THE COUNTY OF MARSHALL/CITY OF BENTON,
KENTUCKY INDUSTRIAL BUILDING REVENUE BONDS
(MID-AMERICA HOMES PROJECT) SERIES 1995

BE IT ORDAINED by the Fiscal Court of Marshall County, KY
that:

WHEREAS, the City of Benton, Kentucky (the "city"), a fourth class city of the Commonwealth of Kentucky, and the County of Marshall, Kentucky (the "county"), a political subdivision of the Commonwealth of Kentucky are authorized and empowered by Sections 103.200 to 103.286, inclusive, of the Kentucky Revised Statutes , as amended (the "Act"), to issue bonds and use the proceeds of the bonds for the benefit of any person to defray the costs of a "building" project as defined in the Act; and

WHEREAS, Mid-America Homes, Inc., a Kentucky corporation (the "Borrower"), has offered to the County and the City to acquire, construct and equip a "building" project to be constructed on a site described in the Lease Agreement (hereinafter identified), if the County and the City will agree to issue \$2,000,000 of Industrial Building Revenue Bonds (Mid-America Homes Project) Series 1995 (the "Bonds"), pursuant to the Act, such "building" project to consist of the acquisition, construction, and equipping of a manufacturing facility for prefabricated housing units located in the Benton-Marshall County Industrial Park and the acquisition

of certain machinery and equipment to be installed in such facility (collectively the "Project"), which will tend to relieve existing conditions of unemployment and result in the employment of a substantial number of workers and promote the economic development of the County, the City and the surrounding area; and

WHEREAS, the County and the City have invited the Borrower to proceed with the proposed Project; and

WHEREAS, under the terms of a proposed Lease Agreement (hereinafter identified), the Borrower has agreed to pay the County and the City sufficient amounts in ample time to pay the principal and interest requirements of the Bonds, and which payments shall be pledged, together with the Lease Agreement itself, as security for the payment of the principal of and interest on the Bonds; and

WHEREAS, the County has found that the operation of the proposed Project will tend to relieve existing conditions of unemployment in the County, the City and the surrounding area and will otherwise promote the general welfare and economic development of the County and all of its citizens and inhabitants;

BE IT ORDAINED BY THE FISCAL COURT OF MARSHALL COUNTY, KENTUCKY:

1. AUTHORIZATION OF BONDS. For the purpose of paying the costs, not otherwise provided, of the Project, the County, in conjunction with the City, hereby authorizes and approves the issuance of \$2,000,000 of Industrial Building Revenue Bonds (Mid-America Homes Project) Series 1995 (the "Bonds") which aggregate amount of \$2,000,000 shall be the maximum amount of such Bonds to be outstanding at any one time, issued as fully registered Bonds,

in said amount, which Bonds may be exchanged for and/or reissued in the domination of \$5,000 each or any integral multiple thereof, as more fully provided for in the Mortgage Deed of Trust hereinafter approved. The Bonds shall bear interest from, at such rates and shall be payable in such amounts and at such times as specified in the Bond Purchase Agreement (hereinafter approved), all as agreed upon by the County, the City, the Borrower and the Underwriter (hereinafter identified), pursuant to Section 103.230 of the Kentucky Revised Statutes; provided, however, that the maximum rate of interest on the Bonds shall not exceed fifteen percent (15%) per annum.

2. APPROVAL AND AUTHORIZATION OF EXECUTION OF VARIOUS DOCUMENTS; LEASE AGREEMENT; TRUST MORTGAGE; BOND PURCHASE AGREEMENT; OFFICIAL STATEMENT. The following documents in the respective forms attached to this Ordinance, are hereby approved, subject to such minor changes, changes of dates, intersections or omissions as may be approved by the County Judge Executive, such approval to be conclusively evidenced by the execution of said documents, in order to effectuate the purposes of this Ordinance; and the County Judge Executive hereby authorized to execute and acknowledge same for and on behalf of the County; and the County Clerk is authorized to attest same. Said documents are hereby ordered to be filed in the office of the County Clerk, labelled respectively, Exhibits A through D, as identified below, and each of said documents is ordered to be recorded with this Ordinance in the official records of the County:

(a) The Lease Agreement (the "Lease Agreement"), to be dated

as of January 1, 1995, between the County and the Borrower.
(Exhibit A)

(b) The Mortgage Deed of Trust (the "Mortgage"), to be dated as of January 1, 1995, between the County and Bank of Benton, Benton, Kentucky, Trustee (the "Trustee"). (Exhibit B)

(c) The Bond Purchase Agreement (the "Bond Purchase Agreement") among the County, the City and J.J.B. Hilliard, W.L. Lyons, Inc. (the "Underwriter"), and also approved by the Borrower, providing for the sale of the Bonds to the Underwriter at the aggregate price, at the interest rates stated therein, and upon the respective terms and conditions set forth in said Bond Purchase Agreement. The approval of said Bond Purchase Agreement by the Borrower and a separate letter from the Borrower to the Cities evidences the request of the Borrower that the Bonds be sold at private sale upon a negotiated basis, as authorized by KRS 103.230.
(Exhibit C)

(d) The Official Statement used by the Underwriter to market the Bonds. (Exhibit D)

3. DISBURSEMENT OF PROCEEDS OF BONDS. The Borrower and the Trustee are authorized to carry out the procedures specified in the Mortgage for the financing of the Project and for the payment from time to time of the costs of such financing and related expenses as same progresses. Such procedures shall include reimbursement to the Borrower for advances made by the Borrower toward the cost of the Project in contemplation of the issuance of the Bonds, in reliance on the commitment of the City pursuant to discussions between officials of the City and the Borrower.

4. REVENUES OF THE PROJECT. The revenues of the Project, including the lease payments to be received by the County and the City under the terms of the Lease Agreement, are determined to a sufficient to pay the principal of and interest on the Bonds, together with the fees and expenses of the Trustee, as the same become due and payable; and all of said payments and any and all other payments, revenues and proceeds received under the Lease Agreement in connection with the Project, together with the Lease Agreement, are hereby pledged to secure all such payments, and in addition, for such other purposes as are more fully specified in the Mortgage.

5. DESIGNATION OF TRUSTEE. Bank of Benton, Benton, Kentucky, is hereby designated as the corporate trustee under the Mortgage and also as the paying agent, tender agent and bond registrar for the Bonds.

6. EXECUTION OF BONDS. The Bonds shall be executed in the manner provided in the Mortgage and shall be delivered to the Trustee for proper authentication and delivery by the Trustee to the Underwriter, with instructions to that effect, as provide in the Mortgage.

7. JUDGE/EXECUTIVE AND OTHER COUNTY OFFICIALS TO TAKE ANY OTHER NECESSARY ACTION. Pursuant to the Constitution and Laws of the Commonwealth of Kentucky, Judge/Executive, the County Court Clerk and all other appropriate officials of the County are hereby authorized and directed to take any and all further action and to execute and deliver all other documents as may be reasonably necessary to effect the issuance and delivery of the Bonds.

8. LIMITED OBLIGATION. The Bonds shall not be a general obligation of the County but a limited obligation payable solely from the amounts payable under the Lease Agreement and other revenues of the Project. Neither the County, the City, the Commonwealth of Kentucky nor any other political subdivision of the Commonwealth shall be obligated to pay the principal of or interest on such Bonds or other costs incident thereto except from the revenues of the Project pledged therefore. Neither the faith and credit nor the taxing power of the County, the City, the Commonwealth or any political subdivision of the Commonwealth is pledged to the payment of the principal of, or premium, if any, or interest on the bonds or other costs incident thereto.

9. ELECTION TO ISSUE THE BONDS PURSUANT TO SECTION 144(a) (4) OF THE INTERNAL REVENUE CODE. The Judge/Executive hereby affirmatively makes an election to issue the Bonds in an amount in excess of \$1,000,000 and not exceeding \$10,000,000, pursuant to Section 144 (a) (4) of the Internal Revenue Code of 1986, as amended (the "Code"), and to file or cause to be filed the appropriate Statement of Election with the Trustee. The Judge/Executive appropriate Statement of Election with the Trustee. The Judge/Executive is entitled to rely upon information furnished by the Borrower in making such election unless the mayor shall be aware of any fact or circumstance which would cause such Statement of Election to be questioned.

10. COMPLIANCE WITH FEDERAL ARBITRAGE REQUIREMENTS. The County has approved the covenant in the Mortgage that sums derived from the proceeds of the Bonds shall not be invested in investments

in a manner which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 the Code and the applicable Regulations thereunder.

Prior to or at the time of delivery of the Bonds, the Judge/Executive and/or County Treasurer, who are jointly and severally charged with the responsibility for the issuance of the bonds, are authorized to execute the appropriate certification with reference to the matters required and contemplated by the Code and the applicable Regulations, setting out all known and contemplated facts concerning the anticipated construction, expenditures and investments, including the execution of necessary and/or desirable certifications contemplated by the Code and the applicable Regulations in order to assure that interest on the Bonds will be excluded from gross income for Federal income tax purposes and that the Bonds will not be treated as "arbitrage bonds". Such officers are entitled to rely upon information furnished by the Borrower in making such certifications and representations unless they, or either of them, shall be aware of any fact or circumstances which would cause such certifications or representations to be questioned.

Notwithstanding anything herein to the contrary, neither the County nor any official of the County shall be liable for any act or omission of the County or such official, to the Borrower, the Trustee, or any owner of the Bonds for failure to comply with any covenant or certifications herein made or made in any of the documents relating to the issuance of the Bonds and the Lease Agreement and the Mortgage shall so provide.

11. PUBLIC APPROVAL REQUIREMENT. The enactment of this Ordinance shall be constructed to constitute the public approval requirements of Section 147(f) of the Code.

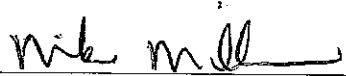
12. SEVERABILITY CLAUSE. If any section, paragraph, clause or provision of this Ordinance shall be ruled by any court of competent jurisdiction to be invalid, the invalidity of such section, paragraph, clause or provisions shall not affect any of the remaining provisions hereof.

13. CAPTIONS OF CLAUSES. The captions of this Ordinance are for convenience only and are not to be construed as part of this Ordinance nor as defining or limiting in any way the scope or intent of the provisions hereof.

14. PROVISIONS IN CONFLICT REPEALED. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Ordinance, are, to the extent of such conflict, hereby repealed.

15. EFFECTIVE DATE OF ORDINANCE. This Ordinance shall take effect from and after its enactment, adoption, approval and publication of Notice of Enactment and Summary hereof (including the title and a summary of this Ordinance), which publication is hereby approved and ordered to be made by the County Clerk, pursuant to KRS Chapter 83A and KRS 103.210.

Passed this the 17th day of January, 1995.



MIKE MILLER
MARSHALL COUNTY JUDGE/EXECUTIVE

ATTEST:

James English
JAMES ENGLISH
MARSHALL COUNTY COURT CLERK

FIRST READING: 1-3-95
SECOND READING: 1-17-95
PUBLICATION: 2-1-95

VOTE

AYE

NAY

JEROME (HOPPY) HICKS
GORDON HARGROVE
JERRY ENGLISH

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<u> ✓ </u>	<u> </u>
<u> ✓ </u>	<u> </u>
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