

BOND ORDINANCE

AN ORDINANCE OF THE FISCAL COURT OF THE COUNTY OF MARSHALL RELATING TO AUTHORIZATION AND PROVISION FOR THE ISSUANCE OF THE CITY OF BENTON/COUNTY OF MARSHALL, KENTUCKY INDUSTRIAL BUILDING REFUNDING REVENUE BONDS (FLEETWOOD PROJECT) SERIES 1998.

WHEREAS, the City of Benton, Kentucky (the "City"), a ~~third~~ 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 ("Mid-America"), acquired, constructed and equipped a manufacturing facility for pre-fabricated housing units located in the Benton-Marshall County Industrial Park (the "Project") with the assistance of the City and the County pursuant to the issuance of \$2,000,000 of Industrial Building Revenue Bonds (Mid-America Homes Project) Series 1995 (the "Series 1995 Bonds"), pursuant to the Act; and

WHEREAS, Mid-America has requested relief under the U.S. Bankruptcy Code thus causing the Series 1995 Bonds to be in default; and

WHEREAS, Fleetwood Homes of Kentucky, Inc. (the "Borrower") has agreed to operate the Project if the City and the County refund the outstanding Series 1995 Bonds through the issuance of \$1,945,000 of Industrial Building Refunding Revenue Bonds (Fleetwood Project) Series 1998 (the "Bonds"), pursuant to the Act; and

WHEREAS, the County has found that the continued operation of the proposed Project will tend to relieve existing conditions of unemployment in the City, the County 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 THE COUNTY OF MARSHALL, KENTUCKY:

1. Authorization of Bonds. For the purpose of paying the costs, not otherwise provided, of the refunding of the Series 1995 Bonds, the County, in conjunction with the City, hereby authorizes and approves the issuance of \$1,945,000 of Industrial Building Refunding Revenue Bonds (Fleetwood Project) Series 1998 (the "Bonds") which aggregate amount of \$1,945,000 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 denomination 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 City, the County, 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 ten percent (10%) 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, insertions 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 is hereby authorized to execute and acknowledge same for and on behalf of the County; and the County Clerk is authorized to attest same and to affix thereto the corporate seal of the County. 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 August 1, 1998, among the County, the City and the Borrower. **(Exhibit A)**

(b) The Mortgage Deed of Trust (the "Mortgage"), to be dated as of August 1, 1998, among the County, the City and the Bank of Benton, Benton, Kentucky, Trustee (the "Trustee"). **(Exhibit B)**

(c) The Bond Purchase Agreement (the "Bond Purchase Agreement") among the City, the County 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 County and the City 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 refinancing of the Series 1995 Bonds 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 refinancing in contemplation of the issuance of the Bonds, in reliance on the commitment of the County pursuant to discussions between officials of the County and the Borrower.

4. Revenues of the Project. The revenues of the Project, including the lease payments to be received by the City and the County under the terms of the Lease Agreement, are determined to be 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 provided in the Mortgage.

7. County Judge/Executive and Other County Officials to Take Any Other Necessary Action. Pursuant to the Constitution and Laws of the Commonwealth of Kentucky, the County Judge/Executive, the County 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 City, the County, 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 therefor. Neither the faith and credit nor the taxing power of the City, the County, 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 County Judge/Executive of the County 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 County Judge/Executive is entitled to rely upon information furnished by the Borrower in making such election unless the County Judge/Executive 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 County Judge/Executive and/or the 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 construed 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 provision 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 67 and KRS 103.210.

Introduced and Given First Reading on July 21, 1998.

Given Second Reading, Enacted and Adopted on August 4, 1998.

COUNTY OF MARSHALL,
KENTUCKY

By _____
County Judge/Executive

(Seal of County)

Attest:

County Clerk

CERTIFICATE OF COUNTY CLERK

I, Dan Duke, hereby certify that I am the duly qualified and acting County Clerk of the County of Marshall, Kentucky, that the foregoing Ordinance is a true copy of an Ordinance introduced and given first reading at a properly convened meeting of said Fiscal Court on July 21, 1998, and given second reading and duly enacted by the Fiscal Court of said County, signed by the County Judge/Executive of said County, and attested under seal by me as County Clerk, at a properly convened meeting of said Fiscal Court held on August 4, 1998, as shown by the official records in my custody and under my control, that Notice of the Enactment and Summary of said Ordinance has been ordered to be published as required by law (KRS Chapter 67 and KRS 103.210), and that said Ordinance appears as a matter of public record in the County Ordinance Book.

I further certify that said meetings were duly held in accordance with all applicable requirements of Kentucky law, including KRS 61.810, 61.815, 61.820 and 61.823, that a quorum was present at each of said meetings, that said Ordinance has not been modified, amended, revoked or repealed, and that same is now in full force and effect.

IN WITNESS WHEREOF, I have hereto set my hand as County Clerk and the official seal of the County this 4th day of August, 1998.

County Clerk

(Seal of County)