

CITY OF BELLEVUE

ORDINANCE NO. 2004-05-05

AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$24,000,000 ADJUSTABLE RATE INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2004 (HARBOR GREENE COMMERCIAL, LLC PROJECT) OF THE CITY OF BELLEVUE, KENTUCKY, THE PROCEEDS OF WHICH SHALL BE USED TO FINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN INDUSTRIAL BUILDING TO BE LOCATED WITHIN THE CITY OF BELLEVUE, KENTUCKY FOR LEASE TO HARBOR GREENE COMMERCIAL, LLC FOR USE AS A FACILITY OR FACILITIES DESIGNED FOR REVITALIZATION OR REDEVELOPMENT OF A DOWNTOWN BUSINESS DISTRICT; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LEASE AGREEMENT AND INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT AND MORTGAGE; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Bellevue, Kentucky (the “Issuer”), by virtue of the laws of the Commonwealth of Kentucky, including Chapter 103 of the Kentucky Revised Statutes, is authorized and empowered among other things (a) to assist in defraying the cost of the acquisition, construction, installation and equipping of an “industrial building”, as defined in Section 103.200 of the Kentucky Revised Statutes, within the boundaries of the Issuer, by constructing, installing, equipping and leasing such industrial building (b) to issue and sell its revenue bonds to provide moneys for such construction, equipping and installation and (c) to enact this Bond Legislation and execute and deliver the agreements and instruments hereinafter identified;

WHEREAS, this City Council (the “Issuing Authority”) has determined and does hereby confirm that the acquisition, construction, installation and equipping of the Project, as hereinafter defined, is a Project designed for revitalization or redevelopment of a downtown business district, the existence of which downtown business district is hereby confirmed, which 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 Issuer, create or preserve jobs and employment opportunities and assist in the development of industrial activities to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the principal amount of up to \$24,000,000 (the “Series 2004 Bonds”) will be acting in the manner consistent with and in furtherance of the provisions of the laws of the Commonwealth of Kentucky, particularly Chapter 103 of the Kentucky Revised Statutes (the “Act”); and

WHEREAS, this City Council has determined that in order to complete the issuance of the Series 2004 Bonds, the City should convey certain real property to Harbor Greene Commercial, LLC.

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF BELLEVUE, 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 Trust Indenture with respect to the Series 2004 Bonds (the “Indenture”) between the Issuer and the Trustee identified therein (the “Trustee”).

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 Bond Legislation.

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 Sections 103.200 to 103.285 of the Act; that such industrial building consists of an industrial building designed for revitalization or redevelopment of a downtown business district, the existence of which downtown business district, to the extent not heretofore designated, is hereby designated as a downtown business district, for the purpose and as set forth in Section 103.200(1)(n) of the Act; and that such industrial building is to be acquired and financed with the proceeds of the Series 2004 Bonds pursuant to the provisions of Sections 103.200 to 103.285 of the Act.

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 2004 Bonds for the purposes of financing costs of acquiring, constructing, installing and equipping the Project, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Lease Agreement (the “Agreement”) between the Issuer and Harbor Greene Commercial, LLC, a Kentucky limited liability company (the “Tenant”). The Series 2004 Bonds shall be designated “Adjustable Rate Industrial Building Revenue Bonds, Series 2004 (Harbor Greene Commercial, LLC Project)” or such other designation as may be required under the Indenture. The maximum amount of Series 2004 Bonds to be outstanding at any one time is \$24,000,000. The Issuer may also issue, sell and deliver Additional Bonds on a parity with the Series 2004 Bonds for the purposes and in the manner provided in the Indenture.

Section 4. Terms and Execution of the Bonds. The Series 2004 Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Series 2004 Bonds shall mature as provided in the Indenture, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indenture. This Issuing Authority hereby fixes and establishes the interest rate in effect from time to time on the Series 2004 Bonds in the manner and pursuant to the provisions of the Indenture. The Series 2004 Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and City Clerk. In case any officer whose signature or a facsimile thereof shall appear on the

Series 2004 Bonds shall cease to be such officer before the issuance or delivery of the Series 2004 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 2004 Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, 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 Indenture, in an aggregate principal amount of \$24,000,000, shall represent the approved form of Series 2004 Bonds of the Issuer.

Section 5. Sale of the Bonds. In accordance with a written request, addressed to the Mayor from the Tenant, that the sale of the Series 2004 Bonds be made privately upon a negotiated basis, the Series 2004 Bonds are hereby awarded to the Original Purchaser (as defined in the Agreement), at the purchase price set forth, and on the terms and conditions described, in the Bond Purchase Agreement with respect to the Series 2004 Bonds (the “Bond Purchase Agreement”) among the Issuer, the Tenant and the Original Purchaser. The Mayor and City 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 2004 Bonds to the Original Purchaser, and to take all steps necessary to effect due execution and delivery to the Original Purchaser of the Series 2004 Bonds (or temporary bonds delivered in lieu of definitive Series 2004 Bonds until their preparation and delivery can be effectuated) under the terms of this Bond Legislation, the Bond Purchase Agreement, the Agreement and the Indenture. It is hereby determined that the price for and the terms of the Series 2004 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. Authorization of Agreement, Indenture, Bond Purchase Agreement, Mortgage 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 2004 Bonds as the same shall become due and payable, the Mayor and City Clerk are authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Indenture, Agreement, Mortgage (as defined in the Indenture) and Bond Purchase Agreement in substantially the forms submitted to the Issuer, which are hereby approved, with such changes therein not inconsistent with this Bond Legislation 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 such Indenture, Agreement, Mortgage and Bond Purchase Agreement by such officers.

The Mayor and City 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 Peck, Shaffer & Williams LLP, as Bond Counsel, in order to effect the issuance of the Series 2004 Bonds and the intent of this Bond Legislation. The City 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 2004 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 2004 Bonds.

Section 7. Covenants of Issuer. In addition to other covenants of the Issuer in this Bond Legislation, 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 Indenture provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Series 2004 Bonds on the dates, at the places and in the manner provided herein, in the Indenture and in the Series 2004 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 2004 Bonds, Agreement, Bond Purchase Agreement, Mortgage and Indenture, and in all proceedings of the Issuer pertaining to the Series 2004 Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Series 2004 Bonds will be, duly authorized by the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the Series 2004 Bonds and to execute the Agreement, the Indenture, 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 2004 Bonds in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Series 2004 Bonds and execution and delivery of the Agreement, the Indenture, the Bond Purchase Agreement, the Mortgage and all other documents to be executed by it in connection with the issuance of the Series 2004 Bonds, have been or will be duly and effectively taken; and that the Series 2004 Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, the Indenture, the Agreement, the Bond Purchase Agreement, the Mortgage and each Series 2004 Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Series 2004 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 2004 Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

Section 8. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Series 2004 Bond, or in the Agreement, the Indenture, the Mortgage 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 2004 Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Series 2004 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 2004 Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2004 Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Agreement, Indenture, the Mortgage and the Bond Purchase Agreement and the issuance of the Series 2004 Bonds.

Section 9. No Debt or Tax Pledge. The Series 2004 Bonds do not constitute an indebtedness of the Issuer within the meaning of the Constitution of the Commonwealth of Kentucky. The Series 2004 Bonds shall be payable solely from the revenues and security interests pledged for their payment as provided in the Indenture, 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 2004 Bonds.

Section 10. Severability. If any section, paragraph or provision of this Bond Legislation 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 Bond Legislation.

Section 11. Sunshine Law. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation 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 12. Effective Date. This Bond Legislation shall be in full force and effect from and after its passage, attestation and publication of a summary hereof.

CITY OF BELLEVUE, KENTUCKY

By: _____
John D. Meyer, Mayor

ATTEST:

By: _____
Mary H. Scott, City Clerk

1st Reading: _____

2nd Reading: _____

Publication: _____

CERTIFICATION

The undersigned, City Clerk of the City of Bellevue, Kentucky, does hereby certify that the foregoing is a true copy of an Ordinance duly adopted by the City Council of the City of Bellevue, Kentucky, at a duly convened meeting properly held on the 9th day of June, 2004, signed by the Mayor and now in full force and effect, as shown by the official records in my custody and under my control.

WITNESS my hand, this ____ day of _____, 2004.

Mary H. Scott, City Clerk

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