

AN ORDINANCE RELATING TO THE ACQUISITION, CONSTRUCTION, AND EQUIPMENT OF AN INDUSTRIAL BUILDING PROJECT FOR USE AND OCCUPANCY FOR INDUSTRIAL PURPOSES, IN ORDER THAT THE CITY MAY BE PROVIDED WITH FACILITIES FOR INDUCING PRIVATE INDUSTRY TO MAINTAIN AND EXPAND OPERATIONS IN THE COMMUNITY AS A MEANS OF AVOIDING OR REDUCING UNEMPLOYMENT AND PROMOTING THE ECONOMIC DEVELOPMENT OF THE CITY; AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF THE CITY OF RUSSELLVILLE INDUSTRIAL BUILDING REVENUE BOND (SMITH-DOUGLASS OF KENTUCKY, INC. PROJECT), IN THE PRINCIPAL AMOUNT OF \$1,700,000, FOR THAT PURPOSE, WHICH BOND WILL BE PAYABLE SOLELY AND ONLY FROM REVENUES AND PROCEEDS OF THE PROJECT; AND AUTHORIZING THE EXECUTION OF (1) A LOAN AGREEMENT AND MORTGAGE, WHEREBY THE CITY WILL LEND THE PROCEEDS OF THE BOND TO SMITH-DOUGLASS OF KENTUCKY, INC., AS BORROWER, TO FINANCE THE COSTS OF THE PROJECT, AND WHEREBY THE BORROWER WILL AGREE TO MAKE PAYMENTS SUFFICIENT TO PAY THE PRINCIPAL AND INTEREST REQUIREMENTS ON THE BOND AND SECURE THE BOND WITH A MORTGAGE LIEN ON THE PROJECT, (2) A TRUST INDENTURE, WHICH SETS FORTH THE TERMS AND CONDITIONS UPON WHICH THE BOND IS TO BE ISSUED AND OUTSTANDING, AND PROVIDES FOR THE RIGHTS OF THE BONDHOLDER AND THE ENFORCEMENT THEREOF, AND (3) A CONTRACT OF PURCHASE OF BOND, PROVIDING FOR THE NEGOTIATED SALE OF THE BOND.

WHEREAS, the City of Russellville, Kentucky (the "City"), a fourth class city of the Commonwealth of Kentucky, is authorized and empowered by the Industrial Buildings for Cities and Counties Act (Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, hereinafter referred to as the "Act"), to issue bonds and lend the proceeds of the bonds to any person to defray the costs of an industrial building as defined in the Act; and

WHEREAS, Smith-Douglass of Kentucky, Inc., a Kentucky corporation (the "Borrower"), has offered to the City to acquire, construct, and equip an industrial building project on a site described in the Trust Indenture (hereinafter identified), if the City will agree to issue an industrial building revenue bond in the principal amount of \$1,700,000 (the "Bond"), pursuant to the Act, such industrial building project to be used and occupied by the Borrower as a facility engaged in fertilizer processing, with related and subordinate facilities necessary to the operation thereof, and for uses incidental thereto (the "Project"), which will result in the employment of a substantial number of workers and promote the economic development of the area; and

WHEREAS, by Inducement Contract and other actions taken, the City has invited the Borrower to proceed with the proposed Project; and

WHEREAS, under the terms of the proposed loan agreement and mortgage (the "Loan Agreement"), the City will receive payments from the Borrower sufficient to pay the principal and interest requirements of the Bond, and which payments shall be pledged, together with the Loan Agreement itself, which includes a mortgage on the Project, as security for the payment of the principal of and interest on the Bond; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF RUSSELLVILLE, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

1. AUTHORIZATION OF BOND.

For the purpose of paying the costs, not otherwise provided, of the Project, the City hereby authorizes and approves the issuance of the City of Russellville Industrial Building Revenue Bond (Smith-Douglass of Kentucky, Inc. Project), dated the date of delivery of the Bond to the purchaser (the "Date of Delivery") (the "Bond"), in the principal amount of One Million Seven Hundred Thousand Dollars (\$1,700,000), initially issued as a single fully registered Bond, in the denomination of One Million Seven Hundred Thousand Dollars (\$1,700,000), which Bond may be reissued as more than one fully registered bond in any denomination in excess of \$5,000, as more fully provided for in the Trust Indenture hereinafter approved. The Bond shall bear interest from the Date of Delivery, payable as provided in the Indenture on the first day of each month in each of the years 1981 through 1996, inclusive, until October 1, 1996, the final maturity of such Bond, at a floating interest rate equal to 75% of the prime rate of First National Bank of Louisville, Louisville, Kentucky (the "Bank"), adjusted from time to time, on the same day on which such prime rate is changed by the Bank, being the prime rate generally in effect on 90-day unsecured loans to the Bank's most substantial and creditworthy commercial borrowers (the "Prime Rate"), but such interest rate equal to 75% of the Prime Rate shall never be more than thirty

percent (30%) per annum. The interest on the Bond shall be computed on the basis of the actual number of days elapsed based on an assumed year of 360 days, which interest rate has been agreed upon by the City, the Borrower, and First National Bank of Louisville (the "Purchaser"), pursuant to Section 103.230 of the Kentucky Revised Statutes. The principal installments and interest requirements of the Bond, based on the agreed interest rate, are as set forth in the Trust Indenture.

2. APPROVAL AND AUTHORIZATION OF EXECUTION OF VARIOUS DOCUMENTS; LOAN AGREEMENT; TRUST INDENTURE; AND CONTRACT OF PURCHASE OF BOND.

The following documents in the respective forms attached to this Ordinance, are hereby approved, subject to such changes, insertions, or omissions as may be approved by the Mayor, such approval to be conclusively evidenced by his execution of said documents, in order to effect the purposes of this Ordinance; and the Mayor is hereby authorized to execute and acknowledge same for and on behalf of the City; and the City Clerk is authorized to attest same and to affix thereto the corporate seal of the City. Said documents are hereby ordered to be filed in the office of the City Clerk, labelled respectively, Exhibits A through C, as identified below, and each of said documents is ordered to be recorded with this Ordinance in the official records of the City:

(a) The Loan Agreement and Mortgage (the "Loan Agreement"), dated as of September 1, 1981, between the City and the Borrower. (Exhibit A)

(b) The Trust Indenture (the "Indenture"), dated as of September 1, 1981, between the City and First National Bank of Louisville, Louisville, Kentucky, Trustee. (Exhibit B)

(c) The Contract of Purchase of Bond dated as of the date of enactment of this Ordinance, between the City and First National Bank of Louisville, Louisville, Kentucky, as purchaser (the "Purchaser"), and also approved by the Borrower, providing for the sale of the Bond to the Purchaser at the aggregate price (\$1,700,000), at the interest rate set forth herein, and upon the respective terms and conditions set forth in said Contract. The approval of said Contract by the Borrower and a separate attached letter from the Borrower to the City evidences the request of the Borrower that the Bond be sold at private sale upon a negotiated basis, as authorized by KRS 103.230. (Exhibit C)

3. DISBURSEMENT OF PROCEEDS OF BOND.

The Borrower and the Trustee are authorized to carry out the procedures specified in the Indenture for the supervision of the acquisition, construction,

and equipping of the Project and for the payment from time to time of the costs of such acquisition and construction and related expenses as same progress. Such procedures shall include reimbursement to the Borrower for all advances made by the Borrower toward the cost of the Project in contemplation of the issuance of this Bond, in reliance on the commitment of the City in the original Inducement Resolution adopted by the City Council of the City on January 20, 1981.

4. REVENUES OF THE LOAN AGREEMENT.

The revenues and other payments to be received by the City under the terms of the Loan Agreement are determined to be sufficient to pay the principal of and interest on the Bond as the same become due and payable; and all of said payments and other payments received under the Loan Agreement, together with the Loan Agreement, are hereby pledged to secure such payments and revenues, and in addition, for such other purposes as are more fully specified in the Indenture.

5. DESIGNATION OF TRUSTEE.

First National Bank of Louisville, Louisville, Kentucky, is hereby designated as the corporate trustee under the Indenture and also as the paying agent and bond registrar for the Bond.

6. EXECUTION OF BOND.

The Bond shall be executed in the manner provided in the Indenture and shall be delivered to the Trustee for proper authentication and delivery by the Trustee to the Purchaser, with instructions to that effect, as provided in the Indenture.

7. MAYOR AND OTHER CITY OFFICIALS TO TAKE
ANY OTHER NECESSARY ACTION.

Pursuant to the Constitution and Laws of the Commonwealth of Kentucky, the Mayor, the City Clerk, and all other appropriate officials of the City are hereby authorized and directed to take any and all further action and to execute and deliver all other documents as may be necessary to effect the issuance and delivery of the Bond.

8. COMPLIANCE WITH FEDERAL ARBITRAGE REQUIREMENTS.

The City covenants that sums derived from the proceeds of the Bond shall not be invested in investments in a manner which would cause the Bond to be treated as an "arbitrage bond" within the meaning of Section 103 of the Internal Revenue Code, as amended, and the applicable Regulations thereunder.

Prior to or at the time of delivery of the Bond, the Mayor and/or the City Clerk, who are jointly and severally charged with the responsibility for the issuance of the Bond, are authorized to execute the appropriate certification with reference to the matters required and contemplated by such statute and 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 aforesaid regulations in order to assure that interest on the Bond will be exempt from all federal income taxes and that the Bond will not be treated as an "arbitrage bond". Such officer(s) is (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.

9. ELECTION TO ISSUE THE BOND PURSUANT TO SECTION 103(b)(6)(D) OF THE INTERNAL REVENUE CODE.

The Mayor of the City is authorized to make an election to issue the Bond in an amount in excess of \$1,000,000 and not exceeding \$10,000,000, pursuant to Section 103(b)(6)(D) of the Internal Revenue Code of 1954, as amended, and to file or cause to be filed all documents necessary to accomplish and perfect such election.

10. 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.

11. 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.

12. PROVISIONS IN CONFLICT REPEALED.

To the extent any Resolution, Ordinance, or part thereof is in conflict herewith, the provisions of this Ordinance shall prevail and be given effect.

13. EFFECTIVE DATE OF ORDINANCE.

This Ordinance shall take effect from and after its adoption, approval, and publication of Notice of Adoption and Summary hereof (including the title of this Ordinance), which publication is hereby approved and ordered to be made by the City Clerk pursuant to KRS 83A and KRS 103.210.

INTRODUCED AND GIVEN FIRST READING ON Sept 22, 1981.

GIVEN SECOND READING, ADOPTED, ENACTED, AND ORDERED PUBLISHED BY
NOTICE AND SUMMARY HEREOF ON Sept 23, 1981.

CITY OF RUSSELLVILLE, KENTUCKY

Attest:

By

Mayor

City Clerk

(Seal of City)

CERTIFICATE OF CITY CLERK

I, PEGGY S. JENKINS, hereby certify that I am the duly qualified and acting City Clerk of the City of Russellville, Kentucky, that the foregoing Ordinance is a true copy of an Ordinance duly adopted by the City Council of said City, signed by the Mayor of said City, and attested under seal by me as City Clerk, at a properly convened term and session of said City Council held on Sept 23, 1981, as shown by the official records in my custody and under my control, that Notice of Adoption and Summary of said Ordinance has been ordered to be published as required by law (KRS 83A and KRS 103.210), that said Ordinance appears as a matter of public record in City Ordinance Book No. 10, that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the City Council of the City.

IN WITNESS WHEREOF, I have hereto set my hand as City Clerk and the Seal of the City, this Sept 23, 1981.

(Seal of City)

City Clerk