

ORDINANCE NO. 2359

AN ORDINANCE AUTHORIZING THE ISSUANCE OF APPROXIMATELY \$1,500,000 INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2011A (BAPTIST CONVALESCENT CENTER, INC. PROJECT) OF THE CITY OF ERLANGER, KENTUCKY, AND APPROXIMATELY \$9,000,000 INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2011B (BAPTIST CONVALESCENT CENTER, INC. PROJECT) OF THE CITY OF ERLANGER, KENTUCKY, THE PROCEEDS OF WHICH SHALL BE LOANED TO BAPTIST CONVALESCENT CENTER, INC. TO REFINANCE THE ACQUISITION OF HEALTHCARE AND ASSISTED LIVING FACILITIES LOCATED WITHIN THE COUNTIES OF CAMPBELL, BOONE AND KENTON IN KENTUCKY IN FURTHERANCE OF THE PURPOSES OF BAPTIST CONVALESCENT CENTER, INC.; AUTHORIZING LOAN AGREEMENTS APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE EACH SERIES OF BONDS; AUTHORIZING A BOND PURCHASE AGREEMENT, TAX REGULATORY AGREEMENT, MORTGAGE AND ASSIGNMENTS FOR EACH SERIES OF BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF EACH SERIES OF BONDS.

WHEREAS, the City of Erlanger, 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 make a loan to assist in defraying the cost of the acquisition of an "industrial building", as defined in § 103.200 of the Kentucky Revised Statutes, (b) to issue and sell its negotiable revenue bonds to provide moneys for such loan, (c) to refund any issued and outstanding bonds and (d) to enact this Ordinance and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, the Issuer has previously issued its Industrial Building Revenue Bond (Baptist Convalescent Center, Inc. Project) dated March 21, 1994 (the "Series 1994 Bonds") and loaned the proceeds thereof to Baptist Convalescent Center, Inc. (the "Borrower") for the purpose of acquiring, constructing, installing and equipping an industrial building suitable for use as health care or related facilities located at 3000 Riggs Avenue in the City of Erlanger, Kentucky (the "2011 Series A Project"); and

WHEREAS, the County of Kenton, Kentucky has previously issued its Adjustable Rate Demand Industrial Building Revenue Bonds, Series 1998 (Baptist Convalescent Center, Inc. Project) dated July 15, 1998 and loaned the proceeds thereof to the Borrower to finance the acquisition, construction, installation and equipping of a 100 bed skilled nursing facility located at 3000 Riggs Avenue in the City of Erlanger, Kentucky (the "Kenton Project"); and

WHEREAS, the City of Covington, Kentucky has previously issued its Adjustable Rate Demand Industrial Building Revenue Bonds, Series 1999 (Baptist Convalescent Center, Inc. Project) dated April 21, 1999 and loaned the proceeds thereof to the Borrower to finance the acquisition, construction, installation and equipping of healthcare and related facilities and/or housing for the aged located at 800 Highland Avenue in the City of Covington, Kentucky (the "Covington Project"); and

WHEREAS, the Kentucky Economic Development Finance Authority has previously issued its Adjustable Rate Demand Industrial Building Revenue Bonds, Series 1999 (Baptist Convalescent Center, Inc. Project) dated December 23, 1999 and loaned the proceeds thereof to the Borrower for the purpose of (a) acquiring, constructing, installing and equipping (1) independent and assisted living facilities for the elderly located at 3775 Burlington Pike in Burlington, Kentucky and (2) independent living facilities for the elderly located at 3000 Riggs Avenue in the City of Erlanger, Kentucky, and (b) currently refunding and retiring prior bonds the proceeds of which were used to finance the acquisition, construction, installation and equipping of a nursing and convalescent care facility located at 120 Main Street in the City of Newport, Kentucky (the "KEDFA Project", and together with the Kenton Project, and the Covington Project, the "2011 Series B Project"); and

WHEREAS, the Borrower desires to refinance the 2011 Series A Project and the 2011 Series B Project (together, the "Projects") in order to obtain lower interest rates on its outstanding debt; and

WHEREAS, this City Council (the “Issuing Authority”) has determined and does hereby confirm that the refinancing of the 2011 Series A Project and the 2011 Series B Project, which Projects serves as healthcare and assisted living and independent living facilities for the elderly in furtherance of the purposes of the Borrower, and which Projects will promote the welfare of the people of the Issuer and 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 Projects through the issuance of revenue bonds in the aggregate principal amount of approximately \$1,500,000 for the 2011 Series A Bonds and approximately \$9,000,000 for the 2011 Series B Bonds (together, the “2011 Series 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”);

NOW THEREFORE, BE IT ORDAINED BY THE CITY OF ERLANGER, 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 for each series of bonds (the “Loan Agreements”) between the Issuer and the Borrower, relating to the 2011 Series 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 Projects are “industrial buildings” as defined in the Act and are consistent with the provisions of §§ 103.200 to 103.285 of the Act; that such industrial buildings consist of industrial buildings suitable for use by the Borrower for use in furtherance of the health care purposes of the Borrower, as set forth in § 103.200(1)(c) of the Act; and that such industrial buildings are to be refinanced with the proceeds of the 2011 Series Bonds pursuant to the provisions 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 2011 Series A Bonds in the aggregate face amount of approximately \$1,500,000 and the 2011 Series B Bonds in the aggregate face amount of approximately \$9,000,000, the proceeds of which will be used to refinance the Projects.

The Issuer (i) heretofore determined in the year of their issuance that the Series 1994 Bonds being refunded by the 2011 Series A Bonds were, and (ii) hereby determines that each series of the 2011 Series B 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 (i) in calendar year 1994 it did not, and (ii) in calendar year 2001 it will not, designate more than \$10,000,000 of “qualified tax-exempt obligations” issued by the Issuer 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 2011.

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 2011 Series Bonds for the purposes of making loans to the Borrower to refinance the costs of the Projects, including costs incidental thereto and of the financing thereof, all in accordance with the provisions of the Loan Agreements. The 2011 Series A Bonds shall be designated “Industrial Building Revenue Bonds, 2011 Series A (Baptist Convalescent Center, Inc. Project) and the 2011 Series B Bonds shall be designated “Industrial Building Revenue Bonds, 2011 Series B (Baptist Convalescent Center, Inc. Project).”

SECTION 4. Terms and Execution of the Bonds. The 2011 Series Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the respective Bond Purchase Agreements hereinafter defined. The 2011 Series Bonds shall mature as provided in the Bond Purchase Agreements, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Bond Purchase Agreements. This Issuing Authority hereby fixes and establishes the interest rate in effect from time to time on the 2011 Series Bonds in the manner and pursuant to the provisions of the respective Bond Purchase Agreements. The 2011 Series Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor and City Clerk, and the seal of the Issuer may be impressed or printed on the 2011 Series Bonds. In case any officer whose signature or a facsimile thereof shall appear on the 2011 Series Bonds shall cease to be such officer before the issuance or delivery of the 2011 Series 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 forms of the 2011 Series Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the respective Bond Purchase Agreements, are 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 respective Bond Purchase Agreements, in the aggregate principal amounts of approximately \$1,500,000 and \$9,000,000 for the 2011 Series A Bonds and the 2011 Series B Bonds, respectively, shall represent the approved forms of 2011 Series Bonds of the Issuer.

SECTION 5. Sale of the Bonds. In accordance with a written request, addressed to the Mayor from the Borrower, that the sale of the 2011 Series Bonds be made privately upon a negotiated basis, the 2011 Series A Bonds are hereby awarded to Fifth Third Bank (the "Purchaser") at the purchase price set forth, and on the terms and conditions described, in the 2011 Series A Bond Purchase Agreement with respect to the 2011 Series A Bonds and the 2011 Series B Bonds are hereby awarded to Fifth Third Bank (the "Purchaser") at the purchase price set forth, and on the terms and conditions described, in the 2011 Series B Bond Purchase Agreement with respect to the 2011 Series B Bonds (together, the "Bond Purchase Agreements") among the Issuer, the Borrower, the Purchaser and Fifth Third Bank, as servicing agent (the "Servicing Agent"). 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 2011 Series Bonds to the Purchaser, and to take all steps necessary to effect due execution and delivery to the Purchaser of the 2011 Series Bonds (or temporary bonds delivered in lieu of definitive 2011 Series Bonds until their preparation and delivery can be effectuated) under the terms of this Ordinance, the Bond Purchase Agreements and the Loan Agreements. It is hereby determined that the price for and the terms of the 2011 Series 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 2011 Series Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the 2011 Series Bonds are delivered to the Purchaser, so that they will not constitute arbitrage bonds under § 148 of the Code. The Mayor or any other officer having responsibility with respect to the issuance of the 2011 Series 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 certificates for inclusion in each transcript of proceedings for the 2011 Series 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 Loan Agreement, Mortgage, Assignment, Bond Purchase Agreement, Tax Regulatory Agreement and All Other Documents to be Executed by the Issuer for Each Series of Bonds. In order to better secure the payment of the principal of, premium, if any, and interest on the 2011 Series 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 Loan Agreement, Tax Regulatory Agreement, Mortgage, Assignment and Bond Purchase Agreement for each series of bonds 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 each such Loan Agreement, Mortgage, Assignment, Tax Regulatory Agreement 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 2011 Series Bonds and the intent of this Ordinance. 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 2011 Series 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 2011 Series 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 Agreements provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all series of 2011 Series Bonds on the dates, at the places and in the manner provided herein, in the Bond Purchase Agreements and in the 2011 Series 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 each 2011 Series Bond, Loan Agreement, Bond Purchase Agreement, Tax Regulatory Agreements Mortgage and Assignment, and in all proceedings of the Issuer pertaining to the 2011 Series Bonds. The Issuer warrants and covenants that it is, and upon delivery of the 2011 Series Bonds will be, duly authorized by the laws of the Commonwealth of Kentucky, including particularly and without limitation the Act, to issue the 2011 Series Bonds and to execute the Loan Agreement, the Assignment, the Tax Regulatory Agreement, the Mortgage and the Bond Purchase Agreement for each respective issue of bonds, 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 2011 Series Bonds in the manner and to the extent herein and in the Bond Purchase Agreements set forth; that all actions on its part for the issuance of the 2011 Series Bonds and execution and delivery of each Loan Agreement, Assignment, Bond Purchase Agreement, Mortgage, Tax Regulatory Agreement and all other documents to be executed by it in connection with the issuance of the 2011 Series Bonds, have been or will be duly and effectively taken; and that the 2011 Series Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Ordinance and respective Assignment, Loan Agreement, Mortgage, Bond Purchase Agreement, Tax Regulatory Agreement and each Series 2011 Bond, and all other documents to be executed by the Issuer in connection with the issuance of the 2011 Series 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 2011 Series 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 2011 Bond, or in any Loan Agreement, Assignment, Mortgage, Tax Regulatory Agreement or 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 2011 Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the 2011 Series 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 2011 Bond, or otherwise, of any sum that may remain due and unpaid upon any Series 2011 Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of each Loan Agreement, Assignment, Mortgage, Tax Regulatory Agreement and Bond Purchase Agreement and the issuance of the 2011 Series Bonds.

SECTION 10. No Debt or Tax Pledge. The 2011 Series Bonds do not constitute an indebtedness of the Issuer within the meaning of the Constitution of the Commonwealth of Kentucky. The 2011 Series Bonds shall be payable solely from the revenues and security interests pledged for their payment as provided in the 2011 Series 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 2011 Series 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.

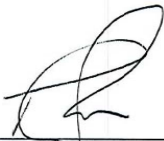
SECTION 13. Effective Date. This Ordinance shall be in full force and effect from and after its passage, attestation and publication of a summary hereof.

INTRODUCED, SECONDED AND GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE ERLANGER CITY COUNCIL, held on the December 6, 2011.

GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE ERLANGER CITY COUNCIL, held on the December 13, 2011 on the same occasion signed by the Mayor as evidence of his approval, attested by the City 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:



THOMAS L. ROUSE, Mayor

ATTEST:



Melissa Andress
Director of Administration

CERTIFICATE

I, Melissa Andress, City Clerk of the City of Erlanger, Kentucky, do hereby certify that the above is a true copy of an ordinance, as adopted by the City Council at a meeting held on December 13, 2011, whereat a quorum was present and voting, all as shown by the records of said City in my office.

Dated: December 13, 2011.

SIGNED:

By: *Melissa Andress* _____
Melissa Andress
Director of Administration

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