

ORDINANCE NO. 98-10

AN ORDINANCE OF THE COUNTY OF MADISON, KENTUCKY AUTHORIZING AND ESTABLISHING THE 1998 RESIDENTIAL MORTGAGE PROGRAM JOINTLY WITH THE OTHER CENTRAL KENTUCKY COUNTIES IN ORDER TO FACILITATE THE CONSTRUCTION AND PURCHASE OF NEW AND EXISTING SINGLE FAMILY HOUSING IN THE COUNTIES; AUTHORIZING THE SALE AND ISSUANCE OF UP TO \$10,000,000 PRINCIPAL AMOUNT OF RESIDENTIAL MORTGAGE REVENUE BONDS TO FINANCE THE PROGRAM; APPROVING THE NEGOTIATED SALE OF THE BONDS; APPROVING, IN SUBSTANCE, TRUST INDENTURES, MORTGAGE ORIGATION AND SERVICING AGREEMENTS WITH CERTAIN LENDING INSTITUTIONS, AN OFFICIAL STATEMENT AND OTHER DOCUMENTS RELATED TO THE ISSUANCE OF THE BONDS AND THE PROGRAM; AND AUTHORIZING OFFICIALS OF THE COUNTY TO TAKE NECESSARY ACTIONS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE ESTABLISHMENT OF THE PROGRAM.

WHEREAS, Section 67.083 of the Kentucky Revised Statutes, as amended (the "Act"), has been enacted by the General Assembly of the Commonwealth of Kentucky in order "... to provide counties as units of local government with the necessary latitude and flexibility to provide and finance various governmental services within those functional areas specified in subsection (3) ... " of the Act, which subsection provides, in part, as follows: "The fiscal court shall have the power to carry out governmental functions necessary for the operation of the county. Except as otherwise provided by statute or the Kentucky Constitution, the fiscal court of any county may enact ordinances, issue regulations, ... issue bonds, appropriate funds and employ personnel in performance of the following public functions: ... (j) (f)facilitating the construction and purchase of new and existing housing"; and

WHEREAS, the Counties of Clark, Madison and other counties which from time to time may enter into the cooperative effort and identified as the Central Kentucky Counties (the "Counties"), in order to jointly establish a program to provide assistance in the financing the purchase of housing (the "Program") have heretofore entered into an Interlocal Cooperation Agreement dated as of August 1, 1998 (the "Interlocal Cooperation Agreement"); and

WHEREAS, in accordance with Section 146 of the Internal Revenue Code of 1986, as amended, the principal sum of \$7,816,000 of "qualified mortgage bonds" was allocated to the County of Madison (the "Issuer") for the calendar year 1998 by the Commonwealth of Kentucky Bond Allocation Committee;

WHEREAS, the Issuer has determined that there is within the Counties, a shortage of affordable, suitable housing and capital for investment in such housing and that it is necessary and desirable, and authorized by the Act, that the Issuer issue its revenue bonds, as provided in the Interlocal Cooperation Agreement, to provide funds for the facilitation of construction and purchase of new and existing housing, in order to make home ownership broadly available to families of moderate and lesser income at the lowest possible cost; and the issuance of such revenue bonds as specifically authorized by the Act, is in the public interest, constitutes the carrying out of a governmental and public function and purpose and is reasonably necessary to the public welfare; and

WHEREAS, the Issuer has determined that such revenue bonds shall be issued to acquire residential mortgages which will be pledged as security for the payment of principal of and interest on such revenue bonds, and specifically the Issuer has developed the Program for (i) the issuance of its Residential Mortgage Revenue Bonds (the "Bonds"), and (ii) the use of the Bond proceeds by the Issuer to purchase without recourse from certain mortgage lending institutions in the jurisdiction of the Counties (the "Mortgage Loan Participants"), certain mortgage loans made to finance residences intended for use as principal places of residence by residents of the Counties (the "Mortgage Loans"), which Mortgage

Loans are to be originated by the Mortgage Loan Participants pursuant to Mortgage Origination and Servicing Agreements between the Issuer and the respective Participants dated as of August 1, 1998, and the Mortgage Loan Participant's Offers to Originate and Service Residential Mortgage Loans (collectively, the "Agreement"); and

WHEREAS, the Mortgage Loan Participants have entered into the Agreement, under which the Issuer has agreed to purchase the Mortgage Loans, and the Mortgage Loan Participants have severally agreed to sell to the Issuer, without recourse, the Mortgage Loans; and

WHEREAS, the Issuer has now determined to issue the Bonds and to enter into a certain Trust Indenture for the Bonds (the "Indenture") to secure the Bonds by a pledge and assignment of the mortgage notes and related mortgages securing the Mortgage Loans, the proceeds thereof, certain insurance proceeds, certain reserve funds and its rights under the Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF THE COUNTY OF MADISON, COMMONWEALTH OF KENTUCKY, AS FOLLOWS:

Section 1. Policies and Purpose. It is hereby determined and declared that the statements set forth in the preamble of this Ordinance are true and correct in all respects and such statements are incorporated as a part of this Ordinance. It is further determined and declared that the residential mortgage Program of the Central Kentucky Counties of Kentucky, is necessary and desirable in the interest of the general welfare of the citizens and inhabitants of the Counties and that such Program, in accordance with the Act, will be carried out in the performance of a necessary and proper governmental function and purposes, to wit, the facilitation of construction and purchase of new and existing housing within the boundaries of the County.

Section 2. Definitions. All words, terms and phrases defined in the Agreement and the Indenture shall have the same meanings, respectively, in this Ordinance. For convenience of reference only, the following words, terms and phrases have the following meanings:

"Act" means Section 67.083 of the Kentucky Revised Statutes, as amended.

"Agreement" means collectively, all the Mortgage Origination and Servicing Agreements, dated as of August 1, 1998, including any and all appendices, exhibits and amendments thereto, and the Offer to Originate and Service Residential Mortgage Loans of each Mortgage Loan Participant and any amendments thereto.

"Bonds" means, collectively, the Series 1998A Bonds and the Series 1998B Bonds issued by the Issuer pursuant to, and subject to the terms and conditions contained in the Indenture.

"Code" means the Internal Revenue Code of 1986, as amended, and any rules or regulations promulgated thereunder.

"Issuer" means the County of Madison, Kentucky, a political subdivision of the Commonwealth of Kentucky.

"Eligible Mortgagors" means persons and families intending to permanently reside as a household who qualify for Mortgage Loans as provided in the Indenture and the Agreement.

"Mortgage Loans" means the mortgage loans made to Eligible Mortgagors evidenced by the Mortgage Notes and secured by the related Mortgages which the Issuer will purchase pursuant to the Agreement.

"Mortgage Loan Participant" means one of the home mortgage lending institutions or other entities which have agreed to, and which have been accepted to, originate Mortgage Loans pursuant to the Program, or any successor lending institution.

"Program" means the 1998 Residential Mortgage Program whereby the Issuer will purchase Mortgage Loans from the Participants.

"Series A Bonds" means the Residential Mortgage Revenue Bonds (Fannie Mae and GNMA Mortgage-Backed Securities Program) Tax-Exempt Series 1998A in the principal amount not to exceed \$7,816,000.

"Series B Bonds" means the Residential Mortgage Revenue (Fannie Mae and GNMA Mortgage-Backed Securities Program) Taxable Series 1998B in the principal amount not to exceed \$2,184,000.

"Trustee" means the entity serving in such capacity under the Indenture.

Section 3. Establishment of 1998 Residential Mortgage Program. Pursuant to the authority of the Act, the Issuer hereby confirms and ratifies all actions previously taken toward the establishment of the Program. The Program, the terms and details of which are more specifically set out in the Agreement, the Indenture and related documents, shall consist of a program under which the Issuer, acting through the Trustee, will acquire certain Mortgage Loans made by each Mortgage Loan Participant to all Eligible Mortgagors in the Counties in order to facilitate the construction and purchasing of new and existing housing and the redevelopment of housing within the boundaries of the Counties, and the Bonds will be issued in order to provide funds for the Issuer to purchase such Mortgage Loans and to establish certain reserves. The Bonds shall be payable as to principal and interest solely from the payments of principal of and interest on the Mortgage Loans received from the Eligible Mortgagors and remitted to the Trustee, and the Trust Estate created under the Indenture. The Bonds shall not constitute a general obligation, indebtedness, liability or other obligation of the Issuer and shall be payable solely as provided in the Indenture. The Agreement requires the Participants to use their best efforts to originate sufficient Mortgage Loans for the designated purposes so that the net proceeds of the Bonds will be applied in full to the purchase of such Mortgage Loans, which shall stand as part of the security for the Bonds. It is hereby determined and declared that the Program will ameliorate conditions of inordinately high interest rates on fixed rate mortgages on Single Family Residences and will constitute the carrying out of essential governmental and public functions of the Issuer and the Counties.

Section 4. Authorization of Bonds. The County hereby authorizes and approves the sale and issuance of the Bonds for the purposes set out in the preamble hereof. The Series A Bonds shall be in a principal amount not to exceed, in the aggregate, \$7,816,000 and shall be designated "Residential Mortgage Revenue Bonds (Fannie Mae and GNMA Mortgage-Backed Securities Program) Tax-Exempt Series 1998A." The Series B Bonds shall be in a principal amount not to exceed, in the aggregate, \$2,184,000 and shall be designated "Residential Mortgage Revenue Bonds (Fannie Mae and GNMA Mortgage-Backed Securities Program) Taxable Series 1998B." The Bonds shall be dated, numbered and in the forms and denominations as set out in the Indenture. The Bonds shall bear interest and the Bonds shall mature and be subject to redemption as stipulated in the Indenture.

The Bonds shall be issued under and secured by the Indenture, pursuant to which the Issuer assigns to the Trustee all Mortgage Loans and the income therefrom, net of certain fees and administrative expenses and charges, the Issuer's rights and interest in the Agreement and all moneys and securities held under the Indenture (excluding moneys representing certain excess investment earnings). The Bonds are special and limited obligations of the Issuer payable solely from the revenues, receipts and resources of the Issuer pledged under the Indenture (the "Trust Estate") and not from any other revenues, funds or assets of the Issuer and do not constitute an indebtedness of the Issuer within the meaning of any constitutional and statutory provisions or a pledge of its credit or taxing power. The Bonds are issued under authority of the Act and the Interlocal Cooperation Agreement.

All provisions of the Indenture with respect to the terms of and details concerning the Bonds, including without limitation the original delivery, the execution and authentication, the future transfer and exchange and the registration of the Bonds, and the application of the Bond proceeds, are hereby acknowledged and adopted in full, and reference is made to the Indenture for such details. The Indenture contains appropriate provisions for protecting and enforcing the rights and remedies of the holders of the Bonds, including covenants of the Issuer setting forth the duties of the Issuer in relation to the purposes to which the proceeds of the Bonds may be applied, the disposition or pledging of the revenues and assets securing the Bonds, and the custody, safeguarding and application of all moneys.

The Bonds shall be executed in the manner described in the Indenture.

Section 5. Approval and Authorization of Documents. The following documents, and the provisions thereof, are hereby approved, authorized and adopted in substantially the forms submitted herewith and marked as exhibits as hereinafter indicated, with such insertions, deletions or changes as the officials executing the same, with the advice of Bond Counsel or the Issuer's Placement Agent, may require or approve on behalf of the Issuer, such approval to be conclusively evidenced by the execution and delivery thereof; and the County Judge/Executive, Fiscal Court Clerk and other officials of the County, and any of them, are hereby authorized and directed to execute, seal and deliver and to approve, for and on behalf of the County, the final forms of such documents, as follows:

- (a) the Trust Indenture;
- (b) the Mortgage Origination and Servicing Agreements; and
- (c) the Bond Purchase Agreement (hereinafter defined).

Copies of said instruments are hereby ordered to be filed in the office of the Fiscal Court Clerk of the Issuer, labeled as exhibits to this Ordinance, and such copies shall constitute a part of the record with respect to the adoption of this Ordinance.

Section 6. Authorization to Proceed. The Issuer's Placement Agent, Ross, Sinclair & Associates, Inc. (the "Placement Agent") and the Issuer's Bond Counsel, Peck, Shaffer & Williams LLP, are authorized and directed to proceed, in participation with the applicable officials of the Issuer, to take whatever actions may be necessary to carry out the private negotiated sale of the Bonds and the delivery thereof in accordance with this Ordinance, the Indenture, the Act and the Code.

Section 7. Prohibition of Discrimination. No person engaged in activities or transactions contemplated in this Ordinance shall, in connection with the origination, underwriting or servicing of Mortgage Loans, discriminate against any person on the basis of race, color, religion, sex, creed, ancestry,

national origin of physical or mental handicap in connection with any such activities or transactions. Any agreement pursuant to which a Participant originates, makes or services Mortgage Loans pursuant to the Program shall contain in substance the following clause:

"This institution will not arbitrarily reject Mortgage Loans for residential properties within any specific geographic area because of the location of the residential property or, in the case of a proposed borrower, vary the terms of the Mortgage Loans or the application procedures for such Mortgage Loans because of race, color, religion, handicap, national origin, age, sex or marital status."

Section 8. Non-Arbitrage Covenant. The County covenants that the proceeds of the Series A Bonds and the revenues, funds and assets pledged to the payment of the Series A Bonds (collectively the "Pledged Revenues") shall not to be invested in investments which will produce a net adjusted yield which would cause such Series A Bonds to be treated as "arbitrage bonds" within the meaning of the Code.

The County covenants that it will make no use of the proceeds of the Series A Bonds or of the Pledged Revenues which, if such use had been reasonably expected on the date of issuance of such Series A Bonds, would have caused such Series A Bonds to be classified as "arbitrage bonds," and that the County will comply with all of the requirements of the Code and all of the requirements of the applicable Income Tax Regulations thereunder to whatever extent is necessary to assure that the Series A Bonds shall not be treated as arbitrage bonds.

Section 9. Sale of Bonds. The Fiscal Court hereby authorizes and directs that the initial sale of the Bonds be made privately upon a negotiated basis to the purchaser or purchasers identified by the Placement Agent (the "Purchaser") on the terms and conditions described, in the Bond Purchase Agreement with respect to the Bonds (the "Bond Purchase Agreement") between the Issuer and the Purchaser. The Judge/Executive and Fiscal Court Clerk are hereby 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 Bonds to the Purchaser, and to take all steps necessary to effect due execution and delivery to the Purchaser of the Bonds (or temporary bonds delivered in lieu of definitive Bonds until their preparation and delivery can be effectuated) under the terms of this Ordinance, the Bond Purchase Agreement, the Agreement and the Indenture. It is hereby determined that the price for and the terms of the 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 10. Further Authorizations. The County Judge/Executive, the Fiscal Court Clerk, and other appropriate officials of the County, and each of them, for and on behalf of the Issuer, are hereby authorized, empowered and directed to do and perform any and all things necessary to effect the execution of the Agreement, the Bond Purchase Agreement, and the Indenture, and the execution of such documents by the Participants and the Trustee, respectively, the performance of all obligations of the Issuer under and pursuant to the Indenture, the Bond Purchase Agreement and the Agreement and related documents and the performance of all other actions of whatever nature necessary to effect and to carry out the authority conferred by this Ordinance, the Indenture, the Bond Purchase Agreement and the Agreement. Such officials, and each of them, are hereby further authorized, empowered and directed, for and on behalf of the Issuer, to execute all necessary and customary papers, documents, certificates or other instruments that may be required for the carrying out and effectuation of the authority conferred by this Ordinance, the Indenture, the Bond Purchase Agreement and the Agreement or to evidence said authority, and to exercise and otherwise take all actions necessary to the full realization of the rights, purposes and accomplishments of the Issuer under the Indenture, the Bond Purchase Agreement, the Agreement and related documents and to discharge all other obligations of the Issuer thereunder. All previous actions of

the County Judge/Executive, Fiscal Court Clerk, and other officials of the County, and all previous actions of the Issuer's Placement Agent, the Purchaser and Bond Counsel, in connection with the formulation of the Program and the issuance of the Bonds are hereby approved, ratified and confirmed.

Section 12. Severability. The provisions of this Ordinance are hereby declared to be severable and, if any section, phrase or provision shall, for any reason, be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

Section 13. Conflicts. In the event of any conflict or conflicts between the provisions of this Ordinance and of any prior ordinances, resolutions or parts thereof, the provisions of this Ordinance shall prevail.

Section 14. Compliance with Sunshine Law. It is hereby determined that all formal actions of this Fiscal Court relating to the adoption of this Ordinance were taken in an open meeting of this Fiscal Court, and that all deliberations of this Fiscal Court and of its committees, if any, which resulted in formal action, were in meeting open to the public, in full compliance with applicable legal requirements.

Section 15. Ordinance Effective; Approval of Summary. This Ordinance shall be in full force and effect from and after its adoption and approval and publication of a summary hereof as provided by law.

INTRODUCED, SECONDED AND GIVEN FIRST-READING APPROVAL AT A DULY CONVENED MEETING OF THE MADISON COUNTY FISCAL COURT, held on the 28th day of July, 1998.

GIVEN SECOND READING AND ADOPTED AT A DULY CONVENED MEETING OF THE MADISON COUNTY FISCAL COURT, held on the 11th day of August, 1998, on the same occasion signed by the County Judge/Executive as evidence of his approval, attested by the Fiscal Court 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: 

County Judge/Executive

ATTEST:



Fiscal Court Clerk