

ORDINANCE NO. 220.15

**AN ORDINANCE OF THE COUNTY OF HART, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO \$35,000,000 PRINCIPAL AMOUNT OF INDUSTRIAL BUILDING REVENUE BONDS, SERIES 2007 (SISTER SCHUBERT'S HOMEMADE ROLLS, INC. PROJECT), IN ONE OR MORE SERIES FOR THE PURPOSE OF FINANCING AN INDUSTRIAL BUILDING PROJECT; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF: (i) A LEASE AGREEMENT BETWEEN THE COUNTY AND SISTER SCHUBERT'S HOMEMADE ROLLS, INC., (ii) A MORTGAGE, (iii) A BOND PURCHASE AGREEMENT, (iv) A PAYMENT IN LIEU OF TAXES AGREEMENT, AND (v) ANY AND ALL OTHER RELATED DOCUMENTS; AND TAKING OTHER RELATED AND INCIDENTAL ACTION.**

**WHEREAS**, the County of Hart, Kentucky (the "Issuer"), pursuant to the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "Act"), is authorized to issue its revenue bonds and to make the proceeds from the sale thereof available to a company for the purpose of financing industrial building facilities as defined in the Act, such bonds being payable from rental payments made by such company; and under the Act the financing of industrial buildings constitutes a public purpose; and

**WHEREAS**, Sister Schubert's Homemade Rolls, Inc., (the "Company"), a Kentucky limited liability company, proposes that the Issuer, pursuant to the Act, assist the Company in financing the acquisition, construction and installation of industrial building facilities, including a manufacturing building of approximately 92,000 square feet located in the City of Horse Cave, Kentucky, together with site improvements and appurtenances, new equipment and machinery (collectively the "Project"), which Project and the site thereof are more particularly described in the Lease Agreement hereinafter identified and approved; and the Project qualifies for financing as an "industrial building" within the meaning of the Act; and

**WHEREAS**, the acquisition, construction and installation of the Project will result in the retention of industry and a substantial number of employment opportunities in the community that would otherwise not be available; and

**WHEREAS**, on July 20, 2006, the Fiscal Court of the Issuer has adopted Resolution 101 (the "Inducement Resolution") authorizing industrial building revenue bond financing for the benefit of the Company and affirming the Issuer's agreement to undertake such financing at the appropriate time, subject to compliance with the provisions of the Act; and

**WHEREAS**, the Kentucky Economic Development Finance Authority has approved the issuance of the Bonds and the reduction in the state ad valorem tax in connection with the Bonds and the Project pursuant to KRS 103.210; and

**WHEREAS**, at the request of the Company the Issuer is prepared to issue its revenue bonds pursuant to the Act for purposes of financing the acquisition, construction and installation of the Project and paying costs of issuance of the bonds, upon terms which are set forth in the Lease Agreement hereinafter identified and approved; and

**WHEREAS**, pursuant to the provisions of Section 103.230 of the Act, the Company will make a request in writing, addressed to the County Judge/Executive acting on behalf of the Issuer, that the sale of the bonds hereinafter identified and authorized (the "Bonds"), to bear interest as set out in the Bond Purchase Agreement hereinafter identified and approved, shall be made upon a negotiated basis; and

**WHEREAS**, it is necessary and proper in the interests of the health, safety, convenience and general welfare of the citizens, residents and inhabitants of the Issuer and its environs that the Issuer (a) authorize the issuance of the Bonds pursuant to the Act in order to finance, for the benefit of the Company, the acquisition, construction and installation of the Project and to pay certain costs of issuance of the Bonds, (b) authorize the execution of a Lease Agreement between the Issuer, as lessor, and the Company, as lessee, (c) authorize the execution of a Mortgage and the execution of related documents, (d) authorize the execution of a Bond Purchase Agreement and the execution of related documents, (e) authorize the execution of a Payment In Lieu of Taxes Agreement, and (f) authorize and approve the sale of the Bonds and approve other necessary or related documents and actions;

**BE IT ORDAINED BY THE FISCAL COURT OF HART COUNTY, KENTUCKY, AS FOLLOWS:**

**Section 1.** For the purposes set forth in the preamble, which is incorporated as a part hereof, the Issuer, acting by and through the Fiscal Court, hereby:

(A) Confirms and ratifies the Inducement Resolution and the prior discussions and agreements described therein, whereby the Issuer agreed preliminarily to authorize and issue its bonds for the Company pursuant to the Act in order to finance the Project.

(B) Accepts from the Company the conveyance of the Project and the sites thereof, subject to the terms and conditions contained in the instruments of conveyance and in the Lease Agreement hereinafter identified and approved.

(C) Authorizes the sale, issuance, execution and delivery of up to \$35,000,000 principal amount of Hart County, Kentucky Industrial Building Revenue Bonds, Series 2007 (Sister Schubert's Homemade Rolls, Inc. Project) (the "Bonds"), which shall be issued in substantially the form and subject to the terms and specifications set forth in the

Bond Purchase Agreement identified and approved herein, all subject to compliance with the provisions of the Act.

(D) Authorizes the use of the proceeds of the Bonds, as provided in the Bond Purchase Agreement, Mortgage and the Lease Agreement hereinafter identified and approved, to pay the costs of acquisition, construction and installation of the Project and to pay certain costs of issuance of the Bonds.

**Section 2.** The County Judge/Executive is hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of the Issuer a Lease Agreement between the Issuer, as lessor of the Project, and the Company, as lessee (the "Lease Agreement"), which Lease Agreement is hereby approved, authorized and adopted in substantially the form previously submitted and filed with the Clerk of the Fiscal Court, with such changes therein and completions thereof as the officer executing the same may require or approve on behalf of the Issuer, upon the advice of counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 3.** In order to provide for the security of the Bonds, the County Judge/Executive is hereby authorized, empowered and directed to execute and acknowledge on behalf of the Issuer a Mortgage, Assignment of Leases and Rents, and Security Agreement in favor of the purchaser of the Bonds (the "Mortgage"). The Mortgage is hereby approved, authorized and adopted in substantially the form previously submitted and filed with the Fiscal Court Clerk, with such changes and completions as the officer executing the same may require or approve on behalf of the Issuer, upon the advice of counsel, such approval to be conclusively evidenced by the execution and delivery thereof. So that the statutory mortgage lien provided by Section 103.250 of the Act shall not attach to the Project, the Issuer hereby declares its intention and elects to follow the provisions of Section 103.251 of the Act with respect to the imposition of a foreclosable lien on the Project in connection with the security of the Bonds. The Bonds shall be issued no later than one (1) year from the date of adoption of this Ordinance, shall mature as to principal no later than the date which is thirty (30) years from the date of issuance of the Bonds and shall be subject to redemption and shall bear interest payable periodically at a rate approved by the Company, all as provided in the Bond Purchase Agreement hereinafter identified, reference to which is hereby made.

**Section 4.** With respect to the authorization and sale of the Bonds, and upon the request of the Company, the Issuer approves, and the County Judge/Executive is authorized and directed to execute and deliver on behalf of the Issuer, a Bond Purchase Agreement between the Issuer and the purchaser of the Bonds to be designated by the Company, and as approved by the Company (the "Bond Purchase Agreement"), being in substantially the form submitted herewith, with such changes and completions as the officer executing the same may require or approve on behalf of the Issuer, upon the advice of counsel, such approval to be conclusively evidenced by the execution and delivery thereof. The sale of the Bonds pursuant to the terms of the Bond Purchase Agreement is hereby authorized, approved and directed.

**Section 5.** The County Judge/Executive is hereby authorized, empowered and directed to execute, acknowledge and deliver on behalf of the Issuer a Payment In Lieu of Taxes Agreement between the Issuer and the Company (the "Payment In Lieu of Taxes Agreement"), which Payment In Lieu of Taxes Agreement is hereby approved, authorized and adopted in substantially the form previously submitted and filed with the Clerk of the Fiscal Court, with such changes therein and completions thereof as the officer executing the same may require or approve on behalf of the Issuer, upon the advice of counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

**Section 6.** The County Judge/Executive, the Fiscal Court Clerk, the County Treasurer, the County Attorney and other appropriate Issuer officials, 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 and delivery of the Lease Agreement, the Mortgage, the Bond Purchase Agreement, the Payment In Lieu of Taxes Agreement and related documents, the performance of all obligations and the preservation of all rights of the Issuer thereunder, the execution and delivery of the Bonds and the performance from time to time of all other actions of whatever nature necessary to carry out the authority conferred or contemplated by and the purposes of this Ordinance, the Lease Agreement, the Mortgage, the Bond Purchase Agreement, the Payment In Lieu of Taxes Agreement and related documents, and further to approve and to execute all papers, documents, certificates or other instruments that may be required for the carrying out and effectuation from time to time of the authority conferred by and the purposes of this Ordinance, the Lease Agreement, the Mortgage, the Bond Purchase Agreement, the Payment In Lieu of Taxes Agreement and related documents, or to evidence said authority and purposes.

**Section 7.** The Bonds and the interest thereon do not represent or constitute an indebtedness of the Issuer or the Commonwealth of Kentucky within the meaning of the Constitution or statutes of the Commonwealth or a pledge of the faith and credit of the Issuer or the Commonwealth. The Issuer shall never be required to pay from its own funds any obligations deriving from the issuance of the Bonds, and the Bonds are declared to be special and limited obligations payable solely and only from the receipts derived under the Lease Agreement and the Mortgage, as provided in the documents herein approved.

**Section 8.** The provisions of this Ordinance may be supplemented from time to time by resolution of the Fiscal Court.

**Section 9.** The provisions of this Ordinance are hereby declared to be severable and, if any section 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 10.** 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 11.** This Ordinance shall be in full force and effect upon its passage and approval and upon publication of the legal notice required by Section 103.210 of the Act.

This Ordinance was given first reading at a duly convened meeting of the Fiscal Court held on Thursday, October 11, 2007, and given second reading and adopted at a duly convened meeting of the Fiscal Court held on Thursday, November 1, 2007.

*Terry Martin*

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Terry Martin, County Judge/Executive

*11-1-07*

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Date

Approved:

*Cherry Brewer*  
\_\_\_\_\_  
*Hart Fiscal*, Clerk

*November 1, 2007*  
\_\_\_\_\_  
Date

**Approved as to Form and Legality:**

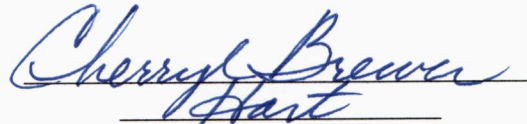
Hart County Attorney

By *Michael*  
\_\_\_\_\_  
*McEntee*  
County Attorney

**CERTIFICATION**

I, the undersigned, do hereby certify that I am the duly qualified and acting Clerk of the Hart County Fiscal Court (the "Fiscal Court"), and as such Clerk I further certify that the foregoing is a true, correct and complete copy of an Ordinance duly adopted by the Fiscal Court upon second reading at a duly convened meeting held on November 1, 2007, signed by the County Judge/Executive, approved by me as Clerk and in full force and effect as therein stated, all as shown by the official records of the Fiscal Court in my possession and under my control.

**IN WITNESS WHEREOF**, I have hereunto set my hand this November 1, 2007.

A handwritten signature in blue ink that reads "Cheryl Brewer". The signature is written in a cursive style and is positioned above a horizontal line.

Fiscal Court Clerk

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