

ORDINANCE NO. 09-11 SERIES 2009

AN ORDINANCE relating to the issuance of revenue bonds:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SOMERSET, KENTUCKY, AUTHORIZING THE ISSUANCE OF UP TO \$10,000,000 PRINCIPAL AMOUNT OF CITY OF SOMERSET, KENTUCKY VARIABLE RATE DEMAND INDUSTRIAL BUILDING REVENUE REFUNDING BONDS (ARMSTRONG HARDWOOD FLOORING COMPANY PROJECT), SERIES 2009 (THE "BONDS"), ISSUED AT THE REQUEST OF ARMSTRONG HARDWOOD FLOORING COMPANY, A TENNESSEE CORPORATION (THE "COMPANY"), FOR THE PURPOSE OF REFUNDING BONDS PREVIOUSLY ISSUED FOR THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A FACILITY TO BE USED FOR THE MANUFACTURING OF HARDWOOD FLOORING LOCATED AT 630 INDUSTRY ROAD, SOMERSET, PULASKI COUNTY, KENTUCKY, 42501; AND APPROVING, AUTHORIZING AND ACKNOWLEDGING THE EXECUTION AND DELIVERY OF (1) A LOAN AGREEMENT BETWEEN THE CITY OF SOMERSET, KENTUCKY AND THE COMPANY; (2) A TRUST INDENTURE BETWEEN U.S. BANK NATIONAL ASSOCIATION AND THE CITY OF SOMERSET, KENTUCKY; (3) A BOND PURCHASE AGREEMENT AMONG THE CITY OF SOMERSET, KENTUCKY, THE COMPANY AND THORNTON FARISH INC. (THE "UNDERWRITER"); (4) A TAX REGULATORY AGREEMENT AMONG U.S. BANK NATIONAL ASSOCIATION, THE COMPANY AND THE CITY OF SOMERSET, KENTUCKY; AND (5) ANY AND ALL OTHER RELATED DOCUMENTS NECESSARY THERETO.

WHEREAS, the City of Somerset, Kentucky (the "Issuer"), a city organized and existing under the laws of the Commonwealth of Kentucky, is authorized and empowered by the Industrial Building Revenue Bond Act (Section 103.200 to 103.285, inclusive) of the Kentucky Revised Statutes (the "Act"), to issue revenue bonds to defray the costs of an industrial building as defined in the Act and is authorized to issue refunding bonds to refund bonds previously issued for industrial buildings; and

WHEREAS, Armstrong Hardwood Flooring Company, a Tennessee corporation, or its affiliate, assignee or nominee (the "Company"), is successor of Tibbals Flooring Company, and Tibbals Flooring Company constructed an "industrial building" project on the site described in the Loan Agreement, dated as of July 1, 2009, between the Issuer and the Company (the "Loan Agreement") and used the proceeds of the

\$10,000,000 City of Somerset, Kentucky Industrial Building Revenue Bonds (Tibbals Flooring Co. Project), Series 1989 bonds (the “Refunded Bonds”) regarding the construction thereof; and

WHEREAS, the Issuer made certain findings in connection with the issuance of the Refunded Bonds, including that the acquisition, construction and equipping of the hardwood flooring manufacturing facility located at 630 Industry Road, Somerset, Pulaski County, Kentucky (the “Project”), would result in the employment of a number of workers and promote the economic development of the area; and

WHEREAS, under the terms of the proposed Loan Agreement, the Issuer will receive payments from the Company sufficient to pay the principal of and interest on the Bonds, and which payments shall be pledged, together with the Loan Agreement itself, as security for the payment of the principal of and interest on the Bonds; and

WHEREAS, the Issuer in connection with the issuance of the Refunded Bonds has heretofore found and determined that the operation of the 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 of Somerset and all of its citizens; and

WHEREAS, the proceeds of the Bonds will be used to refund on a current basis the Refunded Bonds and to pay certain costs of issuance related to the Bonds; and

WHEREAS, the Company is successor to Tibbals Flooring Company and a wholly owned subsidiary of Armstrong Wood Products, Inc.;

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

Section 1. Qualified Project. It is hereby determined that the financing of the Project and the payment of costs related thereto qualifies under the Act for financing with the proceeds of the Bonds and will promote those public purposes outlined in the Act. It is hereby determined, pursuant to Section 103.220(5) of the Act, that the issuance of the Bonds is for a public purpose insofar as the Bonds will be an inducement to the

Company to establish in Kentucky the Project as provided for in the Act and will tend to further the purposes of the Act.

Section 2. Public Hearing and Applicable Representative Approval. At the public hearing conducted by the Issuer in accordance with the provisions of Section 147(f) of the Code, pursuant to published notice, all persons who appeared were given an opportunity to express their views for or against the proposal to issue the Bonds and the Issuer has determined to proceed with the necessary proceedings relating to the issuance of the Bonds. This City Council, as an applicable representative pursuant to Section 147(f) of the Internal Revenue Code of 1986, as amended, hereby approves the issuance of the Bonds on the terms provided herein. The Company is the initial owner, operator and manager of the Project.

Section 3. Authorization of Bonds. For the purpose of refunding the Refunded Bonds and paying the costs of issuance of the Bonds, the Issuer hereby authorizes and approves the issuance of the City of Somerset, Kentucky Variable Rate Demand Industrial Building Revenue Refunding Bonds (Armstrong Hardwood Flooring Company Project), Series 2009 (the "Bonds"), dated as of the date of delivery of the Bonds, in the forms attached to the Trust Indenture, dated as of July 1, 2009, (the "Indenture"), in the principal amount of up to Ten Million Dollars (\$10,000,000) as more fully provided for in the Indenture hereinafter approved. The Bonds shall mature on or before July 1, 2039, and bear interest from the date of delivery to the purchasers thereof as provided in the Indenture with a maximum rate of interest of twelve percent (12%) per annum. The principal and interest requirements of the Bonds are set forth in the Indenture.

Section 4. Approval and Authorization of Execution for Various Documents. The following documents in the respective forms attached to this Ordinance are hereby approved, subject to such minor 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 effectuate the purposes of this Ordinance; and the Mayor is hereby authorized to execute and acknowledge the same for and on behalf of the Issuer; and the City Clerk is authorized to attest same and to affix thereto the corporate seal of the Issuer. Said documents are hereby ordered to be filed in the office of the City Clerk, labeled respectively, Exhibit A, Exhibit B, Exhibit C and

Exhibit D, as identified below, and each of said documents is ordered to be recorded with this Ordinance in the official records of the Issuer:

- (a) The Loan Agreement, dated as of July 1, 2009 (the “Loan Agreement”), between the Issuer and the Company (Exhibit A);
- (b) The Trust Indenture, dated as of July 1, 2009 (the “Indenture”), between the Issuer and U.S. Bank National Association, Hartford, Connecticut, as Trustee (the “Trustee”) (Exhibit B);
- (c) The Bond Purchase Agreement (the “Bond Purchase Agreement”), among the Issuer, the Company and Thornton Farish Inc., as the Underwriter, providing for the sale of the Bonds at the aggregate price of 100% of par and upon the respective terms and conditions set forth in the Bond Purchase Agreement. The approval of said Bond Purchase Agreement by the Company and a separate attached letter from the Company to the Issuer evidences the request of the Company that the Bonds be sold at private sale upon a negotiated basis as authorized by KRS 103.230 (Exhibit C); and
- (d) The Tax Regulatory Agreement, dated as of the date of the issuance of the Bonds (the “Tax Agreement”), among the Issuer, the Trustee and the Company (Exhibit D).

Section 5. Disbursement of Proceeds of Bonds. The Company and the Trustee are authorized to carry out the procedure set forth in the Indenture for the supervision of the refunding of the Refunded Bonds.

Section 6. Revenues of the Project. The revenues and other payments to be received by the Issuer under the terms of the Loan Agreement are determined to be sufficient to pay the principal of, premium, if any, and interest on the Bonds as the same become due and payable, and all said payments and other payments received under the Loan Agreement and all other revenues arising out of or in connection 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. The payment of such amounts by the Company to the Trustee pursuant to the Loan Agreement is hereby authorized, approved and confirmed.

Section 7. Designation of Trustee. U.S. Bank National Association or a Trustee selected by the Company and accepted by the Mayor is hereby appointed Trustee under the Indenture and also as the paying agent and bond registrar for the Bonds.

Section 8. Execution of Bonds. The Bonds 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 or purchasers thereof with instructions to that effect, as provided in the Indenture.

Section 9. Further Actions of Issuer Officials Authorized. Pursuant to the Constitution and laws of the Commonwealth of Kentucky, the Mayor, the City Clerk and all other appropriate officials of the Issuer are hereby authorized and directed to take any and all further actions and to execute and deliver all other documents as may be necessary to effect the issuance and delivery of the Bonds.

Section 10. BONDS ARE LIMITED OBLIGATION OF ISSUER. THE BONDS SHALL NOT BE A GENERAL OBLIGATION OF THE ISSUER BUT A LIMITED OBLIGATION PAYABLE SOLELY FROM THE AMOUNTS PAYABLE UNDER THE LOAN AGREEMENT AND OTHER REVENUES OF THE PROJECT. NEITHER THE ISSUER, THE COMMONWEALTH OF KENTUCKY NOR ANY OTHER POLITICAL SUBDIVISION OF THE COMMONWEALTH OF KENTUCKY SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON SUCH BONDS OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE REVENUES OF THE PROJECT PLEDGED THEREFOR. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE ISSUER, THE COMMONWEALTH OF KENTUCKY OR ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH OF KENTUCKY IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR OTHER COSTS INCIDENT THERETO.

Section 11. Compliance with Federal Arbitrage Requirements. The Issuer covenants that sums derived from the proceeds of the Bonds shall not be invested in investments in a manner which would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 103 of the Internal Revenue Code of 1986 as amended and the applicable regulations thereunder.

Prior to or at the time of delivery of the Bonds, the Mayor, the Chief Financial Officers and/or the City Clerk who are jointly and severally charged with responsibility for the issuance of the Bonds 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 acquisition, construction and equipping, 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 Bonds will be exempt from all federal income taxes and that the Bonds will not be treated as “arbitrage bonds.” Such officers are entitled to rely upon information furnished by the Company in making such certifications and representations unless they, or any of them, shall be aware of any fact or circumstances which would cause such certifications or representations to be questioned.

Section 12. Qualified Small Issue Bonds Election. The Issuer hereby elects to have the provisions of Section 144(a)(4) of the Internal Revenue Code of 1986 (the “Code”), the \$10,000,000 limit instead of the \$1,000,000 limit, and Treasury Regulation Section 1.103-19(b) (2) apply to the Bonds in determining their treatment as “qualified small issue bonds,” as defined in Section 144(a) of the Code.

Section 13. 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.

Section 14. Headings of Ordinance. 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.

Section 15. Repealer. To the extent any resolution, ordinance or part thereof is in conflict with this Ordinance, the provisions of this Ordinance shall prevail.

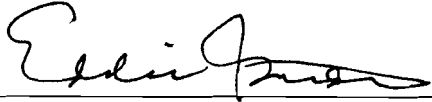
Section 16. Effective Date of Ordinance. This Ordinance shall take effect from and after its adoption, approval and publication of Notice of Passage hereof, including the title of this Ordinance, which publication is hereby approved by the Clerk of the City Council pursuant to KRS 67.077 and KRS 103.210.

[Remainder of this page intentionally left blank.]

INTRODUCED AND GIVEN FIRST READING ON JUNE 22, 2009.

GIVEN SECOND READING, PASSED AND ENACTED ON JULY 13, 2009.

CITY OF SOMERSET, KENTUCKY

By: 
Eddie Girdler
Mayor

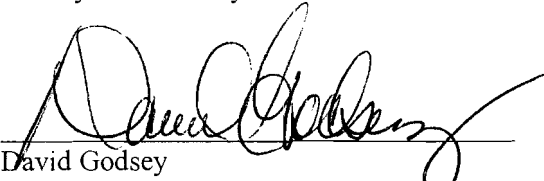
Attest:


David Godsey
City Clerk

(Seal of Issuer)

I, DAVID GODSEY, hereby certify that I am the duly appointed and qualified City Clerk of the City of Somerset, Kentucky, that the foregoing is a true copy of an Ordinance duly enacted by the City Council of said Issuer, signed by the Mayor of said Issuer, and attested under seal by me as City Clerk, at a properly convened term and session of said City Council, held on the 13th day of July, 2009, as shown by official records in my custody and under my control, that Notice of Passage of said Ordinance has been ordered to be published as required by law (KRS 67.077 and KRS 103.210), that said Ordinance appears as a matter of public record in Ordinance Book No 09-11, 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 of Somerset.

IN WITNESS WHEREOF, I have hereto set my hand as City Clerk and the Seal of the Issuer this 13th day of July, 2009.

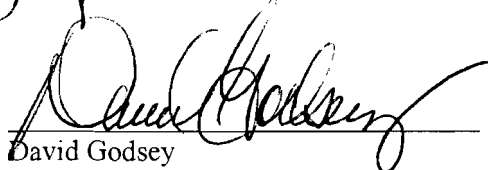

David Godsey
City Clerk

(Seal of Issuer)

CERTIFICATION

I, the City Clerk of the City of Somerset, Kentucky, do hereby certify that the foregoing is a true, correct copy of Ordinance No. 09-11, Series 2009, relating to the issuance of the City of Somerset, Kentucky Variable Rate Demand Industrial Building Revenue Refunding Bonds (Armstrong Hardwood Flooring Company Project), Series 2009, enacted by the City Council of the City of Somerset at its meeting held on the 13th day of July, 2009, and is in full force and effect.

Witness my hand this 13th day of July, 2009.



David Godsey
City Clerk