

ORDINANCE NO. _____

AN ORDINANCE OF THE FISCAL COURT OF THE COUNTY OF SIMPSON, KENTUCKY AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE UNDER THE INDUSTRIAL BUILDING REVENUE BOND ACT, SECTIONS 103.200 TO 103.285, INCLUSIVE, OF KENTUCKY REVISED STATUTES OF ITS TAX-EXEMPT ADJUSTABLE MODE REVENUE REFUNDING BONDS (THE BOC GROUP, INC. PROJECT) SERIES 1992 IN THE AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$4,400,000 FOR THE PURPOSE OF REFINANCING ITS INDUSTRIAL DEVELOPMENT REVENUE BONDS (AIRCO, INC. PROJECT) SERIES 1982; ~~AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT BETWEEN SAID COUNTY AND THE BOC GROUP, INC.;~~ AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE OF TRUST SECURING SAID BONDS; AUTHORIZING THE PLACEMENT OF SAID BONDS AND APPROVING A PRIVATE PLACEMENT MEMORANDUM AND A PLACEMENT AGREEMENT IN CONNECTION THEREWITH; AND AUTHORIZING OTHER MATTERS PERTAINING TO THE ISSUANCE OF SAID BONDS; SAID BONDS TO BE RETIRED FROM THE LOAN REPAYMENTS TO BE MADE BY THE BOC GROUP, INC. UNDER SAID LOAN AGREEMENT WITH THE COUNTY, ALL AS AUTHORIZED BY K.R.S. 103.200 TO 103.285, INCLUSIVE.

WHEREAS, the County of Simpson, Kentucky, a county and political subdivision of the Commonwealth of Kentucky (the "Issuer"), is authorized by the Industrial Building Revenue Bond Act, appearing as the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended (the "Act"), to issue revenue bonds for the purposes set forth in the Act and to permit the expenditure of the proceeds thereof to refinance its previously issued revenue bonds; and

WHEREAS, The BOC Group, Inc., a Delaware corporation, successor to Airco, Inc. (the "Company") has acquired, constructed, and installed certain industrial building facilities (the "Project") located in the County of Simpson, Kentucky with the proceeds of Industrial Development Revenue Bonds (Airco, Inc. Project), Series 1982 (the "Series 1982 Bonds"); and

WHEREAS, in furtherance of the purposes set forth in the Act, the Issuer wishes to provide for the refinancing of its Series 1982 Bonds by the sale and issuance of its revenue, refunding bonds and authorizing such actions as might be required to implement such stated intention; and

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WHEREAS, pursuant to and in accordance with provisions of the Act, the Issuer is now prepared to proceed with the refinancing of the Series 1982 Bonds and to issue and sell its Tax-Exempt Adjustable Mode Revenue Refunding Bonds (The BOC Group, Inc. Project) Series 1992 in the aggregate principal amount of \$4,400,000 (the "Bonds") to provide the same, such Bonds to be secured by the Indenture (hereinafter defined) and, except to the extent payable from Bond proceeds or moneys from the investment thereof, to be payable solely from the revenues and receipts and other amounts received by the Issuer pursuant to the Loan Agreement (hereinafter defined); and

WHEREAS, Wachovia Bank of North Carolina, National Association (the "Placement Agent") has submitted to the Issuer a form of Placement Agreement (hereinafter defined) setting forth the Placement Agent's proposal to place the Bonds with one or more private investors; and

WHEREAS, copies of the Loan Agreement, Indenture, Placement Agreement and Preliminary Private Placement Memorandum have been presented to and are before this meeting;

NOW, THEREFORE, BE IT ORDAINED by the Fiscal Court of the County of Simpson, Commonwealth of Kentucky as follows:

Section 1. The following words and terms as used in this ordinance shall have the following meanings unless the context clearly indicates another or different meaning or intent:

"Act" shall mean the Industrial Building Revenue Bond Act (appearing as the provisions of Sections 103.200 to 103.285, inclusive, of the Kentucky Revised Statutes, as amended).

"Placement Agreement" shall mean the Placement Agreement to be entered into between the Issuer, the Company and the Placement Agent as approved by this ordinance, relating to the purchase and sale of the Bonds.

"Bonds" shall mean the Issuer's Tax-Exempt Adjustable Mode Revenue Refunding Bonds (The BOC Group, Inc. Project) Series 1992 in an aggregate principal amount of \$4,400,000 authorized to be issued pursuant to this ordinance and the Indenture.

"Company" shall mean The BOC Group, Inc., a Delaware corporation, and any successor, surviving, resulting or transferee corporation as permitted by the Loan Agreement.

"Indenture" shall mean the Indenture of Trust dated as of December 1, 1992 between the Issuer and the Trustee, as the same may be supplemented from time to time in accordance with its terms.

"Issuer" shall mean the County of Simpson, Kentucky or any successor succeeding to its rights or obligations under the Loan Agreement and the Indenture.

"Loan Agreement" shall mean the Loan Agreement dated as of December 1, 1992 between the Issuer and the Company, as approved by this ordinance, and as the same may be amended from time to time.

"Placement Agent" shall mean Wachovia Bank of North Carolina, National Association.

"Placement Memorandum" shall mean collectively, the Preliminary Private Placement Memorandum dated November 24, 1992, and the Private Placement Memorandum to be dated December 8, 1992 with respect to the Bonds.

"Project" shall mean the property described and defined as such in the Loan Agreement and the Indenture.

"Trustee" shall mean the trustee appointed under the Indenture, or its successor.

Section 2. Pursuant to the Act, the Issuer does hereby authorize the financing of a portion of the costs of the refinancing of the Series 1982 Bonds in accordance with the terms of the Loan Agreement and does hereby determine it is in furtherance of the public purposes set forth in the Act; and that, therefore, providing for the refinancing of the Project through the issuance and sale of the Bonds is in the public interest.

Section 3. The Fiscal Court of the Issuer does hereby find, declare and determine that (i) pursuant to the Loan Agreement authorized by this ordinance, the Company will covenant and agree to pay amounts sufficient to pay the principal of, premium, if any, and interest on the Bonds in each year the Bonds are outstanding, and (ii) it is not deemed advisable or necessary to establish any reserve funds in connection with the retirement of the Bonds or the maintenance of the Project.

Section 4. To provide for the financing of a portion of the cost of refinancing of the Series 1982 Bonds, the Issuer does hereby authorize the issuance of revenue bonds of the

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Issuer under the Act, to be designated "County of Simpson, Kentucky, Tax-Exempt Adjustable Mode Revenue Refunding Bonds (The BOC Group, Inc.) Series 1992" in the aggregate principal amount of \$4,400,000. The Bonds shall be issued in the forms and denominations set forth in the Indenture; shall be dated, except as otherwise provided in the Indenture, December 8, 1992; shall be numbered as provided in the Indenture; shall mature on October 1, 2012; shall be subject to redemption prior to maturity upon the terms and conditions set forth in the Indenture; shall bear interest payable semiannually at a rate or rates not greater than 15% per annum; and the Bonds shall be sold at a price of par.

Section 5. The Bonds shall be limited obligations of the Issuer and, except to the extent payable from Bond proceeds or moneys from the investment thereof, shall be payable solely from the revenues and receipts and other amounts received by or on behalf of the Issuer pursuant to the Loan Agreement and otherwise as provided therein and in the Indenture. Bonds and interest thereon shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory limitation and shall not constitute nor give rise to a pecuniary liability of the Issuer or a charge against its general credit or taxing powers.

Section 6. The Bonds shall be executed on behalf of the Issuer with the manual or facsimile signature of the County Judge/Executive of the Issuer and attested by the manual or facsimile signature of the Clerk of the Fiscal Court of the Issuer and shall have impressed thereon the official seal of the Issuer.

If any of the officers who shall have signed or sealed any of said Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed shall have been actually authenticated by the Trustee or delivered by the Issuer, such Bonds nevertheless may be authenticated, issued and delivered with the same force and effect as though the person or persons who signed or sealed such Bonds had not ceased to be such officer or officers of the Issuer; and also any such Bonds may be signed and sealed on behalf of the Issuer by those persons who, at the actual date of the execution of such Bonds, shall be the proper officers of the Issuer, although at the nominal date of such Bonds any such person shall not have been such officer of the Issuer.

Section 7. The Issuer reserves the right, but does not hereby obligate itself, to issue additional bonds for the purposes and upon the conditions set forth in the Loan Agreement and the Indenture.

Section 8. The Issuer shall have no obligation with respect to the Project, and all costs, expenses, taxes, governmental charges and fees and charges with respect to the Project shall be paid by the Company.

Section 9. The Indenture is hereby approved in substantially the form submitted to this meeting, and the County Judge/Executive and Clerk of the Fiscal Court of the Issuer are hereby authorized and directed to execute, acknowledge and deliver the Indenture with such changes therein as shall be approved on behalf of the Issuer by such persons executing such document, their execution to constitute conclusive evidence of such approval, and the Clerk of the Fiscal Court is hereby authorized and directed to affix to the Indenture his corporate seal.

Section 10. The Loan Agreement between the Issuer and the Company is hereby approved in substantially the form submitted to this meeting, and the County Judge/Executive and Clerk of the Fiscal Court of the Issuer are hereby authorized and directed to execute, acknowledge and deliver the Loan Agreement with such changes therein as shall be approved on behalf of the Issuer by such persons executing such document, their execution to constitute conclusive evidence of such approval, and the Clerk of the Fiscal Court is hereby authorized and directed to affix to such document his corporate seal.

Section 11. The Placement Agreement is hereby approved in substantially the form submitted to this meeting, and the County Judge/Executive of the Issuer is hereby authorized to confer with the Placement Agent and the Company in order to complete such Placement Agreement and to execute and deliver said Placement Agreement on behalf of the Issuer in substantially the form presented to this meeting with such changes therein as he shall approve on behalf of the Issuer, his execution to constitute conclusive evidence of such approval, and the sale of the Bonds pursuant to the Placement Agreement is hereby authorized, approved and directed.

Section 12. The Preliminary Private Placement Memorandum presented herewith, and the final Private Placement Memorandum, with such changes as shall be approved on behalf of the Issuer by the person executing the final Private Placement Memorandum, whose approval shall be conclusively evidenced by his execution of the final Private Placement Memorandum, is hereby authorized for use in accordance with the Placement Agreement.

Section 13. Each of the authorized officials of the Issuer are hereby empowered and directed to execute and deliver the Bonds and all documents and other instruments which may be required under the terms of the Placement Agreement, the Indenture, the Loan Agreement and this ordinance. For purposes of this section "authorized officials of the Issuer" shall mean the County Judge/Executive, Deputy County Judge/Executive, Clerk of the Fiscal Court and County Attorney of the Issuer.

Section 14. The provisions of this ordinance are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 15. In the event of any conflict between the provisions of this ordinance and any prior ordinances, orders, resolutions or parts thereof, the provisions of this ordinance shall prevail.

Section 16. Pursuant to the provisions of Section 103.210 of the Act, the Clerk of the Fiscal Court is hereby directed to cause the title of this ordinance to be published, together with a statement signed by the Clerk of the Fiscal Court in the following form:

"The County of Simpson, Kentucky has authorized, pursuant to the above entitled Ordinance adopted on second reading on December 1, 1992 \$4,400,000 aggregate principal amount of its Tax-Exempt Adjustable Mode Revenue Refunding Bonds (The BOC Group, Inc. Project) Series 1992 to refinance its \$4,400,000 in outstanding aggregate principal amount Industrial Development Revenue Bonds (Airco, Inc. Project), Series 1982. Said Bonds are to be retired from the loan repayments to be made by The BOC Group, Inc. under a Loan Agreement with the County, all as authorized by K.R.S. 103.200 to 103.285, inclusive."

The summary of this ordinance presented and read at the meetings at which this ordinance was introduced and adopted is approved for reading and publication according to law.

Section 17. This Ordinance shall be effective immediately upon its passage according to law.

Passed and approved by the Fiscal Court of the County of Simpson, Kentucky upon second reading this 1st day of December, 1992 following first reading on November 24, 1992.

Kenneth Y. Harper
County Judge/Executive

(SEAL)

Jada Rhea
Clerk of the Fiscal Court

Ayes: GLEN EVANS
BOBBY WILLIAMS
BILL SCOTT
JAMES BAILEY, JR.
KENNETH Y. HARPER

Nays:

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CERTIFICATION OF FISCAL COURT CLERK

I, Jada Rhea, hereby certify that I am the duly qualified and Clerk of the Fiscal Court of Simpson County, Kentucky, and I certify, as follows:

- (1) That the foregoing is a true and accurate excerpt from the minutes of a regular meeting of the Fiscal Court of Simpson County, Kentucky, held on Tuesday, December 1, 1992;
- (2) That the stated attendance and voting at said meeting are true and correct;
- (3) That the copy of the First Reading of an Ordinance as read by the Fiscal Court Clerk by title and summary (said title constituting a summary of the terms of the Ordinance was certified as accurate in the meeting of November 24, 1992) is copied in full as required by law in Fiscal Court Order Book 12, under date of November 24, 1992.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the Fiscal Court and the official Seal of the County of Simpson this 1st day of December, 1992.

Jada Rhea
Fiscal Court Clerk

(SEAL)

I, Jada Rhea, Clerk of the Simpson County Fiscal Court, do hereby certify that the foregoing instrument was this day lodged to be and is, with this and the foregoing certificate duly recorded in my office

Given under my hand this 2nd of December 1992.

Jada Rhea