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ORDINANCE NO. 97-46-CL

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$1,500,000 AGGREGATE PRINCIPAL AMOUNT OF VARIABLE RATE ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 1997 (BENCYN, INC. PROJECT) OF TIPPECANOE COUNTY, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO JD INVESTMENTS, LLC, AN INDIANA LIMITED LIABILITY COMPANY, TO FINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN ECONOMIC DEVELOPMENT FACILITY LOCATED WITHIN TIPPECANOE COUNTY, INDIANA, FOR LEASE TO BENCYN, INC.; PROVIDING FOR THE PLEDGE AND ASSIGNMENT OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A TRUST INDENTURE, LOAN AGREEMENT, LEASE AGREEMENT AND PLACEMENT AGREEMENT, AUTHORIZING THE USE AND DISTRIBUTION OF A PRELIMINARY PRIVATE PLACEMENT MEMORANDUM AND A PRIVATE PLACEMENT MEMORANDUM WITH RESPECT TO THE BONDS; AUTHORIZING AGREEMENTS TO SECURE FURTHER THE PAYMENT OF SAID BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, Tippecanoe County, Indiana (the "Issuer"), is a county and political subdivision of the State of Indiana, and by virtue of the constitution and laws of the State, including Indiana Code, Title 36, Article 7, Chapters 11.9 and 12, as supplemented and amended (the "Act"), is authorized and empowered, among other things, to (a) provide funds for the acquisition, construction, installation and equipping of economic development facilities; (b) issue its revenue bonds for the purpose set forth herein; (c) secure such revenue bonds by a pledge and assignment of revenues and other documents as provided for herein; and (d) enact this Ordinance (the "Bond Ordinance"), execute the Indenture, the Loan Agreement and the Placement Agreement (all hereinafter identified) and all other documents to be executed by it, upon the terms and conditions provided therein; and

WHEREAS, the County Council of the Issuer (the "County Council") has found and determined, and does hereby confirm, that the property to be acquired with the proceeds of the Bonds herein authorized (the "Project") will increase business opportunities within Tippecanoe County, Indiana, and will be to the benefit of the health and general welfare of the citizens of Tippecanoe County, Indiana, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount not to exceed \$1,500,000, will be acting in a manner consistent with and in furtherance of the provisions of the Act; and

WHEREAS, pursuant to a Trust Indenture (the "Indenture"), dated as of October 1, 1997, between Peoples Bank & Trust Company, as trustee (the "Trustee") and the Issuer, the Issuer proposes to issue an amount not to exceed \$1,500,000 of its Variable Rate Economic Development Revenue Bonds, Series 1997 (BenCyn, Inc. Project) to provide funds for the acquisition, construction, installation and equipping of the Project, by lending such funds to JD Investments, LLC (the "Borrower") pursuant to a Loan Agreement (the "Loan Agreement"), dated as of October 1, 1997, between the Issuer and the Borrower, which prescribes the terms and conditions under which the Borrower shall repay such loan and pursuant to which the Borrower will execute and deliver to the Issuer its promissory note (the "Project Note") in the principal amount equal to the aggregate principal amount of the Bonds; and

WHEREAS, the Borrower will lease the Project to BenCyn, Inc. (the "Lessee") pursuant to a written lease agreement (the "Lease Agreement") for use by the Lessee as an economic development facility within the meaning of the Act; and

WHEREAS, the Bonds will be secured by a direct-pay letter of credit (the "Letter of Credit") issued by NBD Bank, N.A. (the "Bank") to the Trustee for the benefit of the holders of the Bonds and for the account of the Borrower, which Letter of Credit has been issued pursuant to a certain Reimbursement and Pledge Agreement (the "Reimbursement Agreement") between the Borrower and the Bank; and

WHEREAS, it is determined by the Issuer that the amount necessary to finance the costs of or related to the acquisition, construction, installation and equipping of the Project, will require the issuance, sale and delivery of not to exceed \$1,500,000 aggregate principal amount of Variable Rate Economic Development Revenue Bonds, Series 1997 (BenCyn, Inc. Project) (the "Bonds");

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL that:

Section 1. Definitions. In addition to the words and terms defined in this Bond Ordinance, the words and terms used in this Bond Ordinance shall have the meanings set forth in the Loan Agreement, the Project Note, the Indenture, the Placement Agreement (as hereinafter defined) and in the form of the Bonds unless the context or use indicates another or different meaning or intent, which forms are before this meeting, are hereby incorporated by reference in this Bond Ordinance and the Auditor of the Issuer is hereby directed to insert them into the minutes of the Issuer and to keep them on file as specified in Section 14 hereof.

Any reference herein to the Issuer, or to any officers 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 Bond Ordinance.

2. Determination of Issuer. At a meeting open to the public held on August 18, 1997, by the Tippecanoe County Economic Development Commission (the "Commission"), the Commission adopted certain Resolutions and issued a Report and Findings of Fact, finding, among other things, that the proposed financing will be of benefit to the health and general welfare of the citizens of Tippecanoe County, Indiana and complies with the provisions of the Act. The County Council hereby acknowledges the Commission's Report and Findings of Fact.

At a public hearing held on October 14, 1997 by the Commission pursuant to the provisions of Indiana Code 36-7-12-24(a) and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), notice of publication of which was published in the *Lafayette Leader* on September 26, 1997 and in the *Lafayette Journal and Courier* on September 24, 1997, being newspapers of general circulation in Tippecanoe County, Indiana, the public was given an opportunity to express their views for or against the Project, and no persons appeared nor were written statements received either for or against the Project. The County Council hereby acknowledges the public hearing.

The Issuer has received from the Commission the Resolution dated October 14, 1997 wherein the Commission has found that the proposed financing will be of benefit to the health and general welfare of the citizens of Tippecanoe County, Indiana and that the proposed financing complies with the provisions of the Act, and further recommending this form of Ordinance for approval by this County Council.

Based upon the Report and Findings of Fact and the Resolutions of the Commission, the Issuer hereby finds and determines that the financing approved by the Commission in its Resolution dated October 14, 1997 will be of benefit to the health and general welfare of the citizens of Tippecanoe County, Indiana and complies with the provisions of the Act.

Section 3. Small Issue Election of Issuer. The Issuer hereby elects to have the provisions as to the \$10,000,000 limitation contained in Section 144(a)(4)(A) of the Code apply to the Bonds.

Section 4. Authorization of the Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, Bonds in the maximum aggregate principal amount of not to exceed \$1,500,000, designated as "Tippecanoe County, Indiana Variable Rate Economic Development Revenue Bonds, Series 1997 (BenCyn, Inc. Project)," the proceeds of which will be held by the Trustee under the Indenture and used to make a loan to the Borrower to pay the cost of the acquisition, construction, installation and equipping of the Project, which Project will be leased to the Lessee for use as an economic development facility within the meaning of the Act.

Section 5. Terms and Execution of the Bonds. The Bonds shall be issued as fully registered Bonds, without coupons, in the denominations set forth in the Indenture, numbered consecutively as set forth in the Indenture, and shall be payable at the office of the Trustee and mature as provided in the Indenture. The Bonds shall have such terms, bear such interest rates (but in no event in excess of 12% per annum), and be subject to mandatory and optional redemption or tender as provided in the Indenture and Placement Agreement heretofore presented to the Issuer. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of the Board of Commissioners of the Issuer and the Auditor of the Issuer, and the seal of the Issuer shall be impressed thereon or a facsimile of such seal placed thereon. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

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The form of the Bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, be and the same is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated by the Indenture in an aggregate principal amount not to exceed \$1,500,000 shall represent the approved form of Bonds of the Issuer.

The Bonds are special, limited obligations of the Issuer payable solely from payments of principal of, premium, if any, and interest on the Bonds made by the Bank under the Letter of Credit or by the Borrower under the Project Note and the Loan Agreement except to the extent that the principal of, premium, if any, and interest on the Bonds may be paid out of money attributable to Bond proceeds or from temporary investments thereof.

Section 6. Sale of the Bonds. The Bonds will be privately placed by First Chicago Capital Markets, Inc. (the "Placement Agent"), at the purchase price set forth, and on the terms and conditions described in the Placement Agreement (the "Placement Agreement") among the Issuer, the Borrower and the Placement Agent.

Section 7. Arbitrage Provisions. Subject to the obligations of the Borrower and the Lessee set forth in the Loan Agreement, the Tax Compliance Certificate and the Principal User's Tax Certificate, the Issuer will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute arbitrage bonds under Section 148 of the Code and the regulations prescribed under that Section. The Board of Commissioners of the Issuer and the Auditor of the Issuer, or any other officer having responsibility with respect to the issuance of the Bonds, are 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 a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder.

Section 8. Loan Agreement, Project Note, Indenture, Lease Agreement, Preliminary Private Placement Memorandum, Private Placement Memorandum, Placement Agreement, and all other Documents to be Executed or Accepted by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the Board of Commissioners of the Issuer and the Auditor of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, the Indenture, the Loan Agreement, Project Note and the Placement Agreement, and all other material documents and assignments to be executed or accepted by it in substantially the forms submitted to the Issuer or its counsel, which are hereby approved, with such changes therein not inconsistent with this Bond 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 without further approval of the County Council or of the Commission if such changes do not affect terms set forth in I.C. 36-7-12-27(a)(1) through (a)(10). The approval of such changes by such officers to the extent such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution or acceptance of receipt of any of the foregoing documents by such officers.

The Issuer approves the Lease Agreement, and hereby approves and ratifies the use and distribution of a Preliminary Private Placement Memorandum and a Private Placement Memorandum, in substantially the form submitted to the Issuer, in connection with the issuance, sale and delivery of the Bonds, and authorizes and directs the Board of Commissioners of the Issuer to sign the Private Placement Memorandum if so requested by counsel to the Placement Agent.

Section 9. Covenants of the Issuer. In addition to other covenants of the Issuer in this Bond Ordinance, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from the sources herein provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Bonds on the dates, at the places and in the manner provided herein and in the Bonds, and in all other documents referred to herein.

(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 the Indenture, the Loan Agreement and the Placement Agreement executed and delivered, or received, under this Bond Ordinance, and in all other proceedings of the Issuer pertaining to the Indenture, the Loan Agreement and the Placement Agreement. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the laws of the State of Indiana, including particularly and without limitation, the Act, to issue the Bonds and to execute the Loan

Agreement, the Indenture and the Placement Agreement, and all other documents to be executed or received by it, to provide the security for payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent herein set forth; that all actions on its part for the issuance of the Bonds and execution or acceptance and delivery of the Loan Agreement, the Indenture, the Placement Agreement and all other documents to be executed or accepted by it have been or will be duly and effectively taken; and that the Bonds will be valid and enforceable special, limited obligations of the Issuer according to the terms thereof. Each provision of this Bond Ordinance, the Indenture, each Bond and all other documents to be executed by the Issuer is binding upon such 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 Bonds and all other documents to be executed by the Issuer is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty.

Section 10. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Ordinance, or in the Bonds, the Loan Agreement, the Indenture, the Placement 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, under or independent of the Loan Agreement, shall be had against any member, director, or officer or attorney, 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 the Bonds secured thereby, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of such 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 member, director, or officer or attorney, 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 any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement, the Indenture and the Placement Agreement, and the issuance of the Bonds.

Section 11. No Debt or Tax Pledge. The Bonds shall not constitute a debt or pledge of the faith and credit of the Issuer, the State or any political subdivision thereof, and the holders or owners thereof shall have no right to have taxes levied by the Issuer, the State or of any political subdivision, for the payment of the principal thereof or interest thereon. Moneys raised by taxation shall not be obligated or pledged for the payment of principal of or interest on the Bonds, and the Bonds shall be payable solely from the revenues and security interests pledged for their payment as authorized by the Indenture.

Section 12. Severability. If any section, paragraph or provision of this Bond 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 Bond Ordinance.

Section 13. Repeal of Conflicting Ordinances and Resolutions. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Bond Ordinance are, to the extent of such conflict, hereby repealed.

Section 14. Public Inspection. A copy of the Loan Agreement, the Indenture, the Placement Agreement, the Preliminary Private Placement Memorandum, the Private Placement Memorandum and the form of the Tippecanoe County, Indiana Variable Rate Economic Development Revenue Bonds, Series 1997 (BenCyn, Inc. Project) is available for public inspection upon request to the Auditor of the Issuer.

Section 15. Compliance with Open Door Law. It is hereby determined that all formal actions of the County Council relating to the adoption of this Bond Ordinance were taken in an open meeting of the County Council, that all deliberations of the County Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, et seq., as supplemented and amended.

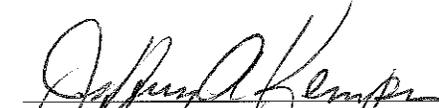
Section 16. Effective Date. This Bond Ordinance shall be in full force and effect upon compliance with Indiana Code 36-2-4 et seq.

Passed on the first reading this 14th day of October, 1997.

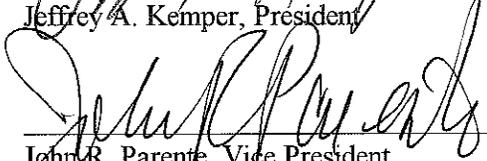
VOTE

TIPPECANOE COUNTY COUNCIL

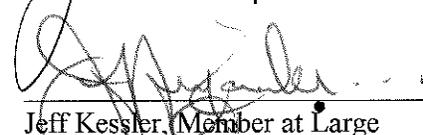
Yes


Jeffrey A. Kemper, President

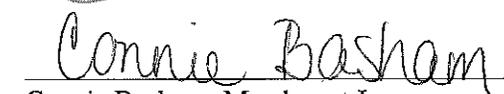
Yes


John R. Parente, Vice President

Yes


Jeff Kessler, Member at Large

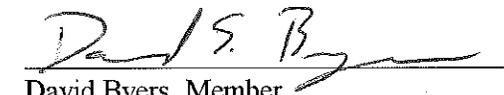
Yes


Connie Basham, Member at Large

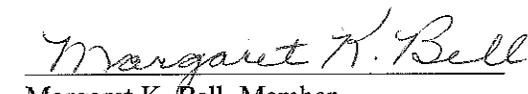
Yes


David S. Koltick, Member at Large

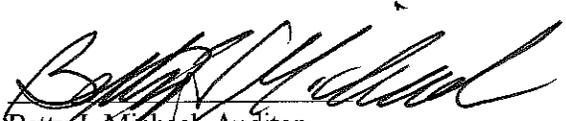
Yes


David Byers, Member

Yes

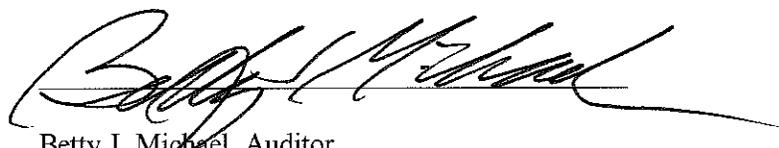

Margaret K. Bell, Member

ATTEST:


Betty J. Michael, Auditor
Tippecanoe County, Indiana

Passed on the second reading this 14th day of October, 1997.

The foregoing was passed by the County Council this 14th day of October, 1997, and presented by me to the Presiding Officer of the County Council of Tippecanoe County, Indiana this 14th day of October, 1997, at Lafayette, Indiana.


Betty J. Michael, Auditor
Tippecanoe County, Indiana

Approved and signed this 14th day of October, 1997.

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Presiding Officer, Tippecanoe County Council

Betty J. Michael, Auditor
Tippecanoe County, Indiana