Sponsored by Mayor John Dennis

ORDINANCE NO. 09-10 (SECOND AMENDMENT BY INSERTION)

AN ORDINANCE AUTHORIZING THE CITY OF WEST LAFAYETTE, INDIANA TO ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2010 (WESTMINSTER VILLAGE PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the West Lafayette Economic Development Commission (the "EDC") has rendered its Project Report for the Westminster Village Project regarding the financing of economic development facilities for Westminster Village West Lafayette, Inc.; and

WHEREAS, the EDC conducted a public hearing at 12:00 p.m. on ~~April 29,~~June 3, 2010, and thereafter adopted a resolution regarding the financing for the Westminster Village Project (the "Resolution") which Resolution has been transmitted hereto, finding that the financing or refinancing of such economic development facilities for Westminster Village West Lafayette, Inc. complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing will be of benefit to the health and welfare of the City of West Lafayette, Indiana (the "City") and its citizens; and

WHEREAS, the EDC has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the form of and has transmitted the Bond Purchase and Loan Agreement to this Common Council for approval; and

WHEREAS, the Project is expected to create opportunities for gainful employment in the City and will be of benefit to the health and general welfare of the City and its citizens; now, therefore

BE IT ORDAINED BY THE COMMON COUNCIL OF WEST LAFAYETTE, INDIANA THAT:

Section 1. It is hereby found that the financing and refinancing of the economic development facilities referred to in the Bond Purchase and Loan Agreement, approved by the EDC and presented to this Common Council, the issuance and sale of one or more series of taxable or tax exempt bonds, known as City of West Lafayette, Indiana Economic Development Revenue Bonds, Series 2010 (Westminster Village Project) (the "Bonds"), the loan of the proceeds of the Bonds to Westminster Village West Lafayette, Inc. (the "Borrower") to finance and refinance the acquisition, construction, renovation and improvement of the Project to be owned and operated by the Borrower, the payment of the Bonds by the Borrower pursuant to the Bond Purchase and Loan Agreement, and the securing of said Bonds under such Bond Purchase and Loan Agreement complies with the purposes and provisions of I.C. 36-7-11.9 and 12, and will be of benefit to the health and welfare of the City and its citizens.

Section 2. The proceeds of the Bonds will be used for the financing and refinancing of the acquisition, construction, renovation and improvement of continuing care facilities known as Westminster Village located at 2471 North Salisbury Street, West Lafayette, Indiana, to be owned and operated by the Borrower (the "Project").

Section 3. **At the public hearing held before the EDC, the EDC considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City, and subsequently found, based on special findings of fact set forth in the Resolution transmitted hereto, that the Project would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the EDC's Resolution, and concludes that the Project will not have an adverse competitive effect on any other similar facilities in or near the City, and the facilities will be of benefit to the health and welfare of the citizens of the City.**

Section 4. The form of the Bond Purchase and Loan Agreement approved by the EDC is hereby approved (herein referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and 12), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk-Treasurer for public inspection.

Section 5. The City shall issue its taxable or tax exempt Bonds in the total principal amount not to exceed $~~20,000,000,~~26,000,000, and maturing no later than ~~June~~August 1, ~~2040.~~2045. Said Bonds are to be issued for the purpose of procuring funds to finance and refinance the costs of acquisition, construction, renovation and improvement of the Project, as more particularly set out in the Financing Agreement, incorporated herein by reference, which Bonds will be payable as to principal, premium, if any, and interest from the payments made by the Borrower under the Financing Agreement. The Bonds shall be issued in fully registered form and shall be redeemable as provided in the Financing Agreement, but in all events the Bonds shall be subject to redemption, at par, in no longer than ten (10) years. Payments of principal and interest are payable in lawful money of the United States of America by check or draft mailed or delivered to the registered owners as provided in the Financing Agreement. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City nor are the Bonds payable in any manner from revenues raised by taxation. By January 31 of each year the Bonds remain outstanding, the Borrower shall provide to the Clerk-Treasurer a report identifying the (i) the Borrower's ~~use~~expenditure of Bond proceeds during the previous year, and (ii) the aggregate amount of Bonds outstanding as of December 31 of the previous year.

Section 6. The Mayor and Clerk-Treasurer are authorized and directed to approve the sale of the Bonds to the original purchaser (the "Purchaser") at the price of 100% of the principal amount thereof. The Bonds shall bear interest at rates per annum established pursuant to the Financing Agreement, provided that the interest rate on the Bonds shall not exceed 12% per annum.

Section 7. The Mayor and Clerk-Treasurer are authorized and directed to execute, attest, affix or imprint by any means the City seal to the Financing Agreement approved herein on behalf of the City and any other document or certificate which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor and Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the Financing Agreement which take place after the date of this Ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that said Financing Agreement may change; however, the statutorily required approvals of the Common Council shall not change after the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, interest rate on or term of the Bonds as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk-Treasurer on the Bonds may be either manual or facsimile signatures. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to the Purchaser and the Purchaser will make such payment for the Bonds available to Borrower as provided in the Financing Agreement. The Bonds shall be originally dated the date of issuance and delivery thereof.

Section 8. The provisions of this Ordinance and the Financing Agreement securing the Bonds shall constitute a contract binding between the City, the Purchaser and the Borrower, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as said Bonds or the interest thereon remains unpaid.

Section 9. This Ordinance shall be in full force and effect from and after its passage.

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