

ORDINANCE NO. 11-12

ORDINANCE AUTHORIZING
THE CITY OF WEST LAFAYETTE, INDIANA TO ISSUE ITS
“ECONOMIC DEVELOPMENT REVENUE BOND, SERIES 2012
(FAITH WEST PROJECT)”
AND APPROVING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the West Lafayette Economic Development Commission (the “Commission”) has rendered its Project Report for the Faith West Project regarding the financing of proposed economic development facilities for Faith West Properties, Inc. (the “Borrower”), and the Tippecanoe County Area Plan Commission has commented favorably on such Project Report; and

WHEREAS, the Commission conducted a public hearing at 12:00 p.m. on May 24, 2012, and thereafter adopted a resolution on May 24, 2012 regarding the financing of the proposed economic development facilities for the Borrower (the “Resolution”), which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities of the Borrower 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 and its citizens; and

WHEREAS, the Commission 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 for approval by the Common Council the Bond Purchase and Loan Agreement (the “Bond Purchase and Loan Agreement”); and

WHEREAS, the Project (as hereinafter defined) is expected to create opportunities for gainful employment in the City of West Lafayette, Indiana, and will be of benefit to the health and general welfare of the City of West Lafayette, Indiana, and its citizens; now, therefore

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

Section 1. It is hereby found that the financing of a portion of the costs of the economic development facilities referred to in the Bond Purchase and Loan Agreement approved by the Commission and presented to this Common Council; the issuance and sale of the City of West Lafayette, Indiana Economic Development Revenue Bond, Series 2012 (Faith West Project) (the "Bond"); the loan of the proceeds of the Bond to the Borrower to finance a portion of the costs of the acquisition, construction, expansion, renovation and equipping of such facilities to be owned by the Borrower; the payment of the Bond by the payments of the Borrower under the Bond Purchase and Loan Agreement; and the securing of said Bond under the 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 of West Lafayette, Indiana and its citizens.

Section 2. The economic development facilities to be financed in part from proceeds of the Bond will consist of the acquisition, construction, expansion, renovation and equipping of certain economic development facilities for the Borrower, including (i) the construction and equipping of a new approximately 94,000 square foot, four story community center, to be built on approximately 6.4 acres of land located at 1920 Northwestern Avenue in West Lafayette, Indiana, to be comprised of facilities for preschool programs, a community fitness center, a

counseling/mentoring center, a multi-purpose gymnasium, meeting rooms, and community housing to accommodate approximately 120 persons in 39 units, and (ii) the acquisition, construction, expansion, renovation and equipping of various other and related economic development facilities for the Borrower, including streets, grounds, landscaping and site improvements in connection with the foregoing facilities (collectively, the “Project”).

Section 3. At the public hearing held before the Commission, the Commission considered whether the economic development facilities comprising the Project would have an adverse competitive effect on any similar facilities located in or near the City of West Lafayette, Indiana, 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 Commission’s Resolution, and concludes that the Project will not have an adverse competitive effect on any other similar facilities in or near the City of West Lafayette, Indiana, and the facilities will be of benefit to the health and welfare of the citizens of the City of West Lafayette, Indiana.

Section 4. The substantially final form of the Bond Purchase and Loan Agreement approved by the Commission 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-Treasurer. 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 of West Lafayette, Indiana shall issue its Bond in the total principal amount not to exceed \$7,000,000 and maturing no later than December 31, 2033. Said Bond is to be issued for the purposes of procuring funds (i) to pay a portion of the costs of the acquisition, construction, expansion, renovation and equipping of the Project, as more particularly set out in the Financing Agreement, incorporated herein by reference, which Bond will be payable as to principal, premium, if any, and interest from the payments made by the Borrower under the Financing Agreement, and (ii) to pay certain costs of issuance. The Bond shall be issued in fully registered form in a single denomination for the full principal amount and shall be redeemable as provided in Financing Agreement. Payments of principal, premium, if any, and interest and other charges under the Financing Agreement or the Bond are payable in lawful money of the United States of America in immediately available funds, payable to the registered owner as provided in the Financing Agreement. The Bond shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of West Lafayette, Indiana, nor is the Bond payable in any manner from revenues raised by taxation.

Section 6. During the outstanding term of the Bond, the Borrower shall submit to the Clerk-Treasurer (who shall disburse such information to the Department of Development, the Commission and the Common Council) by January 31 of each year, a report of the balance of the loan as of December 31 of the previous year and, if the Project has not yet been completed, the proceeds remaining to be spent.

Section 7. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bond to JPMorgan Chase Bank, N.A., as an institutional investor (the "Purchaser"), at the price of 100% of the principal amount thereof, plus accrued interest, if any, less a Purchaser's fee not

in excess of 2% of the face amount thereof. The Bond shall bear interest at an interest rate or rates established pursuant to the Financing Agreement, provided that the interest rate on the Bond shall never exceed 12% per annum.

Section 8. The Mayor and the Clerk-Treasurer are authorized and directed to execute, attest, affix or imprint by any means the seal of the City of West Lafayette to the Financing Agreement approved herein on behalf of the City of West Lafayette, Indiana, and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bond authorized herein. The Mayor and the 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 the City Attorney, it being the express understanding of this Common Council that said Financing Agreement, although in substantially final form as of the date of this Ordinance, nonetheless may change; provided, that 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 Bond as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and the Clerk-Treasurer on the Bond may be either manual or facsimile signatures. Payment for the Bond will be made available by the Purchaser to the Borrower as provided in the Financing Agreement, and after such payment the Bond will be delivered directly to the Purchaser. The Clerk-Treasurer is authorized to arrange for delivery of such Bond to the Purchaser thereof. The Mayor and the

Clerk-Treasurer shall execute and the Clerk-Treasurer shall deliver the Bond to the Purchaser thereof within ninety days of the adoption of this Ordinance. The Bond shall be originally dated the date of its issuance and delivery.

Section 9. The provisions of this Ordinance and the Financing Agreement securing the Bond shall constitute a contract binding between the City of West Lafayette, Indiana, the Purchaser and the Borrower, and, after the issuance of said Bond, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holder so long as said Bond or the interest thereon remains unpaid.

Section 10. This Common Council hereby represents that bonds, warrants and other evidences of indebtedness issued by it or on its behalf (other than “private activity bonds” which are not “qualified 501(c)(3) bonds” as those terms are defined in the Internal Revenue Code of 1986, as amended) during calendar year 2012 will be less than \$10,000,000 principal amount of tax-exempt obligations. The Common Council hereby designates the Bond as a qualified obligation pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, relating to the disallowance of 100% of the deduction for interest expense allocable to tax-exempt obligations acquired after August 7, 1986.

Section 11. This Ordinance shall be in full force and effect from and after its passage.

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Thank you.