

BILL NO. S-16-02-10

SPECIAL ORDINANCE NO. _____

A SPECIAL ORDINANCE AUTHORIZING THE CITY OF FORT WAYNE, INDIANA, TO ISSUE ONE OR MORE SERIES OF ITS CITY OF FORT WAYNE, INDIANA MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2016 (LILLIE GARDENS PROJECT) (WITH SUCH FURTHER SERIES OR OTHER DESIGNATION AS DETERMINED TO BE NECESSARY, DESIRABLE OR APPROPRIATE), IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED FIVE MILLION DOLLARS (\$5,000,000), AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the "Act") declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Fort Wayne, Indiana (the "Issuer" or "City") is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the Issuer; and

WHEREAS, Lillie Gardens, LP, an Indiana limited partnership (the "Developer") desires to finance a portion of the costs of acquisition, design, construction, renovation, improvement and/or equipping of the existing multifamily housing facility located in the City of Fort Wayne, Indiana, currently known as the Diplomat Apartments, located at 3323 Diplomat Drive, Fort Wayne, Indiana, containing approximately 140 affordable living units including certain functionally-related improvements (the "Project"); and

WHEREAS, the Developer has advised the Fort Wayne Economic Development Commission (the "Commission") and the Issuer concerning the Project, and has requested that the Issuer issue, pursuant to the Act, one or more series of its taxable or tax-exempt Multifamily Housing Revenue Bonds, Series 2016

1 (Lillie Gardens Apartments Project) (with such further or different series designation
2 as may be necessary, desirable or appropriate, including such series designation to
3 indicate the year in which the bonds are issued)(the "Bonds"), in an aggregate
4 principal amount not to exceed Five Million Dollars (\$5,000,000), for the purpose of
5 providing funds for paying all or a portion of the costs of the Project including but
6 not limited to paying all incidental expenses incurred on account of the issuance of
7 the Bonds; and

8 **WHEREAS**, the Commission has rendered its report (the "Report")
9 concerning the proposed financing for the Developer and the Plan Commission has
10 been given the opportunity to comment thereon; and

11 **WHEREAS**, the Commission and this Common Council of the City of Fort
12 Wayne, Indiana (the "Council") each have studied the Project and the proposed
13 financing of the Project and its effects on the health and general welfare of the Issuer
14 and its citizens; and

15 **WHEREAS**, the creation or retention of opportunities for gainful
16 employment and the provision of quality, affordable, multifamily housing to be
17 achieved by the acquisition, renovation and equipping of the Project will be of public
18 benefit to the health, safety and general welfare of the Issuer and its citizens; and

19 **WHEREAS**, pursuant to and in accordance with the Act, the Issuer desires to
20 provide funds necessary to finance all or a portion of the Project by issuing the
21 Bonds; and

22 **WHEREAS**, the Act provides that such revenue bonds may be secured by
23 and issued pursuant to the terms of a trust indenture between an issuer and a
24 corporate trustee; and

25 **WHEREAS**, pursuant to and in accordance with the Act, the Issuer desires to
26 provide funds to finance the Project by issuing the Bonds in an original aggregate
27 principal amount not to exceed \$5,000,000; and

1 **WHEREAS**, the Issuer intends to issue the Bonds pursuant to a Trust
2 Indenture, to be dated the first day of the month in which the Bonds are sold or
3 delivered (or such other date as the officers of the Issuer may hereafter approve) (the
4 “Indenture”), by and between the Issuer and The Huntington National Bank, as
5 trustee (the “Trustee”), in order to obtain funds necessary to provide for the
6 financing of all or a portion of the Project in accordance with the terms of a Loan
7 Agreement to be dated as of the first day of the month in which the Bonds are sold or
8 delivered (or such other date as the officers of the Issuer may hereafter approve) (the
9 “Loan Agreement”), by and between the Issuer and the Developer with respect to the
10 Bonds and the Project; and

11 **WHEREAS**, pursuant to the Loan Agreement, the Developer will make
12 separate representations, warranties and commitments with respect to the Project and
13 the use of the proceeds of the Bonds and the Developer will agree to make payments
14 sufficient to pay the principal and interest on the Bonds as the same become due and
15 payable and to pay administrative expenses in connection with the Bonds in
16 accordance with the terms thereof; and

17 **WHEREAS**, there has been submitted to this Council for approval
18 substantially final forms of the Indenture, Loan Agreement, Regulatory Agreement
19 and Declaration of Restrictive Covenants among the Issuer, the Trustee and the
20 Developer, form of the Bonds (hereinafter referred to collectively as the “Financing
21 Documents”), and the proposed form of ordinance (the “Ordinance”) which are by
22 this reference incorporated herein; and

23 **WHEREAS**, pursuant to Indiana Code 36-7-12-24, as amended, and Section
24 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), the
25 Commission published notice of a public hearing (the “Public Hearing”) on the
26 proposed issuance of the Bonds to finance all or a portion of the Project, and on
27 August 20, 2015 the Commission held the Public Hearing for the purpose of
28 receiving evidence and testimony on the Project and matters related to the proposed
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1 financing thereof and heard all persons interested in the proceedings and considered
2 written remonstrances and objections, if any; and

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4 **WHEREAS**, following such Public Hearing, the Commission approved a
5 report (the "Report") and adopted a resolution (the "EDC Resolution") making
6 findings that the financing of the Project complies with the purposes and provisions
7 of the Act and that such financing will be of benefit to the health and welfare of the
8 Issuer, and that the Project will not have an adverse competitive effect or impact on
9 any similar facility already constructed or operating in the same market area or in or
about Allen County, Indiana; and

10 **WHEREAS**, no member of this Council has any pecuniary interest in any
11 employment, Financing Documents or other contract made under the provisions of
12 the Act and related to the Bonds authorized herein, which pecuniary interest has not
13 been fully disclosed to this Council and no such member has voted on any such
14 matter, all in accordance with the provisions of Indiana Code 36-7-12-16; and

15 **WHEREAS**, there has been submitted to the Commission for its approval the
16 forms of the Financing Documents, and a form of this proposed Ordinance, which
17 were incorporated by reference in the Commission's Resolution adopted on February
18 18, 2016, which Resolution has been transmitted hereto; and

19 **WHEREAS**, the Issuer expects to pay for certain costs of the Bonds or costs
20 related to the Project (collectively, the "Expenditures") prior to the issuance of the
21 Bonds, and to reimburse the Expenditures with proceeds received by the City upon
22 the issuance of the Bonds; and

23
24 **WHEREAS**, the Common Council desires to reaffirm its intent to reimburse
25 the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c);
26 and

1 **WHEREAS**, based upon the Report and EDC Resolution, the Common
2 Council hereby finds and determines that the funding approved by the Commission
3 for all or a portion of the Project will be of benefit to the health and general welfare
4 of the citizens of the City, complies with the provisions of the Act and the amount
5 necessary to finance all or a portion of the costs of the Project, together with
6 incidental expenses incurred in connection therewith, will require the issuance, sale
7 and delivery of one or more series of revenue bonds in an aggregate combined
8 principal amount not to exceed Five Million Dollars (\$5,000,000).

9 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON**
10 **COUNCIL OF THE CITY OF FORT WAYNE AND OF ALLEN COUNTY AS**
11 **FOLLOWS:**

12 **SECTION 1.** After considering the evidence presented in the findings of
13 fact set forth in the Report, this Council hereby finds, determines, ratifies and
14 confirms that the financing of the economic development facilities referred to in the
15 Financing Documents consisting of the Project, the issuance and sale of the Bonds,
16 and the use of the net proceeds thereof by the Developer to finance all or a portion of
17 the Project will: (i) promote a substantial likelihood of the diversification of industry,
18 the creation or retention of business opportunities, the creation or retention of
19 opportunities for gainful employment and the provision of quality, affordable,
20 multifamily rental housing within the jurisdiction of the Issuer; (ii) serve a public
21 purpose, and will be of benefit to the health and general welfare of the Issuer; (iii)
22 comply with the purposes and provisions of the Act and it is in the public interest
23 that the Issuer take such lawful action as determined to be necessary or desirable to
24 encourage the diversification of industry, the creation or retention of business
25 opportunities, and the creation or retention of opportunities for gainful employment
26 and the provision of quality, affordable, multifamily rental housing within the
27 jurisdiction of the Issuer and (iv) not have a material adverse competitive effect on
28 any similar facilities already constructed or operating in or near Allen County,
29 Indiana.
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1 **SECTION 2.** The forms of the Financing Documents presented herewith
2 are hereby approved, with any and all such changes as may be deemed necessary,
3 desirable or appropriate by the Mayor and the Clerk of the Council (the "Clerk"). In
4 compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2)
5 copies of the Financing Documents are on file in the office of the City Clerk for
6 public inspection.

7 **SECTION 3.** The Issuer is authorized to issue the Bonds, in one or more
8 series, with a maximum aggregate principal amount not to exceed Five Million
9 Dollars (\$5,000,000), with a maximum term not to exceed four (4) years and with a
10 maximum interest rate not to exceed three percent (3.0%) per annum, for the purpose
11 of procuring funds to pay all or a portion of the costs of the Project by making a
12 portion of the proceeds of such Bonds available as set forth in the Financing
13 Documents and pay all incidental expenses incurred on account of the issuance of the
14 Bonds. The Bonds shall be payable as to principal and interest upon such terms and
15 conditions as otherwise provided in the Financing Documents and the Ordinance.
16 The mandatory tender of the Bonds within three (3) years of the date of issuance
17 thereof at a price of one hundred percent (100%) of the principal amount thereof is
18 also approved. The Bonds shall never constitute a general obligation of, moral
19 obligation of, an indebtedness of, or charge against the general credit of the City or a
20 pledge of the full faith or credit of the City within the purview of any constitutional
21 or statutory limitation or provision.

22 **SECTION 4.** The Mayor and the Controller are authorized and directed
23 to sell the Bonds to the purchaser or purchasers thereof at a price not less than
24 ninety-eight and one-half percent (98.5%) of the aggregate principal amount thereof
25 plus accrued interest, if any, at a rate of interest not to exceed three percent (3.0%)
26 per annum, and with a final maturity date no later than four (4) years from the date of
27 the issuance of any series of the Bonds. A bond purchase agreement, in form and
28 substance acceptable to the Mayor and the Controller (collectively, the "Purchase
29 Agreements"), is hereby authorized and approved, and the Mayor and the Controller
30 are hereby authorized and directed to execute and deliver the Purchase Agreements

1 in form and substance acceptable to them and consistent with the terms and
2 conditions set forth in this Ordinance, with such to be conclusively evidenced by
3 their execution thereof. If necessary or desirable in connection with the sale of the
4 Bonds, the Mayor, the Clerk and any other officer of the City are authorized to enter
5 into one or more continuing disclosure undertaking agreements, in compliance with
6 Rule 15c2-12 of the Securities and Exchange Commission, which will be in such a
7 form as may be deemed necessary, appropriate or desirable by the Mayor, the Clerk
8 and any other officer of the City, with such to be conclusively evidenced by their
9 execution thereof.

10 **SECTION 5.** The Mayor and the Clerk are authorized and directed to
11 execute the Financing Documents, and the Mayor, the Controller, the Clerk and any
12 other officer of the City are authorized and directed to execute such other documents
13 approved or authorized herein and any other document which may be necessary,
14 appropriate or desirable to consummate the transaction contemplated by the
15 Financing Documents and this Ordinance, and their execution is hereby confirmed
16 on behalf of the City. The signatures of the Mayor and the Clerk on the Bonds and
17 any other documents which may be necessary or desirable to consummate the
18 transaction are hereby confirmed on behalf of the City. The signatures of the
19 Mayor and the Clerk on the Bonds may be facsimile signatures. The Mayor, the
20 Clerk, the Controller and any other officer of the City are authorized to arrange for
21 the delivery of the Bonds to the purchaser, payment for which will be made in the
22 manner set forth in the Financing Documents. The Mayor and the Clerk may, by
23 their execution of the Financing Documents requiring their signatures and imprinting
24 of their facsimile signatures thereon, approve any and all such changes therein and
25 also in those Financing Documents which do not require the signature of the Mayor
26 or the Clerk without further approval of this Common Council or the Commission if
27 such changes do not affect terms set forth in Sections 27(a)(1) through and including
28 (a)(10) of the Act.

29 **SECTION 6.** The provisions of this Ordinance and the Financing
30 Documents shall constitute a contract binding between the City and the holder or

1 holders of the Bonds and after the issuance of said Bonds, this Ordinance shall not be
2 repealed or amended in any respect which would adversely affect the right of such
3 holder or holders so long as said Bonds or the interest thereon remains unpaid.

4 **SECTION 7.** Subject to the provisions of Sections 5 and 13 of this
5 Ordinance, if necessary or desirable, a Preliminary Official Statement of the City
6 relating to the Bonds (the "Preliminary Official Statement"), in a form acceptable to
7 the Mayor, is hereby (a) authorized and approved, together with such changes in
8 form and substance as may be deemed necessary or appropriate by the Mayor
9 pursuant to Sections 5 and 13 of this Ordinance, (b) authorized and approved, as the
10 same may be appropriately confirmed, modified and amended pursuant hereto, for
11 distribution as the Preliminary Official Statement of the City, (c) authorized to be
12 deemed and determined by the Mayor on behalf of the City, as of its date, to
13 constitute the "final" official statement of the City with respect to the Bonds to be
14 offered thereby, subject to completion as permitted by and otherwise pursuant to the
15 provisions of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC
16 Rule"), and (d) authorized and approved, consistent with the provisions of any
17 Purchase Agreement and the SEC Rule, to be placed into final form and distributed
18 and delivered to purchasers and potential purchasers of the Bonds offered thereby as
19 the final official statement of the City, as of the date thereof, with respect to the
20 Bonds (the "Official Statement").

21 **SECTION 8.** Subject to the obligations of the Developer set forth in the
22 Financing Documents and/or the certificates or agreements of such Developer to be
23 executed upon the issuance of the Bonds, if any of the Bonds are issued on a tax-
24 exempt basis for purposes of federal income taxation, the City will use its best efforts
25 to restrict the use of the proceeds of the Bonds in such a manner and to expectations
26 at the time the Bonds are delivered to the purchasers thereof, so that they will not
27 constitute "arbitrage bonds" under Section 148 of the Code and the regulations
28 promulgated thereunder, or to preserve any other desired tax status under the Code.
29 The Mayor, the Controller and the Clerk, or any other officer having responsibility
30 with respect to the issuance of the Bonds, are authorized and directed, alone or in

1 conjunction with any of the foregoing, or with any other officer, employee,
2 consultant or agent of the City, to deliver a certificate for inclusion in the transcript
3 of proceedings for the Bonds, setting forth the facts, estimates and circumstances and
4 reasonable expectations pertaining to the use of the Bond proceeds as of the date of
5 issuance thereof.

6 **SECTION 9.** No recourse under or upon any obligation, covenant,
7 acceptance or agreement contained in this Ordinance, the Financing Documents or
8 under any judgment obtained against the City, including without limitation its
9 Economic Development Commission, or by the enforcement of any assessment or by
10 any legal or equitable proceeding by virtue of any constitution or statute or
11 otherwise, or under any circumstances, under or independent of the Financing
12 Documents, shall be had against any member, director, or officer or attorney, as
13 such, past, present, or future, of the City, including without limitation its Economic
14 Development Commission, either directly or through the City, or otherwise, for the
15 payment for or to the City or any receiver thereof or for or to any holder of the
16 Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by
17 the City upon any of the Bonds. Any and all personal liability of every nature,
18 whether at common law or in equity, or by statute or by constitution or otherwise, of
19 any such member, director, or officer or attorney, as such, to respond by reason of
20 any act or omission on his or her part or otherwise for, directly or indirectly, the
21 payment for or to the City or any receiver thereof, or for or to any owner or holder of
22 the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds
23 hereby secured or any at them, shall be expressly waived and released as a condition
24 of and consideration for the execution and delivery of the Financing Documents and
25 the issuance, sale and delivery of the Bonds.

26 **SECTION 10.** If any section, paragraph or provision of this Ordinance
27 shall be held to be invalid or unenforceable for any reason, the invalidity or
28 unenforceability of such section, paragraph or provision shall not affect any of the
29 remaining provisions of this Ordinance.
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1 **SECTION 11.** All ordinances, resolutions and orders or parts thereof, in
2 conflict with the provisions of this Ordinance are, to the extent of such conflict,
3 hereby repealed.

4 **SECTION 12.** It is hereby determined that all formal actions of this
5 Council relating to the adoption of this Ordinance were taken in one or more open
6 meetings of the Council, that all deliberations of this Council and of its committees,
7 if any, which resulted in formal action, were in meetings open to the public, and that
8 all such meetings were convened, held and conducted in compliance with applicable
9 legal requirements, including Indiana Code 5-14-1.5, as amended.

10 **SECTION 13.** The Mayor, the Controller, the Clerk and any other officer
11 of the City are hereby authorized and directed, in the name and on behalf of the City,
12 to execute, attest and deliver such further instruments and documents, and to take
13 such further actions, in the name of the City as in their judgment shall be necessary
14 or advisable in order fully to consummate the transactions described herein and carry
15 out the purposes of this Ordinance, and any such documents heretofore executed and
16 delivered and any such actions heretofore taken, be, and hereby are, ratified and
17 approved.

18 **SECTION 14.** This Council hereby declares its official intent, to the extent
19 permitted by law, to issue the Bonds in one or more series or issues, not to exceed
20 the maximum aggregate principal amount authorized herein, and to reimburse costs
21 of the Project consisting of the Expenditures from proceeds of the sale of the Bonds.

22 **SECTION 15.** This Council finds and determines that the amount of tax
23 credits to be allocated to the Project under Section 42 of the Internal Revenue Code
24 of 1986, as amended, does not exceed the amount necessary for the financial
25 feasibility of the Project and its viability as a qualified housing project throughout
26 the credit period for the Project. In making the foregoing determination, this Council
27 has relied upon representations of the Developer. The foregoing determination shall
28 not be construed to be a representation or warranty by this Council as to the
29 feasibility or viability of the Project. In reliance upon the representations of the
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1 Developer, it is hereby found and determined that the Project satisfies the
2 requirements for the allocation of a housing credit dollar amount under the Indiana
3 Housing and Community Development Authority's qualified allocation plan.

4 **SECTION 16.** This ordinance shall be in full force and effect
5 immediately upon passage by this Council and signing by the President of this
6 Council and by the Mayor.

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9 _____
Russ Jehl, President

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11 APPROVED AS TO FORM AND LEGALITY:

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13 _____
14 Carol Helton, City Attorney
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