

BILL NO. S-20-01-38 – AS AMENDED

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 OF 2020 (McCORMICK PLACE APARTMENTS) AND ITS NOTE (WITH SUCH FURTHER SERIES OR OTHER DESIGNATION AS DETERMINED TO BE NECESSARY, DESIRABLE OR APPROPRIATE), IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED TEN MILLION FIVE HUNDRED THOUSAND DOLLARS (\$10,500,000), 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 “City”) is authorized to issue revenue bonds and notes and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, design, construction, rehabilitation and equipping of economic development facilities in order to foster creation or retention of opportunities for gainful employment and creation of business opportunities in or near the City; and

WHEREAS, McCormick Rehabilitation, LLC, an Indiana limited liability company (the “Borrower”) desires to finance a portion of the costs of a certain project constituting an economic development facility under the Act within the City, including all or any portion of the acquisition, design, construction, rehabilitation and equipping of the existing apartment buildings located in the City at 2811 McCormick Avenue consisting of 96 units, 2 of which are used as a resident resource center and 94 are used as residential units, and certain functionally-related improvements (the “Project”); and

WHEREAS, the Borrower has advised the Fort Wayne Economic Development Commission (the “Commission”) and the City concerning the Project, and requested that the City issue, pursuant to the Act, (i) one or more series of its Multifamily Housing Revenue Bonds of 2020 (McCormick Place Apartments) (the “Bonds”) and (ii) its note to the Housing Authority of the City of Fort Wayne (the “Housing Authority”) (the “Note” and together with the Bonds, the “Obligations”) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in an aggregate principal amount not to exceed Ten Million Five Hundred Thousand Dollars (\$10,500,000) and lend all or a portion of the proceeds of such Obligations to the Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design, acquisition, construction, rehabilitation and equipping of the Project, and (b) to pay incidental expenses of issuance, including but not limited to, the funding of a debt service reserve fund, if necessary, and capitalized interest, if necessary; and

1 **WHEREAS**, the Commission and this Common Council of the City (the
2 “Council”) each have studied the Project and the proposed financing of the Project and
3 its effect on the health and general welfare of the City and its citizens; and

4 **WHEREAS**, the Commission has considered whether the proposed Project may
5 have an adverse competitive effect on similar facilities already constructed or operating
6 in the City; and

7 **WHEREAS**, the completion and operation of the Project will result in the
8 creation and retention of jobs, the creation and retention of business opportunities in the
9 City, the creation of affordable housing in the City and will be of public benefit to the
10 health safety and general welfare of the City and its citizens; and

11 **WHEREAS**, the Borrower has advised the Commission that it has determined
12 that the amount of tax credits to be allocated to the Project under Section 42 of the
13 Internal Revenue Code of 1986, as amended (the “Code”) does not exceed the amount
14 necessary for the financial feasibility of the Project and its viability as a qualified housing
15 project throughout the credit period for the Project and that the Project satisfies the
16 requirements for the allocation of a housing credit dollar amount under the Indiana
17 Housing and Community Development Authority’s (the “IHCD”) qualified allocation
18 plan; and

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

22 **WHEREAS**, the City intends to issue the Bonds pursuant to a Bond Purchase and
23 Loan Agreement, to be dated the day of the month in which the Bonds are sold or
24 delivered (or such other date as the officers of the City may hereafter approve) (the
25 “Bond Purchase and Loan Agreement”), by and between the City, the Borrower and
26 Merchants Bank of Indiana (the “Purchaser”), in order to obtain funds to lend to the
27 Borrower for the purpose of financing a portion of the Project in accordance with the
28 terms of the Bond Purchase and Loan Agreement, provided, however, that the aggregate
29 principal amount of the Bonds together with the face amount of the Note shall not exceed
30 Ten Million Five Hundred Thousand Dollars (\$10,500,000); and

WHEREAS, pursuant to the Bond Purchase and Loan Agreement and a note
 from the Borrower to the City, the Borrower will make certain representations,
 warranties and commitments with respect to the Project and will agree to make payments
 sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same
 becomes due and payable, and to pay administrative expenses in connection with the
 Bonds; and

WHEREAS, there has been submitted to this Council for its approval the
 substantially final forms of the Financing Documents (as hereinafter defined) and the
 form of the proposed Special Ordinance of the Common Council of the City (the
 “Council”) with respect to the Project and the Obligations (the “Ordinance”); and

1 **WHEREAS**, the Obligations shall never constitute a general obligation of, an
2 indebtedness of, or charge against the general credit of the City; and

3 **WHEREAS**, pursuant to Indiana Code Title 36, Article 7, Chapter 12, Section 24
4 and Section 147(f) of the Code, and the rules promulgated thereunder, as amended, the
5 Commission published notice of a public hearing (the “Public Hearing”) on the proposed
6 issuance of the Obligations to finance a portion of the costs of the Project; and

7 **WHEREAS**, on January 23, 2020, the Commission held the Public Hearing on
8 the Project for the purpose of receiving evidence and testimony on the Project and
9 matters related to the proposed financing thereof and heard all persons interested in the
10 proceedings and considered written remonstrances and objections, if any; and

11 **WHEREAS**, the Commission has rendered its report dated as of May 22, 2019
12 (the “Report”) concerning the proposed financing of the Project and the Secretary of the
13 Commission has previously caused such Report to be submitted to the executive director
14 or chairman of the Fort Wayne Plan Commission, pursuant to the Act.; and

15 **WHEREAS**, no member of this Council has any pecuniary interest in any
16 employment, financing agreement or other contract made under the provisions of the Act
17 and related to the Bonds authorized herein, which pecuniary interest has not been fully
18 disclosed to the Commission and no such member has voted on any such matter, all in
19 accordance with the provisions of Indiana Code 36-7-12-16.

20 **WHEREAS**, there has been submitted to the Commission for its approval the
21 forms of the Financing Documents, and a form of this proposed Ordinance, which were
22 incorporated by reference in the Commission’s Resolution adopted on January 23, 2020,
23 which Resolution has been transmitted hereto; and

24 **WHEREAS**, the Issuer expects to pay for certain costs of the Obligations or costs
25 related to the Project (collectively, the “Expenditures”) prior to the issuance of the
26 Obligations, and to reimburse the Expenditures with proceeds received by the City upon
27 the issuance of the Obligations; and

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

30 **WHEREAS**, based upon the Report and EDC Resolution, the Common Council
hereby finds and determines that the funding approved by the Commission for all or a
portion of the Project will be of benefit to the health and general welfare of the citizens
of the City, complies with the provisions of the Act and the amount necessary to finance
all or a portion of the costs of the Project, together with incidental expenses incurred in
connection therewith, will require the issuance, sale and delivery of one or more series of
its Obligations in an aggregate combined principal amount not to exceed Ten Million
Five Hundred Thousand Dollars (\$10,500,000).

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

3 After considering the evidence presented at the Public Hearing and in the findings
4 of fact set forth in the Report, this Council hereby finds, determines, ratifies and confirms
5 that the financing of the economic development facilities referred to in the Financing
6 Documents consisting of the Project, the issuance and sale of the Bonds and delivery of
7 the Note, and the loan of the net proceeds thereof by the Borrower to finance all or a
8 portion of the Project will: (i) promote a substantial likelihood of the diversification of
9 industry, the creation or retention of business opportunities, the creation or retention of
10 opportunities for gainful employment and the provision of quality, affordable,
11 multifamily rental housing within the jurisdiction of the Issuer; (ii) serve a public
12 purpose, and will be of benefit to the health and general welfare of the Issuer; (iii)
comply with the purposes and provisions of the Act and it is in the public interest that the
Issuer take such lawful action as determined to be necessary or desirable to encourage the
diversification of industry, the creation or retention of business opportunities, and the
creation or retention of opportunities for gainful employment and the provision of
quality, affordable, multifamily rental housing within the jurisdiction of the Issuer and
(iv) not have a material adverse competitive effect on any similar facilities already
constructed or operating in or near Allen County, Indiana.

13 The forms of the Bond Purchase and Loan Agreement and a corresponding
14 promissory note from the Borrower to the City, including the Allonge thereto from the
15 City to the Purchaser, Land Use Restriction Agreement by and among the City, the
16 Borrower and the Purchaser, Leasehold Mortgage, Assignment, Security Agreement and
17 Fixture Filing (City Seller Loan to Developer), Leasehold Mortgage, Assignment,
18 Security Agreement and Fixture Filing (Housing Authority Seller Loan to City),
19 promissory note from the City to the Housing Authority, a Subordinate Master Agency
20 Agreement between the City and the Borrower and a Subordinate Master Pledge and
21 Assignment among the City, the Borrower and the Agent (collectively, the “Financing
Documents”) presented herewith are hereby approved, with any and all such changes as
may be deemed necessary, desirable or appropriate by the Mayor and the Clerk of the
Council (the “Clerk”). In compliance with Indiana Code Title 36, Article 1, Chapter 5,
Section 4, two (2) copies of the Financing Documents are on file in the office of the City
Clerk for public inspection.

22 The City is authorized to issue one or more series of its Multifamily Housing
23 Revenue Bonds of 2020 (McCormick Place Apartments) and its Note (with such further
24 or different series designation as may be necessary, desirable or appropriate, including
25 such series designation to indicate the year in which the Bonds or Note are issued), in a
26 maximum aggregate principal amount not to exceed Ten Million Five Hundred Thousand
27 Dollars (\$10,500,000), with a maximum term not to exceed forty (40) years from the date
28 of the Bonds and of the Note, respectively, and with a maximum interest rate not to
29 exceed eight percent (8.00%) per annum, for the purpose of procuring funds to loan to
30 the Borrower in order to finance a portion of the Project, which Obligations will be
payable as to principal, premium if any, and interest solely from payments made by the
Borrower pursuant to the Bond Purchase and Loan Agreement and the Note issued
thereunder, and upon such terms and conditions as otherwise provided in the Financing
Documents and the Special Ordinance. The Obligations shall never constitute a general

1 obligation of, an indebtedness of, or charge against the general credit of the City. The
2 Mayor and Clerk are authorized to sell such bonds to the purchaser thereof at a price not
3 less than 98% of the aggregate principal amount thereof (excluding any original issue
premium or discount), plus accrued interest, if any.

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

14 The provisions of this Ordinance and the Financing Documents shall constitute a
15 contract binding between the City and the holder or holders of the Bonds and after the
16 issuance of said Obligations, this Ordinance shall not be repealed or amended in any
17 respect which would adversely affect the right of such holder or holders so long as any of
said Obligations or the interest thereon remains unpaid.

18 Subject to the obligations of the Borrower set forth in the Financing Documents
19 and/or the certificates or agreements of such Borrower to be executed upon the issuance
20 of the Obligations, if any of the Obligations are issued on a tax-exempt basis for purposes
21 of federal income taxation, the City will use its best efforts to restrict the use of the
22 proceeds of the Obligations in such a manner and to expectations at the time the
23 Obligations are delivered to the purchasers thereof, so that they will not constitute
24 "arbitrage bonds" under Section 148 of the Code and the regulations promulgated
25 thereunder, or to preserve any other desired tax status under the Code. The Mayor, the
Controller and the Clerk, or any other officer having responsibility with respect to the
issuance of the Obligations, are authorized and directed, alone or in conjunction with any
of the foregoing, or with any other officer, employee, consultant or agent of the City, to
deliver a certificate for inclusion in the transcript of proceedings for the Obligations,
setting forth the facts, estimates and circumstances and reasonable expectations
pertaining to the use of the proceeds of the Obligations as of the date of issuance thereof.

26 No recourse under or upon any obligation, covenant, acceptance or agreement
27 contained in this Ordinance, the Financing Documents or under any judgment obtained
28 against the City, including without limitation its Economic Development Commission, or
29 by the enforcement of any assessment or by any legal or equitable proceeding by virtue
30 of any constitution or statute or otherwise, or under any circumstances, under or

1 independent of the Financing Documents, shall be had against any member, director, or
2 officer or attorney, as such, past, present, or future, of the City, including without
3 limitation its Economic Development Commission, either directly or through the City, or
4 otherwise, for the payment for or to the City or any receiver thereof or for or to any
5 holder of the Obligations secured thereby, or otherwise, of any sum that may remain due
6 and unpaid by the City upon any of the Obligations. Any and all personal liability of
7 every nature, whether at common law or in equity, or by statute or by constitution or
8 otherwise, of any such member, director, or officer or attorney, as such, to respond by
9 reason of any act or omission on his or her part or otherwise for, directly or indirectly,
10 the payment for or to the City or any receiver thereof, or for or to any owner or holder of
11 the Obligations, or otherwise, of any sum that may remain due and unpaid upon the
12 Obligations hereby secured or any at them, shall be expressly waived and released as a
13 condition of and consideration for the execution and delivery of the Financing
14 Documents and the issuance, sale and delivery of the Obligations.

15 If any section, paragraph or provision of this Ordinance shall be held to be invalid
16 or unenforceable for any reason, the invalidity or unenforceability of such section,
17 paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

18 All ordinances, resolutions and orders or parts thereof, in conflict with the
19 provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

20 It is hereby determined that all formal actions of this Council relating to the
21 adoption of this Ordinance were taken in one or more open meetings of the Council, that
22 all deliberations of this Council and of its committees, if any, which resulted in formal
23 action, were in meetings open to the public, and that all such meetings were convened,
24 held and conducted in compliance with applicable legal requirements, including Indiana
25 Code 5-14-1.5, as amended.

26 The Mayor, the Controller, the Clerk and any other officer of the City are hereby
27 authorized and directed, in the name and on behalf of the City, to execute, attest and
28 deliver such further instruments and documents, and to take such further actions, in the
29 name of the City as in their judgment shall be necessary or advisable in order fully to
30 consummate the transactions described herein and carry out the purposes of this
Ordinance, and any such documents heretofore executed and delivered and any such
actions heretofore taken, be, and hereby are, ratified and approved.

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

This Council finds and determines that the amount of tax credits to be allocated to
the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not
exceed the amount necessary for the financial feasibility of the Project and its viability as
a qualified housing project throughout the credit period for the Project. In making the
foregoing determination, this Council has relied upon representations of the Borrower.
The foregoing determination shall not be construed to be a representation or warranty by
this Council as to the feasibility or viability of the Project. In reliance upon the

1 representations of the Borrower, it is hereby found and determined that the Project
2 satisfies the requirements for the allocation of a housing credit dollar amount under the
3 Indiana Housing and Community Development Authority’s qualified allocation plan.

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

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Thomas F. Didier, President

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9 APPROVED AS TO FORM AND LEGALITY:

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Carol Helton, City Attorney