

ORDINANCE NO. 2018-14

AN ORDINANCE AUTHORIZING THE CITY OF LEBANON, INDIANA TO ISSUE ITS "ECONOMIC DEVELOPMENT LEASE RENTAL REVENUE BONDS, SERIES 2018 (GATEWAY MARKETPLACE PROJECT)"; APPROVING A LEASE BETWEEN THE CITY OF LEBANON PUBLIC BUILDING CORPORATION, AS LESSOR, AND THE CITY OF LEBANON REDEVELOPMENT COMMISSION, AS LESSEE; PLEDGING FOOD AND BEVERAGE TAX REVENUES TO THE LEBANON REDEVELOPMENT COMMISSION FOR THE PAYMENT OF CERTAIN LEASE RENTALS; AND AUTHORIZING AND APPROVING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City of Lebanon, Indiana ("City") is a municipal corporation and political subdivision of the State of Indiana and by virtue of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, "Act"), is authorized and empowered to adopt this ordinance (this "Bond Ordinance") and to carry out its provisions; and

WHEREAS, the Lebanon Redevelopment Commission ("Redevelopment Commission"), the Lebanon Public Building Corporation ("Building Corporation"), the Lebanon Economic Development Commission ("EDC") and the City have approved an Economic Development Agreement ("EDA") which provides for the acquisition, construction and installation of certain infrastructure improvements, together with all necessary appurtenances and related equipment (collectively, "Project"), to support a proposed mixed-use project to be located at the southeast quadrant of I-65 and SR 32 ("Facilities"), to be constructed and developed by Lebanon Gateway Properties, LLC, an Indiana limited liability company, or an affiliate or related successor entity thereof ("Developer"); and

WHEREAS, pursuant to Indiana Code 36-8-14-39, the Redevelopment Commission did on May 14, 2018 adopt a declaratory resolution ("Declaratory Resolution") establishing the Gateway Marketplace Allocation Area ("Allocation Area") for the purpose of capturing property taxes generated from the incremental assessed value of real property located in the Allocation Area ("Tax Increment"), and the Project and Facilities will be located in or physically connected to the Allocation Area; and

WHEREAS, pursuant to the terms of the EDA, the Developer has advised the EDC and the City that it proposes that the City issue its taxable or tax-exempt Economic Development Lease Rental Revenue Bonds, Series 2018 (Gateway Marketplace Project), in one or more series, in an amount not to exceed Three Million Three Hundred Thousand Dollars (\$3,300,000) ("Bonds") under the Act for the purpose of financing all or a portion of the costs of the Project and certain costs related to the issuance of the Bonds, including capitalized interest on the Bonds, if any, and a debt service reserve, if necessary, to support the Facilities for the purpose of attracting commercial, business, health care and retail to the City; and

WHEREAS, the principal and interest on the Bonds will be payable from certain lease rentals pledged and assigned by the Building Corporation to the City, such lease rentals to be

paid by the Redevelopment Commission under the terms of a proposed lease ("Lease") between the Building Corporation, as Lessor, and the Redevelopment Commission, as Lessee, of the Project; and

WHEREAS, pursuant to the Lease, the lease rentals due under the Lease shall be payable from (i) the Tax Increment, and (ii) to the extent the Tax Increment is insufficient for such purpose, the Food and Beverage Tax revenues collected by the City under Indiana Code 6-9-35 ("Food and Beverage Tax Revenues"), and (iii) to the extent the Food and Beverage Tax Revenues are insufficient for such purpose, a special tax levied on all of the taxable property within the Lebanon Redevelopment District pursuant to Indiana Code 36-7-14-27 ("Special Benefits Tax"); and

WHEREAS, the Common Council of the City ("Council") has determined that it will be of public utility and benefit to pledge the Food and Beverage Tax Revenues to the Redevelopment Commission pursuant to Indiana Code 36-7-14-25.5 for the payment of lease rentals due under the Lease, to the extent the Tax Increment is insufficient for such purpose; and

WHEREAS, the Council desires to approve the Lease pursuant to Indiana Code 36-7-14-25.2, which provides that any lease approved by a resolution of the Redevelopment Commission must also be approved by an ordinance or resolution of the fiscal body of the unit; and

WHEREAS, the financing of all or a portion of the Project results in the diversification of industry, the creation and retention of jobs, the creation and retention of business opportunities in the City, and will be of public benefit to the health, safety and general welfare of the City and its citizens; and

WHEREAS, on August 13, 2018, the EDC conducted a public hearing ("Public Hearing") in accordance with Indiana Code 36-7-12-24 and adopted its resolution finding that the financing of all or a portion of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and general welfare of the City; and

WHEREAS, the EDC has heretofore approved and recommended the adoption of this form of ordinance by this Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Council, the forms of (i) a Financing Agreement, between the City and the Developer; (ii) a Trust Indenture, with respect to the Bonds ("Indenture"), between the City and a trustee to be selected ("Trustee") (clauses (i) and (ii), "Financing Documents"; and (iii) this Bond Ordinance; and

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LEBANON, INDIANA, THAT:

Section 1. The Council hereby finds and determines that the Project involves the acquisition, construction and equipping of an "economic development facility" as that phrase is used in the Act; that the Project will create employment opportunities and diversification of economic development in the City, will improve and promote the economic stability, development and welfare in the City, will encourage and promote the expansion of industry, trade and commerce in the City and the location of other new industries in the City; that the

public benefits to be accomplished by this Bond Ordinance, intending to overcome insufficient employment opportunities and insufficient diversification of industry, are greater than the cost of public services (as that phrase is used in the Act) which will be required by the Project; and, therefore, that the financing of the Project by the issue of the Bonds under the Act: (i) will be of benefit to the health and general welfare of the City and (ii) complies with the Act.

Section 2. The proposed financing of all or a portion of the Project, and the financing of certain costs related to the issuance of the Bonds, including capitalized interest on the Bonds, if any, and a debt service reserve fund, if necessary, as further described in the Financing Documents, by the issuance of the Bonds, in one or more series, under the Act, in the form that such financing was approved by the EDC, is hereby approved.

Section 3. The issuance of the Bonds, payable solely from the revenues and receipts derived from the Financing Documents, is hereby authorized.

Section 4. The Bonds, in one or more series, taxable or tax-exempt, and in the aggregate principal amount not to exceed Three Million Three Hundred Thousand Dollars (\$3,300,000), shall (i) be executed at or prior to the closing date by the manual or facsimile signatures of the Mayor and the Clerk-Treasurer of the City; (ii) be dated as of the date of issuance or the first day of the month in which the Bonds are issued; (iii) mature on a date not later than twenty-five (25) years after the date of issuance; (iv) bear interest at a rate not to exceed six percent (6.00%) per annum if tax-exempt and not to exceed six and one-half percent (6.50%) if taxable, the exact rates as determined through either a competitive sale or negotiation with the purchaser thereof, with such interest to be payable as provided in the Financing Documents; (v) be issuable in such denominations as set forth in the Financing Documents; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Indenture; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office of the Trustee as provided in the Indenture; (x) be subject to optional redemption prior to maturity and subject to redemption as otherwise provided in the Financing Documents; and (xi) contain such other terms and provisions as may be provided in the Financing Documents.

The Bonds and the interest thereon do not and shall never constitute an indebtedness of, or a charge against the general credit or taxing power of, the City, but shall be special and limited obligations of the City, payable solely from revenues and other amounts derived from the Financing Documents. Forms of the Financing Documents are before this meeting and are by this reference incorporated in this Bond Ordinance, and the Clerk-Treasurer of the City is hereby directed, in the name and on behalf of the City, to insert them into the minutes of the Council and to keep them on file.

Section 5. Pursuant to Indiana Code 36-7-14-25.2, the City hereby approves the Lease in the form presented at this meeting, with such lease rentals due thereunder in an amount sufficient to pay debt service on the Bonds described herein issued by the City to finance all or a portion of the Project pursuant to the EDA.

Section 6. Pursuant to Indiana Code 36-7-14-25.5, the City hereby pledges Food and Beverage Tax Revenues to the Redevelopment Commission for the payment of lease rentals due under the Lease for the term of the Lease. Except for the Food and Beverage Tax Revenues, no funds of the City are pledged to the Redevelopment Commission by the Council for the payment of lease rentals due under the Lease, and neither the full faith and credit nor the general taxing power of the City is so pledged. The City reserves the right to enter into leases or other obligations entitled to the pledge of Food and Beverage Tax Revenues on a parity with the Food and Beverage Tax Revenues and in accordance with the requirements set forth in this Section 6 ("Parity Obligations"). The authorization and issuance of Parity Obligations shall be subject to the following conditions precedent:

(a) All payments due under the Bonds and all payments on any Parity Obligations payable from Food and Beverage Tax Revenues shall be current to date in accordance with the terms thereof, with no payment in arrears.

(b) For Parity Obligations payable from Food and Beverage Tax Revenues without an ad valorem property tax backup, the City shall have received a certificate prepared by an independent, qualified accountant or feasibility consultant certifying the amount of the Food and Beverage Tax Revenues estimated to be received in each succeeding year shall be at least equal to one hundred twenty-five percent (125%) of the debt service requirements or lease rentals with respect to the Bonds, any other outstanding Parity Obligations, and the proposed Parity Obligations for each respective year during the term of the Bonds and the proposed Parity Obligations. If the proposed Parity Obligations are secured by an ad valorem property tax, the requirements of this subsection (b) need not be met. The City shall approve and confirm the figures and estimates set forth in the above-described certificate in any resolution or ordinance authorizing the proposed Parity Obligations.

(c) Payments of any Parity Obligations or junior obligations payable from Food and Beverage Tax Revenues shall be payable semiannually on February 1 and August 1.

Section 7. The Mayor and Clerk-Treasurer are authorized and directed to sell the Bonds, either by competitive or negotiated sale, to the original purchasers thereof at a price not less than the par value thereof. The Mayor and Clerk-Treasurer are hereby authorized to approve and execute a bond purchase agreement, if applicable, for the Bonds with the Purchaser in a form approved by such officers, such approval to be conclusively evidenced by the execution thereof.

Section 8. The Mayor and the Clerk-Treasurer of the City are hereby authorized to approve the preparation and distribution of a Preliminary Official Statement for the Bonds. The Mayor and the Clerk-Treasurer of the City are hereby authorized to deem and determine the Preliminary Official Statement as the near final Official Statement with respect to the Bond for purposes of SEC Rule 15c2-12, subject to completion in accordance with such rule and in a manner acceptable to the Mayor and the Clerk-Treasurer of the City, and to place the Preliminary Official Statement into final form as the Final Official Statement. The Mayor and the Clerk-Treasurer of the City are hereby authorized to sign the Final Official Statement and by such signature approve its distribution.

Section 9. The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Financing Documents, submitted to the Council, which are hereby approved in all respects. The Mayor and the Clerk-Treasurer of the City are hereby authorized and directed, to select a financial institution to serve as the Trustee.

Section 10. The Mayor and the Clerk-Treasurer of the City are hereby authorized, in the name and on behalf of the City, without further approval of the Council or the EDC, to approve such changes in the Financing Documents as may be permitted by the Act, such approval to be conclusively evidenced by their execution thereof.

Section 11. The Mayor and the Clerk-Treasurer of the City, and each of them, are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse any and all agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by them, or either of them, to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Bond Ordinance (including the preambles hereto and the documents mentioned herein), the Project, the issuance and sale of the Bonds, and the securing of the Bonds under the Financing Document, including, but not limited to, such agreements, documents and instruments as are contemplated under the EDA, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 12. The provisions of this Bond Ordinance and the Financing Documents shall constitute a binding contract between the City and the holders of the Bonds, and after issuance of the Bonds this Bond Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of the holders of the Bonds as long as the Bonds or interest thereon remains unpaid.

Section 13. All ordinance or parts of ordinances in conflict herewith are hereby repealed.

Section 14. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 15. Two copies of the Financing Agreements incorporated into this Bond Ordinance were duly filed in the office of the Clerk-Treasurer of the City, and are available for public inspection in accordance with Indiana Code § 36-1-5-4.

* * * *

ALL OF WHICH IS ADOPTED this 27 day August, 2018 by the Lebanon Common Council of the City of Lebanon, Indiana.

Voting For

Voting Against

Abstain

Keith Campbell
Keith Campbell

Keith Campbell

Keith Campbell

John Copeland
John Copeland

John Copeland

John Copeland

Dan Fleming

Dan Fleming

Dan Fleming

Mike Kincaid
Mike Kincaid

Mike Kincaid

Mike Kincaid

Morris Jones

Morris Jones

Morris Jones
Morris Jones

Dick Robertson
Dick Robertson

Dick Robertson

Dick Robertson

Brent Wheat
Brent Wheat

Brent Wheat

Brent Wheat

ATTEST:

Tonya Thayer
Tonya Thayer, Clerk-Treasurer

I hereby certify that Ordinance 2018-14 was delivered to the Mayor of Lebanon on the 28 day of August, 2018, at 9:05 a.m.

Tonya Thayer
Tonya Thayer, Clerk-Treasurer

I hereby APPROVE ORDINANCE 2018-12
this 29 day of August, 2018,
at 2:45 p.m.

Matthew T. Gentry
Matthew T. Gentry, Mayor

I hereby VETO ORDINANCE 2018-12
this ___ day of _____, 2018,
at ___:___ m.

Matthew T. Gentry, Mayor

ATTEST:

Tonya Thayer
Tonya Thayer, Clerk-Treasurer