

BILL NO. S-09-09-20 (AS AMENDED)

SPECIAL ORDINANCE NO. S-100-09

**AN ORDINANCE OF THE CITY OF FORT WAYNE,
INDIANA, COMMON COUNCIL APPROVING AND
AUTHORIZING THE EXECUTION OF A LEASE FOR
THE ACQUISITION, RENOVATION AND EQUIPPING
OF A BUILDING LOCATED AT 200 EAST BERRY
STREET, PLEDGING CERTAIN REVENUES TO THE
PAYMENT OF RENTALS THEREFOR,
AUTHORIZING THE ISSUANCE OF BONDS FOR
SUCH PURPOSES, AND REGARDING CERTAIN
RELATED MATTERS**

WHEREAS, the City of Fort Wayne, Indiana (the "City"), has previously investigated the necessity for the acquisition, renovation and equipping of the building located at 200 East Berry Street, Fort Wayne, Indiana (said real estate and improvements located thereon being collectively referred to herein as the "Project Site"), to be used by the City as a City Hall (the "Project"); and

WHEREAS, the City has also previously investigated alternative methods for paying for the Project; and

WHEREAS the Common Council desires to enter into a lease pursuant to I.C. 36-1-10 (the "Act") to finance the Project; and

WHEREAS, the Fort Wayne Municipal Building Corp. (the "Building Corporation") has been organized as an Indiana non-profit corporation for the purpose of constructing and leasing public improvements, such as the Project, to the City; and

WHEREAS, a form of lease between the Building Corporation and the City (the "Lease") has been prepared and submitted to the Common Council for its consideration; and

WHEREAS, the Lease, as presented to the Common Council, provides for the lease of the Project for a term not to exceed twenty (20) years (the "Term"), beginning on the date the Project is completed and ready for use or June 15, 2011, whichever is later; and

WHEREAS, the lease rentals payable under the Lease (the "Rentals") by the City with respect to the Project shall not exceed \$1,800,000 per year and shall be payable semiannually on each June 1 and December 1, beginning on the later of: (i) the date that the Project is completed and ready for use; or (ii) June 1, 2011, from revenues expected to be available for such purpose as described herein; and

WHEREAS, the Project does not constitute a "controlled project" as such term is defined by IC 6-1.1-20-1.1 because the Rentals payable by the City to the Building Corporation shall be payable from funds other than property taxes that are exempt from the levy limitations of I.C. 6-1.1-18.5 as described herein; and

WHEREAS, the City anticipates that the Building Corporation will issue its first mortgage revenue bonds (the "Bonds") in an aggregate principal amount expected not to exceed \$18,290,000 to pay for the costs associated with the Project, which Bonds are to be payable from the Rentals; and

WHEREAS, the Common Council desires to pledge the County Economic Development Income Tax revenues (the "CEDIT Revenues") distributed to the City pursuant to I.C. 6-3.5-7 for the payment of the Rentals as required under the Lease on a parity with other outstanding parity obligations payable from the CEDIT Revenues; and

WHEREAS, the City has received an allocation of the national Recovery Zone Economic Development Bonds limitation in the amount of \$8,844,000 (the "Allocation") pursuant to the American Recovery and Reinvestment Tax Act of 2009 (the "Act") and Notice 2009-50, issued on June 12, 2009, by the Internal Revenue Service; and

WHEREAS, the Common Council desires to utilize said Allocation to designate a portion of the Bonds (in a principal amount equal to the amount of said Allocation received by the City) described herein as "Recovery Zone Economic Development Bonds;" and

WHEREAS, the City has previously had the Project Site appraised and is acquiring said Project Site for a purchase price of \$7,268,500 (the "Purchase Price") which is equal to the average of the two (2) appraisals and now desires to authorize the sale of said Project Site to the Building Corporation for the same purchase price as required by I.C. 36-1-10-11;

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, AS FOLLOWS:

1. The Common Council hereby determines that a need exists for the completion of the Project and the funds needed therefor exceed the funds presently available to the City.

2. Having held a public hearing regarding the Lease for which notice was provided in accordance with Indiana Code 5-1-3, the Common Council hereby approves the Lease in the form presented to this meeting. The Lease with the Building Corporation as lessor provides for a fair and reasonable rental, and further, the execution of the proposed lease is necessary and wise. The Mayor and Clerk of the City are hereby authorized to execute and attest, respectively, the Lease in the form presented to this meeting with such changes as may be necessary or appropriate on the advice of counsel with such execution and attestation to evidence approval of such changes; provided, however, that any such changes may not (i) increase the term of the Lease or increase the rentals payable by the City under the Lease with respect to the Project or (ii) alter the scope and nature of the Project described in the Lease. The Mayor and the Clerk of the City are further authorized to execute and attest, respectively, an addendum to the Lease following the sale of the Bonds by the Building Corporation as contemplated by the provisions of the Lease.

3. The Clerk of the City shall cause to be published a notice of execution of the Lease according to law following such execution.

4. All actions taken to publish the notice of the public hearing regarding the Lease are hereby approved and ratified.

5. The Common Council hereby approves of the use of the Building Corporation for purposes of financing and leasing the Project to the City.

6. The Building Corporation is hereby authorized to issue its Bonds in one or more series in an aggregate principal amount expected not to exceed \$18,290,000 to provide funds to pay some or all of the costs of the Project. The Bonds will be payable solely from the Revenues. The Common Council hereby designates an amount of the Bonds as "Recovery Zone Economic Development Bonds" equal to the amount of the Allocation. If in the determination of the Mayor and the Controller, based upon the advice of the financial advisor of the City, market conditions warrant, all of the Bonds may be issued on a traditional tax-exempt basis.

7. The Rentals payable under the Lease are payable solely from the Revenues. Neither the full faith and credit nor the taxing power of the City shall be pledged to the payment of the Rentals.

8. The Common Council hereby irrevocably pledges available CEDIT Revenues for the payment of the Rentals (the "CEDIT Pledge") during the term of the Lease. The CEDIT Pledge shall be on a parity with (a) the CEDIT revenue bonds issued by the City in 2001 (the "2001 Bonds") as set forth in Ordinance No. S-02-01 adopted by the Common Council on January 16, 2001 (the "2001 Ordinance"); (b) the pledge of CEDIT Revenues (the "2002 Lease Pledge") by the City pursuant to Ordinance No. S-20-02 adopted by the Common Council on February 26, 2002 (the "2002 Ordinance"), for the payment of lease rentals pursuant to a lease between the City and the Building Corporation dated as of February 1, 2002, as amended; (c) the pledge of CEDIT Revenues (the "2002 Bond Pledge") by the City pursuant to Resolution No. R-11-02 adopted by the Common Council on

February 26, 2002 (the "2002 Resolution"), for the payment of principal of and interest on Redevelopment District Bonds, Series 2002, issued for and on behalf of the Redevelopment District in 2002; (d) CEDIT revenue bonds issued by the City in 2005 (the "2005 Bonds") pursuant to Ordinance No. S-97-04 adopted by the Common Council on November 23, 2004 (the "2004 Ordinance"); (e) the pledge of CEDIT Revenues (the "2005 Lease Pledge") by the City pursuant to Ordinance No. S-31-05 adopted by the Common Council on February 22, 2005 (the "2005 Ordinance"), for the payment of lease rentals pursuant to a lease between the City and the Building Corporation dated as of March 1, 2005; (f) the pledge of CEDIT Revenues (the "2005 B Pledge") by the City pursuant to Ordinance No. S-99-04 (the "2005 B Ordinance") adopted by the Common Council on November 23, 2004, for the payment of principal of and interest on Redevelopment District Revenue Bonds, Series 2005 B issued for and on behalf of the Redevelopment District in 2005; (g) the pledge of CEDIT Revenues by the City pursuant to Ordinance No. 55-04 adopted by the Common Council on July 13, 2004 (the "2005 A Ordinance") for the payment of principal of and interest on the City of Fort Wayne, Indiana, Redevelopment District Revenue Bonds, Series 2005 A-1, issued for and on behalf of the Redevelopment District in 2005, and City of Fort Wayne, Indiana, Redevelopment District Taxable Revenue Bonds, Series 2005 A-2, issued for and on behalf of the Redevelopment District in 2005 (collectively, the "2005 Bond Pledge"); (h) the pledge of CEDIT revenues (the "2006 Lease Pledge") by the City pursuant to Ordinance No. S-20-06 adopted by the Common Council on February 28, 2006 (the "2006 Ordinance"), for the payment of lease rentals pursuant to a lease between the City and the Building Corporation dated as of February 1, 2006, as amended; and (i) the CEDIT Revenue Bonds issued by the City in 2009 (the "2009 Bonds" and with the 2001 Bonds, the 2002 Lease Pledge, the 2002 Bond Pledge, the 2005 Bonds, the 2005 Lease Pledge, the 2005 B Pledge, the 2005 Bond Pledge, the 2006 Lease Pledge, the "Prior Obligations"), pursuant to Ordinance No. S-109-08 adopted by the Common Council on December 9, 2008 (the "2009 Ordinance" and with the 2001 Ordinance, the 2002 Lease Ordinance, the 2002 Resolution, the 2004 Ordinance, the 2005 Ordinance, the 2005 B Ordinance, the 2005 A Ordinance, and

the 2006 Ordinance, the "Prior Ordinances") and any other obligations issued or entered into by the City which are on a parity with the Prior Obligations. Prior to the execution of the Lease as set forth herein, the Controller is hereby authorized to certify that the provisions of the Prior Ordinances have been complied with to permit the Pledge to be on parity with the Prior Obligations and any other obligations issued or entered into by the City which are on a parity with the Prior Obligations. The Controller is hereby authorized to employ an independent financial advisor for the purposes described in the Prior Ordinances in conjunction with such certification. The CEDIT Pledge shall continue irrevocably during the period in which the Rentals are payable under the Lease. The City may issue revenue bonds or enter into leases payable solely from CEDIT revenues payable on a parity with the CEDIT Pledge in accordance with the parity provisions set forth in the Prior Ordinances.

9. The provisions hereof shall be construed to create a trust in the Revenues described herein and this ordinance shall not be repealed or amended in any manner which would serve to adversely affect the application of the Revenues to the payment of the Rentals (including, without limitation, the pledge of the CEDIT Revenues) made herein by the Common Council on behalf of the City. The Mayor, Controller, and the Clerk are hereby authorized to execute such documents as may be necessary in connection with the execution of the Lease to evidence the pledge of such Revenues for the purposes set forth herein.

10. The Common Council hereby authorizes the sale of the Project Site to the Building Corporation for an amount equal to the Purchase Price in accordance with I.C. 36-1-10-11. The Purchase Price shall be applied by the City to the costs of the Project. The Mayor and the Clerk of the City are hereby authorized to execute and attest, respectively, a deed conveying the Project Site to the Building Corporation once it has been acquired by the City and upon the issuance of the Bonds by the Building Corporation.

11. This Ordinance shall be in full force and effect from and upon compliance with the procedures required by law.

Elizabeth M. Brown
Council Member

Read the third time in full and on motion by Brown. and duly adopted, placed on its passage. PASSED by the following vote:

AYES: Six
Bender, Brown, Didier, Goldner,
Hines, Pape
NAYS: Three
Harper, Shoaff, Smith
ABSTAINED: None
ABSENT: None

DATED: 10-13-09

Sandra E. Kennedy
City Clerk

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as Special Ordinance No. S-100-09 on the 13th day of October, 2009

ATTEST:

SEAL

Sandra E. Kennedy
City Clerk

Thomas E. Smith
Presiding Officer

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 14th day of October, 2009, at the hour of 11:30 o'clock A.M. E.S.T.

Sandra E. Kennedy
City Clerk

Approved and signed by me this 16th day of October, 2009, at the hour of 10:45 o'clock A.M, E.S.T.

Thomas C. Henry
Mayor

**WAIVER OF TERMINATION RIGHTS
AND
NOTICE OF EXTENSION OF CLOSING DATE**

THIS WAIVER OF TERMINATION RIGHTS AND NOTICE OF EXTENSION OF CLOSING DATE is made and delivered to Renaissance Square, LLC (the "Seller") this 26th day of August, 2009 by The City of Fort Wayne, Indiana (the "Buyer") under the following circumstances:

A. Seller and Buyer have entered into a Sale and Purchase Agreement with an effective date as of August 26, 2009 (the "Purchase Agreement") under the terms of which Seller has agreed to sell to Buyer, and Buyer has agreed to purchase from Seller certain real estate together with improvements, structures and fixtures located thereon, which is commonly known as "Renaissance Square" and is located at 200 East Berry Street, Fort Wayne, Indiana, and related parking lots (collectively, the "Property").

B. Under the terms of the Purchase Agreement and in connection with its due diligence review, the Buyer has certain rights to review the condition of the Property, to examine the status of Seller's title to the Property, and to terminate the Purchase Agreement and its obligations thereunder if Buyer is not satisfied with either the condition of the Property or with Seller's title thereto.

C. Buyer has completed its review of the condition of the Property as well as its examination of the status of Buyer's title to the Property and is satisfied both as to the condition of the Property and the current status of Buyer's title.

D. Buyer also has the right, under certain circumstances, to extend the stated closing date in the Purchase Agreement of August 31, 2009 (the "Closing Date"), provided Buyer gives Seller three (3) business days' notice of its desire to extend the Closing Date, and Buyer has determined that it will be necessary to so extend the Closing Date for an undetermined period of time but not beyond December 31, 2009.

THEREFORE, the Buyer takes the following action:

1. Subject to Seller curing, to the reasonable satisfaction of Buyer, those Title Defects (as defined in the Purchase Agreement) listed in attached Schedule 1 on or before the Closing Date, Buyer waives its right to terminate the Purchase Agreement pursuant to Sections 5.1.3 and 5.2.2 thereof; provided, however, that this waiver shall not amend, limit or otherwise change any other provision of the Purchase Agreement, including, without limitation, any of Buyer's rights or remedies under Article 9 of the Purchase Agreement.

2. Buyer hereby gives Seller notice, pursuant to Section 8.1 of the Purchase Agreement, of its intent to extend the Closing Date beyond August 31, 2009.

3. In compliance with Sections 2.1, 2.2 and 8.1 of the Purchase Agreement, Buyer has tendered a \$200,000 earnest money payment to Titan Title Services, agent for Chicago Title Insurance Company, NBU, as escrow agent.

IN WITNESS WHEREOF, the Buyer has executed this Waiver Of Termination Rights And Notice Of Extension Of Closing Date on the day and year first above written.

THE CITY OF FORT WAYNE, INDIANA

By: _____

Thomas C. Henry, Mayor

Renaissance Square, LLC hereby acknowledges receipt of the above and foregoing Waiver Of Termination Rights And Notice Of Extension Of Closing Date this 26th day of August, 2009.

RENAISSANCE SQUARE, LLC

By: _____

George B. Huber, President

SCHEDULE 1
TITLE DEFECTS

1. Mortgage dated August 30, 2002 executed by Renaissance Square, LLC to The Lincoln National Life Insurance Company to secure the sum of \$8,500,000.00, recorded August 30, 2002 as Document Number 202069332.
2. Assignment of Leases, Rents and Profits executed by Renaissance Square, LLC to The Lincoln National Life Insurance Company dated August 30, 2002 and recorded August 30, 2002 as Document Number 202069333.
3. Mortgage dated March 15, 2004 executed by Renaissance Square, LLC to Wells Fargo Bank, National Association to secure the sum of \$6,000,000.00 recorded March 24, 2004 as Document Number 204020967; and Subordination and Intercreditor Agreement dated March 17, 2004 and recorded April 20, 2004 and re-recorded May 10, 2004 as Document Number 204033612.
4. Financing Statement listing Renaissance Square, LLC, as Debtor, and The Lincoln National Life Insurance Company, as Secured Party, filed August 30, 2002 as U.C.C. No. 202001619; continuation filed May 25, 2007 as U.C.C. No. 207000449.
5. Lease by and between CBD Investment Group, Lessor, and Lincoln National Corporation, Tenant, dated November 16, 1994 as evidenced by Memorandum of Lease dated November 16, 1994 and recorded November 16, 1994 as Document Number 94-65077.
6. Lease by and between CBD Investment Group, Lessor, and Lincoln National Foundation, Inc., Tenant, dated November 16, 1994 as evidenced by Memorandum of Lease dated November 16, 1994 and recorded November 16, 1994 as Document Number 94-65078; Assignment and Assumption of Leases by Lincoln National Realty Corporation, Assignor, to Renaissance Square, LLC, Assignee, dated August 30, 2002, recorded August 30, 2002 as Document Number 202069331.

Sandra Kennedy

From: Pat Roller
Sent: Tuesday, February 14, 2012 9:50 AM
To: Geoff Paddock; Glynn Hines; John Crawford; John Shoaff; Martin Bender; Mitch Harper; Russ Jehl; Tom Didier; Tom Smith
Cc: Sandra Kennedy
Subject: Citizens Square extention
Attachments: 20120203130212864.tif



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4.tif (142 KB)...

In response to Councilman Harper request, please find the "waiver of termination rights and notice of extension of closing date" document which highlights the extension of the closing date for Citizens Square from August 31, 2009 to no later than December 31, 2009.

Please let me know if you have any questions.

Thanks