

ORDINANCE 15-02

**AN ORDINANCE BY THE COMMON COUNCIL OF THE CITY OF WESTFIELD,
INDIANA, APPROVING AND AUTHORIZING CERTAIN ACTIONS AND
PROCEEDINGS WITH RESPECT TO CERTAIN PROPOSED ECONOMIC
DEVELOPMENT FACILITIES AND THE LEASE THEREOF BY THE CITY**

WHEREAS, Indiana Code Title 36, Article 7, Chapters 11.9 and 12 (collectively, the “Act”) declares a unit of government may lease, as lessee, economic development facilities and that such constitutes a public purpose; and

WHEREAS, pursuant to the Act, the City of Westfield, Indiana (the “City”) is authorized enter into a lease, as lessee, for the purpose of causing the acquisition, construction, installation and equipping of economic development facilities in order to foster diversification of economic development, creation of business opportunities and creation or retention of opportunities for gainful employment in or near the City; and

WHEREAS, Holladay Properties Grand Park Sports I, LLC (the “Company”) desires to construct and lease to the City economic development facilities to be undertaken by the Company consisting of the acquisition, construction and equipping of an indoor athletic facility to be used for field sports and ancillary uses containing approximately 380,000 square feet to be located in Grand Park at 701 E. 191st Street, Westfield, Indiana (the “Project”) pursuant to a lease agreement between the Company, as Lessor, and the City, as Lessee, (the “Lease”); and

WHEREAS, the Company has arranged for financing of the Project; and

WHEREAS, this Council has studied the Project and the proposed leasing of the Project to the City and its effects on the health and general welfare of the City and its citizens; and

WHEREAS, the completion of the Project will result 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, pursuant to and in accordance with the Act, the City desires to enter into the Lease; and

WHEREAS, there have been prepared plans and specifications and cost estimates for the Project, which have been reviewed by this Council; and

WHEREAS, the Lease will be payable from any legally available revenues of the City; and

WHEREAS, on January 26, 2015, this Council adopted a resolution making the preliminary determination that a need exists for the Project and for the City to lease the Project from the Company;

WHEREAS, there has been submitted to this Council for its approval the form of the Lease and the form of the proposed Ordinance of the Council with respect to the Project (the “Ordinance”); and

WHEREAS, pursuant to Indiana Code 36-7-12-24, as amended, and in accordance with Indiana Code 5-3-1-2(b), (a) this Council published notice of a public hearing (the “Council Public Hearing”) on the proposed Lease and of the City’s intention to enter into the Lease, and on February 9, 2015 prior to the adoption of this Ordinance this Council held the Council Public Hearing on the Project regarding the necessity for the execution of the Lease and whether the lease rental provided therein is a fair and reasonable rental for the Project at which all interested parties were given an opportunity to be heard prior to the final determination to execute the Lease; and (b) the Westfield Economic Development Commission (the “Commission”) published notice of a public hearing (the “Commission Public Hearing”) on the proposed Lease and of the City’s intention to enter into the Lease, and on October 27, 2014 prior to the adoption of this Ordinance the Commission held the Commission Public Hearing on the proposed Lease and of the City’s intention to enter into the Lease at which all interested parties were given an opportunity to be heard prior to the adoption of the Commission’s resolution; and

WHEREAS, the Commission on October 27, 2014 adopted its resolution regarding the Project and the leasing thereof by the City which resolution has been transmitted to this Council together with the form of the Lease and of this Ordinance; and

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

WHEREAS, this Council has previously adopted its Ordinance 14-48; and

WHEREAS, this Council after giving substantial reconsideration of the terms of the Lease, its public purpose and the subject matter thereof finds that all conditions precedent to the adoption of this Ordinance have been complied with.

NOW, THEREFORE, BE IT ORDAINED BY THIS WESTFIELD COMMON COUNCIL AS FOLLOWS:

SECTION 1. This Council hereby finds, determines, ratifies and confirms that the financing by the Company of the economic development facilities referred to in the Lease consisting of the Project and the entering into the Lease by the City, as Lessee, will: (i) result in the diversification of industry, the creation or retention of business opportunities and the creation or retention of opportunities for gainful employment within the jurisdiction of the City; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City 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 within the jurisdiction of the City; (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the

City; and (v) that the use of the Project throughout the term of the Lease by the City will serve the public purpose of the City and is in the best interests of its residents.

SECTION 2. After investigation, this Council hereby determines that a need exists for the Project and that the Project cannot be constructed from funds available to the City making it necessary for the City to enter into the Lease with the Company and the City shall proceed to take steps as may be necessary to cause the Project to be constructed by the Company and leased by the City. The term of the Lease shall be no longer than twenty-five (25) years from the date the Project is complete and ready for occupancy. The maximum annual Base Rent (as defined in the Lease) is not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000). This Council hereby approves (i) the terms of the Lease in the form presented at this meeting; and (ii) the form of the Ordinance authorizing the issuance of the City to enter into the Lease and providing for the terms thereof. The forms of the Lease and the Ordinance presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor and such Lease shall be kept on file by the Clerk-Treasurer. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Lease are on file in the office of the Clerk-Treasurer for public inspection.

SECTION 3. On or before each rental payment date under the Lease, the Clerk-Treasurer shall transfer to the Company or its duly authorized assigns, legally available revenues of the City at least equal to the Base Rent and the Additional Rent (each as defined in the Lease) then due under the Lease on such rental payment date which funds are pledged to such payments. The City reasonably believes that on each rental payment date an amount of legally available revenues sufficient to fully pay the Base Rental and the Additional Rent then due and owing will be available. Upon the final payment of Base Rent and Additional Rent due under the Lease, the pledge of this Section shall expire and shall no longer be in force and effect.

SECTION 4. The Mayor is hereby authorized and directed, in the name and on behalf of the City, to execute the Lease and any and all other agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by such officer to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this Ordinance (including the preambles hereto and the documents mentioned herein), and any such execution, performance, approval or doing of other things heretofore effected be, and hereby is, ratified and approved.

SECTION 5. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 6. All resolutions, ordinances and orders, or parts thereof, in conflict with the provision of this Ordinance are, to the extent of such conflict, hereby repealed or amended. Ordinance 14-48 is hereby superceded by this Ordinance.

SECTION 7. This Ordinance shall be in full force and effect upon adoption.

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ADOPTED AND PASSED THIS ____ DAY OF _____, 2015, BY THE
WESTFIELD COMMON COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD COMMON COUNCIL
Hamilton County, Indiana

WESTFIELD COMMON COUNCIL

Voting For

Voting Against

Abstain

Jim Ake

Jim Ake

Jim Ake

Steve Hoover

Steve Hoover

Steve Hoover

Robert L. Horkay

Robert L. Horkay

Robert L. Horkay

Charles Lehman

Charles Lehman

Charles Lehman

Bob Smith

Bob Smith

Bob Smith

Cindy L. Spoljaric

Cindy L. Spoljaric

Cindy L. Spoljaric

Robert Stokes

Robert Stokes

Robert Stokes

ATTEST:

Cindy Gossard, Clerk-Treasurer
City of Westfield, Indiana

I hereby certify that ORDINANCE 15-02 was delivered to the Mayor of Westfield on the _____ day of _____, 2015, at ____:____.m.

Cindy Gossard, Clerk-Treasurer

I hereby APPROVE Ordinance 15-02

this _____ day of _____, 2015

at ____:____.m.

J. Andrew Cook, Mayor

I hereby VETO Ordinance 15-02

this _____ day of _____, 2015

at ____:____.m.

J. Andrew Cook, Mayor

I affirm under the penalties of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. /s/ James T. Crawford, Jr.

This document prepared by James T. Crawford, Jr., Esq., Krieg DeVault LLP, 161 Lakeview Drive, Noblesville, IN 46060, (317) 238-6239.