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KRIEG DEVAULT LLP
DRAFT DATED 9-20-11

ORDINANCE NO. 11-23

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $2,500,000 AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT TAX INCREMENT REVENUE BONDS, SERIES 2011 (UNION STREET FLATS PROJECT) OF THE CITY OF WESTFIELD, INDIANA, THE PROCEEDS OF WHICH SHALL BE PROVIDED TO THE BORROWER, TO FINANCE THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF AN ECONOMIC DEVELOPMENT FACILITY LOCATED IN THE CITY OF WESTFIELD, INDIANA; PROVIDING FOR THE PLEDGE AND ASSIGNMENT OF REVENUES FOR THE PAYMENT OF SAID BONDS; AUTHORIZING A PROJECT AGREEMENT AND A BOND PURCHASE AND LOAN AGREEMENT WITH RESPECT TO THE BONDS AND THE PROJECT; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Westfield, Indiana (the "Issuer") is a municipal corporation and political subdivision of the State of Indiana, and by virtue of the constitution and laws of the State, including Indiana Code, Title 36, Article 7, Chapters 11.9, 12 and 14, as supplemented and amended (the "Act"), is authorized and empowered, among other things, to (a) provide funds for the acquisition, construction, installation and equipping of economic development facilities; (b) issue its revenue bonds for the purpose set forth herein; (c) secure such revenue bonds by a pledge and assignment of revenues and other documents as provided for herein; and (d) enact this Ordinance (the "Bond Ordinance"), execute the Project Agreement (hereinafter defined), execute the Bond Purchase and Loan Agreement (hereinafter defined) and all other documents to be executed by it, upon the terms and conditions provided therein; and

WHEREAS, Union Street Flats, LLC, or a related affiliate or entity (the "Borrower") has advised the Westfield Economic Development Commission (the "Commission") and the Issuer of its proposal that the Issuer issue and sell one or more series of its economic development tax increment revenue bonds, any series of which may be taxable or tax-exempt, for the purpose of paying a portion of the costs of the acquisition, construction, installation and equipping of an economic development facility located within the City of Westfield, Indiana, consisting of the acquisition, construction, installation and equipping of an apartment development containing approximately 238 units in buildings comprising a total of approximately 221,366 square feet to be located in the City of Westfield, Indiana, on approximately 7.5 acres of land at 509 South Union Street, which facilities will be owned and/or operated by the Borrower who will use the bond proceeds to acquire, equip and construct the facility (the "Project"); and

WHEREAS, the Common Council of the Issuer (the "Common Council") has found and determined, and does hereby confirm, that the Project will increase business opportunities within the City of Westfield, Indiana, and will be to the benefit of the health and general welfare of the citizens of the City of Westfield, Indiana, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount not to

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exceed $2,500,000, will be acting in a manner consistent with and in furtherance of the provisions of the Act; and

WHEREAS, pursuant to a Bond Purchase and Loan Agreement (the "Bond Purchase and Loan Agreement") among the Issuer, the Borrower and the purchaser(s) of the Bonds (hereinafter defined), the Issuer proposes to issue an amount not to exceed $2,500,000 of its Economic Development Tax Increment Revenue Bonds, Series 2011 (Union Street Flats Project) to provide funds for the acquisition, construction, installation and equipping of the Project, by lending such funds to the Borrower pursuant to the Bond Purchase and Loan Agreement between the Issuer and the Borrower which Bond Purchase and Loan Agreement and Project Agreement (collectively, the "Financing Documents") prescribe the terms and conditions related to the funding of the Project; with all of the foregoing being for the purpose of financing or providing reimbursement for a portion of the cost of the Project and to pay a portion of the costs of issuance of the Bonds (as defined herein); and

WHEREAS, the Issuer will sell and the purchaser(s) will agree to buy the Bonds; and

WHEREAS, it is determined by the Issuer that the amount necessary to finance the costs of or related to the acquisition, construction, installation and equipping of the Project, will require the issuance, sale and delivery of not to exceed $2,500,000 aggregate principal amount of Economic Development Tax Increment Revenue Bonds, Series 2011 (Union Street Flats Project) (the "Bonds");

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL that:

Section 1. Definitions. In addition to the words and terms defined in this Bond Ordinance, the words and terms used in this Bond Ordinance shall have the meanings set forth in the Project Agreement and the Bond Purchase and Loan Agreement, and in the form of the Bonds unless the context or use indicates another or different meaning or intent, which forms are before this meeting, are hereby incorporated by reference in this Bond Ordinance and the Clerk-Treasurer of the Issuer is hereby directed to insert them into the minutes of the Issuer and to keep them on file as specified in Section 11 hereof.

Any reference herein to the Issuer, or to any officers thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms "hereof," "hereby," "hereto," "hereunder," and similar terms, mean this Bond Ordinance.

Section 2. Determination of Issuer. At a meeting open to the public held on September 12, 2011, by the Commission prior in time to the adoption of this Bond Ordinance by the Common Council, the Commission adopted a Resolution including therein a Report and Findings of Fact, finding, among other things, that the proposed financing will be of benefit to the health and general welfare of the citizens of the City of Westfield, Indiana and complies with the provisions of the Act. The Common Council hereby acknowledges the Commission's Report and Findings of Fact.

At a public hearing held on September 12, 2011 by the Commission prior in time to the adoption of this Bond Ordinance by the Common Council pursuant to the provisions of Indiana Code 36-7-12-24(a) of which notice was published in *The Times* on September 1, 2011, pursuant to Indiana Code 5-3-1, the public was given an opportunity to express their views for or against the Project. The Common Council hereby acknowledges the public hearing.

The Issuer has received from the Commission its Resolution dated September 12, 2011, wherein the Commission has found that the proposed financing will be of benefit to the health and general welfare of the citizens of the City of Westfield, Indiana, and that the proposed financing complies with the provisions of the Act, and further recommending this form of Ordinance for approval by this Common Council.

Based upon the Report and Findings of Fact and the Resolutions of the Commission, the Issuer hereby finds and determines that the financing approved by the Commission in its Resolution dated September 12, 2011 will be of benefit to the health and general welfare of the citizens of the City of Westfield, Indiana, and complies with the provisions of the Act.

Section 3. Authorization of the Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided and authorized herein and pursuant to the authority of the Act, Bonds in one or more series, any series of which may be taxable or tax-exempt, in the maximum aggregate principal amount of not to exceed $2,500,000 designated as "City of Westfield, Indiana Economic Development Tax Increment Revenue Bonds, Series 2011 (Union Street Flats Project)," the proceeds of which will be provided to the Borrower to pay the cost of acquisition, construction, installation and equipping of the Project, which Project will be used as an economic development facility within the meaning of the Act.

Section 4. Terms and Execution of the Bonds. The Bonds shall be issued as fully registered Bonds, without coupons, in the denominations set forth in the Bond Purchase and Loan Agreement, numbered consecutively as set forth in the Bond Purchase and Loan Agreement, and shall be payable at the office of the Issuer, and mature as provided in the Bond Purchase and Loan Agreement. The Bonds shall be sold at a price not less than ninety-eight percent (98%) of the aggregate principal amount thereof, plus accrued interest, if any, and at rates of interest not to exceed eight and one-half percent (8.5%) per annum, and shall have such terms and be subject to mandatory and optional redemption as provided in the Project Agreement heretofore presented to the Issuer and incorporated by reference herein. The Bonds will mature no later than seven (7) years from their dated date. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signatures of the Mayor of the Issuer and attested by the City Clerk of the Issuer, and the seal of the Issuer shall be impressed thereon or a facsimile of such seal placed thereon. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

The form of the bonds submitted to this meeting, subject to appropriate insertions and revisions in order to comply with the provisions of the Bond Purchase and Loan Agreement, be and the same is hereby approved, and when the same shall be executed on behalf of the Issuer by the appropriate officers thereof in the manner contemplated by the Bond Purchase and Loan

Agreement in an aggregate principal amount not to exceed $2,500,000 shall represent the approved from of Bonds of the Issuer.

The Bonds are special, limited obligations of the Issuer payable solely as to principal and interest solely from (i) payments made by the Company pursuant to the Bond Purchase and Loan Agreement and the note issued thereunder, and (ii) incremental property tax revenues derived by the Redevelopment Commission from the East Side Allocation Area (but only to the extent the revenues identified in clause (i) are insufficient for such purpose), and upon such terms and conditions as otherwise provided in the Financing Documents, this Ordinance and pursuant to the Resolution of the Westfield Redevelopment Commission pledging a sufficient amount of such incremental property tax revenues.

Section 5. Bond Purchase and Loan Agreement, Project Agreement and All Other Documents to be Executed or Accepted by the Issuer. The Mayor and the Clerk-Treasurer of the Issuer are authorized and directed to execute, acknowledge and deliver, in the name and on behalf of the Issuer, the Financing Documents and all other material documents and assignments to be executed or accepted by it in substantially the forms submitted to the Issuer or its counsel, which are hereby approved, with such changes therein not inconsistent with this Bond Ordinance and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officers executing the same on behalf of the Issuer without further approval of the Common Council or of the Commission if such changes do not affect terms set forth in Indiana Code 36-7-12-27(a)(1) through (a)(10). The approval of such changes by such officers to the extent such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution or acceptance of receipt of any of the foregoing documents by such officers.

Section 6. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Ordinance, or in the Bonds, the Financing Documents, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Documents, shall be had against any member, director, or officer or attorney, as such, past, present or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of the Bonds secured thereby, or otherwise, of any sums that may be due and unpaid by the Issuer upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director or officer or attorney, as such, to respond by reason of any act or omission on his or her part, or otherwise, for directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance of the Bonds.

Section 7. No General Debt. The Bonds shall not constitute a general obligation of, indebtedness of, or a charge against the general credit of the Issuer, the State or any political subdivision thereof, and the holders or owners thereof shall have no right to have taxes levied by the Issuer, the State or of any political subdivision, for the payment of the principal thereof or interest thereon except from the East Side TIF Revenues (as hereinafter defined) pledged thereto.

Section 8. Tax Pledge. Moneys raised by taxation shall be obligated or pledged pursuant to the Resolution of the Westfield Redevelopment Commission Pledging Tax Increment, as adopted on September 12, 2011 (the "East Side TIF Revenues," as defined therein), for the payment of principal of or interest on the Bonds, and the Bonds shall be payable solely from the revenues and security interests pledged for their payment as authorized by the Project Agreement and the Bond Purchase and Loan Agreement.

Section 9. Severability. If any section, paragraph or provision of this Bond 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 Bond Ordinance.

Section 10. Repeal of Conflicting Ordinances and Resolutions. All ordinances, resolutions and orders, or parts thereof, in conflict with the provisions of this Bond Ordinance are, to the extent of such conflict, hereby repealed.

Section 11. Public Inspection. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file with the Clerk-Treasurer of the Issuer and are available for inspection upon request.

Section 12. Compliance with Open Door Law. It is hereby determined that all formal actions of the Common Council relating to the adoption of this Bond Ordinance were taken in an open meeting of the Common Council, that all deliberations of the Common Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, et seq., as supplemented and amended.

Section 13. Effective Date. This Bond Ordinance shall be in full force and effect upon compliance with Indiana Code 36-4-6 et seq.

ADOPTED AND PASSED THIS 10 DAY OF OCTOBER, 2011, BY THE WESTFIELD COMMON COUNCIL, HAMILTON COUNTY, INDIANA.

WESTFIELD COMMON COUNCIL
Hamilton County, Indiana

WESTFIELD COMMON COUNCIL

Voting For	Voting Against	Abstain
John Dippel	John Dippel	John Dippel
Steven Hoover	Steven Hoover	Steven Hoover
Robert L. Horkay	Robert L. Horkay	Robert L. Horkay
Kenneth Kingshill	Kenneth Kingshill	Kenneth Kingshill
Robert J. Smith	Robert J. Smith	Robert J. Smith
Thomas Smith	Thomas Smith	Thomas Smith
Robert W. Stokes	Robert W. Stokes	Robert W. Stokes

ATTEST:

Cindy J. Gossard, Clerk Treasurer
City of Westfield, Indiana

"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"

Signed

I hereby certify that ORDINANCE 11-23 was delivered to the Mayor of Westfield on the 11 day of Oct, 2011, at 9:35 A.m.

Cindy J. Gossard, Clerk-Treasurer

I hereby APPROVE Ordinance 11-23

this 12 day of October, 2011

at 3:30 p.m.

J. Andrew Cook, Mayor

I hereby VETO Ordinance 11-23

this _____ day of _____, 2011.

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.

Signed

This document prepared by
James T. Crawford, Jr., Esq.
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Noblesville, Indiana 46060
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