

ORDINANCE # 14-2015

AN ORDINANCE AUTHORIZING THE ISSUANCE OF THE CITY OF BATESVILLE, INDIANA TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS (THRIVE MARKET PROJECT), AND PROVIDING THE PROCEEDS THEREOF TO THRIVE MARKET, INC., AND AUTHORIZING AND APPROVING OTHER ACTIONS IN RESPECT THERETO

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

WHEREAS, Thrive Market, Inc., or a subsidiary or affiliate thereof (the "Company"), desires to finance all or a portion of the costs of the improvement, installation and equipping of an economic development facility, which shall be leased by the Company, or an affiliate thereof, together with the purchase of machinery and equipment to be located therein and used as a fulfillment distribution facility, and the payment of incidental costs, all of which will be located in the GE Allocation Area of the Expanded Batesville I-74 Economic Development Area (the "Area") of Batesville, Indiana, as created and established by the Batesville Redevelopment Commission (the "Project");

WHEREAS, the Batesville Redevelopment Commission (the "Redevelopment Commission" has advised the Batesville Economic Development Commission (the "Commission") and the City that it proposes that the City issue and sell its Taxable Economic Development Revenue Bonds (Thrive Market Project) for the purpose of supporting the development of the Project, which shall be purchased by Thrive Market, Inc., or an affiliate thereof, and who will use the bond proceeds to improve, install and equip the facility for use as a fulfillment distribution facility and create job and employment opportunities for the City, and that the Redevelopment Commission proposed to pledged certain tax increment funds created by the Project to support and make debt service payments on the bonds (the "Pledged TIF Revenues");

WHEREAS, pursuant to this Ordinance and an Economic Development Project Agreement, (the "Project Agreement") between the City, the Redevelopment Commission, the Commission, the Industrial Park Board and the Company, the City proposes to issue its Taxable Economic Development Revenue Bonds, in one or more series (with an appropriate series designation for each series), in an aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000) (the "Bonds") under the Act, for the purpose of supporting the financing of the Project by the Company and as consideration for the job and employment opportunities created by the Company and the Project, whereby the Company, as holder of the Bonds, will receive debt service payments under the Bonds to repay certain project costs made by the Company pursuant to the Project Agreement, 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, if and as necessary;

WHEREAS, the completion of the Project results in the diversification of industry, the creation or retention of jobs and the creation or retention of business opportunities in the City;

WHEREAS, pursuant to Indiana Code 36-7-12-24, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance the Project;

WHEREAS, on August 24, 2015, the Commission held the Public Hearing on the Project;

WHEREAS, the Commission has performed all actions required of it by the Act preliminary to the adoption of this Bond Ordinance and has approved and forwarded to the Common Council the forms of: (1) the Project Agreement; (2) the Bonds; (3) this Bond Ordinance, (4) the Loan Agreement (5) the Trust Indenture, and (6) and other related agreements, documents and certifications (the "Financing Documents") (the Project Agreement, the Bonds, this Bond Ordinance, Loan Agreement, Trust Indenture and the Financing Documents, collectively, the "Finance Agreements");

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

Section 1. Findings; Public Benefits. The Common Council hereby finds and determines that the Project involves the improvement, installation and equipping of an "economic development facility" as that phrase is used in the Act; that the Project will increase or retain employment opportunities and increase 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 issuance 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. Approval of Financing. The proposed financing of the Project by the issuance of the Bonds, the Project Agreement and as provided within the Financing Agreements under the Act, in the form that such financing was approved by the Commission, is hereby approved.

Section 3. Authorization of the Bonds. The issuance of the Bonds, payable solely from revenues and receipts derived from the Pledged TIF Revenues and as provided within the Financing Agreements, is hereby authorized.

Section 4. Terms of the Bonds. (a) The Bonds, in the aggregate principal amount not to exceed Five Hundred Thousand Dollars (\$500,000), 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 their delivery; (iii) mature on a date not later than twenty-five

(25) years after the date of issuance; (iv) bear interest at such rates as determined through negotiation with the purchaser thereof, with such interest payable as provided in the Financing Agreements; (v) be issuable in such denominations as set forth in the Financing Agreements; (vi) be issuable only in fully registered form; (vii) be subject to registration on the bond register as provided in the Financing Agreements; (viii) be payable in lawful money of the United States of America; (ix) be payable at an office as provided in the Financing Agreements; (x) shall not be subject to optional redemption prior to maturity; (xi) be issued in one or more series; and (xii) contain such other terms and provisions as may be provided in the Financing Agreements.

(b) The Bonds and the interest thereon, if any, 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 Agreements. Forms of the Financing Agreements are before this meeting or shall be made available 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 Common Council and to keep them on file.

Section 5. Sale of the Bonds. The Mayor and the Clerk-Treasurer of the City, or those so designated with executive authority under Indiana law, are hereby authorized and directed, in the name and on behalf of the City, to sell the Bonds to a purchaser or purchasers selected by such officers at such prices and on such terms as may be determined at the time of sale and to make such changes as deemed necessary to the terms of the Bonds as provided herein.

Section 6. Execution and Delivery of Financing Agreements. For each series of the Bonds, the Mayor and Clerk-Treasurer of the City, or those so designated with executive authority under Indiana law, are hereby authorized and directed, in the name and on behalf of the City, to execute or endorse and deliver the Financing Agreements to the Company or such other governing bodies as necessary, which are hereby approved in all respects.

Section 7. Changes in Financing Agreements. The Mayor and Clerk-Treasurer of the City, or those so designated with executive authority under Indiana law, are hereby authorized, in the name and on behalf of the City, without further approval of the Common Council or the Commission, to approve such changes in the Financing Agreements as may be permitted by Act, such approval to be conclusively evidenced by their execution thereof.

Section 8. General. The Mayor and the Clerk-Treasurer of the City, or those so designated with executive authority under Indiana law, 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 any 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 Agreements, and any such execution, endorsement, performance or doing of other things heretofore effected be, and hereby is, ratified and approved.

Section 9. Binding Effect. The provisions of this Bond Ordinance and the Financing Agreements 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 10. Repeal. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

Section 11. Effective Date. This Bond Ordinance shall be in full force and effect immediately upon adoption.

Section 12. Copies of Financing Agreements on File. Two copies of the Financing Agreements incorporated into this Bond Ordinance were or will be duly filed in the office of the Clerk-Treasurer of the City, and are or will be made available for public inspection in accordance with Indiana Code 36-1-5-4.

ADOPTED, by the Common Council of the City of Batesville, Indiana, this 14th day of September, 2015 at 6:45 o'clock p.m., by a vote of _____ ayes and _____ nays.

Gene Lambert, Acting Mayor
City of Batesville, Indiana

ATTEST:

Ronald C. Weigel
Clerk-Treasurer of the City of Batesville, Indiana

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