

ORDINANCE NO. 3696

ORDINANCE AUTHORIZING THE CITY OF NEW CASTLE,
INDIANA TO ISSUE ITS "ECONOMIC DEVELOPMENT
REVENUE BONDS, SERIES 2013 (JENNINGS PROJECT)"
AND APPROVING AND AUTHORIZING OTHER ACTIONS
IN RESPECT THERETO

WHEREAS, the New Castle Economic Development Commission ("Commission") conducted a public hearing and adopted a resolution on November 18, 2013, which resolution has been transmitted hereto, finding that the financing of certain economic development facilities of Historic Properties Jennings, LLC ("Company") complies with the purposes and provisions of IC 36-7-11.9 and -12 and that such financing will be of benefit to the health and welfare of the City of New Castle, Indiana ("City" or "Issuer") and its citizens; and

WHEREAS, the Redevelopment Commission of the City has pledged TIF Revenues (as defined in the hereinafter defined Financing Agreement) to be used to pay debt service on the Bonds pursuant to a Financing and Covenant Agreement between the Company and the City, dated as of November 1, 2013 ("Financing Agreement"). The City shall issue its Taxable Economic Development Revenue Bonds, Series 2013 (Jennings Project) ("Bonds") pursuant to this ordinance to finance a portion of the costs of the design, development, renovation and construction of a mixed-use development consisting of new eateries on the ground floor and basement level with residential apartments on the second and third floors of the historic Jennings Building in downtown New Castle with available parking, including all necessary appurtenances, related improvements and equipment in or physically connected to the Southeast-Downtown Economic Development Area ("Project") and costs of issuance and related expenses; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of ordinance by this Common Council, has considered the issue of adverse competitive

effect and has approved the forms of and has transmitted for approval by the Common Council the Financing Agreement; the Trust Indenture (including form of Bonds) between the Issuer and the Trustee, dated as of November 1, 2013 ("Indenture"); and the Bond Purchase Agreement between the Issuer and the purchaser of the Bonds;

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

Section 1. It is hereby found that: (i) the financing of the Project referred to in the Financing Agreement approved by the Commission and presented to this Common Council; (ii) the issuance and sale of the City's Economic Development Revenue Bonds, Series 2013 (Jennings Project) ("Bonds"); (iii) the payment of the Bonds from TIF Revenues under the Financing Agreement; and (iv) the securing of the Bonds by granting a security interest in the Trust Estate (as defined in the Indenture) to the Trustee under the Indenture, complies with the purposes and provisions of IC 36-7-11.9, -12, -14 and -25 (collectively, "Act") and will be of benefit to the health and welfare of the City and its citizens.

Section 2. The economic development facilities will consist of the Project as permitted by the Act.

Section 3. At the public hearing held before the Commission, the Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in the City as required by IC 36-7-12-21. The Commission also considered whether the Project would be of benefit to the public health and welfare of the City and found that financing the Project would be of benefit to the public health and welfare of the City and the Common Council hereby confirms that finding.

Section 4. The substantially final forms of the Financing Agreement, the Indenture and the Bond Purchase Agreement approved by the Commission are hereby approved (collectively, "Financing Documents," referred to in the Act), and the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk-Treasurer. In accordance with the provisions of IC 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer for public inspection.

Section 5. The City may issue its Bonds, maturing no later than February 1, 2035, in the aggregate principal amount not to exceed \$700,000. The Bonds are to be issued for the purpose of procuring funds to pay a portion of the costs of financing the Project, all as more particularly set out in the Indenture and the Financing Documents, incorporated herein by reference, which Bonds will be payable as to principal, premium, if any, and interest from TIF Revenues pursuant to the Financing Documents or as otherwise provided in the Indenture. The Bonds shall be issued in fully registered form in denominations of \$5,000 and any integral multiples thereof or as provided in the Indenture, payable semiannually on February 1 and August 1. The Bonds shall be subject to optional redemption prior to maturity at the option of the City, on any date, upon thirty (30) days' written notice, at face value, plus in each case accrued interest to the date fixed for redemption, with no premium, as further provided in the Indenture. The Bonds may be issued as term bonds subject to mandatory sinking fund redemption. Payments on the Bonds are payable in lawful money of the United States of America by check mailed or delivered to the registered owners or by wire transfer as provided in the Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City as described in the Indenture.

Section 6. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bonds to the purchaser thereof at a price not less than the par value thereof and shall accrue no interest. The Bonds may be both purchased by the bond purchaser in installments and drawn down by the Company in installments (subject to the Internal Revenue Code).

Section 7. The Mayor and the Clerk-Treasurer are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Documents approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the Bonds authorized herein. The Mayor and the Clerk-Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Documents which take place after the date of this ordinance with the review and advice of the counsel; it being the express understanding of this Common Council that the terms of the Financing Documents are in substantially final form as of the date of this ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum issuance amount or maturity amount of, interest rate on or term of the Bonds as approved by the Common Council by this ordinance without further consideration by the Common Council. The signatures of the Mayor and the Clerk-Treasurer on the Bonds may be either manual or facsimile signatures. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to the trustee named in the Indenture. Payment for the Bonds will be made to the trustee named in the Indenture, and after such payment the Bonds will be delivered by the Trustee to the purchasers thereof. The Bonds shall be originally dated as of the issue date.

Section 8. The provisions of this ordinance and the Indenture securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or the interest thereon remains unpaid.

Section 9. This ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted by the Common Council of the City of New Castle, Indiana this 2nd day of December, 2013.

COMMON COUNCIL OF THE CITY OF NEW
CASTLE, INDIANA

Presiding Officer

Attest:

Clerk-Treasurer

Presented by me to the Mayor of the City of New Castle, Indiana, on the _____ day of December, 2013, at the hour of __:__ .m.

Clerk-Treasurer

This ordinance approved and signed by me, the Mayor of the City of New Castle, Indiana, on the _____ day of December, 2013, at the hour of __:__ .m.

Mayor