

**ORDINANCE OF THE DELAWARE COUNTY COUNCIL
AUTHORIZING THE COUNTY TO ISSUE ITS TAXABLE
ECONOMIC DEVELOPMENT REVENUE BONDS,
SERIES 2008 (DALEVILLE AREA PROJECT), AND
APPROVING OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, the Delaware County Economic Development Commission (the "Commission") has rendered one or more Reports (collectively, the "Report") regarding the financing of a portion of certain proposed economic development facilities for (a) a certain project to be undertaken thereon by IBM Corporation and (b) a certain project to be undertaken thereon by Jarden Home Brands, LLC, and said Report has been submitted to the Delaware-Muncie Metropolitan Plan Commission and the Superintendent of Daleville Community Schools; and

WHEREAS, the Commission has heretofore (i) conducted a public hearing in accordance with Indiana Code 36-7-12-24; and (ii) adopted a resolution subsequent to such public hearing and approved the Report of even date of such resolution, the same having been transmitted hereto, finding that the financing of a portion of certain economic development facilities of IBM Corporation and Jarden Home Brands, LLC (collectively, the "Borrowers") complies with the purposes and provisions of Indiana Code 36-7-11.9 and Indiana Code 36-7-12 (collectively, the "Act") and that such financing will be of benefit to the health, prosperity, economic stability and general welfare of Delaware County, Indiana (the "County") and its citizens; and

WHEREAS, the Commission has heretofore approved and recommended the adoption of this form of Ordinance by The Delaware County Council (the "County Council"), has considered the issue of adverse competitive effect and has approved and transmitted for approval by the County Council the forms of certain Loan Agreements, Notes and Financing Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE DELAWARE COUNTY COUNCIL,
AS FOLLOWS:

SECTION 1. It is hereby found that the financing of a portion of the economic development facilities referred to in the Loan Agreements approved by the Commission and presented to the County Council, the issuance and sale of the Delaware County, Indiana, Taxable Economic Development Revenue Bonds, Series 2008 (Daleville Area Project) (the "Bonds"), in one or more series (with the series designation to reflect the calendar year of issuance in the event the Bonds are issued in a calendar year other than 2008, together with a letter designation in the event multiple series of Bonds are issued), the loan of the proceeds of the Bonds to the Borrowers for the financing of a portion of the costs of the respective Projects (as hereinafter defined), the payment of the Bonds from TIF Revenues (as defined in the Financing Agreement) and from note payments of the Borrowers under the respective Loan Agreements and Notes, and the securing of said Bonds under the Financing Agreement complies with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the County and its citizens.

SECTION 2. A portion of the proceeds of the Bonds in the amount of Four Hundred Fifty Thousand Dollars (\$450,000) will be loaned to IBM Corporation and used for the financing of a portion of the equipping and furnishing of a customer service center (the "IBM Project"). A portion of the proceeds of the Bonds in the amount of One Hundred Thousand Dollars (\$100,000) will be loaned to Jarden Home Brands, LLC and used for the financing of a portion of the equipping and furnishing of an office/distribution facility (the "Jarden Project," and together with the IBM Project, the "Projects"). Each of the Projects is to be located in the area within the County heretofore designated as the "Daleville Redevelopment Area." Notwithstanding

anything in this Ordinance to the contrary, no proceeds of the Bonds loaned to IBM Corporation or Jarden Home Brands, LLC shall be used to finance either movable furniture or non-computer related equipment.

SECTION 3. At the public hearing held before the Commission, the Commission considered whether either of the Projects would have an adverse competitive effect on any similar facilities located in the County, and subsequently found, based on the findings of fact approved in connection with the Report of the Commission, that neither of the Projects would have an adverse competitive effect because there are no other similar businesses located in the proximity of the Area. The County Council hereby confirms the findings set forth in the Commission's resolution and Report, and concludes that neither of the Projects will have an adverse competitive effect on any other similar facilities located in the County, and the facilities will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the County.

SECTION 4. The substantially final forms of the Loan Agreements, the Notes and the Financing Agreement approved by the Commission are hereby approved (herein collectively referred to as the "Financing Documents"), and the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the County Council and kept on file by the Auditor of the County (the "Auditor"). In accordance with the provisions of Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Auditor for public inspection.

SECTION 5. The County shall issue its Bonds, in one or more series, in an aggregate principal amount not to exceed Five Hundred Fifty Thousand Dollars (\$550,000). Each series of the Bonds shall finally mature not later than February 1, 2010. Said Bonds are to

be issued for the purpose of procuring funds to pay the costs of a portion of the equipping and furnishing of the Projects, as more particularly set out in the Financing Agreement and the Loan Agreements, incorporated herein by reference, which Bonds will be payable as to principal and interest from TIF Revenues and the note payments made by the Borrowers under the Loan Agreements and the Notes or as otherwise provided in the above-described Financing Agreement. The Bonds shall be issued in fully registered form in denominations of One Hundred Thousand Dollars (\$100,000) and integral multiples of One Thousand Dollars (\$1,000) in excess thereof or as otherwise provided in the Financing Agreement, and shall be subject to redemption as provided in Section 3 of the Financing Agreement. Payments of principal and interest are payable in lawful money of the United States of America by check mailed or delivered to the registered owners as provided in the Financing Agreement. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the County nor are the Bonds payable in any manner from revenues raised by taxation (except to the extent of the pledge of TIF Revenues). At the option of the Auditor, any series of the Bonds may be issued as "draw down" bonds such that the principal of such series of Bonds shall not be payable and the interest thereon shall not accrue until such principal amount has been advanced pursuant to disbursements made pursuant to the Financing Agreement.

SECTION 6. The Board of Commissioners of the County (the "Board of Commissioners") and the Auditor are authorized and directed to sell the Bonds to the original purchasers thereof at a price of not less than ninety-nine percent (99%) of the principal amount thereof. The Bonds shall bear interest at a taxable rate or rates not exceeding eight percent (8.0%) per annum.

SECTION 7. The Board of Commissioners and the Auditor are, and each of them is, authorized and directed to execute, attest and affix or imprint by any means the seal of the County to the documents constituting the Financing Documents approved herein on behalf of the County and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Board of Commissioners and the Auditor are, and each of them is, 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 counsel to the County Council, it being the express understanding of the County Council that said 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 principal amount of, maximum interest rate on, or terms of the Bonds described in Indiana Code 36-7-12-27 as approved by the County Council by this Ordinance without further consideration by the County Council. The signatures of the Board of Commissioners and the Auditor on the Bonds may be either manual or facsimile signatures. The Auditor is authorized to arrange for delivery of such Bonds to the purchaser or purchasers of the Bonds as set forth in the Financing Agreement after receipt of payment for the Bonds made to the Auditor. The Bonds shall be originally dated the date of issuance and delivery thereof.

SECTION 8. The provisions of this Ordinance and the Financing Agreement securing the Bonds shall constitute a contract binding between the County and the holders of the Bonds, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended in

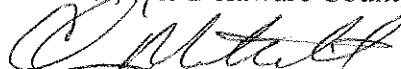
any respect which would adversely affect the rights of such holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 9. This Ordinance shall be effective upon its passage by the County Council, in accordance with procedures as required by law.


Duly adopted this 25 day of March, 2008.

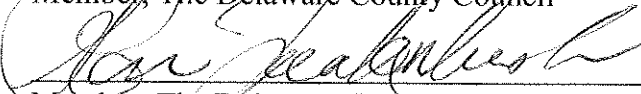

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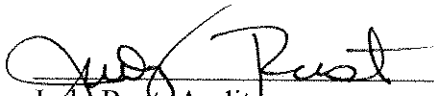

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The foregoing was passed by The Delaware County Council this 25 day of March, 2008, and presented by me to the Presiding Officer of The Delaware County Council this 22 day of April, 2008, at Muncie, Indiana.


Judy Rust, Auditor,
Delaware County, Indiana