

TOWN OF PLAINFIELD

ORDINANCE NO. 37-2014

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF PLAINFIELD, INDIANA, AUTHORIZING THE ISSUANCE OF THE TOWN OF PLAINFIELD, INDIANA, TAXABLE ECONOMIC DEVELOPMENT REVENUE BONDS IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000) AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, Indiana Code 36-7-11.9 and 12 (collectively, the “Act”) declares that the financing and refinancing of economic development facilities constitutes a public purpose; and

WHEREAS, pursuant to the Act, the Town of Plainfield, Indiana (the “Town”) is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, installation and equipping of economic development facilities in order to foster diversification of economic development and creation or retention of opportunities for gainful employment in or near the Town; and

WHEREAS, Pulte Homes of Indiana, LLC and/or one or more subsidiaries, affiliates or joint ventures thereof (the “Developer”), desires to finance the acquisition, construction, renovation, and equipping of the improvements described in Exhibit A attached hereto and made a part hereof, for use by the Developer in its commercial development and related operations within the Northwest Economic Development Area, which improvements will be physically located or physically connected to the I-70 Interchange Economic Development Area (the “I-70 Area”), created by the Plainfield Redevelopment Commission (the “Redevelopment Commission”) in the Town (the “Project”); and

WHEREAS, there has been prepared a Development Agreement (the “Development Agreement”), by and among the Developer and the Town, in order to set forth the rights and obligations of the respective parties thereto with respect to the completion and financing of the Project; and

WHEREAS, the Developer has advised the Town, the Town of Plainfield Economic Development Commission (the “Economic Development Commission”) and the Redevelopment Commission concerning the Project, and pursuant to the Development Agreement, the Town is obligated to issue economic development revenue bonds of the Town, designated as the Town of Plainfield, Indiana, Taxable Economic Development Revenue Bonds of 2014 in the aggregate principal amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000) (the “Bonds”), under the Act and make the net proceeds of such Bonds available for the purpose of financing a portion of the costs of the Project as provided in the Development Agreement; and

WHEREAS, the Economic Development Commission has rendered a report concerning the proposed financing or refinancing of economic development facilities for the Developer and the Plainfield Plan Commission has been given the opportunity to comment thereon; and

WHEREAS, following a public hearing, pursuant to Section 24 of the Act, the Economic Development Commission found that the financing of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and public welfare of the Town; and

WHEREAS, the Economic Development Commission has considered whether the financing will have an adverse competitive effect or impact on any similar facility or facility of the same kind already constructed or operating in the corporate boundaries of the Town; and

WHEREAS, pursuant to and in accordance with the Act, the Town desires to provide funds necessary to finance all or a portion of the Project by issuing the Bonds; and

WHEREAS, the Town intends to issue the Bonds consistent with the terms of this Ordinance and the Development Agreement, in order to secure funds necessary to provide for the financing of all or a portion of the Project in accordance with the terms of a Bond Purchase Agreement, to be dated the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the Town executing the same may hereafter approve) (the "Purchase Agreement"), by and between the Town and BMO Harris Bank N.A. (the "Bank") with respect to the purchase of the Bonds by the Bank; and

WHEREAS, no member of the Town Council of the Town (the "Town Council") has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Bonds authorized herein, which pecuniary interest has not been fully disclosed to the Town Council, 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, the forms of the Bonds and the Purchase Agreement (collectively, the "Financing Documents"), the Development Agreement and a form of this proposed Ordinance were submitted to, and approved by, the Economic Development Commission, which documents were incorporated by reference in the resolution heretofore adopted by the Economic Development Commission, which resolution has been transmitted to the Town Council in accordance with the Act.

NOW THEREFORE, BE IT ORDAINED by the Town Council of Town of Plainfield, Indiana, as follows:

SECTION 1. Based upon the resolution adopted by the Economic Development Commission pertaining to the Project, the Town Council hereby finds and determines that the funding approved by the Economic Development Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the Town, complies with the provisions of the Act, and the amount necessary to finance all or a portion of the costs of the Project will require the issuance, sale and delivery of taxable economic development revenue bonds in an aggregate principal amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000).

SECTION 2. It is hereby found, determined, ratified and confirmed that the financing of the economic development facilities referred to in the Financing Documents consisting of the

Project, the issuance and sale of the Bonds, and the use of the net proceeds thereof by the Developer to finance all or a portion of the Project 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 Town; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the Town; and (iii) comply with the purposes and provisions of the Act and it is in the public interest that the Town 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 Town.

SECTION 3. The forms of the Financing Documents presented herewith are hereby approved and all such documents shall be kept on file by the Clerk-Treasurer of the Town (the "Clerk-Treasurer"). Two (2) copies of the Financing Documents shall be kept on file in the office of the Clerk-Treasurer for public inspection.

SECTION 4. The Town is authorized to issue the Bonds, the interest on all of which will be taxable for federal income tax purposes, in the maximum aggregate principal amount not to exceed Five Million Five Hundred Thousand Dollars (\$5,500,000), with a maximum term not to exceed two (2) years after the date of delivery thereof and with an interest rate of one and eighteen-hundredths percent (1.18%) per annum, for the purpose of procuring funds to (a) pay all or a portion of the cost of acquisition, design, demolition, construction, renovation, improvement and equipping of the Project, (b) pay capitalized interest on the Bonds (if necessary), and (c) pay all incidental expenses on account of the issuance of the Bonds and acquiring any credit enhancement with respect thereto (if necessary). The Bonds shall be special and limited obligations of the Town, payable solely from a pledge by the Redevelopment Commission of certain incremental property taxes derived from the I-70 Area, upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance.

SECTION 5. The Town Council President and the Clerk-Treasurer are authorized and directed to sell such Bonds to the Bank thereof at a price of 100% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest per annum not to exceed one and one-half percent (1.5%), and with a final maturity no later than eighteen (18) months from the date of the issuance of the Bonds. The forms of (a) the Purchase Agreement, and (b) if necessary, a Continuing Disclosure Undertaking Agreement, with respect to the Bonds (the "Continuing Disclosure Agreement"), executed by the Town in favor of the holders of the Bonds in compliance with Rule 15c2-12 of the Securities and Exchange Commission promulgated under the Securities Exchange Act of 1934 (the "SEC Rule"); are each hereby authorized and approved in a form and substance acceptable to the Clerk-Treasurer with the advice of counsel. The Town Council President and the Clerk-Treasurer are hereby authorized and directed to execute and deliver the Purchase Agreement and, if necessary, the Continuing Disclosure Undertaking Agreement each in a form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with such acceptance of the form and substance thereof to be conclusively evidenced by their execution thereof.

SECTION 6. Each of the Town Council President, the Clerk-Treasurer and any other officer of the Town are authorized and directed to execute the Financing Documents, such other

documents approved or authorized herein and any other document which may be necessary, appropriate or desirable to consummate the transaction contemplated by the Financing Documents and this Ordinance, and their execution is hereby confirmed on behalf of the Town. The signatures of the Town Council President, the Clerk-Treasurer and any other officer of the Town on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the Town. The signatures of the Town Council President, the Clerk-Treasurer and any other officer of the Town on the Bonds may be facsimile signatures. The Town Council President, the Clerk-Treasurer and any other officer of the Town are authorized to arrange for the delivery of such Bonds to the Bank, payment for which will be made in the manner set forth in the Financing Documents. The Town Council President, the Clerk-Treasurer and any other officer of the Town may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve any and all such changes therein and also in those Financing Documents which do not require the signature of the Town Council President, the Clerk-Treasurer or any other officer of the Town without further approval of this Town Council or the Economic Development Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 7. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the Town and the holder or 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 right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 8. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, the Financing Documents or under any judgment obtained against the Town, including without limitation its Economic Development Commission, 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 Purchase Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the Town, including without limitation its Economic Development Commission, either directly or through the Town, or otherwise, for the payment for or to the Town or any receiver thereof or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may remain due and unpaid by the Town 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 Town 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 Purchase Agreement and the issuance, sale and delivery of the Bonds.

SECTION 9. 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 10. All ordinances, resolutions and orders or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

SECTION 11. It is hereby determined that all formal actions of the Town Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the Town 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, as amended.

SECTION 12. The Town Council hereby approves the Development Agreement substantially in the form submitted to the Town Council prior to this meeting. The prior execution and delivery of the Development Agreement by the Town Council President is hereby ratified, and the Town Council President is hereby authorized to approve such changes or modifications in form or substance as he may approve with the advice of counsel, such approval to be conclusively evidenced by his execution thereof.

SECTION 13. The Town Council President, the Clerk-Treasurer and any other officer of the Town are hereby authorized and directed, in the name and on behalf of the Town, to execute, attest and deliver such further instruments and documents, and to take such further actions, in the name of the Town as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

SECTION 14. The resolution of the Redevelopment Commission, including the findings of fact regarding the physical connection of the Project to the Allocation Area, is hereby approved and ratified.

SECTION 15. This Ordinance shall be in full force and effect from and after its passage.

THIS ORDINANCE is hereby passed and adopted this 10th day of November, 2014.

TOWN COUNCIL, TOWN OF PLAINFIELD,
HENDRICKS COUNTY, INDIANA



Robin G. Brandgard, President



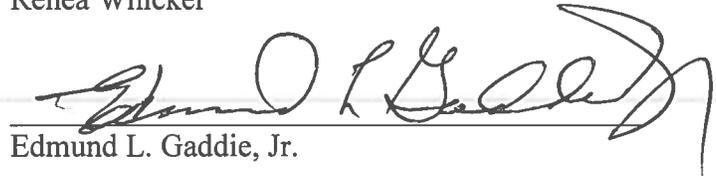
Kent McPhail



Bill Kirchoff



Renea Whicker



Edmund L. Gaddie, Jr.

Constituting a majority of all of the members of the
Town Council

ATTEST:


Wesley R. Bennett, Clerk-Treasurer
The Town of Plainfield, Indiana

EXHIBIT A

(i) Design and construction of Vandalia Boulevard from U.S. 40/Main Street to County Road 500E at the Vandalia Trail (approximately 4300 feet), (ii) design and construction of approximately 6'- 8' tall mounds on both sides of Vandalia Boulevard from the old interurban line to the Vandalia Trail, (iii) design and construction of storm sewer required to provide drainage for Vandalia Boulevard and mounding, (iv) design and construction of an 8' wide asphalt path along the east side of Vandalia Boulevard, (v) design and construction of a traffic signal and intersection improvements at U.S. 40 and Vandalia Boulevard, (vi) design and construction of sanitary lift station to be located in southeast corner of property, including a 10" force main to be tied in to existing force main at lift station in The Springs at Saratoga, (vii) design and construction of approximately 2600' of 15" sanitary sewer from the proposed lift station to a point north of the proposed Del Webb Parkway, (viii) design and construction of approximately 1800' of 10" sanitary sewer from existing Springs at Saratoga lift station to 15" sanitary sewer, (ix) decommission of existing lift station in The Springs at Saratoga, (x) design and construction of sanitary sewer crossings of Vandalia Boulevard required for future construction, (xi) design and construction of 12" water main along Vandalia Boulevard from the existing 12" main on the south side of U.S 40 to the existing main on the east side of County Road 500E north of Vandalia Trail, including stubs for future connections, (xii) design and construction of improvements to County Road 500E from U.S. 40 to the termination of the road, including a cul de sac, and (xiii) demolition/removal of County Road 500E north of the old interurban to the connection of the new Vandalia Boulevard.