

ORDINANCE NO. 15-2018

**AN ORDINANCE OF THE
TOWN COUNCIL OF THE TOWN OF PLAINFIELD, INDIANA,
AUTHORIZING THE ISSUANCE OF ECONOMIC DEVELOPMENT REVENUE
BONDS IN ONE (1) OR MORE SERIES IN THE AGGREGATE PRINCIPAL AMOUNT
NOT TO EXCEED NINETEEN MILLION DOLLARS (\$19,000,000.00) AND
APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO**

WHEREAS, the Town Council (the "Town Council") of the Town of Plainfield, Indiana (the "Town"), has previously adopted a resolution on February 12, 2018 (the "Inducement Resolution") preliminarily expressing interest in the proposed economic development facilities project to be owned and operated by Glasswater Creek of Plainfield, LLC (the "Borrower"), consisting of the acquisition, construction, installation and equipping of a 131-unit affordable assisted living multi-family housing facility, together with functionally related and subordinate facilities for low and moderate income seniors (the "Project") to be located at 10480 Glasswater Lane (formerly 2362 South County Road 1050 East) in the Town; and

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 is authorized to issue revenue bonds and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, 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, the Act provides that such bonds may be secured by a trust indenture between an issuer of such bonds and a corporate trustee; and

WHEREAS, the Borrower has advised the Town of Plainfield, Indiana Economic Development Commission (the "Commission") and the Town concerning the Project, and requested that the Town issue one or more series of its taxable or tax-exempt Multifamily Housing Revenue Bonds (Glasswater Creek of Plainfield Project), Series 2018 (with such further series or other designation as determined to be necessary, appropriate or desirable), in an aggregate principal amount not to exceed Nineteen Million Dollars (\$19,000,000) (the "Bonds"), under the Act and lend all or a portion of the proceeds of such Bonds to the Borrower for the purpose of paying all or a portion of the costs of the Project, funding a debt service reserve fund and/or other permissible reserves, if necessary, paying capitalized interest, if necessary and paying all or a portion of the incidental expenses incurred on account of the issuance of the Bonds; and

WHEREAS, the Commission has rendered a report concerning the proposed financing of economic development facilities for the Borrower and the Plan Commission of the Town has been given the opportunity to comment thereon; and

WHEREAS, pursuant to the Act, the Commission has considered whether the Project will have an adverse competitive effect or impact on any similar facility or facilities of the same kind already constructed or operating in the same market area or in or about the Town; and

WHEREAS, pursuant to Section 24 of the Act and certain provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, (the "Code"), the Commission held a public hearing on June 7, 2018, following publication of notice duly given (the "Public Hearing") for the

purpose of receiving evidence and testimony on the Project and matters related to the proposed financing thereof and heard all persons interested in the proceedings and considered written remonstrances and objections, if any; and

WHEREAS, following the Public Hearing, the Commission found that the financing of the Project complies with the purposes and provisions of the Act, that such financing will be of benefit to the health and welfare of the Town and its citizens through the requirements that the Project serve persons and families of low and moderate income, that the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period for the Project, and that the Project satisfied the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan; 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 pursuant to a Trust Indenture, 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 may hereafter approve) (the "Indenture"), by and between the Town and a corporate trustee to be selected by the Borrower (the "Trustee"), in order to obtain funds to lend to the Borrower for the purpose of financing all or a portion of the Project, funding a debt service reserve fund and/or other permissible reserves, if necessary, paying capitalized interest, if necessary and paying all or a portion of the incidental expenses incurred on account of the issuance of the Bonds in accordance with the terms of a Loan 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 may hereafter approve) (the "Loan Agreement"), by and between the Town and the Borrower with respect to Bonds and the Project, provided, however, that the aggregate principal amount of the Bonds shall not exceed \$19,000,000; and

WHEREAS, pursuant to the Loan Agreement, the Borrower will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, no member of 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 Commission approved the terms of the following documents in substantially final form: the Indenture (including a form of the Bonds), the Loan Agreement, the Preliminary Official Statement providing for the marketing of the Bonds (the "Preliminary Official Statement"), the Purchase Agreement among the Town, the Borrower and Piper Jaffray & Co. (the "Underwriter") for sale of the Bonds (the "Purchase Agreement"), and the Land Use Restriction Agreement among the Town, the Borrower and the Trustee (the "Land Use Restriction Agreement and collectively with the Indenture, the Loan Agreement, the Preliminary Official Statement and the Purchase Agreement, the "Financing Documents"), and this proposed form of ordinance, each of which were incorporated by reference in the Commission's Resolution adopted on June 7, 2018, which Resolution has been transmitted hereto; and

WHEREAS, based upon the resolution adopted by the Commission pertaining to the Project, the Town Council hereby finds and determines that the funding approved by the 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 one or more series of the Bonds in an aggregate principal amount not to exceed Nineteen Million Dollars (\$19,000,000);

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PLAINFIELD, INDIANA, AS FOLLOWS:

SECTION 1. 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 loan of the proceeds thereof to the Borrower for the purpose of financing all or a portion of the Project (i) will 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) will serve a public purpose, and will be of benefit to the health and general welfare of the Town, and (iii) complies 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 and providing quality affordable multifamily housing within the jurisdiction of the Town.

SECTION 2. 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. In compliance with Indiana Code 36-1-5-4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer of the Town for public inspection.

SECTION 3. The Town shall issue its Bonds in one or more series, as described above, in the maximum aggregate principal amount not to exceed Nineteen Million Dollars (\$19,000,000), with a maximum term not to exceed twenty (20) years and with a maximum interest rate not to exceed six and one-half percent (6.50%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance all or a portion of the Project, fund a debt service reserve fund and/or other permissible reserves, if necessary, pay capitalized interest, if necessary, and pay all or a portion of the incidental expenses incurred on account of the issuance of the Bonds. The Bonds will be payable as to principal and interest solely from payments made by the Borrower pursuant to the Financing Documents, and upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the Town.

SECTION 4. The President of the Town Council and the Clerk-Treasurer of the Town are authorized and directed to sell such Bonds to the purchaser or purchasers thereof at a price not less than 98% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed six and one-half percent (6.50%) per annum, and with a final maturity no later than twenty (20) years from the date of the issuance of any series of Bonds. The Purchase Agreement in form and substance acceptable to the President of the Town Council and the Clerk-Treasurer of the Town, may be, and hereby is, approved, and the President of the Town Council and the Clerk-Treasurer of the Town are hereby authorized and directed to execute and deliver the Purchase Agreement in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance. If necessary or desirable in connection with the sale of the Bonds, each of the President of the Town Council, the Clerk-Treasurer of the Town and any other officer of the Town is authorized to enter into a continuing disclosure undertaking agreement, in compliance with Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), which will be in such a form as may be deemed necessary, appropriate or desirable by each of the President of the Town Council, the Clerk-Treasurer of the Town and any other officer of the Town, with such to be conclusively evidenced by execution thereof by any such officer. The President of the Town Council, the Clerk-Treasurer of the Town, or any other officer of the Town familiar with the matters with respect to the Town set forth in the Preliminary Official Statement is hereby authorized to certify to the underwriter of the Bonds that the information in the Preliminary Official Statement with respect to the Town is deemed to be final within the

meaning of the SEC Rule. The Underwriter is hereby authorized to distribute Preliminary Official Statement to potential investors in the Bonds.

SECTION 5. The President of the Town Council and the Clerk-Treasurer of the Town are authorized and directed to execute the Financing Documents, and the President of the Town-Council, the Clerk-Treasurer of the Town and any officer of the Town are authorized and directed to execute 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 President of the Town Council and the Clerk-Treasurer 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 President of the Town Council and the Clerk-Treasurer of the Town on the Bonds may be facsimile signatures. The President of the Town Council, the Clerk-Treasurer of the Town and any other officer of the Town are authorized to arrange for the delivery of such Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The President of the Town Council, the Clerk-Treasurer of the Town 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 President of the Town Council, the Clerk-Treasurer of the Town or any other officer of the Town without further approval of this Town Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 6. 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 7. It is hereby determined that the amount of the tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the Town Council has relied upon the representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the Town as to the feasibility or viability of the Project. The Town Council hereby authorizes and directs the President of the Town Council to review and make the foregoing determination again for and on behalf of the Town at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Indiana Housing and Community Development Authority ("IHCDA") and either written representations of the Borrower or of IHCDA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfied the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan. Such determinations shall occur on or about the date of the sale of the Bonds to the purchasers thereof and on or about the date that each building of the Project is placed in service. In reliance solely upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan.

SECTION 8. Subject to the obligations of the Borrower set forth in the Loan Agreement, the Land Use Restriction Agreement and/or the certificates or other agreements of the Borrower to be executed upon the issuance of the Bonds, the Town will use its best efforts to restrict the use of the proceeds of the Bonds in such a manner and to expectations at the time the Bonds are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status of any series of Bonds under the Code, if necessary.

The President of the Town Council, the Clerk-Treasurer of the Town, or any other officer having responsibility with respect to the issuance of the Bonds, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the Town, to deliver a certificate for inclusion in the transcript of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and the regulations thereunder.

SECTION 9. 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 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 Loan 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 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 at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement and the issuance, sale and delivery of the Bonds.

SECTION 10. The Borrower will indemnify and hold the Town, including its officials, attorneys, employees and agents, free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expenses, attorneys' fees and expenses and other court costs arising out of, or in any way relating to, the execution or performance of the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds, including the issuance and sale of the Bonds or failure to issue or sell the Bonds or other actions taken under the Financing Documents or other documents in connection therewith or any other cause whatsoever pertaining to the Project or the Bonds arising out of a failure or breach of performance by the Borrower, all as further described in the Loan Agreement, except in any case as a result of the intentional misrepresentation or willful misconduct of the Town or its agents.

SECTION 11. The President of the Town Council, the Clerk-Treasurer of the Town and any other officer of the Town are each hereby authorized and directed to execute, attest and deliver such further instruments and documents and to take such further actions, in the name and on behalf of the Town, as in their judgment shall be necessary, desirable or appropriate in order to fully consummate the transaction and to effect the purposes of this Ordinance, and any such instruments or documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved. The President of the Town Council or their designee is hereby authorized to enter into one or more project agreements with the Borrower, on terms and conditions acceptable to the President of the Town Council, together with any all changes as may be necessary, desirable or appropriate, which shall be evidenced by his execution thereof.

SECTION 12. 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 13. 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 14. 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 Town 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.

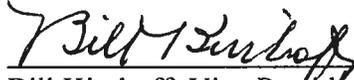
SECTION 15. This Ordinance shall be in full force and effect upon adoption and compliance with Indiana Code 36-5-2.

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Passed and adopted by the Town Council of the Town of Plainfield, Indiana, this 25th day of June, 2018.

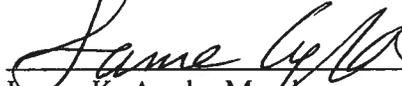
TOWN COUNCIL OF THE
TOWN OF PLAINFIELD, INDIANA

Robin G. Brandgard, President
Town Council of the Town of Plainfield

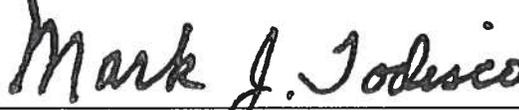

Bill Kirchoff, Vice President
Town Council of the Town of Plainfield


Kent McPhail, Member
Town Council of the Town of Plainfield

Dan Bridget, Member
Town Council of the Town of Plainfield


Lance K. Angle, Member
Town Council of the Town of Plainfield

ATTEST:


Mark J. Todisco, Clerk-Treasurer
of the Town of Plainfield