

COMMON COUNCIL OF THE CITY OF HOBART, INDIANA

Ordinance Number 2019-37

An Ordinance of the Common Council of the City of Hobart, Indiana Concerning Certain Actions and Proceedings with Respect to the Financing of Certain Affordable Multifamily Housing Facilities and authorizing the City of Hobart, Indiana, to issue one or more series of its City of Hobart, Indiana Multifamily Housing Revenue Bonds, Series 2019 (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the bonds are issued and the Development) (A Safe Haven Veterans Apartments) (the "Bonds") in the maximum aggregate principal amount not to exceed Seven Million One Hundred Thousand Dollars (\$7,100,000), 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 City of Hobart, Indiana (the "City") is authorized to issue revenue bonds 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 City; and

WHEREAS, a representative of A Safe Haven Veterans Apartments LP, an Indiana limited partnership (the "Borrower"), has advised the Hobart Economic Development Commission (the "Commission") and the City that it proposes that the City lend proceeds of an economic development financing to the Borrower to provide a portion of the funds for the acquisition, design, construction, improvement and/or equipping of the affordable multifamily housing facilities to be located in the City of Hobart, Indiana at 7930 Iowa Street consisting of approximately 75 living units and certain functionally-related improvements (the "Development"), which are intended to be utilized in connection with the HUD-Veterans Affairs Supportive Housing program ("HUD-VASH") to be owned by Borrower; and

WHEREAS, the Borrower has advised the Commission and the City concerning the Development, and has requested that the City issue, pursuant to the Act, one or more series of its taxable or tax-exempt Multifamily Housing Revenue Bonds, Series 2019 (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the bonds are issued and the Development) (the "Bonds"), in an aggregate principal amount not to exceed Seven Million One Hundred Thousand Dollars (\$7,100,000), for the purpose of providing funds for paying a portion of the costs of the Development including but not limited to paying all incidental expenses incurred on account of the issuance of the Bonds; and

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

WHEREAS, pursuant to Indiana Code 36-7-12-24, as amended, and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Bonds to finance a portion of the Development, and on November 19, 2019 prior in time to the adoption of this Ordinance, the Commission held the Public Hearing for the purpose of receiving evidence and testimony on the Development 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 such Public Hearing, the Commission adopted a resolution (the "EDC Resolution") making findings that the financing of the Development complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and welfare of the City, will provide affordable housing, and that the Development will not have an adverse competitive effect or impact on any similar facility already constructed or operating in the same market area or in or about the City; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide a portion of the funds necessary to finance the Development by issuing the Bonds; and

WHEREAS, the Act provides that such revenue bonds may be secured by a trust indenture between an issuer and a corporate trustee; and

WHEREAS, the City 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 City may hereafter approve) (the "Indenture"), by and between the City and one or more corporate trustees to be selected by the City (the "Trustee"), in order to obtain funds necessary to provide for the financing of a portion of the Development in accordance with the terms of Financing Agreements (as defined in the Act), to be dated as of the first day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Financing Agreements"), by and between the City and the Borrower with respect to the Bonds and the Development; and

WHEREAS, pursuant to the Financing Agreements, the Borrower will make representations, warranties and commitments with respect to the Development and the use of the proceeds of the Bonds to be provided to the Borrower in accordance with the terms thereof; and

WHEREAS, no member of the Common Council of the City of Hobart, Indiana (the "Council") has any pecuniary interest in the Financing Agreements or any employment, Financing Agreement (as defined in the Act) 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 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, there has previously been submitted to the Commission for its approval the forms of the Bonds, the Indenture, Financing Agreements, Regulatory Agreement and Declaration of Restrictive Covenants among the City, the Trustee and the Borrower (collectively, the "Financing Documents"), and a form of this proposed Ordinance, which were incorporated

by reference in the EDC Resolution adopted on November 19, 2019, which EDC Resolution has been transmitted hereto; and

WHEREAS, certain costs of the Bonds or costs related to the Development are expected to be paid prior to the issuance of the Bonds (collectively, the "Expenditures"), and such Expenditures are expected to be reimbursed with proceeds received by the City upon the issuance of the Bonds; and

WHEREAS, the Council has previously, by way of its Special Resolution No. 45, 2018, declared its intent to reimburse the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, based upon the EDC Report and EDC Resolution, the Council hereby finds and determines that the funding approved by the Commission for a portion of the costs of the Development will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance a portion of the costs of the Development, together with incidental expenses incurred in connection therewith, will require the issuance, sale and delivery of one or more series of revenue bonds in an aggregate combined principal amount not to exceed Seven Million One Hundred Thousand Dollars (\$7,100,000):

**BE IT ORDAINED BY THE COMMON COUNCIL OF THE
CITY OF HOBART, INDIANA:**

SECTION 1. After considering the evidence presented in the EDC Report and EDC Resolution, 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 Development, the issuance and sale of the Bonds, and the use of the net proceeds thereof by the Borrower to finance a portion of the Development, will: (i) promote a substantial likelihood of 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 City and the provision of quality, affordable, multifamily rental housing within the jurisdiction of the Issuer; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the City; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the City 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 affordable multifamily housing within the jurisdiction of the City; and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

SECTION 2. The forms of the Financing Documents presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor (the "Mayor") and the Clerk-Treasurer of the City (the "Clerk-Treasurer") and all such documents shall be kept on file by the Clerk-Treasurer. 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 for public inspection.

SECTION 3. The City is authorized to issue the Bonds in one or more series, any series of which may be taxable or tax-exempt for federal income tax purposes, in the maximum aggregate principal amount not to exceed Seven Million One Hundred Thousand Dollars (\$7,100,000), with a maximum term not to exceed forty (40) years and with a maximum interest rate not to exceed ten percent (10.0%) per annum, for the purpose of procuring funds to pay a portion of the costs of the Development by making a portion of the proceeds of the Bonds available as set forth in the Financing Documents and paying incidental expenses incurred on account of the issuance of the Bonds. The Bonds shall be payable as to principal and interest upon such terms and conditions as otherwise provided in the Financing Documents and this Ordinance. The Bonds may be subject to mandatory tender or optional redemption at one or more times prior to maturity. The Bonds shall never constitute a general obligation of, moral obligation of, an indebtedness of, or charge against the general credit of the City or a pledge of the full faith or credit of the City within the purview of any constitutional or statutory limitation or provision.

SECTION 4. The Mayor and the Clerk-Treasurer are authorized and directed to sell the Bonds to the purchaser or purchasers thereof at a price not less than 97% of the aggregate principal amount thereof plus accrued interest, if any, at a rate of interest not to exceed ten (10.0%) per annum, and with a final maturity date no later than forty (40) years from the date of the issuance of any series of the Bonds. One or more bond purchase agreements, each in form and substance acceptable to the Mayor and the Clerk-Treasurer (collectively, the "Purchase Agreements"), are hereby authorized and approved, and the Mayor and the Clerk-Treasurer are hereby authorized and directed to execute and deliver the Purchase Agreements in form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with such to be conclusively evidenced by their execution thereof.

SECTION 5. The Mayor and the Clerk-Treasurer are authorized and directed to execute the Financing Documents, and the Mayor, the Clerk-Treasurer and any other officer of the City 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 City. The signatures of the Mayor and the Clerk-Treasurer on the Bonds which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk-Treasurer on the Bonds may be facsimile signatures. The Mayor, the Clerk-Treasurer and any other officer of the City are authorized to arrange for the delivery of the Bonds to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and the Clerk-Treasurer 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 Mayor or the Clerk-Treasurer without further approval of this 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 City 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. Subject to the provisions of Sections 5 and 13 of this Ordinance, if necessary or desirable, a Preliminary Official Statement of the City relating to the Bonds (the "Preliminary Official Statement"), in a form acceptable to the Mayor, is hereby (a) authorized and approved, together with such changes in form and substance as may be deemed necessary or appropriate by the Mayor pursuant to Sections 5 and 13 of this Ordinance, (b) authorized and approved, as the same may be appropriately confirmed, modified and amended pursuant hereto, for distribution as the Preliminary Official Statement of the City, (c) authorized to be deemed and determined by the Mayor on behalf of the City, as of its date, to constitute the "final" official statement of the City with respect to the Bonds to be offered thereby, subject to completion as permitted by and otherwise pursuant to the provisions of Rule 15c2-12 of the Securities and Exchange Commission (the "SEC Rule"), and (d) authorized and approved, consistent with the provisions of any Purchase Agreement and the SEC Rule, to be placed into final form and distributed and delivered to purchasers and potential purchasers of the Bonds offered thereby as the final official statement of the City, as of the date thereof, with respect to the Bonds (the "Official Statement").

SECTION 8. Subject to the obligations of the Borrower set forth in the respective Financing Documents and/or the certificates or agreements of such Borrower to be executed upon the issuance of the Bonds, if any of the Bonds are issued on a tax-exempt basis for purposes of federal income taxation, the City 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 under the Code. The Mayor and the Clerk-Treasurer, 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 City, 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 the use of the Bond proceeds as of the date of issuance thereof.

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 City, 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 Financing Documents, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the City, including without limitation its Economic Development Commission, either directly or through the City, or otherwise, for the payment for or to the City 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 City upon any of the 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 City 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 Financing Documents and the issuance, sale and delivery of the Bonds.

SECTION 10. 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 11. 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 12. It is hereby determined that all formal actions of the Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of the 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 13. The Mayor, the Clerk-Treasurer and any other officer of the City are hereby authorized and directed, in the name and on behalf of the City, to execute, attest and deliver such further instruments and documents, and to take such further actions, in the name of the City 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. This Council hereby re-affirms its official intent, to the extent permitted by law, to issue the Bonds in one or more series or issues, not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the Development consisting of the Expenditures from proceeds of the sale of the Bonds.

SECTION 15. This Council finds and determines that the amount of tax credits to be allocated to the Development under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the Development and its viability as a qualified housing Development throughout the credit period for the Development. In making the foregoing determination, this Council has relied upon representations of the Borrower. The foregoing determination shall not be construed to be a representation or warranty by this Council as to the feasibility or viability of the Development. In reliance upon the representations of the Borrower, it is hereby found and determined that the Development satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan.

SECTION 16. This Ordinance shall be in full force and effect after the time it has been adopted and approved by the Council, and signed by the Mayor.

ALL OF WHICH is adopted as the Ordinance of the Common Council of the City of Hobart, Indiana on this 4th day of December, 2019.


PRESIDING OFFICER

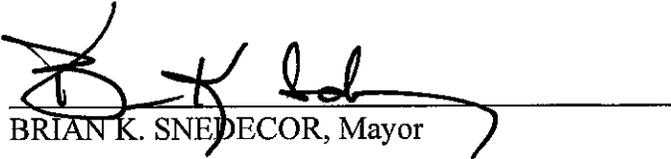
ATTEST:


DEBORAH A. LONGER, Clerk-Treasurer

PRESENTED by me to the Mayor of the City of Hobart, Indiana on this 4th day of December, 2019 at the hour of 7:15 pm.


DEBORAH A. LONGER, Clerk-Treasurer Council

APPROVED, EXECUTED AND RETURNED by me to the Common Council of the City of Hobart, Indiana on this 4th day of December, 2019 at the hour of 7:15 pm.


BRIAN K. SNEDECOR, Mayor

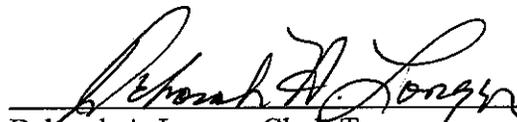
ATTEST: 
DEBORAH A. LONGER, Clerk-Treasurer

STATE OF INDIANA, LAKE COUNTY)
) SS:
CITY OF HOBART)

I, Deborah A. Longer, Clerk-Treasurer of the City of Hobart, Lake County, Indiana, do hereby certify the above and foregoing is a full, true and complete copy of ORDINANCE NO. 2019-37, an ORDINANCE, passed by the Common Council on the 4th day of December, 2019, by a vote of 7 YEAS and 0 NAYS, which was signed by the Mayor on the 4th day of December, 2019, and now remains on file and on record in my office.

WITNESS my hand and the official seal of the City of Hobart, Indiana, this 4th day of December, 2019.

(SEAL)



Deborah A. Longer, Clerk-Treasurer