

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE ISSUANCE OF NOT TO EXCEED \$[25,000,000] AGGREGATE PRINCIPAL AMOUNT OF ECONOMIC DEVELOPMENT REVENUE REFUNDING BONDS, SERIES 2019 (OTTERBEIN HOMES OBLIGATED GROUP), OF THE CITY OF FRANKLIN, INDIANA, THE PROCEEDS OF WHICH SHALL BE LOANED TO OTTERBEIN HOMES OR AN AFFILIATE THEREOF TO REFUND A TAXABLE LOAN; PROVIDING FOR THE PLEDGE OF REVENUES FOR THE PAYMENT OF SUCH BONDS; AUTHORIZING A LOAN AGREEMENT AND TRUST INDENTURE APPROPRIATE FOR THE PROTECTION AND DISPOSITION OF SUCH REVENUES AND TO FURTHER SECURE SUCH BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX EXEMPTION CERTIFICATE AND AGREEMENT; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT WITH RESPECT TO SUCH BONDS; APPROVING A PRELIMINARY OFFICIAL STATEMENT AND OFFICIAL STATEMENT IN RESPECT OF SUCH BONDS; AND AUTHORIZING OTHER ACTIONS IN CONNECTION WITH THE ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Franklin, Indiana (the “City”), by virtue of the laws of the State of Indiana (the “State”), including Title 36, Article 7, Chapters 11.9 and 12 of the Indiana Code, as supplemented and amended (the “Act”), in order to, among other things, create or retain opportunities for gainful employment and create business opportunities, is authorized to (i) make loans for the cost of acquisition, construction or installation of “economic development facilities” (as defined in the Act), including land, machinery, or equipment therefor; (ii) issue bonds for the purpose of providing funds to pay all or any part of such cost; and (iii) enter into a financing agreement and execute and deliver other transaction documents providing for payments in an amount sufficient to pay the principal and interest on said bonds; and

WHEREAS, Otterbein Homes (“Otterbein”) is an Ohio nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and operates continuing care retirement communities in Ohio and Indiana; and

WHEREAS, Otterbein is the parent company of The Franklin United Methodist Home, Inc., an Indiana nonprofit corporation (“FUMH”), which operates Otterbein Franklin, a continuing care retirement community located in the City (the “Facility”); and

WHEREAS, Otterbein, FUMH, an affiliate thereof or any combination of the foregoing (as applicable, the “Borrower”) has requested that the City issue one or more series of taxable and/or tax-exempt economic development revenue bonds in the aggregate principal amount of not to exceed \$[25,000,000] (the “Series 2019 Bonds”) for the purpose of (a) refunding a taxable loan incurred by Otterbein and certain of its affiliates, including FUMH (the “Prior Loan”), the proceeds of which were used to finance certain improvements to the Facility and to refund the City’s Economic Development Revenue Refunding and Improvement Bonds, Series 2015 (The Franklin United Methodist Home, Inc. Project), the proceeds of which, together with the proceeds of other revenue

bonds previously issued by the City for the benefit of FUMH, were used to finance or refinance the costs of acquisition, construction, renovation, installation and/or equipping of certain improvements to the Facility; and (b) paying certain costs of issuance related to the Series 2019 Bonds (collectively, the “Project”); and

WHEREAS, this Common Council (the “Council”) of the City has determined and does hereby confirm that the financing of the Project with the proceeds of the Series 2019 Bonds (as hereinafter defined) will promote a substantial likelihood of increasing business opportunities and be of benefit to the health and general welfare of the City and its citizens and complies with the purposes and provisions of the Act, and that the City, by assisting with the financing of the Project with the proceeds of the Series 2019 Bonds, will be acting in the manner consistent with and in furtherance of the provisions of the laws of the State of Indiana, particularly the Act; and

WHEREAS, no member of the Council has any pecuniary interest in any employment, financing agreement or other contract made under the provisions of the Act and related to the Series 2019 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 the Act;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FRANKLIN, STATE OF INDIANA, AS FOLLOWS:

SECTION 1. Definitions. All defined terms used herein and those not otherwise defined herein shall have the respective meanings given to them in the Loan Agreement, between the City and the Borrower (the “Loan Agreement”), or the Indenture (as defined below), each relating to the Series 2019 Bonds.

Any reference herein to the City or the Council, or to any officers or members thereof, shall include those which succeed to their functions, duties or responsibilities pursuant to or by operation of law or who are lawfully performing their functions.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa, and the terms “hereof,” “hereby,” “hereto,” “hereunder,” and similar terms, mean this Ordinance.

SECTION 2. Determinations of City. Based solely on the representations made, information presented and testimony given by the Borrower and without independent verification by this Council, it is hereby found that the financing of the Project, the issuance and sale of the Series 2019 Bonds, the loan of the net proceeds thereof to the Borrower for the purposes stated above (the “Loan”), and the repayment of the Loan by the Borrower, will promote a substantial likelihood of increasing business opportunities and be of benefit to the health and general welfare of the City and its citizens and complies with the purposes and provisions of the Act. Based solely on the representations made, information presented and testimony given by the Borrower and without independent verification by this Council, it is hereby further found that the Facility is owned by the Borrower, is used in furtherance of the exempt purpose of the Borrower, and is not used by any other Person.

The Council, as the “applicable elected representative” of the City for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), reasonable public notice having been provided to the public in accordance therewith, hereby approves the issuance of the Series 2019 Bonds in a maximum aggregate face amount of not to exceed \$[25,000,000], the proceeds of which will be used to finance the Project.

The City has not designated any portion of the Series 2019 Bonds as “qualified tax-exempt obligations” within the meaning of Section 265(b)(3) of the Code.

SECTION 3. Authorization of Bonds. It is hereby determined to be necessary to, and the City shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Series 2019 Bonds for the purposes of making a loan to the Borrower to (a) refund the outstanding Prior Loan; and (b) pay certain costs of issuance relating to the Series 2019 Bonds, all in accordance with the provisions of an Indenture of Trust (Bond Indenture) (the “Indenture”), between the City and U.S. Bank National Association, a national banking association and its successors in trust, as trustee (the “Bond Trustee”). The Series 2019 Bonds shall be designated “Economic Development Revenue Refunding Bonds, Series 2019 (Otterbein Homes Obligated Group),” may be issued in one or more series and may bear a series designation that may be appropriate to further distinguish the Series 2019 Bonds. The maximum amount of Series 2019 Bonds to be outstanding at any one time is not to exceed \$[25,000,000].

In order to provide for the further authorization, and to secure the Series 2019 Bonds to be issued pursuant to this Ordinance and to prescribe the terms and conditions upon which the Series 2019 Bonds are to be secured, executed, authenticated, accepted and held, there is hereby authorized, empowered and directed to execute and deliver, on behalf of the City, the Indenture, which Indenture shall be in substantially the form on file with the City Clerk, as provided by Dinsmore & Shohl LLP, as bond counsel to the City (“Bond Counsel”), final approval of which on behalf of the City to be conclusively evidenced by the execution and delivery thereof.

SECTION 4. Terms and Execution of the Series 2019 Bonds. The Series 2019 Bonds shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The Series 2019 Bonds shall mature as provided in the Indenture, and have such terms, bear such interest, and be subject to mandatory and optional redemption as provided in the Indenture. This Council hereby fixes and establishes the interest rate in effect from time to time on the Series 2019 Bonds in the manner and pursuant to the provisions of the Indenture. The Series 2019 Bonds shall not bear interest in excess of [_____] % per annum and the maximum term for the Series 2019 Bonds shall be [_____] years. The Series 2019 Bonds shall be executed on behalf of the City by the manual or facsimile signature of its Mayor and attested by the manual or facsimile signature of the City Clerk. In case any officer whose signature or a facsimile thereof shall appear on the Series 2019 Bonds shall cease to be such officer before the issuance or delivery of the Series 2019 Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if the officer had remained in office until after that time.

The form of the Series 2019 Bonds as set forth in the Indenture, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture, is hereby approved, and when the same shall be executed on behalf of the City by the appropriate officers thereof in the

manner contemplated hereby and by the Indenture, in the aggregate principal amount of not to exceed \$[25,000,000], shall represent the approved form of Bonds of the City.

SECTION 5. Sale of the Series 2019 Bonds. The Series 2019 Bonds shall be awarded to Fifth Third Securities, Inc. (the “Underwriter”) at the purchase price set forth, and on the terms and conditions described, in the Bond Purchase Agreement with respect to the Series 2019 Bonds (the “Bond Purchase Agreement”) among the City, the Borrower and the Underwriter, which shall be in such form as is acceptable to the City Attorney. The Mayor and City Clerk are authorized and directed to make on behalf of the City the necessary arrangements to establish the date, location, procedure and conditions for the delivery of the Series 2019 Bonds to the Underwriter, and to take all steps necessary to effect due execution and delivery to the Underwriter (or temporary bonds delivered in lieu of definitive Bonds until their preparation and delivery can be effectuated) under the terms of this Ordinance, the Indenture, the Bond Purchase Agreement and the Loan Agreement. It is hereby determined that the price for and the terms of the Series 2019 Bonds, and the sale thereof, all as provided in the aforesaid documents, are in the best interests of the City and consistent with all legal requirements.

SECTION 6. Arbitrage Provisions. The City will, at the direction of the Borrower and to the extent the Series 2019 Bonds are issued as tax-exempt bonds, restrict the use of the proceeds of the Series 2019 Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time the Series 2019 Bonds are delivered to the Underwriter, so that they will not constitute arbitrage bonds under Section 148 of the Code. The Mayor or any other officer having responsibility with respect to the issuance of the Series 2019 Bonds, is 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 Series 2019 Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 of the Code and regulations thereunder.

SECTION 7. Authorization of Indenture, Loan Agreement, Bond Purchase Agreement, Tax Exemption Certificate and Agreement and All Other Documents to be Executed by the City. In order to better secure the payment of the principal of, premium, if any, and interest on the Series 2019 Bonds as the same shall become due and payable, the Mayor and City Clerk are authorized and directed to, as applicable, finalize, execute, acknowledge and deliver in the name and on behalf of the City, the Indenture, Loan Agreement, Tax Exemption Certificate and Agreement related to the Series 2019 Bonds (the “Tax Exemption Certificate and Agreement”) and Bond Purchase Agreement, each of which is hereby approved in substantially the form on file with the City Clerk or in such form as is acceptable to the City Attorney or other counsel to the City, as applicable, with such changes therein not inconsistent with this Ordinance and not substantially adverse to the City as may be permitted by the Act and approved by the officers executing the same on behalf of the City. The approval of such changes by said officers, and that such are not substantially adverse to the City, shall be conclusively evidenced by the execution of such Indenture, Loan Agreement, Tax Exemption Certificate and Agreement and Bond Purchase Agreement by such officers.

The Mayor and City Clerk are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates, deeds and other instruments that may be necessary or appropriate in the opinion of Bond Counsel in order to effect the issuance of the Series 2019 Bonds, the repayment of the Prior Loan and the intent of this Ordinance. The City Clerk,

or other appropriate officer of the City, shall certify a true transcript of all proceedings had with respect to the issuance of the Series 2019 Bonds, along with such information from the records of the City as is necessary to determine the regularity and validity of the issuance of the Series 2019 Bonds.

SECTION 8. Official Statement. A Preliminary Official Statement with respect to the Series 2019 Bonds is hereby authorized and approved. The use of the name of the City in such Preliminary Official Statement is hereby approved. The Mayor and City Clerk are each hereby separately authorized to certify that the Preliminary Official Statement is “final” for purposes of Rule 15c2-12 (the “Rule”) promulgated under the Securities Exchange Act of 1934, as amended.

The final Official Statement in respect of the Series 2019 Bonds, substantially in the form of the Preliminary Official Statement approved and authorized in the preceding paragraph, is hereby authorized and approved, including the use of the name of the City in the final Official Statement. The Mayor and City Clerk are each hereby separately authorized to certify that the Official Statement is “final” for purposes of the Rule.

The distribution of an Official Statement relating to the Series 2019 Bonds is hereby approved. The City has not confirmed, and assumes no responsibility for, the accuracy, sufficiency or fairness of any statements in the Official Statement or any amendments thereof or supplements thereto, or in any reports, financial information, offering or disclosure documents or other information relating to the Underwriter, the Project or the Borrower, or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or otherwise contained in the Official Statement.

SECTION 9. Covenants of City. In addition to other covenants of the City in this Ordinance, the City further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The City will, solely from and only to the extent of the sources herein or in the Indenture provided, pay or cause to be paid the principal of, premium, if any, and interest on each and all Series 2019 Bonds on the dates, at the places and in the manner provided herein, in the Indenture and in the Series 2019 Bonds.

(b) Performance of Covenants, Authority and Actions. The City will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Series 2019 Bonds, Loan Agreement, Indenture, Bond Purchase Agreement, Tax Exemption Certificate and Agreement, and in all proceedings of the City pertaining to the Series 2019 Bonds. The City warrants and covenants that it is, and upon delivery of the Series 2019 Bonds will be, duly authorized by the laws of the State of Indiana, including particularly and without limitation the Act, to issue the Series 2019 Bonds and to execute the Loan Agreement, the Indenture, the Tax Exemption Certificate and Agreement and the Bond Purchase Agreement, and all other documents to be executed by it, to provide for the security for payment of the principal of, premium, if any, and interest on the Series 2019 Bonds in the manner and to the extent herein and in the Bond Purchase Agreement set forth; that all actions on its part for the issuance of the Series 2019 Bonds and execution and delivery of the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Tax Exemption Certificate and Agreement and all other documents to be executed by it in connection with the issuance of the Series 2019 Bonds, have been or will be duly and effectively taken; and that the Series 2019 Bonds will be valid and enforceable special obligations of the City according to the terms thereof. Each

provision of the Ordinance, the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Tax Exemption Certificate and Agreement and each Series 2019 Bond, and all other documents to be executed by the City in connection with the issuance of the Series 2019 Bonds, is binding upon each officer of the City as may from time to time have the authority under law to take such actions as may be necessary to perform all or any part of the duty required by such provision; and each duty of the City and of its officers and employees undertaken pursuant to such proceedings for the Series 2019 Bonds is established as a duty of the City and of each such officer and employee having authority to perform such duty.

The Mayor and the City Clerk of the City are hereby authorized to execute and deliver on behalf of the City such other certificates, documents and instruments in connection with the issuance and sale of the Series 2019 Bonds as may be required, necessary or appropriate, including, without limitation, any documents which are necessary or appropriate in order to provide that the Series 2019 Bonds constitute “qualified 501(c)(3) bonds” under the Code to the extent the Series 2019 Bonds are issued as tax-exempt bonds. Such documents, including the ones specifically authorized hereby, shall be subject to such changes, insertions and omissions as may be approved by the appropriate officers of the City, which approval shall be conclusively evidenced by the execution thereof as aforesaid.

SECTION 10. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Ordinance, or in any Series 2019 Bond, or in the Loan Agreement, the Indenture, the Tax Exemption Certificate and Agreement or the Bond Purchase Agreement, or under any judgment obtained against the City 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, shall be had against any officer as such, past, present, or future, of the City, 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 any Bond, or otherwise, of any sum that may be due and unpaid by the City upon any of the Series 2019 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 officer, 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 the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of the Loan Agreement, the Indenture, the Tax Exemption Certificate and Agreement and the Bond Purchase Agreement and the issuance of the Series 2019 Bonds.

SECTION 11. No Debt or Tax Pledge. THE SERIES 2019 BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE CITY WITHIN THE MEANING OF THE CONSTITUTION OF THE STATE OF INDIANA. THE SERIES 2019 BONDS SHALL BE PAYABLE SOLELY FROM THE REVENUES AND SECURITY INTERESTS PLEDGED FOR THEIR PAYMENT AS PROVIDED IN THE INDENTURE, AND NEITHER MONEYS RAISED BY TAXATION NOR ANY OTHER GENERAL OR SPECIAL REVENUES OF THE CITY SHALL BE OBLIGATED OR PLEDGED FOR THE PAYMENT OF PRINCIPAL OF, PREMIUM (IF ANY) OR INTEREST ON THE SERIES 2019 BONDS.

SECTION 12. Incorporation of Preambles. The preambles of this Ordinance are hereby incorporated as an integral part of this Ordinance, to the same extent as if repeated herein verbatim,

it being declared that the statements of fact set forth in such preambles are true and accurate in all respects.

SECTION 13. Severability. 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 14. Open Meetings Law. This Council hereby finds and determines that all formal actions relative to the adoption of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, in full compliance with applicable legal requirements, particularly Title 5, Article 14, Chapter 1.5 of the Indiana Code.

SECTION 15. Effective Date. This Ordinance shall be in full force and effect from and after passage by this Council and its approval by the Mayor of the City of Franklin, Indiana.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA THIS DAY, _____, 2019.

COMMON COUNCIL,
CITY OF FRANKLIN, INDIANA

President, Common Council

ATTEST:

By: _____
City Clerk

Presented by me, the undersigned City Clerk of the City of Franklin, Indiana to the Mayor of said City for his approval on _____, 2019 at _____ o'clock __.m.

City Clerk

Having examined the foregoing Ordinance, I do now, as the Mayor of the City of Franklin, Indiana approve said Ordinance and return the same to the City Clerk of the City of Franklin, Indiana this day, _____, 2019.

Mayor

CERTIFICATE

STATE OF INDIANA)
 SS:)
COUNTY OF JOHNSON)

I hereby certify that the attached and foregoing document is a true, accurate and complete copy of Ordinance No. _____ adopted by the Common Council of the City of Franklin, Johnson County, Indiana, on _____, 2019 and approved by the Mayor of said City on _____, 2019 as the same appears on file and record in my office.

Witness my hand and the seal of said City, affixed at Franklin, Indiana on _____, 2019.

By: _____
City Clerk
City of Franklin, Indiana

Approved:

By: _____
Mayor

ATTEST:

By: _____
City Clerk