

County Council of Cuyahoga County, Ohio

Resolution No. R2018-0217

<p>Sponsored by: County Executive Budish/Department of Development</p>	<p>A Resolution authorizing the issuance of not-to-exceed \$36,000,000.00 Multifamily Housing Mortgage Revenue Bonds, Series 2018 (Hamlet Hills LLC) by the County of Cuyahoga, Ohio, the proceeds of which shall be loaned to Hamlet Hills LLC to (i) refund and retire certain indebtedness incurred to finance the acquisition, renovation, and equipping of a multifamily residential rental housing facility, (ii) finance certain additional capital improvements and (iii) fund certain working capital needs for the hereinafter defined Borrower; authorizing the issuance of additional Bonds; 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 a Bond Purchase Agreement and Preliminary and Final Official Statement; authorizing a Tax Regulatory Agreement and a Land Use Restriction Agreement; authorizing other actions in connection with the issuance of such Bonds; and declaring the necessity that this Resolution become immediately effective.</p>
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WHEREAS, the County of Cuyahoga, Ohio (the “Issuer”), by virtue of the laws of the State of Ohio, including Article VIII, Section 16 of the Constitution of Ohio, and Section 133.51 of the Ohio Revised Code, is authorized and empowered among other things (a) to make a loan to assist in the financing and refinancing of the acquisition, construction, renovation and equipping of housing facilities within the boundaries of the Issuer, (b) to issue and sell its revenue bonds to provide moneys for such loans and (c) to enact this resolution (this “Bond Legislation”) and execute and deliver the agreements and instruments hereinafter identified; and

WHEREAS, this Council (the “Issuing Authority”) has been presented with a proposal by Hamlet Hills LLC, an Ohio limited liability company (the “Borrower”), with

respect to the refinancing of a certain 138-unit multifamily residential rental housing facility located in Chagrin Falls, Ohio (the “Project”); and

WHEREAS, the sole member of the Borrower is Hamlet Operator Holding LLC, an Ohio nonprofit limited liability company, the sole member of Hamlet Operator Holding LLC is AE Hamlet Holding LLC, an Ohio nonprofit limited liability company, and the sole member of AE Hamlet Holding LLC is American Eagle LifeCare Corporation, a Tennessee nonprofit corporation and an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, the Issuing Authority has determined, based solely upon representations of the Borrower, and does hereby confirm that the refunding and retirement of certain indebtedness previously incurred to finance the acquisition, renovation and equipping of the Project (the “Prior Indebtedness”) and the funding of certain capital improvements to the Project and certain working capital needs of the Borrower, will promote the welfare of the people of the Issuer and the State of Ohio, provide residential rental housing to the benefit of the people of the Issuer, and that the Issuer, by assisting with the financing of the Project through the issuance of revenue bonds in the aggregate principal amount not to exceed \$36,000,000 to be designated Multifamily Housing Mortgage Revenue Bonds, Series 2018 (Hamlet Hills LLC), or such other designation as provided in the hereinafter defined Indenture, consisting of Multifamily Housing Mortgage Revenue Bonds, Tax-Exempt Series 2018A, Multifamily Housing Mortgage Revenue Bonds, Taxable Series 2018B and additional series of bonds, which may not be on a parity with the aforementioned Series 2018A Bonds and Series 2018B Bonds, if such additional series of bonds are deemed necessary in connection with the financing of the Project (collectively, the “Bonds”), will be acting in the manner consistent with and in furtherance of the provisions of Article VIII, Section 16 of the Constitution of the State of Ohio, and the laws of the State of Ohio, particularly Section 133.51 of the Ohio Revised Code (the “Act”); and

WHEREAS, proposed forms of the following documents have been presented to the Issuer for approval in connection with the issuance, sale, and delivery of the Bonds:

1. Trust Indenture (the “Indenture”) between the Issuer and UMB Bank, National Association and its successors in trust, as trustee (the “Trustee”), with respect to the proposed Bonds, including the proposed form of the Bonds;
2. Loan Agreement (the “Loan Agreement”) between the Issuer and the Borrower, with respect to the Bonds;
3. Bond Purchase Agreement (the “Bond Purchase Agreement”) with respect to the Bonds among the Issuer, the Borrower and Piper Jaffray & Co. (the “Underwriter”);
4. Tax Regulatory Agreement and No-Arbitrage Certificate (the “Tax Regulatory Agreement”) among the Issuer, the Borrower, American Eagle

LifeCare Corporation, Hamlet Operator Holding LLC, AE Hamlet Holding LLC and the Trustee;

5. Land Use Restriction Agreement (the “Land Use Restriction Agreement”) among the Issuer, the Borrower, American Eagle LifeCare Corporation and the Trustee; and
6. Preliminary Official Statement (the “Preliminary Official Statement”) with respect to the Bonds; and

WHEREAS, in accordance with the applicable provisions of the Act, the Issuer proposes to enter into the Indenture, the Loan Agreement, the Tax Regulatory Agreement, the Land Use Restriction Agreement and the Bond Purchase Agreement (collectively, the “Issuer Documents”) and approve the use and distribution of the Preliminary Official Statement and an Official Statement;

NOW THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF THE COUNTY OF CUYAHOGA, OHIO:

SECTION 1. Definitions. All defined terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Indenture.

Any reference herein to the Issuer or the Issuing Authority, 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 Bond Legislation.

SECTION 2. Determination of Issuer. Pursuant to Section 133.51 of the Act, this Issuing Authority hereby finds and determines, based solely upon representations of the Borrower and the advice of Bond Counsel, that the Project to be refinanced with the proceeds of the Bonds through the refunding and retirement of the Prior Indebtedness, the financing of certain capital improvements to the Project and the funding of certain working capital needs of the Borrower is consistent with the provisions of Section 16 of Article VIII, Ohio Constitution.

SECTION 3. Authorization of Bonds. It is hereby determined to be necessary to, and the Issuer shall, issue, sell and deliver, as provided herein and pursuant to the authority of the Act, the Bonds for the purpose of (i) refunding and retiring the Prior Indebtedness which financed the acquisition, renovation and equipping of the Project, (ii) financing the acquisition, construction, renovation and equipping of certain capital improvements to the Project and (iii) funding certain working capital needs of the Borrower, including costs incidental thereto and of the financing thereof, all in

accordance with the provisions of the Loan Agreement. The maximum amount of all Bonds to be outstanding at any one time is not to exceed \$36,000,000.

SECTION 4. Terms and Execution of the Bonds. The Bonds shall be designated, shall be issued in the forms and denominations, shall be numbered, dated and payable as provided in the Indenture. The 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. The Bonds shall bear interest at a weighted average interest rate not to exceed 7.00% per annum and shall mature over a period not to exceed 38 years. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the County Executive and, if determined by the Issuer to be appropriate, the Fiscal Officer of the Issuer. In case any officer whose signature or a facsimile thereof shall appear on the Bonds shall cease to be such officer before the issuance or delivery of the Bonds, such signature or facsimile thereof shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until after that time.

The form of the Bonds submitted to the Issuer, 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 Issuer by the appropriate officers thereof in the manner contemplated hereby and by the Indenture, in aggregate principal amounts not to exceed \$36,000,000, shall represent the approved form of Bonds of the Issuer.

The Bonds initially shall be issued only in fully registered form as described in the Indenture.

SECTION 5. Sale of the Bonds. In accordance with a request of the Borrower that the sale of the Bonds be made privately upon a negotiated basis, the Bonds are hereby awarded to the Underwriter at the purchase price set forth, and on the terms and conditions described in, the Bond Purchase Agreement. The County Executive, the Fiscal Officer, the Director of Law or the Clerk of the Issuing Authority each are hereby separately authorized and directed to make on behalf of the Issuer the necessary arrangements to establish the dates, location, procedures and conditions for the delivery of the Bonds to or at the order of the Underwriter and to take all steps necessary to effect due execution and delivery to or at the order of the Underwriter (or temporary bonds delivered in lieu of definitive Bonds until their preparation and delivery can be effectuated) under the terms of this Bond Legislation, the Bond Purchase Agreement, the Loan Agreement and the Indenture. It is hereby determined that the prices for and the terms of the Bonds, and the sale thereof, all as provided in the aforesaid documents, are in compliance with all legal requirements.

SECTION 6. Arbitrage Provisions. The Issuer covenants in the Loan Agreement that it will require the Borrower to restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the times the Bonds are delivered to the Underwriter so that they will not constitute arbitrage bonds under Section 148 of the Internal Revenue Code

of 1986, as amended (the “Code”). The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Bonds, is authorized and directed, alone or in conjunction with any other officer, employee, consultant or agent of the Issuer, to deliver certificates prepared by Bond Counsel and approved by the Issuer’s counsel, based upon representations of the Borrower, as provided in such certificates, for inclusion in the transcripts of proceedings for the Bonds, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to said Section 148 and regulations thereunder, all as of the date of delivery of and payment for the Bonds.

SECTION 7. Authorization of Issuer Documents, Official Statement and All Other Documents to be Executed by the Issuer. In order to better secure the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable, the County Executive is authorized and directed to execute, acknowledge and deliver in the name and on behalf of the Issuer, the Issuer Documents in substantially the forms submitted to the Issuer, which are hereby approved, with such changes therein not inconsistent with this Bond Legislation and not substantially adverse to the Issuer as may be permitted by the Act and approved by the officer executing the same on behalf of the Issuer. The approval of such changes by said officer, and that such are not substantially adverse to the Issuer, shall be conclusively evidenced by the execution of such Issuer Documents by such officer.

The use and distribution of the Preliminary Official Statement prepared by the Underwriter in connection with the sale of the Bonds, including such use and distribution prior to the date of this Bond Legislation, is approved and ratified. The use and distribution of a final Official Statement in substantially the form of the Preliminary Official Statement with changes therein to reflect the terms of the Bonds, established by this Bond Legislation and the Indenture, and any amendments thereof or supplements thereto, is hereby authorized.

The Issuer has not confirmed, and assumes no responsibility for the accuracy, sufficiency or fairness of any statements in the Preliminary Official Statement or the final Official Statement or any amendments thereof or supplements thereto (except for certain limited information provided or approved by the Issuer for inclusion in the Preliminary Official Statement and the Official Statement as set forth in the Bond Purchase Agreement), or in any reports, financial information, offering or disclosure documents or other information relating to the Bonds, the Underwriter, the Project or the Borrower, or any other documents, or the history, businesses, properties, organization, management, financial condition, market area or any other matter relating to the Borrower or contained otherwise in such Official Statement.

The County Executive, the Fiscal Officer, the Director of Law and the Clerk of the Issuing Authority are each hereby separately authorized to take any and all actions and to execute such financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Dinsmore & Shohl LLP, as Bond Counsel, in order to effect the issuance of the Bonds and the intent of this Bond Legislation. The Clerk of the Issuing Authority, or other appropriate officer of the Issuer, shall certify a true transcript of all proceedings had with respect to the issuance of the

Bonds along with such information from the records of the Issuer as is necessary to determine the regularity and validity of the issuance of the Bonds. The Fiscal Officer or other appropriate officer of the Issuer is authorized to collect and receive, on behalf of the Issuer, application, administrative and related fees in connection with the issuance of the Bonds.

SECTION 8. Covenants of Issuer. In addition to other covenants of the Issuer in this Bond Legislation, the Issuer further covenants and agrees as follows:

(a) Payment of Principal, Premium and Interest. The Issuer will, solely from 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 Bonds on the dates, at the places and in the manner provided herein, in the Indenture and in the Bonds.

(b) Performance of Covenants, Authority and Actions. The Issuer will at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Bonds and the Issuer Documents, and in all proceedings of the Issuer pertaining to the Bonds. The Issuer warrants and covenants that it is, and upon delivery of the Bonds will be, duly authorized by the laws of the State of Ohio, including particularly and without limitation the Act, to issue the Bonds and to execute the related Issuer Documents 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 Bonds in the manner and to the extent herein and in the Indenture set forth; that all actions on its part for the issuance of the Bonds and execution and delivery of the Issuer Documents and all other documents to be executed by it in connection with the issuance of the Bonds, have been or will be duly and effectively taken; and that the Bonds will be valid and enforceable special obligations of the Issuer according to the terms thereof. Each provision of the Bond Legislation, the Issuer Documents and each Bond, and all other documents to be executed by the Issuer in connection with the issuance of the Bonds, is binding upon each officer of the Issuer 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 Issuer and of its officers and employees undertaken pursuant to such proceedings for the Bonds is established as a duty of the Issuer and of each such officer and employee having authority to perform such duty, specifically enjoined by law and resulting from an office, trust or station within the meaning of Section 2731.01 of the Ohio Revised Code, providing for enforcement by writ of mandamus.

SECTION 9. No Personal Liability. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Legislation, or in any Bond, or in the Issuer Documents, or under any judgment obtained against the Issuer 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 Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer 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 Issuer 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 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 Issuer 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 Issuer Documents and the issuance of the Bonds.

SECTION 10. No Debt or Tax Pledge. Neither the Bonds nor any of the Issuer Documents constitute an indebtedness or pledge of the faith and credit or taxing powers of the Issuer within the meaning of the Constitution of the State of Ohio. The 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 Issuer shall be obligated or pledged for the payment of principal of, premium (if any) or interest on the Bonds, and each Bond shall contain on the face thereof a statement to that effect and to the effect that the Bonds shall be paid solely from the revenues received by the Issuer pursuant to the Loan Agreement and in accordance with the Indenture.

SECTION 11. Severability. If any section, paragraph or provision of this Bond Legislation 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 Bond Legislation.

SECTION 12. Sunshine Law. This Issuing Authority hereby finds and determines that all formal actions relative to the adoption of this Bond Legislation were taken in open meetings of this Issuing Authority, and that all deliberations of this Issuing Authority 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, including Section 121.22, Ohio Revised Code.

SECTION 13. Retention of Counsel. This Issuing Authority hereby retains the legal services of Dinsmore & Shohl LLP as Bond Counsel to the Issuer and Tucker Ellis LLP as special counsel to the Issuer, each in connection with the authorization, sale, issuance and delivery of the Bonds, pursuant to the authority in Ohio Revised Code Section 133.51; provided, that any fees and charges of such firms for the provision of such services shall be payable solely from the proceeds of the Bonds or funds otherwise made available by the Borrower, and the Issuer shall not have any responsibility for the payment of any of those fees and charges. In providing those legal services, as independent contractors and in attorney-client relationships, such counsel shall not exercise any administrative discretion on behalf of the Issuer in the formulation of public policy, expenditure of public funds, enforcement of laws, rules and regulations of the State, or of the Issuer, or of any other political subdivision of the State, or the execution of public trusts.

SECTION 14. Effective Date. It is necessary that this Bond Legislation become immediately effective for the usual daily operation of the Issuer; the preservation of

public peace, health, or safety in the Issuer; and any additional reasons set forth in the preamble. Provided that this Bond Legislation receives the affirmative vote of at least eight members of Council, it shall take effect and be in force immediately upon the earliest occurrence of any of the following: (i) its approval by the County Executive through signature, (ii) the expiration of the time during which it may be disapproved by the County Executive under Section 3.10(6) of the Charter, or (iii) its passage by at least eight members of Council after disapproval pursuant to Section 3.10(7) of the Charter. Otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

On a motion by Mr. Schron, seconded by Mr. Brady, the foregoing Resolution was duly adopted.

Yeas: Miller, Tuma, Gallagher, Schron, Conwell, Jones, Brown, Houser, Simon, Baker and Brady

Nays: None

County Council President

Date

County Executive

Date

Clerk of Council

Date

First Reading/Referred to Committee: October 23, 2018

Committee(s) Assigned: Economic Development & Planning

Bond Counsel: Dinsmore & Shohl LLP

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November 13, 2018