

# TOWN OF BRIDGEVILLE

*If you lived here, you would be home now.*

ORDINANCE NO. 14-6

AN ORDINANCE OF THE COMMISSIONERS OF BRIDGEVILLE (THE "COMMISSIONERS"): CONFIRMING THE AUTHORIZATION OF THE COMMISSIONERS TO ISSUE, SELL AND DELIVER, AT ANY ONE TIME OR FROM TIME TO TIME, ITS SERIES OF ADDITIONAL SPECIAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$16,000,000; CONFIRMING CERTAIN LEGISLATIVE FINDINGS, AMONG OTHERS, CONCERNING THE PUBLIC BENEFIT AND PURPOSE OF SPECIAL OBLIGATION BONDS TO BE ISSUED BY THE COMMISSIONERS; PROVIDING THAT SUCH SPECIAL OBLIGATION BONDS AND THE INTEREST THEREON SHALL NEVER CONSTITUTE A GENERAL OBLIGATION DEBT OF OR A PLEDGE OF THE COMMISSIONER'S FULL FAITH AND CREDIT OR TAXING POWERS; AUTHORIZING AND EMPOWERING THE PRESIDENT OF THE COMMISSIONERS PRIOR TO THE ISSUANCE, SALE AND DELIVERY OF SUCH SPECIAL OBLIGATION BONDS, TO PRESCRIBE THE RATE OR RATES OF INTEREST SUCH SPECIAL OBLIGATION BONDS ARE TO BEAR, THE FORM, TENOR, TERMS AND CONDITIONS OF AND SECURITY FOR SUCH SPECIAL OBLIGATION BONDS, AND TO PRESCRIBE, DETERMINE, PROVIDE FOR AND APPROVE VARIOUS OTHER MATTERS, DETAILS, DOCUMENTS AND PROCEDURES IN CONNECTION WITH THE AUTHORIZATION, ISSUANCE, SECURITY, SALE AND PAYMENT FOR SUCH SPECIAL OBLIGATION BONDS; CONFIRMING THE DECLARATION OF OFFICIAL INTENT; ALL IN ACCORDANCE WITH TITLE 22 OF THE DELAWARE CODE, CHAPTER 18 AND SECTION 29A OF 51 DELAWARE LAWS, CHAPTER 237, AS AMENDED.

WHEREAS, Under the provisions of Title 22 of the Delaware Code, Chapter 18 and Section 29A of 51 Delaware Laws, Chapter 237, as amended (the "Charter") (collectively, the "Act"), the Commissioners of Bridgeville, a municipal body corporate of the State of Delaware (the "Commissioners") may create special development districts, levy ad valorem or special taxes and borrow money by issuing and selling bonds for the purpose of financing, refinancing, or reimbursement for the cost of the design, construction, establishment, extension, alteration, or acquisition of adequate storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, parking, parks and recreation facilities, libraries, schools, transit facilities, solid waste facilities and other infrastructure improvements as necessary, whether situated within the special development districts or outside the special development

districts if the infrastructure improvement provides service or benefit to the property within the special development district for the development and utilization of land, each with respect to any defined geographic region within the municipality. Bonds authorized by the Act are special obligations of the Commissioners payable from a special fund created by the Commissioners for the purpose of paying the debt service on such bonds and from other assets or revenues pledged by the Commissioners for that purpose; and

WHEREAS, the Commissioners received an "Application to Create a Special Development District" dated March 11, 2005 (the "Request") from Passwater Farm LLC as the owner of (i) 100 percent of the assessed value of the real property located within the Heritage Shores District, except for governmentally-owned property, and (ii) 100 percent of the acreage located within the Heritage Shores District, except for governmentally-owned property, at the time of the Request (the "Owner" or the "Developer") of approximately seven hundred and forty five (745) contiguous acres of real property located in the Town (the "Property"). The Commissioners also received a Letter of Intent dated March 11, 2005 from the Owner stating that the Owner intended to develop the Property as a residential development with golf course and aquatic center. The Owner requested that the Commissioners create a special development district comprised of such Property and issue its special obligations bonds to assist in the financing of certain public infrastructure improvements for such special development district pursuant to the Act; and

WHEREAS, the Commissioners, following a public hearing held on March 22, 2005, pursuant to notice published in a newspaper of general circulation not less than ten (10) days before such hearing, adopted a Resolution on March 22, 2005 (the "Resolution") which created the (1) "Heritage Shores Special Development District" comprised of the Property described in the Resolution (the "Heritage Shores District") and (2) "Heritage Shores Special Development District Special Fund" (the "Heritage Shores Special Fund") and expressed their intention to consider an Ordinance to levy a special tax on the Property (subject to taxation) within the Heritage Shores District, pledge payment of the special tax into the Heritage Shores Special Fund and apply revenues of the special tax and the proceeds of any bonds issued under the Act for the Heritage Shores District to provide improvements for the benefit of the Property within the Heritage Shores District and situated outside the Heritage Shores District (that provide service or benefit to the property within the Heritage Shores District), all in connection with the Heritage Shores District under the Act; and

WHEREAS, pursuant to Section 1807(c)(2) of Title 22 of the Delaware Code and Section 29 of the Charter, the Commissioners received a Supplemental Application from the Owner dated April 7, 2005 requesting that the Commissioners issue and sell bonds for the purpose of financing, refinancing or reimbursement for the cost of the design, construction, establishment, extension, alteration, or acquisition of certain infrastructure improvements and machinery and equipment, situated within the Heritage Shores District and situated outside the

Heritage Shores District (that provide service or benefit to the property within the Heritage Shores District); and

WHEREAS, The Commissioners, following a public hearing held on May 9, 2005, pursuant to notice published in a newspaper of general circulation not less than ten (10) days before such hearing, adopted Ordinance No. A05-7 on May 9, 2005 (the "Resolution") which authorized the levy of a special tax, the pledge of such special tax to the Heritage Shores Special Fund, caused the proceeds of such special tax to be paid into such Special Fund, authorized the issuance of special obligation bonds in one or more series (the "Bonds") and the application of the special tax revenues and the proceeds of such Bonds issued under the Act to provide public infrastructure improvements for the benefit of the Property within the Heritage Shores District; and

WHEREAS, the public infrastructure improvements located or to be located within the Heritage Shores District and outside the Heritage Shores District (which are related to infrastructure improvements within the Heritage Shores District) and financed in full or in part with the proceeds of the Bonds includes, among other things:

- (1) construction of a water tower;
- (2) construction of water lines and related appurtenances;
- (3) construction of fire hydrants and valves;
- (4) construction of sewer lines and related appurtenances;
- (5) construction of sewer pump stations;
- (6) construction of roads, including curbs and gutters;
- (7) construction of storm drains;
- (8) construction of storm water management ponds;
- (9) construction of a library;
- (10) related grading, engineering and stakeout; lighting; landscaping; identifying monuments; signage; traffic signals; and sidewalks; and
- (11) other public improvements and equipment to benefit the Heritage Shores District.

The improvements described in the foregoing paragraph are hereafter referred to as the "Improvements"; and

WHEREAS, the Commissioners approved an Official Intent Resolution on August 9, 2004 (the "Official Intent Resolution") pursuant to which the Commissioners declared its reasonable expectation that certain project costs in connection with the Improvements would be paid prior to the issuance of the Bonds and proceeds of the Bonds would be used to reimburse the parties for said costs; and

WHEREAS, the first series of the Bonds were issued on July 28, 2005 in order to finance

the costs of a portion of the Improvements pursuant to Trust Indenture dated as of June 1, 2005 (the "Indenture") by and between the Commissioners and M&T Trust Company of Delaware, as trustee; and

WHEREAS, the construction of the Improvements is progressing and the Developer has requested, in furtherance the Request, that the Commissioners issue additional series of Bonds authorized by the Ordinance No. A05-7, in one or more series, in the aggregate principal amount not to exceed \$ 16,000,000 (the "Additional Bonds") finance a portion of the costs of a portion of the Improvements. Section 2.05 of the Indenture permits the issuance of additional Bonds under and secured by the Indenture on a parity with any other series of Bonds that may be issued from time to time, to the extent provided in the Indenture, to obtain funds necessary to finance or refinance the completion of the acquisition or construction of the Improvements. The Indenture requires that an ordinance of the Commissioners be delivered to the Trustee under the Indenture in connection with the issuance of any additional Bonds. This Ordinance is intended to satisfy such requirement; and

WHEREAS, as provided in the Act, except as may be required by the Constitution of the State of Delaware, this Ordinance, any order or resolution adopted in furtherance of this Ordinance and the issuance of the Additional Bonds shall not be subject to any referendum by reason of any other State or local law; and

WHEREAS, in connection with the issuance of the Additional Bonds, the Commissioners expect that certain professional services will be performed by outside professional firms. The Commissioners have determined that Section 53-1 of the Code of the Town of Bridgeville shall not apply to any professional services performed in connection with the issuance of the Additional Bonds; and

WHEREAS, prior to the adoption of this Ordinance, the Commissioners will hold a public hearing regarding this Ordinance and the issuance of the Additional Bonds. The Commissioners will publish notice of this public hearing in accordance with the procedures of the Commissioners; and

WHEREAS, by this Ordinance, the Commissioners desire to confirm the authority conferred upon it by the Act (i) to issue the Additional Bonds for the Improvements, (ii) to find that the Improvements will serve the public purpose of the Commissioners and to determine that the costs of the Improvements can be financed with the proceeds of the Additional Bonds under the Act, (iii) to authorize the execution and delivery of such documents as shall be necessary to be delivered in connection with the issuance of the Additional Bonds and the financing of the Improvements, (iv) confirm the Official Intent Resolution; and (v) to specify certain other matters relating to the Additional Bonds and the Improvements.

**NOW, THEREFORE, THE COMMISSIONERS OF BRIDGEVILLE HEREBY ORDAIN** (by an affirmative vote of at least a majority of all of the members of Commissioners elected):

SECTION 1. FINDINGS AND DETERMINATIONS. The Commissioners of Bridgeville (the "Commissioners") hereby find and determine that:

(1) The issuance of the Additional Bonds to finance the costs of a portion of the Improvements under the Act and this Ordinance will serve the public purposes of providing public improvements within the Town, directly and indirectly enhancing the taxable base of the Town, encouraging the development of commerce and industry within the Town, and increasing employment within the Town through the installation of utilities and other necessary public infrastructure improvements in the Heritage Shores District;

(2) The costs of the Improvements to be financed with the proceeds of the Additional Bonds are costs associated with the design, construction, establishment, extension, alteration or acquisition of adequate storm drainage systems, sewers, water systems, roads, bridges, culverts, tunnels, streets, sidewalks, lighting, parking, parks and recreation facilities, libraries, transit facilities, solid waste facilities and other infrastructure improvements within the meaning of the Act for the Heritage Shores District;

(3) The Developer has expressed a desire to undertake further development within the Heritage Shores District and has requested the Commissioners to issue the Additional Bonds to finance a portion of the costs of a portion of the Improvements relating to such further development;

(4) Any obligations issued by the Commissioners with respect to the Improvements under the Act and pursuant to this Ordinance may be bonds, notes, or other similar instruments; and

(5) Any such bonds, notes or similar instruments shall not be general obligations of the Commissioners and shall not be secured by a pledge of the full faith and credit or taxing power of the Commissioners, but shall be payable solely from the special tax of the Commissioners created by Ordinance A05-7 allocated and paid into the Heritage Shores Special Fund created by the Resolution and from such sinking funds, debt service reserve funds, or such other assets and revenues as the Commissioners may establish or pledge for or to the payment of such bonds, notes or similar instruments.

(6) The Commissioners have complied with the provisions of Section 1805 of Title 22 of the Delaware Code.

(7) In connection with the issuance of the Additional Bonds, the Commissioners expect that certain professional services will be performed by outside professional firms. The Commissioners have determined that Section 53-1 of the Code of the Town of Bridgeville shall not apply to any professional services performed in connection the issuance of the Additional Bonds.

SECTION 2. ISSUANCE OF ADDITIONAL BONDS. The issuance and sale of the Additional Bonds in an aggregate principal amount not to exceed \$16,000,000, and bearing interest at a maximum rate of interest not to exceed 8.0%, all as may be determined by the President of the Commissioners (the "President"), are hereby confirmed, authorized and approved. The Additional Bonds are authorized hereby to be executed by the manual or facsimile signature of the President and the seal of the Commissioners shall be affixed to the Additional Bonds and attested by the Secretary. The Additional Bonds shall not be an indebtedness of the Commissioners for which the Commissioners are obligated to levy or pledge, or has levied or pledged, general or special taxation other than the Heritage Shores Special Tax. Pursuant to the Act, the Additional Bonds will be special obligations payable solely from the funds in the Heritage Shores Special Funds and the proceeds of the Heritage Shores Special Taxes and shall not constitute a general obligation debt of the Commissioners or a pledge of the Commissioner's full faith and credit or taxing power.

All proceeds received from the sale of the Additional Bonds shall be applied to pay Costs (as defined in Section 1801(3) of Title 22 of the Delaware Code with respect to the Improvements and the Additional Bonds

SECTION 3. SALE OF ADDITIONAL BONDS. The Commissioners hereby determine to sell the Additional Bonds to Stifel, Nicolaus & Company, as underwriter in a private, negotiated deal. The President is authorized to proceed with the offering and sale of the Additional Bonds; provided, however, that any offering of the Additional Bonds shall be limited to "accredited investors" within the meaning of Section 2(15) of the Securities Act of 1933, as amended.

SECTION 4. OTHER ACTIONS.

A. The President and/or any other authorized officers of the Commissioners are authorized and directed to take any and all actions and to execute, attest, affix the Commissioner's seal to and deliver, and to file and record in any appropriate public offices (if applicable) all documents, instruments, certifications, forms (including but not limited to, appropriate IRS forms in respect to the Additional Bonds) financing statements, letters of instructions, written requests, contracts, agreements and other papers, whether or not herein mentioned, as may be necessary or convenient to evidence the approvals of the Commissioners provided in this Ordinance and to consummate the transactions contemplated in this Ordinance or in any of the documents herein authorized and approved.

B. The President, the Treasurer of the Commissioners and all other officials of the Commissioners are hereby authorized and empowered to do any and all such things as shall be deemed necessary by them to facilitate the issuance of the Additional Bonds and are hereby authorized and empowered to do all such things and execute such documents and certificates as may be determined by them to be necessary to carry out and comply with the provisions of the Act and this Ordinance.

SECTION 5. EXECUTIVE ORDER. Prior to the issuance, sale and delivery of the Additional Bonds, the President by executive order shall specify, prescribe, determine, provide for, or approve, for the purposes and within the limitations of the Act and this Ordinance, all matters, details, forms, documents, and procedures pertaining to the sale, security, issuance,

delivery, and payment of or for one or more series of the Additional Bonds, including, without limitation, the following:

- (1) The actual principal amount of the Additional Bonds to be issued,
- (2) The actual rate or rates of interest for the Additional Bonds,
- (3) The manner in which and the terms upon which the Additional Bonds are to be sold,
- (4) The manner in which and the times and places that the interest on the Additional Bonds is to be paid,
- (5) The time or times that the Additional Bonds may be executed, issued, and delivered,
- (6) The form and tenor of the Additional Bonds and the denominations, in which the Additional Bonds may be issued,
- (7) The manner in which and the times and places that the principal of the Additional Bonds is to be paid, within the limitations set forth in the Act and this Ordinance,
- (8) Provisions pursuant to which any or all of the Additional Bonds may be called for redemption prior to their stated maturity dates,
- (9) The establishment of a sinking fund and a debt service reserve fund for the Additional Bonds,
- (10) The form and contents of, and provisions for the execution and delivery of, such financing documents as the President shall deem necessary or desirable to evidence, secure or effectuate the issuance, sale and delivery of the Additional Bonds, including (without limitation) any fiscal agent agreements, development agreements, funding agreements, security agreements, assignments, guarantees, indentures, financing agreements or escrow agreements;
- (11) The creation of security for the Additional Bonds and provision for the administration of the Additional Bonds, including (without limitation) the appointment of such trustees, escrow agents, fiscal agents, payment agents, registrars or other agents as the President shall deem necessary or desirable to effectuate the transactions authorized hereby;
- (12) Provisions for the preparation and distribution of both a preliminary and a final official statement, placement memorandum, or offering circular in connection with the sale of any series of the Additional Bonds, if such preliminary official statement and final official statement, placement memorandum, or offering circular are determined to be necessary or desirable for the sale the Additional Bonds;

(13) To the extent that other obligated persons with respect to the Additional Bonds have not assured compliance with, or to the extent that the offering of the Additional Bonds is not exempt from the requirements of, Rule 15c2-12 of the United States Securities and Exchange Commission, the determination of the form and contents of any written agreement or contract required by law for the benefit of the holders of the Additional Bonds under which agreement or contract the Commissioners will undertake to provide annual financial information, audited financial statements, material events notices, and other information to the extent required by such Rule;

(14) The determination of, or the provision for, such other matters in connection with the authorization, issuance, execution, sale, delivery, and payment of the Additional Bonds, the security for the Additional Bonds, and the consummation of the transactions contemplated by this Ordinance as may be deemed appropriate by the President, including without limitation, establishing procedures for the execution, acknowledgment sealing, and delivery of such other and further agreements, documents, and instruments, and the authorization of the officials of the Commissioners to take any and all actions, as are or may be necessary or appropriate to consummate the transactions contemplated by this Ordinance in accordance with the Act and this Ordinance.

SECTION 6. OFFICIAL INTENT. The Commissioners hereby confirm the Official Intent Resolution.

SECTION 7. EFFECTIVE DATE; REVOCATION OF ORDINANCE.

A. This Ordinance shall become effective upon its adoption by a majority of all members elected to the Commissioners of Bridgeville.

B. In the event that no Additional Bonds are issued to finance the Improvements within one year after the date this Ordinance is adopted, this Ordinance shall be automatically revoked without further action by the Commissioners.

COMMISSIONERS OF BRIDGEVILLE

By: Patricia M. Correll  
President

Attest: Laurance J. Sone  
Secretary

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Adopted: October 9, 2014