ORDINANCE NO. 5-2024

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AUTHORIZING THE ISSUANCE OF THE ECONOMIC DEVELOPMENT REVENUE BONDS 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 Valparaiso, Indiana (the "City"), is authorized to issue revenue bonds for the purpose of financing, reimbursing or refinancing the costs of acquisition, construction, renovation, 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, the City of Valparaiso, Indiana Redevelopment Commission (the "Redevelopment Commission") on **March 9, 2023** approved and adopted its Resolution No. 2023-3, whereby the Redevelopment Commission created the Grand Gardner Economic Development Area (the "Area") and designated the Area as an allocation area (the "Allocation Area") in accordance with Indiana Code 36-7-14-39 for the purposes of capturing incremental ad valorem property taxes levied and collected on all taxable real property in such Area; and

WHEREAS, Urschel Development Corporation (the "Company") intends to undertake the acquisition, renovation, reconstruction, improvement and equipping of a boutique-style hotel in the Area, including, but not limited to, all utility and road infrastructure, demolition and related improvements which will repurpose the 1899 historic Gardner School building as its central core, will include on-site and on-street parking, and is anticipated to include the following: 52 guest rooms and 6 suites; rooftop breakfast area/bar; fitness center; meeting/event venue; meeting room/board room; spa services area/flex space; speakeasy and a common area lobby (collectively, the "Project"); and

WHEREAS, the Company has advised the City, the City of Valparaiso Economic Development Commission (the "Economic Development Commission") and the Redevelopment Commission concerning the Project, and has requested that the City authorize and issue its economic development tax increment revenue bonds under the Act, to be designated as City of Valparaiso, Indiana Taxable Economic Development Tax Increment Revenue Bonds, Series 2024 (Urschel Development Corporation Project), in one or more series (with such further series or different year or series designation as determined to be necessary or appropriate) (the "Bonds"), the net proceeds of such Bonds being used for the purpose of financing a portion of the costs of the Project and costs of issuing the Bonds; and

WHEREAS, the Economic Development Commission has rendered a report concerning the proposed financing or refinancing of economic development facilities for the Company; and

WHEREAS, following a public hearing, pursuant to Section 24 of the Act, the Economic Development Commission found that the financing of a portion of the costs of the Project complies with the purposes and provisions of the Act and that such financing will be of benefit to the health and public welfare of the City; and

WHEREAS, the Economic Development Commission has considered whether the financing of the Project will have an adverse competitive effect or impact on any similar facility or facility of the same kind already constructed or operating in the corporate boundaries of the City; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide (or be deemed to provide) funds necessary to finance a portion of the costs of the Project by issuing the Bonds; and

WHEREAS, the Act provides that such 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 for the Bonds (the "Indenture"), by and between the City and a corporate trustee to be selected by the City, in order to secure funds necessary to provide (or be deemed to provide) for the financing of a portion of the costs of the Project in accordance with the terms of a Financing Agreement with the Company (the "Financing Agreement"), by and between the City and the Company with respect to the use (or deemed use) of the proceeds of the Bonds and the completion of the Project; and

WHEREAS, no member of the Common Council of the City (the "Common 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 Common Council, and no such member has voted on any such matter, all in accordance with the provisions of Section 16 of the Act; and

WHEREAS, the forms of the Bonds, the Indenture and the Financing Agreement (collectively, the "Financing Documents"), and a form of this proposed Ordinance were submitted to, and approved by, the Economic Development Commission, which documents were incorporated by reference in the resolution heretofore adopted by the Economic Development Commission, which resolution has been transmitted to the Common Council in accordance with the Act;

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

1. It is hereby found that the financing of a portion of the economic development facilities for the Project referred to in the Financing Documents previously approved by the Economic Development Commission and presented to this Common Council, the issuance and sale of the Bonds, the use (or deemed use) of the proceeds of the Bonds by the Company for the financing of a portion of the costs of the Project, the payment of the Bonds from the Pledged TIF Revenues (as hereinafter defined) and other sources pursuant to the Financing Documents, and the securing of the Bonds under the Indenture comply with the purposes and provisions of the Act and will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

2. At the public hearing held before the Economic Development Commission, the Economic Development Commission considered whether the Project would have an adverse competitive effect on any similar facilities located in or near the City. This Common Council hereby confirms the findings set forth in the Economic Development Commission's resolution, and concludes that the Project will be of benefit to the health, prosperity, economic stability and general welfare of the citizens of the City.

3. The substantially final forms of the Financing Documents shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk-Treasurer of the City (the "Clerk-Treasurer"). In accordance with the provisions of 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.

4. The City shall issue the Bonds in one (1) or more series in the maximum aggregate principal amount not to exceed Six Million Eight Hundred Seventeen Thousand Dollars (**$6,817,000**), which Bonds shall mature no later than **twenty-five (25) years** after the date of issuance of the Bonds, and shall bear interest at a per annum rate of **zero percent (0.00%)**. The Bonds may be issued on a draw basis. The Bonds are to be issued for the purpose of procuring funds to (a) pay a portion of the cost of acquisition, renovation, reconstruction, and equipping of the Project, and (b) pay all incidental expenses on account of the issuance of the Bonds. The Bonds shall be lettered and numbered R-1 upward. The Bonds shall be special and limited obligations of the City, payable solely from the trust estate created and established under the Indenture (the "Trust Estate"), which Trust Estate shall consist of the funds and accounts created under the Indenture together with a pledge by the Redevelopment Commission of **ninety percent (90%) of the tax increment finance revenues** from the Allocation Area, subject to the terms and conditions of a Pledge Agreement between the Redevelopment Commission and the City (the "Pledged TIF Revenues"), 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 City**. 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 Agreement, 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 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 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 of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreement and the issuance, sale and delivery of the Bonds. The Bonds, and the interest payable thereon, do not and shall not represent or constitute a debt of the City, the State of Indiana or any political subdivision or taxing authority thereof within the meaning of the provisions of the constitution or statutes of the State of Indiana or a pledge of the faith and credit of the City, the State of Indiana or any political subdivision or taxing authority thereof. Neither the faith and credit nor the taxing power of the City, the State of Indiana or any political subdivision or taxing authority thereof is pledged to the payment of the principal of or premium, if any, or the interest on the Bonds. The Bonds do not grant to the owners or holders thereof any right to have the City, the State of Indiana or its General Assembly of the State of Indiana, or any political subdivision or taxing authority of the State of Indiana or the City, levy any taxes or appropriate any funds for the payment of the principal of or premium, if any, or interest on the Bonds. The City has no taxing power with respect to the Bonds.

5. The Mayor of the City (the "Mayor") and the Clerk-Treasurer of the City (the "Clerk-Treasurer") are authorized and directed to sell such Bonds to a purchaser determined by either of such officers, at a price of par, at a rate of interest (if any) not to exceed zero percent (0%) per annum, and with a final maturity no later than twenty-five years after the date of issuance of the Bonds. The form of a Bond Purchase Agreement (the "Bond Purchase Agreement"), between the City and the purchaser of the Bonds is hereby authorized and approved in a form and substance acceptable to the Mayor and Clerk-Treasurer with the advice of counsel. The Mayor and the Clerk-Treasurer are hereby authorized and directed to execute and deliver the Bond Purchase Agreement in a form and substance acceptable to them and consistent with the terms and conditions set forth in this Ordinance, with such acceptance of the form and substance thereof to be conclusively evidenced by their execution thereof.

6. Each of the Mayor and the Clerk-Treasurer and any other officer of the City are authorized and directed to execute the Financing Documents, 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, the Clerk-Treasurer and any other officer of the City 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, the Clerk-Treasurer and any other officer of the City on the Bonds may be facsimile signatures or electronic signatures. The Mayor, the Clerk-Treasurer and any other officer of the City 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 Mayor, the Clerk-Treasurer and any other officer of the City 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, the Clerk-Treasurer or any other officer of the City without further approval of this Common Council or the Economic Development Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act. In particular, at the request of the Company, 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, in lieu of a Financing Agreement, a Loan Agreement with the Company in such form as such officers shall approve, such approval to be conclusively evidenced by their execution thereof.

7. The provisions of this Ordinance and the Financing Documents securing the Bonds shall constitute a contract binding between the City and the holders of the Bonds, and after the issuance of the Bonds, this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holders so long as the Bonds or any interest thereon remains unpaid.

8. The Common Council does hereby acknowledge and approve the pledge of the Pledged TIF Revenues to the payment of the Bonds pursuant to the Indenture. Pursuant to IC 5-1-14-4, the pledge of the Pledged TIF Revenues pursuant to the Indenture is intended to be binding from the time the pledge is made, with such Pledged TIF Revenues so pledged and thereafter received by the City to be immediately subject to the lien of the pledge without any further act, and the lien of such pledge to be binding against all parties having claims of any kind, in tort, contract, or otherwise against the City, regardless of whether the parties have notice of any such lien.

9. The Common Council hereby finds that (a) the Project and the related financing assistance for the Project provided in the Financing Documents are consistent with the economic redevelopment plan for the Area and Allocation Area; (b) the Company would not develop the Project without the financing assistance provided in Financing Documents; (c) the Project furthers the economic development and redevelopment of the Allocation Area and the Area generally; and (d) the Project will be of benefit to the health, prosperity, economic stability and general welfare of the City and its citizens.

10. This Ordinance shall be in full force and effect from and after its passage.

DULY PASSED on this 26 day of February, 2024, by the Common Council of the City of Valparaiso, Indiana.

Presiding Officer

ATTEST:

Holly Taylor, Clerk-Treasurer

This ordinance presented by me, the Clerk-Treasurer of the City of Valparaiso, Indiana, to the Mayor for his approval this 26 day of February, 2024.

Holly Taylor, Clerk-Treasurer

This ordinance signed and approved by me, the Mayor of the City of Valparaiso, Indiana, this 26 day of February 2024.

Jon Costas, Mayor

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