

## ORDINANCE NO. 7-2004

AN ORDINANCE AUTHORIZING THE CITY OF VALPARAISO TO ISSUE ITS "ECONOMIC DEVELOPMENT FIRST MORTGAGE REVENUE NOTE, SERIES 2004 (PINE VILLAGE RETIREMENT COMMUNITIES, INC. PROJECT)" AND APPROVING OTHER ACTIONS IN RESPECT THERETO:

**WHEREAS**, the Valparaiso Economic Development Commission has rendered its Project Report for the Pines Village Retirement Communities, Inc. Project regarding the financing and refinancing of proposed economic development facilities for Pines Village Retirement Communities, Inc. (formerly known as Indiana Retirement Communities, Inc.) (the "Borrower"), and the City of Valparaiso Plan Commission has commented favorably thereon: and

**WHEREAS**, the Valparaiso Economic Development Commission conducted a public hearing on October 13, 2003, and adopted a Resolution on October 13, 2003, which Resolution has been transmitted hereto, finding that the financing and refinancing of certain economic development facilities of the Borrower complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing and refinancing will be of benefit to the health and welfare of the City of Valparaiso and its citizens; and

**WHEREAS**, the Valparaiso Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered this issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Second Supplemental and Amendatory Loan Agreement (the Second Supplemental Loan Agreement"), the Series 2004 Borrower Note, (the "Borrower Note") and the Second Supplemental and Amendatory Purchase Agreement (the "Second Supplemental Purchase Agreement"); now, therefore

**NOW, THEREFORE, BE IT ORDAINED** by the Common Council of the City of Valparaiso, that:

Section 1. It is hereby found that (i) the financing and refinancing of the economic development facilities referred to in the Second Supplemental Loan Agreement approved by the Valparaiso Economic Development Commission and presented to this Common Council; (ii) the issuance and sale of the City of Valparaiso, Indiana Economic Development First Mortgage Revenue Note, Series 2004 (Pine Village Retirement Communities, Inc. Project) (the "Revenue Note"); (iii) the loan of the proceeds of the Revenue Note to the Borrower to finance (a) the current refunding of the City of Valparaiso, Indiana Economic Development First Mortgage Refunding Revenue Note, Series 2003 (Pines Village Retirement Communities, Inc. Project) (the "Prior Revenue Note"), which was issued on January 17, 2003 to refinance a portion of the costs of the acquisition, construction and equipping of such facilities, and (b) the acquisition, construction and equipping of a portion of the remaining costs of such facilities; (iv) the payment of the Revenue Note by the note payments of the Borrower under the Second Supplemental Loan Agreement and Borrower Note; and (v) the securing of said Revenue Note by the mortgage of such facilities to Bank One, NA (as successor by merger to Bank One, Indiana, N.A.), as Purchaser under the Second Supplemental Purchase Agreement, complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and will be of benefit to the health and welfare of the City of Valparaiso and its citizens.

Section 2. The economic development facilities and refinanced consist of the acquisition, construction and equipping of various economic development facilities of the Borrower, including (i) the acquisition, construction and equipping of a comprehensive residential assisted living community and healthcare facility to be known as Meridian Woods, containing approximately 35 or 36 single story duplex buildings, 70 to 72 duet homes, an independent congregate living building containing approximately 110 apartment units together with ancillary dining, recreation and personal care facilities, and an additional building containing approximately 48 apartment units, and (iii) the acquisition, construction and equipping of various other economic development facilities for the Borrower, including streets, grounds, landscaping and site improvement in connection with such facilities, all such facilities located on a parcel of approximately 39 acres located on North Campbell Street in the City of Valparaiso, Indiana (the "Project").

Section 3. At the public hearing held before the Valparaiso Economic Development Commission, the Commission considered whether the financing and refinancing of the economic development facilities would have an adverse competitive effect on any similar facilities located in or near the City of Valparaiso, and subsequently found, based on separate findings of fact set forth in the Resolution transmitted hereto, that the facilities would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the Commission's Resolution, and

concludes that the financing and refinancing of the economic development facilities will not have an adverse competitive effect on any other similar facilities in or near the City of Valparaiso, and the facilities will be of benefit to the health and welfare of the citizens of the City of Valparaiso.

Section 4. The substantially final forms of the Second Supplemental Loan Agreement, the Borrower note, and the Second Supplemental Purchase Agreement approved by the Valparaiso Economic Development Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and 12), and the Financing Agreement 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. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk Treasurer for public inspection.

Section 5. The City of Valparaiso shall issue its Revenue Note in the total principal amount not to exceed \$3,800,000 outstanding at any time and maturing no later than February 1, 2009. Said Revenue Note is to be issued for the purpose of procuring funds (i) to pay the costs of the current refunding of the Prior Revenue Note, and (ii) to pay for a portion of the remaining costs of the acquisition, construction and equipping of the Project, all as more particularly set out in the Second Supplemental Purchase Agreement and Second Supplemental Loan Agreement, each incorporated herein by reference, which Revenue Note will be payable as to principal, premium, if any, and interest from the note payments made by the Borrower under the Second Supplemental Loan Agreement and Borrower Note or as otherwise provided in the above described Second Supplemental Purchase Agreement. Said Revenue Note may be issued for the further purpose of procuring funds to pay certain costs of issuance. The Revenue Note shall be issued in fully registered form and shall be redeemable as provided in Section 4 of the Purchase Agreement dated as of August 1, 2000 between the City of Valparaiso, Indiana and the Purchaser (the "Original Purchase Agreement"). Payments of principal and interest are payable in lawful money of the United States of America by check or draft mailed or delivered to the registered owner as provided in the Second Supplemental Purchase Agreement. The Revenue Note shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Valparaiso, nor is the Revenue Note payable in any manner from revenues raised by taxation.

Section 6. The Mayor and Clerk Treasurer are authorized and directed to sell the Revenue Note to Bank One, NA, the original purchaser thereof, at the price of 100% of the principal amount thereof. The Revenue Note shall bear interest at a rate not to exceed 64% of the prime interest rate as published from time to time by Bank One, NA.

Section 7. The Mayor and Clerk Treasurer are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing agreement approved herein on behalf of the City and any other document which may be necessary or desirable to consummate the transaction, including the Revenue Note authorized herein. The Mayor and Clerk Treasurer are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this Ordinance with the review and advice of the City Attorney; it being the express understanding of this Common Council that said Financing Agreement is in substantially final form as of the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal there to or the imprinting of the seal thereon; provided, however, that no such modification or additional shall change the maximum principal amount of, interest rate on or term of the Revenue Note as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and Clerk Treasurer on the Revenue Note may be either manual or facsimile signatures. The Clerk Treasurer is authorized to arrange for delivery of such Revenue Note to the Purchaser named in the Second Supplemental Purchase Agreement. Payment for the Revenue Note will be made to the borrower named in the Second Supplemental Purchase Agreement, and after such payment the Revenue Note will be delivered to the Purchaser. The Mayor and Clerk Treasurer shall execute and deliver the Revenue Note to the Purchaser within ninety days of the adoption of this Ordinance. The Revenue Note shall be originally dated as of its closing date.

Section 8. The provisions of this Ordinance and the Original Purchase Agreement (as supplemented and amended) securing the Revenue Note shall constitute a contract binding between the City of Valparaiso, Indiana and the holder of the Revenue Note, and after the issuance of said Revenue Note this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holder so long as said Revenue Note or the interest thereon remains unpaid.

The Ordinance shall be in full force and effect immediately upon its adoption by the Common Council and approval by the Mayor.

PASSED by the Common Council of the City of Valparaiso, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004 by a \_\_\_\_\_ vote of \_\_\_\_\_ members present and voting.

\_\_\_\_\_  
Jon Costas, Mayor

ATTEST:  
Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, at the hour of \_\_\_\_\_ o'clock P. M.

\_\_\_\_\_  
Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2004, at the hour of \_\_\_\_\_ o'clock P.M.

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Jon Costas, Mayor