

ORDINANCE NO. 41-2007

ORDINANCE AUTHORIZING THE CITY OF VALPARAISO TO
ISSUE ITS "ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2007
(VALPARAISO FAMILY YMCA PROJECT)"
AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Valparaiso Economic Development Commission has rendered its Project Report for the Valparaiso Family YMCA Project regarding the financing of proposed economic development facilities for the Young Men's Christian Association of Valparaiso, Indiana, 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 5, 2007, on behalf of itself and the Common Council of the City of Valparaiso, Indiana, and adopted a Resolution on October 5, 2007, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities for the Borrower complies with the purposes and provisions of I.C. 36-7-11.9 and 12 and that such financing 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 the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Loan Agreement (the "Loan Agreement"), the Series 2007 Note (the "Series 2007 Note"), the Bond Placement Agreement (the "Bond Placement Agreement"), the Trust Indenture (the "Trust Indenture"), the Bonds (as hereinafter defined), and the Limited Offering Memorandum (the "Limited Offering Memorandum"), now, therefore

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO,
INDIANA THAT:

Section 1. It is hereby found that (i) the financing of the economic development facilities referred to in the Loan Agreement and the Trust Indenture 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 Revenue Bonds, Series 2007 (Valparaiso Family YMCA Project) (the “Bonds”); (iii) the loan of the proceeds of the Bonds to the Borrower to finance the acquisition, construction and equipping of such facilities; and (iv) the payment of the Bonds by the note payments of the Borrower under the Loan Agreement and the Series 2007 Note, 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 financing will consist of (a) financing the acquisition, construction and equipping, as the case may be, of various economic development facilities for the Borrower, including the acquisition, construction and equipping of a new two-story, approximately 84,000 square foot YMCA facility, including a family/instructional warm water pool, a 25 meter competition/fitness pool, a fitness and wellness center, an aerobics/multipurpose exercise studio, indoor adult and family gymnasiums, an indoor walking/running track, a youth fitness area, a child watch area, specialized locker room facilities, accommodations for preschool, before and after school and kindergarten programs, a parking lot with a child drop-off area, staff offices, outdoor recreational space, and a gathering social area, and (ii) the acquisition, construction and equipping of various related economic development facilities for the Borrower, including streets, grounds, landscaping and site improvements related to such facilities, all such facilities located on a parcel of approximately 14 acres located at the new Cumberland Crossing development at 1201 Cumberland Crossing Drive in the City of Valparaiso, Indiana (the “Project”); and (b) paying certain costs of issuance associated with

issuance of the Bonds, including underwriter's discount, construction period interest, costs of credit enhancement (if any), and debt service reserves.

Section 3. At the public hearing held before the Valparaiso Economic Development Commission, on behalf of itself and the Common Council of the City of Valparaiso, Indiana, the Commission considered whether the financing 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 special 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 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 Loan Agreement, the Series 2007 Note, the Bond Placement Agreement, the Trust Indenture, the Bonds and the Limited Offering Memorandum 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 Bonds in the total principal amount of not to exceed \$16,000,000 and maturing no later than November 1, 2042. Said Bonds are to be issued for the purpose of procuring funds to pay for (i) all or a portion of the costs of the acquisition, construction and equipping of the Project, all as more particularly set out in the Trust Indenture and Loan Agreement, each incorporated herein by reference, and (2) certain costs of issuance, including underwriter's discount, construction period interest, costs of credit

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enhancement (if any), and debt service reserves. The Bonds will be payable as to principal, premium, if any, and interest from the note payments made by the Borrower under the Loan Agreement and the Series 2007 Note or as otherwise provided in the above described Trust Indenture. The Bonds shall be issued in fully registered form in the denominations of \$25,000 or integral multiples of \$5,000 in excess thereof and shall be redeemable as provided in Article V of the Trust Indenture. 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 owners as provided in the Trust Indenture. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Valparaiso, nor are the Bonds payable in any manner from revenues raised by taxation.

Section 6. The Mayor and Clerk-Treasurer are authorized and directed to sell the Bonds via private placement conducted by Oppenheimer & Co., as placement agent, at the price of 100% of the principal amount thereof plus accrued interest (if any), less a placement agent's fee not in excess of 2% of the principal amount thereof. The Bonds shall bear interest at a fixed rate as approved by the Mayor or the Clerk-Treasurer, which fixed rate shall not exceed a true interest cost of 6.0%.

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 Bonds 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

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thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, interest rate on, or maximum term of the Bonds 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 Bonds may be either manual or facsimile signatures. The Clerk-Treasurer is authorized to arrange for delivery of such Bonds to the trustee named in the Trust Indenture. Payment for the Bonds will be made to the trustee named in the Trust Indenture, and after such payment the Bonds will be delivered to by the trustee to The Depository Trust Company, New York, New York (“DTC”), on behalf of the original purchasers thereof (or arrangements shall be made for FAST close procedures with DTC). The Mayor and Clerk-Treasurer shall execute and deliver the Bonds to the trustee within ninety days of the adoption of this Ordinance. The Bonds shall be originally dated as of the date of their issuance and delivery.

Section 8. The provisions of this Ordinance and the Trust Indenture securing the Bonds shall constitute a contract binding between the City of Valparaiso, Indiana and the holders of the Bonds, and after the issuance of said Bonds this Ordinance shall not be repealed or amended in any respect which would adversely affect the rights of such holder so long as said Bonds or the interest thereon remains unpaid.

Section 9. This Ordinance shall be in full force and effect from and after its passage and execution by the Mayor.

Passed and adopted this 8th day of October, 2007.

VALPARAISO COMMON COUNCIL

Jon Costas, Presiding Officer

Attest:

Sharon E. Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana on this 8th day of October, 2007
at the hour of ____ p.m.

Sharon W. Swihart, Clerk-Treasurer

Approved and signed by me this 8th day of October, 2007.

Mayor, City of Valparaiso