

RESOLUTION CC-03-05-18-01

A RESOLUTION OF THE COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA, AUTHORIZING USE OF FUNDS IN THE CARMEL REDEVELOPMENT COMMISSION SUPPLEMENTAL RESERVE FUND TO SUPPORT THE MIDTOWN WEST BONDS

Synopsis:

Resolution authorizes the Carmel Redevelopment Commission to use a portion of the Supplemental Reserve Fund previously established by an Amended & Restated Revenue Deposit Agreement between the Commission and the City of Carmel as a liquidity reserve fund to secure proposed economic development revenue bonds of the City to be issued to fund the Midtown West project.

WHEREAS, on March 6, 2017, the Common Council (the "Common Council") of the City of Carmel, Indiana (the "City") adopted its Ordinance D-2348-17 (the "Bond Ordinance") authorizing the issuance of the City's taxable economic development revenue bonds (the "Bonds") to finance a parking garage and related infrastructure improvements that will provide parking to a mixed-use retail and apartment building, as well as public parking, for what is commonly known as the Midtown West project in the City; and

WHEREAS, the Bonds will be payable from revenues received by the City pursuant to a loan agreement (the "Loan Agreement") between the City and the Carmel Midtown Building Corporation (the "Borrower"), which Loan Agreement was approved by the Council in the Bond Ordinance; and

WHEREAS, the payments owed by the Borrower under the Loan Agreement will be payable from revenues received by the Borrower pursuant to a Garage Lease (the "Lease") between the Borrower, as lessor, and the City of Carmel Redevelopment Commission (the "Commission") and Midtown Carmel Capital Partners, LLC, as co-lessees, which Lease was also approved by the Council in the Bond Ordinance; and

WHEREAS, in order to secure the Bonds, the City will need to establish and maintain a debt service reserve fund (the "Midtown West Bond Reserve") accessible to or held by the trustee for the Bonds (the "Bond Trustee") to provide liquidity for Bond payments in the event that Lease rental payments are insufficient for such purpose; and

WHEREAS, the City and the Commission have executed an Amended & Restated Revenue Deposit Agreement, dated as of December 14, 2017 (the "RDA") which governs the required uses and priorities of TIF Revenue (as defined therein) of the Commission; and

WHEREAS, the RDA created a Supplemental Reserve Fund (as defined therein) into which certain amounts of the TIF Revenue are required to be deposited and held by the Commission; and

WHEREAS, the Commission desires to make a portion of the Supplemental Reserve Fund available to the Bond Trustee, on behalf of the City, to meet the requirements of the Midtown West Bond Reserve during the construction period for the Midtown West project pending the effective date of a surety policy or credit facility to be deposited into the Midtown West Bond Reserve; and

39 WHEREAS, the Common Council desires to approve this proposed use of the Supplemental
40 Reserve Fund on the terms and conditions set forth herein.

41 NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY
42 OF CARMEL, INDIANA, as follows:

43 Section 1. Authorization of Use of Supplemental Reserve Fund. The Common Council
44 hereby authorizes the Commission to make available or transfer to the Bond Trustee a portion of the
45 Supplemental Reserve Fund, subject to the following conditions: (a) the maximum amount of
46 Supplemental Reserve Fund moneys that may be used to satisfy the Midtown West Bond Reserve
47 requirement shall not exceed \$925,000; (b) the City or the Commission shall have received a
48 commitment from a qualified provider of a surety policy or credit facility, the policy limit of which
49 upon the effective date thereof, will satisfy the reserve requirement for the Midtown West Bond
50 Reserve; and (c) the authorizations contained herein shall expire upon the effective date of the
51 surety policy or credit facility deposited into the Midtown West Bond Reserve.

52 Section 2. Authorization of Reserve Fund Agreement. The Council hereby authorizes
53 the Commission to enter into an agreement with the City and/or the Bond Trustee regarding the
54 application of Supplemental Reserve Fund moneys as described in Section 1 of this Resolution, so
55 long as the agreement satisfies and is consistent with the conditions set forth by the Common
56 Council in Section 1. Notwithstanding anything herein to the contrary, the Commission may
57 transfer a portion of the Supplemental Reserve Fund (subject to the limitations of Section 1) to the
58 Bond Trustee for deposit in the Midtown West Bond Reserve under the trust indenture for the
59 Bonds. Upon the effective date of the surety policy or other credit facility that will be issued and
60 deposited into the Midtown West Bond Reserve to satisfy the reserve requirement, the City shall
61 direct that any moneys from Supplemental Reserve Fund that were transferred to and deposited in
62 the Midtown West Bond Reserve shall be returned to the Supplemental Reserve Fund by the Bond
63 Trustee.

64 Section 3. Authorization of Other Actions. Each of the Mayor, any member of the
65 Common Council and the Clerk-Treasurer, and any other officer, employee or agent of the City is
66 hereby authorized and directed, for and on behalf of the City, to execute and deliver any document
67 and to take any action as such person determines to be necessary or appropriate to accomplish the
68 purposes of this Resolution, such determination to be conclusively evidenced by such person's
69 execution of such document or such person's taking of such action.

70 Section 4. Severability. If any part of this Resolution shall be adjudged to be invalid by
71 a court of proper jurisdiction, it shall be conclusively presumed that the Common Council would
72 have passed the remainder of this Resolution without such invalid part.

73 Section 5. Effectiveness. This Resolution shall be in full force and effect from and after
74 its adoption by the Common Council and upon compliance with the procedures required by law.

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76 **PASSED** by the Common Council of the City of Carmel, this ____ day of _____, 2018,
77 by a vote of ____ ayes and ____ nays.

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COMMON COUNCIL OF THE CITY OF CARMEL, INDIANA

Sue Finkam, President

Anthony Green

Kevin D. Rider, Vice President

Bruce Kimball

Laura Campbell

Jeff Worrell

Ronald E. Carter

ATTEST:

Christine Pauley, Clerk-Treasurer of the City
of Carmel, Indiana

80 Presented by me to the Mayor of the City of Carmel, Indiana, this ____ day of _____,
81 2018, at _____.M.

Christine Pauley, Clerk-Treasurer

82 Approved by me, Mayor of the City of Carmel, Indiana, this ____ day of _____,
83 2018, at _____.M.

James Brainard, Mayor

ATTEST:

Christine Pauley, Clerk-Treasurer

84
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