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ORDINANCE NO.: 24-2016

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, APPROVING THE DONATION OF REAL PROPERTY TO PORTER-STARKE SERVICES, INC.

WHEREAS, the City of Valparaiso, Indiana (“City”), owns real property generally referred to as 1 Valley Drive, Valparaiso, Indiana 46383, consisting of 3.63 acres (“Real Estate”). The legal description for the Real Estate is attached hereto, incorporated herein and marked as *Exhibit “A”* to this Ordinance; and

WHEREAS, Porter-Starke Services, Inc. (“Porter-Starke”) and Housing Opportunities, Inc. (“Housing Opportunities”) are both non-profit corporations organized and existing under of the laws of the State of Indiana. The principal places of business for both Porter-Starke Services, Inc., and Housing Opportunities, Inc., are located within the geographical boundaries of the City; and

WHEREAS, Porter-Starke Services, Inc. and Housing Opportunities, Inc., and another entity are desirous of forming a limited partnership known as Aurora View, L.P. (“Aurora”), in order to finance, construct and operate an affordable housing development consisting of thirty-one (31) units on the Real Estate (“Project”) with other units located on adjacent land for residents having low or moderate incomes ; and

WHEREAS, Aurora will be a for-profit limited partnership organized under the laws of the State of Indiana and its principal purpose will be to construct and manage affordable housing for residents of Indiana having low or moderate incomes; and

WHEREAS, the City is desirous of donating the Real Estate to Porter-Starke to be used in conjunction with the Project; and

WHEREAS, Indiana’s Home Rule Statute located at Indiana Code § 36-1-3-6 provides that in the event that there is no constitutional or statutory provision requiring a specific manner for exercising a power, a municipality wanting to exercise the power must adopt an ordinance prescribing the specific manner for exercising the power; and

WHEREAS, Indiana Code § 36-1-11, *et seq.*, sets forth the statutory process whereby municipalities within the State of Indiana can dispose of or sell real or personal property that is owned by the municipalities; and

WHEREAS, Indiana Code § 36-1-11-1 sets forth a number of circumstances which are exempt from the procedures set forth in I.C. 36-1-11, *et seq.* Specifically, I.C. 36-1-11-1(b)(7) provides that the procedures to not apply to the sale or lease of property by a unit to an Indiana non-profit corporation organized for educational, literary, scientific, religious or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code; and

WHEREAS, I.C. 36-1-1(b)(20) further provides that the aforementioned procedures do not apply to the disposal of residential structures or improvements by a municipal corporation without consideration to non-profit corporation that is organized to expand the suppliers sustain the existing supply of good quality, affordable housing for residents of Indiana having low or moderate incomes; and

WHEREAS, Porter-Starke is a non-profit corporation that is exempt from federal income taxation under Section 501 of the Internal Revenue Code. Porter-Starke's is organized and operated exclusively to assist charitable, scientific, educational programs and projects including, but not limited to, fostering, promoting, developing and providing house that is safe, decent and affordable to low-income and moderate-income individuals and families; and

WHEREAS, in accordance with Indiana's Home Rule Statute and I.C. §§ 36-1-11-1(b)(7) and (20), the Common Council of the City is desirous of adopting this Ordinance in order to approve the donation of the Real Estate to Porter-Starke to be used in conjunction with the Project.

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

Section 1. Incorporation of Recitals. The foregoing Recitals (or whereas clauses) are incorporated herein by referenced into this Ordinance as findings of fact.

Section 2. Approval of Donation of Real Estate to Porter-Starke. The Common Council of the City of Valparaiso, Indiana, hereby approves of the donation of the Real Estate to Porter-Starke in accordance with the terms and conditions set forth in this Ordinance. The Mayor of the City of Valparaiso, Indiana, and the City Attorney are hereby authorized by the Common Council to take all actions and execute all legal documents necessary to effectuate the transfer of title to the Real Estate to Porter-Starke in accordance with the terms and conditions set forth in this Ordinance.

Section 3. Conditions on Donation. The donation of the Real Estate by the City to Porter-Starke is subject to the following terms and conditions:

(a) The donation of the Real Estate to Porter-Starke is contingent upon Porter-Starke and/or Aurora successfully obtaining approval for rental housing tax credits from the Indiana Housing and Community Development Authority ("IHCDA") in an amount of not less than **Nine Hundred Thousand Dollars (\$900,000.00) per year for ten (10) years** to finance the construction of the Project. In the event that Porter-Starke/Aurora's application for rental housing tax credits is not approved by the IHCDA as required above, for any reason, this Ordinance shall automatically terminate and shall be deemed to be null and void *ab initio* and of no force and effect whatsoever. In the event that Porter-Starke/Aurora's application for rental housing tax credits is not approved by the IHCDA as required above, the Real Estate will not be donated by the City to Porter-Starke.

(b) The donation of the Real Estate to Porter-Starke is also contingent upon the Common Council adoption of Ordinance No.: 23-2016 entitled "An Ordinance of the Common

Council of the City of Valparaiso, Indiana, Amending the City's Official Zoning Map and Rezoning Land Within the City From Business Park Zoning District ("BP") to Urban Residential Zoning District ("UR"). In the event that Ordinance No.: 23-2016 is not adopted by the Common Council, for any reason, this Ordinance shall automatically terminate and shall be deemed to be null and void *ab initio* and of no force and effect whatsoever. The Common Council's adoption of this Ordinance is subject to any and all conditions and terms set forth in Ordinance No.: 23-2016 or any exhibits thereto.

(c) In the event that Porter-Starke/Aurora's application for rental housing tax credits is approved (as set forth in Section 3(a) above), the Real Estate shall be conveyed by the City to Porter-Starke on an "as is" "where is" basis with no representations or warranties whatsoever.

Section 4. Severability. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason by any Court of competent jurisdiction, such decision shall not effect any other section, paragraph or provision of this Ordinance.

Section 5. Repealer. All ordinances, resolutions and orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 6. Effective Date. This Ordinance shall be in full force and effect after its passage and any publication required by law.

PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Porter County, Indiana, on the _____ day of October, 2016.

Jon Costas, Mayor

ATTEST:

Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this _____ day of _____, 2016, at _____ o'clock p.m.

Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this _____ day of _____, 2016, at _____ o'clock p.m.

Jon Costas, Mayor

Exhibit A – Legal Description for the Real Estate

The East 200' of Parcel D in Vale Park South, in the City of Valparaiso, as per plat thereof, recorded in Plat File 15-D-2, in the office of the Recorder of Porter County, Indiana.

Parcel No.: 64-09-13-201-005.000-004

Commonly known as: 1 Valley Drive, Valparaiso, Indiana 46383