

ORDINANCE NO. 30, 2021

AN ORDINANCE AUTHORIZING THE CITY OF VALPARAISO, INDIANA, TO ISSUE ONE OR MORE SERIES OF ITS CITY OF VALPARAISO, INDIANA MULTIFAMILY HOUSING REVENUE BONDS, SERIES 2021 (UPTOWN EAST APARTMENTS) AND ITS NOTE (WITH SUCH FURTHER SERIES OR OTHER DESIGNATION AS DETERMINED TO BE NECESSARY, DESIRABLE OR APPROPRIATE), IN A MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED SEVENTEEN MILLION DOLLARS (\$17,000,000), AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO.

WHEREAS, Indiana Code Title 36, Article 7, Chapters 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 and notes and lend the proceeds thereof to a developer for the purpose of financing, reimbursing or refinancing the costs of acquisition, design, construction, rehabilitation and equipping of economic development facilities in order to foster creation or retention of opportunities for gainful employment and creation of business opportunities in or near the City; and

WHEREAS, Eastgate Investments III LP, an Indiana limited partnership (the “Borrower”) desires to finance a portion of the costs of a certain project constituting an economic development facility under the Act within the City, including all or any portion of the acquisition, design, construction, rehabilitation and equipping of the existing apartment buildings 1 and 2 located in the City at 1305 Laporte Avenue and 1401 Laporte Avenue and 1405 Laporte Avenue consisting 119 residential units, and certain functionally-related improvements (the “Project”); and

WHEREAS, the Borrower has advised the Valparaiso Economic Development Commission (the “Commission”) and the City concerning the Project, and requested that the City issue, pursuant to the Act, (i) one or more series of its Multifamily Housing Revenue Bonds, Series 2021 (Uptown East Apartments) (the “Bonds”) and (ii) its note to the [Name of seller] (the “Seller”) (the “Note” and together with the Bonds, the “Obligations”) (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in an aggregate principal amount not to exceed Seventeen Million Dollars (\$17,000,000) and lend all or a portion of the proceeds of such Obligations to the Borrower for the purpose of providing funds (a) to pay all or a part of the cost of design, acquisition, construction, rehabilitation and equipping of the Project, and (b) to pay incidental expenses of issuance, including but not limited to, the funding of a debt service reserve fund, if necessary, and capitalized interest, if necessary; and

WHEREAS, the Commission and this Common Council of the City (the “Council”) each have studied the Project and the proposed financing of the Project and its effect on the health and general welfare of the City and its citizens; and

WHEREAS, the Commission has considered whether the proposed Project may have an adverse competitive effect on similar facilities already constructed or operating in the City; and

WHEREAS, the completion and operation of the Project will result in the creation and retention of jobs, the creation and retention of business opportunities in the City, the creation of affordable housing in the City and will be of public benefit to the health safety and general welfare of the City and its citizens; and

WHEREAS, the Borrower has advised the Commission that it has determined that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended (the "Code") does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's (the "IHCD") qualified allocation plan; and

WHEREAS, pursuant to and in accordance with the Act, the City desires to provide funds necessary to finance a portion of the Project by issuing the Obligations; and

WHEREAS, the City intends to issue the Bonds pursuant to a Bond Purchase and Loan Agreement, to be dated the day of the month in which the Bonds are sold or delivered (or such other date as the officers of the City may hereafter approve) (the "Bond Purchase and Loan Agreement"), by and between the City, the Borrower and Cedar Rapids Bank & Trust (the "Purchaser"), in order to obtain funds to lend to the Borrower for the purpose of financing a portion of the Project in accordance with the terms of the Bond Purchase and Loan Agreement, provided, however, that the aggregate principal amount of the Bonds together with the face amount of the Note shall not exceed Seventeen Million Dollars (\$17,000,000); and

WHEREAS, pursuant to the Bond Purchase and Loan Agreement and a note from the Borrower to the City, the Borrower will make certain representations, warranties and commitments with respect to the Project and will agree to make payments sufficient to pay all principal of, premiums, if any, and interest on the Bonds as the same becomes due and payable, and to pay administrative expenses in connection with the Bonds; and

WHEREAS, there has been submitted to this Council for its approval the substantially final forms of the Financing Documents (as hereinafter defined) and the form of the proposed Special Ordinance of the Common Council of the City (the "Council") with respect to the Project and the Obligations (the "Ordinance"); and

WHEREAS, the Obligations shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City; and

WHEREAS, pursuant to Indiana Code Title 36, Article 7, Chapter 12, Section 24 and Section 147(f) of the Code, and the rules promulgated thereunder, as amended, the Commission published notice of a public hearing (the "Public Hearing") on the proposed issuance of the Obligations to finance a portion of the costs of the Project; and

WHEREAS, on October 25, 2021, the Commission held the Public Hearing on the Project for the purpose of receiving evidence and testimony on the Project and matters related to the proposed financing thereof and heard all persons interested in the proceedings and considered written remonstrances and objections, if any; and

WHEREAS, the Commission has rendered its report dated as of February 22, 2021 (the "Report") concerning the proposed financing of the Project and the Secretary of the Commission has previously caused such Report to be submitted to the executive director or chairman of the Valparaiso Plan Commission, pursuant to the Act.; and

WHEREAS, no member of this 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 Commission and no such member has voted on any such matter, all in accordance with the provisions of Indiana Code 36-7-12-16.

WHEREAS, there has been submitted to the Commission for its approval the forms of the Financing Documents, and a form of this proposed Ordinance, which were incorporated by reference in the Commission's Resolution adopted on February 22, 2021, which Resolution has been transmitted hereto; and

WHEREAS, the Issuer expects to pay for certain costs of the Obligations or costs related to the Project (collectively, the "Expenditures") prior to the issuance of the Obligations, and to reimburse the Expenditures with proceeds received by the City upon the issuance of the Obligations; and

WHEREAS, the Common Council desires to reaffirm its intent to reimburse the Expenditures pursuant to Treas. Reg. §1.150-2 and Indiana Code §5-1-14-6(c); and

WHEREAS, based upon the Report and EDC Resolution, the Common Council hereby finds and determines that the funding approved by the Commission for all or a portion of the Project will be of benefit to the health and general welfare of the citizens of the City, complies with the provisions of the Act and the amount necessary to finance all or a portion of the costs of the Project, together with incidental expenses incurred in connection therewith, will require the issuance, sale and delivery of one or more series of its Obligations in an aggregate combined principal amount not to exceed Seventeen Million Dollars (\$17,000,000).

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO AND OF PORTER COUNTY AS FOLLOWS:

SECTION 1. After considering the evidence presented at the Public Hearing and in the findings of fact set forth in the Report, this Council hereby finds, determines, ratifies and confirms that the financing of the economic development facilities referred to in the Financing Documents consisting of the Project, the issuance and sale of the Bonds and delivery of the Note, and the loan of the net proceeds thereof by the Borrower to finance all or a portion of the Project will: (i) promote a substantial likelihood of the diversification of industry, the creation or retention of business opportunities, the creation or retention of opportunities for gainful employment and the

provision of quality, affordable, multifamily rental housing within the jurisdiction of the Issuer; (ii) serve a public purpose, and will be of benefit to the health and general welfare of the Issuer; (iii) comply with the purposes and provisions of the Act and it is in the public interest that the Issuer take such lawful action as determined to be necessary or desirable to encourage the diversification of industry, the creation or retention of business opportunities, and the creation or retention of opportunities for gainful employment and the provision of quality, affordable, multifamily rental housing within the jurisdiction of the Issuer and (iv) not have a material adverse competitive effect on any similar facilities already constructed or operating in or near the City.

SECTION 2. The forms of the Bond Purchase and Loan Agreement and the corresponding promissory note from the Borrower to the City, including the Allonge thereto from the City to the Purchaser, Land Use Restriction Agreement by and among the City, the Borrower and the Purchaser, Mortgage, Assignment, Security Agreement and Fixture Filings, Subordinate Master Pledge and Assignment among the City, the Surplus Cash Note Agent and the Surplus Cash Note Holder, Subordinate Master Agency Agreement between the Seller and the City and Surplus Cash Promissory Note from the Borrower on behalf of the City to the Seller (collectively, the “Financing Documents”) presented herewith are hereby approved, with any and all such changes as may be deemed necessary, desirable or appropriate by the Mayor and the Clerk-Treasurer of the Council (the “Clerk-Treasurer”). In compliance with Indiana Code Title 36, Article 1, Chapter 5, Section 4, two (2) copies of the Financing Documents are on file in the office of the Clerk-Treasurer for public inspection.

SECTION 3. The City is authorized to issue one or more series of its Multifamily Housing Revenue Bonds, Series 2021 (Uptown East Apartments) and its Note (with such further or different series designation as may be necessary, desirable or appropriate, including such series designation to indicate the year in which the Bonds or Note are issued), in a maximum aggregate principal amount not to exceed Seventeen Million Dollars (\$17,000,000), with a maximum term not to exceed forty (40) years from the date of the Bonds and of the Note, respectively, and with a maximum interest rate not to exceed eight percent (8.00%) per annum, for the purpose of procuring funds to loan to the Borrower in order to finance a portion of the Project, which Obligations will be payable as to principal, premium if any, and interest solely from payments made by the Borrower pursuant to the Bond Purchase and Loan Agreement and the Note issued thereunder, and upon such terms and conditions as otherwise provided in the Financing Documents and the Special Ordinance. The Obligations shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Mayor and Clerk-Treasurer are authorized to sell such bonds to the purchaser thereof at a price not less than 98% of the aggregate principal amount thereof (excluding any original issue premium or discount), plus accrued interest, if any.

SECTION 4. The Mayor and the Clerk-Treasurer are authorized and directed to execute the Financing Documents, and the Mayor, the Clerk-Treasurer and any other officer of the City are authorized and directed to execute 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 and the Clerk-Treasurer on the Obligations and any other documents which may be necessary or desirable to consummate the transaction are hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk-Treasurer on the Obligations may be facsimile signatures. The Mayor, the Clerk-Treasurer and any

other officer of the City are authorized to arrange for the delivery of the Obligations to the purchaser, payment for which will be made in the manner set forth in the Financing Documents. The Mayor and the Clerk-Treasurer 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 or the Clerk-Treasurer without further approval of this Common Council or the Commission if such changes do not affect terms set forth in Sections 27(a)(1) through and including (a)(10) of the Act.

SECTION 5. The provisions of this Ordinance and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Bonds and after the issuance of said Obligations, this Ordinance shall not be repealed or amended in any respect which would adversely affect the right of such holder or holders so long as any of said Obligations or the interest thereon remains unpaid.

SECTION 6. Subject to the obligations of the Borrower set forth in the Financing Documents and/or the certificates or agreements of such Borrower to be executed upon the issuance of the Obligations, if any of the Obligations are issued on a tax-exempt basis for purposes of federal income taxation, the City will use its best efforts to restrict the use of the proceeds of the Obligations in such a manner and to expectations at the time the Obligations are delivered to the purchasers thereof, so that they will not constitute "arbitrage bonds" under Section 148 of the Code and the regulations promulgated thereunder, or to preserve any other desired tax status under the Code. The Mayor and the Clerk-Treasurer, or any other officer having responsibility with respect to the issuance of the Obligations, are authorized and directed, alone or in conjunction with any of the foregoing, or with any other officer, employee, consultant or agent of the City, to deliver a certificate for inclusion in the transcript of proceedings for the Obligations, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds of the Obligations as of the date of issuance thereof.

SECTION 7. 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 Documents, 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 Obligations secured thereby, or otherwise, of any sum that may remain due and unpaid by the City upon any of the Obligations. 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 Obligations, or otherwise, of any sum that may remain due and unpaid upon the Obligations hereby secured or any at them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Documents and the issuance, sale and delivery of the Obligations.

SECTION 8. If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

SECTION 9. 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 10. It is hereby determined that all formal actions of this Council relating to the adoption of this Ordinance were taken in one or more open meetings of the Council, that all deliberations of this Council and of its committees, if any, which resulted in formal action, were in meetings open to the public, and that all such meetings were convened, held and conducted in compliance with applicable legal requirements, including Indiana Code 5-14-1.5, as amended.

SECTION 11. 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 such further instruments and documents, and to take such further actions, in the name of the City as in their judgment shall be necessary or advisable in order fully to consummate the transactions described herein and carry out the purposes of this Ordinance, and any such documents heretofore executed and delivered and any such actions heretofore taken, be, and hereby are, ratified and approved.

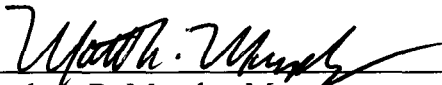
SECTION 12. This Council hereby declares its official intent, to the extent permitted by law, to issue the Obligations in one or more series or issues, not to exceed the maximum aggregate principal amount authorized herein, and to reimburse costs of the Project consisting of the Expenditures from proceeds of the sale of the Obligations.

SECTION 13. This Council finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, this Council has relied upon representations of the Borrower. The foregoing determination shall not be construed to be a representation or warranty by this Council as to the feasibility or viability of the Project. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan.

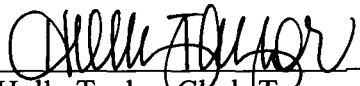
SECTION 14. This ordinance shall be in full force and effect immediately upon passage by this Council and signing by the Mayor.

(Signature page follows.)

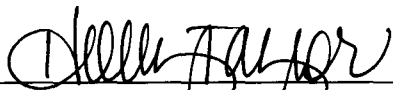
Passed and adopted by the Common Council of the City of Valparaiso, Indiana on the 8th day
of November, 2021


Matthew R. Murphy, Mayor

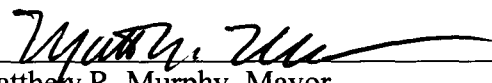
ATTEST:


Holly Taylor, Clerk-Treasurer

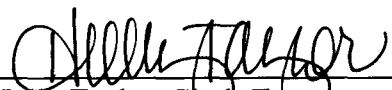
Presented by me to the Mayor of the City of Valparaiso, Indiana this 8th day of
November, 2021, at the hour of 6:31 o'clock P. M.


Holly Taylor, Clerk-Treasurer

This ordinance approved and signed by me on the 8th day of November,
2021 at the hour of 6:31 o'clock P. M.


Matthew R. Murphy, Mayor

ATTEST:


Holly Taylor, Clerk-Treasurer