

RESOLUTION NO. 2-2021

A RESOLUTION OF THE VALPARAISO ECONOMIC DEVELOPMENT COMMISSION APPROVING AND AUTHORIZING CERTAIN ACTIONS AND PROCEEDINGS WITH RESPECT TO CERTAIN PROPOSED ECONOMIC DEVELOPMENT REVENUE BONDS AND NOTE FOR THE UPTOWN EAST APARTMENTS

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 has 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 Commission for its approval the substantially final forms of the Financing Documents (as hereinafter defined) and the form of the proposed 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 Commission 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.

NOW, THEREFORE, BE IT RESOLVED BY THE VALPARAISO ECONOMIC DEVELOPMENT COMMISSION AS FOLLOWS:

SECTION 1. After considering the evidence presented at the Public Hearing and the findings of fact set forth in the Report, the Commission 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 to the Borrower for the purpose of financing all or a portion of the Project and the repayment of said loan by the Borrower (i) will result in the substantial likelihood of the creation or retention of business opportunities, the creation of affordable housing and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, (ii) will serve a public purpose, and will be of benefit to the health and general welfare of the City, (iii) complies with the purposes and provisions of the Act and it is in the public interest that the City take such lawful action as determined to be necessary or desirable to encourage the creation or retention of business opportunities, the creation of affordable housing, and the creation or retention of opportunities for gainful employment within the jurisdiction of the City, and (iv) will not have a material adverse competitive effect on any similar facilities already constructed in 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”) and the proposed Ordinance 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”) and all such documents shall be kept on file by the Clerk-Treasurer or the Secretary of the Commission. The Commission recommends to the Council that it adopt the Ordinance. The provisions of such Ordinance, if and when adopted, and the Financing Documents shall constitute a contract binding between the City and the holder or holders of the Obligations and after the issuance of said Bonds, this resolution shall not be repealed or amended, in any respect which would adversely affect the right of such holder or holders so long as said Bonds or the interest thereon remains unpaid.

SECTION 3. The Commission hereby approves and recommends to the Council that the City 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 Ordinance. The Obligations shall never constitute a general obligation of, an indebtedness of, or charge against the general credit of the City. The Commission further recommends that the Council authorized the Mayor and Clerk-Treasurer 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 Commission recommends that the Mayor and Clerk-Treasurer be authorized and directed to execute those Financing Documents approved herein which require the signature of the Mayor and Clerk-Treasurer and any other document which may be necessary or desirable to consummate the transaction, and their execution is hereby confirmed on behalf of the City. The signatures of the Mayor and the Clerk-Treasurer on the Bonds may be facsimile signatures. The Commission also recommends that the Clerk-Treasurer be authorized to arrange for the delivery of such Bonds to the purchaser thereof, and the Note to the Seller payment for which will be made in the manner set forth in the Financing Documents. The Mayor and Clerk-Treasurer may, by their execution of the Financing Documents requiring their signatures and imprinting of their facsimile signatures thereon, approve changes therein and also in those Financing Documents which do not require the signature of the Mayor and/or Clerk-Treasurer without further approval of the Council or the Commission if such changes do not affect terms set forth in Indiana Code Title 36, Article 7, Chapter 12, Section 27(a)(1) through (a)(10).

SECTION 5. Any officer of the Commission is hereby authorized and directed, in the name and on behalf of the Commission, to execute any and all other agreements, documents and instruments, perform any and all acts, approve any and all matters, and do any and all other things deemed by such officer to be necessary or desirable in order to carry out and comply with the intent, conditions and purposes of this resolution (including the preambles hereto and the documents mentioned herein), the Project and the issuance and sale of the Bonds and the Note, and any such execution, performance, approval or doing of other things heretofore effected be, and hereby is, ratified and approved.

SECTION 6. The Commission hereby determines that, based solely on the representations provided by the Borrower, the amount of tax credits to be allocated to the Project under Section 42 of 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. In making the foregoing determination, the Commission has relied upon the representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the City or the Commission as to the feasibility or viability of the Project. In reliance upon the representation 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 IHCD's qualified allocation plan.

SECTION 7. The Secretary of this Commission shall transmit this resolution, together with two (2) copies of the forms of the Financing Documents and the Ordinance approved by this Resolution, to the Office of the Clerk-Treasurer for presentation to the Council with the recommendation that the Council approve the forms of the Financing Documents and adopt the proposed Ordinance hereby recommended to the Council. The provisions of such Ordinance, if and when adopted, and the Financing Documents shall constitute a contract binding between the Issuer and the holder or holders of the Obligations and after the issuance of said Obligations, the special resolution shall not be repealed or amended, in any respect which would adversely affect the right of such holder or holders so long as said Obligations or the interest thereon remains unpaid.

SECTION 8. This resolution shall be in full force and effect upon adoption.

Adopted this 25th day of October, 2021.

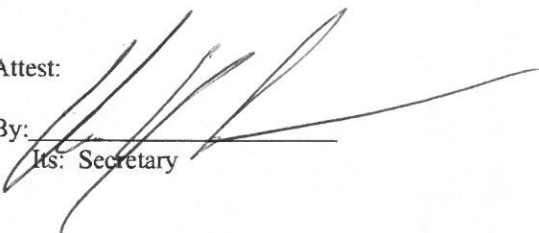
VALPARAISO ECONOMIC DEVELOPMENT
COMMISSION

By:


Its: President

Attest:

By:


Its: Secretary