



Request for City Council Committee Action from the Department of Community Planning and Economic Development - CPED

Date: June 4, 2013

To: Council Member Lisa Goodman, Community Development Committee

Referral to:

Subject: West River Commons (4610 E Lake St) – City Authorization to Amend and Subordinate Existing City Financing and Covenants.

Recommendation: It is recommended that the City Council authorize City consent to subordinate its interests and extend loan maturity dates as applicable in accommodation of HUD-insured 1st mortgage refinance as represented by attached Resolution 2013R-___ and consent to assignment of the previously issued TIF Note.

Previous Directives:

On June 24, 2002, City Council approved \$500,000 Multi-Family Rental and Cooperative Housing Program deferred payment affordable housing loan (HOME Loan).

On August 9, 2002, City Council approved the West River Commons Redevelopment Plan and West River Commons Tax Increment Finance Plan.

On September 13, 2002, City Council approved issuance of Variable Rate Multifamily Housing Revenue Bonds in the original aggregate principal amount of \$8,200,000 for the benefit of Gateway Real Estate, LLC and West River Commons Project.

Department Information

Prepared by: Scott Ehrenberg, Loan Portfolio Specialist, 612-673-5067	
Approved by: Thomas A. Streitz, Director of Housing Development	_____
Charles T. Lutz, CPED Deputy Director	_____
Presenters in Committee: Scott Ehrenberg	
Language Reviewed by Development Finance:	_____

Financial Impact (*delete all lines not applicable to your request*)

- No financial impact (Fees will be collected to offset staff costs in processing request)

Community Impact

- Neighborhood Notification
- City Goals
- Comprehensive Plan
- Zoning Code
- Other

Supporting Information

West River Commons was a newly constructed affordable rental housing development completed in 2004. Located at 4610 E Lake St in the Cooper Neighborhood, the project is comprised of 53 rental units and approximately 8,000 square feet of retail/commercial space on the 1st floor of the building. 12 (22.6%) of the project's 53 rental units are subject to a Declaration of Land Use Restrictive Covenants for Housing Tax Credits and HOME Program Regulatory Agreement requiring income and rent affordability at or below 50% AMI. These same 12 units are subject to Section 8 HAP contract serving very low income populations.

West River Commons' current 1st mortgage is a variable rate loan made available through the City's Multifamily Housing Revenue Bond Program. West River Commons' owner, Gateway Real Estate, LLC has secured a HUD-insured loan commitment that will facilitate refinance of the variable rate mortgage. The newly originated 1st mortgage is anticipated to have a 35-year term (maturing in July, 2048). The new HUD-insured 1st mortgage will mitigate the current interest rate risk to the project's long-term operating stability presented by the variable rate nature of the current 1st mortgage. The new HUD-insured 1st mortgage will take advantage of the current historically low interest rate environment by locking-in an anticipated 3.37% interest rate for the entire 35-year term. As a condition to providing the 1st mortgage insurance, HUD requires that the previous financing and regulatory agreements be subordinated to the lien, covenants and enforcement of the new financing.

The City has made one deferred-payment subordinate HOME loan of \$500,000. The HOME loan is made at 1% simple interest. Current maturity date of the deferred-payment subordinate HOME loan is 10/23/2032. This deferred-payment subordinate HOME loan will require amendment to remain subordinate to the newly originated HUD-insured 1st mortgage loan. Maturity date of the City's affordable housing loan will be extended approximately 16 years to remain co-terminus with the newly originated HUD-insured 1st mortgage. This will also extend preservation of existing affordability on West River Commons' 12 affordable units. The new maturity date of the deferred-payment subordinate loan is anticipated to occur in July, 2048.

In accommodating this refinance, it is anticipated that the following amendments to existing City contracts will be required:

- Execute a Subordination and Modification Agreement as this document relates to the HOME Loan
- Execute an Amendment to the and Subordination of Declaration of Restrictive Covenants as this document relates to the HOME Loan
- Execute a HUD Amendment to the Regulatory Agreement as this document relates to the Regulatory Agreement connected to the revenue bonds*
- Execute an Amendment to and Subordination of the Development Agreement
- Execute a Consent and Assignment of the TIF Note
- Execute an Assignment of the Allonge Endorsement to the Tax Increment Limited Revenue Note

*This refinance will result in the early retirement of the Variable Rate Multifamily Housing Revenue Bonds though rental and occupancy restrictions will remain in place for the entire term of the Bond Regulatory Agreement (through October, 2017) and the City will be required to assume rental and occupancy monitoring requirements previously performed by the Trustee. West River Commons is subject to active, annual compliance monitoring as a result of the allocation of Low Income Housing Tax Credits. Tax credit monitoring is governed by a Declaration of Land Use Restrictive Covenants for Housing Tax Credits recorded against this property requiring 12 (22.6%) of the project's 53 rental units be occupied by income-qualified households at or below 50% AMI. Annual tax credit compliance monitoring has occurred since the project's initial occupancy in 2005. There have been no compliance findings with regard to household income to date. Annual tax credit monitoring is scheduled to occur thru the entire tax credit compliance period expiring in the year 2034. This monitoring effort is sufficient to establish ongoing occupancy requirements for the remaining years of the Bond Regulatory Agreement.

RESOLUTION 2013R-____

APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF A HUD AMENDMENT TO REGULATORY AGREEMENT AND OTHER DOCUMENTS WITH RESPECT TO THE REFINANCING OF THE WEST RIVER COMMONS PROJECT INITIALLY FINANCED WITH REVENUE BONDS ISSUED BY THE CITY FOR THE BENEFIT OF GATEWAY REAL ESTATE, L.L.C.; AND GRANTING APPROVAL FOR CERTAIN OTHER ACTIONS WITH RESPECT THERETO

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

1. STATUTORY AUTHORIZATION. The City of Minneapolis (the "City"), is a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota, and is authorized by Minnesota Statutes, Chapter 462C, as amended (the "Act"), to carry out the public purposes described in the Act by issuing revenue bonds or other revenue obligations to finance or refinance multifamily housing developments located within the City. In the issuance of the City's revenue bonds and other revenue obligations and in the making of a loan to finance a multifamily housing development, the City may exercise, within its corporate limits, any of the powers that the Minnesota Housing Finance Agency may exercise under Minnesota Statutes, Chapter 462A, as amended, without limitation under the provisions of Minnesota Statutes, Chapter 475, as amended, including the power to issue refunding obligations and to apply the proceeds derived from the sale of the refunding obligations to redeem and prepay the bonds or other obligations to be refunded.

2. THE COMPANY AND THE FACILITY. On October 22, 2002, the City issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Gateway Real Estate, L.L.C. Project), Series 2002 (the "Series 2002 Bonds"), in the original aggregate principal amount of \$8,200,000, for the benefit of Gateway Real Estate, L.L.C., a Minnesota limited liability company (the "Company"). The Series 2002 Bonds were issued pursuant to the terms of Resolution No. 2002R-299, adopted by the City Council of the City on September 13, 2002, and approved by the Mayor of the City on September 18, 2002, and an Indenture of Trust, dated as of October 1, 2002 (the "Indenture"), between the City and U.S. Bank National Association (formerly LaSalle Bank National Association), as trustee (the "Initial Trustee"). The proceeds derived from the sale of the Series 2002 Bonds were loaned to the Company pursuant to the terms of a Loan Agreement, dated as of October 1, 2002 (the "Loan Agreement"), between the City and the Company. The proceeds of the loan were applied by the Company to finance the acquisition, construction, and equipping of a 53-unit multifamily housing facility located at 4610 East Lake Street in the City (the "Project").

3. SERIES 2010 NOTES. The payment of the principal of and interest on the Series 2002 Bonds was secured by an irrevocable, direct-pay letter of credit issued by the Bank of America (as successor to LaSalle Bank National Association as issuer of the original letter of credit securing the Series 2002 Bonds). Several years after the date of issuance of the Series 2002 Bonds, the Bank of America informed the Company that it did not intend to renew its letter of credit upon the expiration of the letter of credit. As a result, the Company obtained a commitment from Wells Fargo Bank, National Association (the "Bank") to issue a replacement letter of credit (the "Letter of Credit") in substitution for the existing Bank of America letter of credit. The City consented to the substitution of the Bank Letter of Credit for the Bank of America letter of credit. The Letter of Credit secured only approximately \$6,175,000 of the principal amount of the outstanding Series 2002 Bonds. The Company requested that the City issue a series of Subordinate Multifamily Housing Refunding Revenue Notes (Gateway Real Estate, L.L.C. Project), Series 2010 (the "Series 2010 Notes"), in an original aggregate principal amount not to exceed \$1,500,000, and loan the proceeds derived from the sale of the Series 2010 Notes to the Company pursuant to the terms of a Note Agreement, dated as of October 1, 2010 (the "Note Agreement"), between the City and the Company. The Company applied the proceeds of the loan made pursuant to the terms of the Note Agreement to the redemption and prepayment of the portion of the Series 2002 Bonds that was not secured by the Letter of Credit. The Company applied equity funds to the prepayment of Series 2002 Bonds not covered by the new Letter of Credit or redeemed with the proceeds of the Series 2010 Notes. The Series 2010 Notes are subordinate to the Series 2002 Bonds and are secured by the obligations of the Company under the Note Agreement and a Repayment Guaranty, dated as of October 1, 2010 (the "Guaranty"), executed and delivered by each member of the Company.

4. SUCCESSOR TRUSTEE. Subsequent to the issuance of the Series 2010 Notes, the Initial Trustee was replaced by Wells Fargo Bank, National Association, a national banking association, as successor trustee (the "Successor Trustee").

5. THE REGULATORY AGREEMENT AND FIRST AMENDMENT TO REGULATORY AGREEMENT. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Internal Revenue Code of 1986, as amended, and to ensure compliance with certain restrictions imposed by the City, a Regulatory Agreement, dated as of October 1, 2002 (the "Original Regulatory Agreement"), was executed by the Company and the Trustee, and delivered in conjunction with the issuance of the Series 2002 Bonds. The Original Regulatory Agreement was filed with the County Recorder of Hennepin County on December 13, 2002, as Document Number 7887427. In connection with the issuance of the Series 2010 Notes, a First Amendment to Regulatory Agreement, dated as of October 1, 2010 (the "First Amendment to Regulatory Agreement"), was executed by the Company and the Trustee. The First Amendment to Regulatory Agreement was filed with the County Recorder of Hennepin County on November 8, 2010, as Document Number A9584585. The Original Regulatory Agreement, as amended by the First Amendment to Regulatory Agreement, is hereinafter referred to as the "Amended Regulatory Agreement."

6. HOME LOAN. Under the terms of a Home Loan Agreement, dated October 23, 2002 (the "Original HOME Loan Agreement"), between the Company and the Minneapolis Community Development Agency, a Minnesota public body corporate and politic (the "Agency"), the Agency made a loan of \$500,000 (the "HOME Loan") to the Company. The funds for the HOME Loan were derived by the Agency from a grant from the United States Department of Housing and Urban Development ("HUD") under the HOME Investments Partnership Program Regulations, 24 CFR Part 92, as amended. The Original HOME Loan Agreement was amended by the terms of an Amendment to HOME Loan Agreement, dated October 25, 2004 (the "Amendment to HOME Loan Agreement"), between the Company, the City, as successor to the Agency, and the Agency. The Original HOME Loan Agreement, as amended by the Amendment to HOME Loan Agreement, is hereinafter referred to as the "HOME Loan Agreement." The obligations of the Company under the HOME Loan Agreement were secured by the terms of: (i) a HOME Note, dated October 23, 2002, of the Company; and (ii) a Combination Mortgage, Security Agreement and Fixture Financing Statement, dated October 23, 2002 (the "HOME Mortgage"), from the Company to the Agency. The Company agreed to impose certain restrictions on the use and occupancy of certain units in the Project and on the sale of the Project in accordance with the terms of a Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions, dated October 23, 2002 (the "Original HOME Regulatory Agreement"), as amended by an Amendment to Regulatory Agreement and Declaration of Covenants, Conditions and Restrictions (West River Commons Apartments Project), dated October 25, 2004 (the "Amendment to HOME Regulatory Agreement"), between the Company, the City, as successor to the Agency, and the Agency. The Original HOME Regulatory Agreement, as amended by the Amendment to HOME Regulatory Agreement, is hereinafter referred to as the "HOME Regulatory Agreement."

7. DECLARATIONS OF RESTRICTIVE COVENANTS. In connection with other financing provided by the Agency to the Company with respect to the Project and the receipt of tax credits with respect to the Project, the Company also executed and delivered: (i) a Declaration of Restrictive Covenants, dated October 23, 2002, from the Company in favor of the City (the "City Declaration"), filed December 13, 2002, with the County Recorder of Hennepin County on December 13, 2002, as Document Number 7887428; and (ii) a Declaration of Land Use Restrictive Covenants for Housing Tax Credits 2004 Allocation Year, dated August 1, 2005 (the "Tax Credit Declaration"), filed with the County Recorder of Hennepin County on September 9, 2005, as Document Number 8650298.

8. REFINANCING OF INDEBTEDNESS. The Company has obtained mortgage loan financing (the "Mortgage Loan") from Dougherty Mortgage LLC, a Delaware limited liability company (the "Lender"), the proceeds of which are to be applied to the redemption and prepayment of all outstanding Series 2002 Bonds and all outstanding Series 2010 Notes. The Mortgage Loan will be insured by HUD and, as a condition to providing such insurance, HUD requires that the Amended Regulatory Agreement, the HOME Regulatory Agreement, the City Declaration, and

the Tax Credit Declaration be subordinated to the lien, covenants, and enforcement of the mortgage from the Borrower in favor of the Lender.

9. CITY AS PARTY TO THE AMENDED REGULATORY AGREEMENT. Once the Series 2002 Bonds and the Series 2010 Notes are redeemed and prepaid, the Successor Trustee will no longer have any interest in the outstanding financing with respect to the Project and, therefore, will have no interest or obligation to enforce the obligations of the Company under the terms of the Amended Regulatory Agreement. In order to ensure that the obligations of the Company under the terms of the Amended Regulatory Agreement are enforced, the City will become a party to the Amended Regulatory Agreement as further amended by the HUD Amendment to Regulatory Agreement (as hereinafter defined).

10. HUD AMENDMENT TO REGULATORY AGREEMENT. The Finance Officer is hereby authorized and directed to execute and deliver a HUD Amendment to Regulatory Agreement, dated on or after May 1, 2013 (the "HUD Amendment to Regulatory Agreement"), between the City, the Company, and the Successor Trustee. All of the provisions of the HUD Amendment to Regulatory Agreement, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The HUD Amendment to Regulatory Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determinations.

11. OTHER DOCUMENT AMENDMENTS. The Finance Officer is hereby authorized and directed to execute and deliver: (i) a Subordination and Modification Agreement, dated on or after May 1, 2013 (the "HOME Subordination Agreement"), between the Lender, the City, and the Company; and (ii) an Amendment to and Subordination of Declaration of Restrictive Covenants, dated on or after May 1, 2013 (the "Amendment to City Declaration"), between the Company and the City. All of the provisions of the HOME Subordination Agreement and the Amendment to City Declaration, when executed and delivered as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The HOME Subordination Agreement and the Amendment to City Declaration shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determinations. An Amendment to and Subordination of Declaration of Land Use Restrictive Covenants for Housing Tax Credits 2004 Allocation Year, dated on or after May 1, 2013 (the "Amendment to Tax Credit Declaration"), between the Company and the Minneapolis/Saint Paul Housing Finance Board, a public body corporate and politic of the State of

Minnesota (the "Housing Finance Board"), is hereby approved and execution and delivery of the Amendment to Tax Credit Declaration by the Housing Finance Board is hereby approved.

12. OTHER CITY DOCUMENTS. The Finance Officer is hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the execution and delivery of the HUD Amendment to Regulatory Agreement, the HOME Subordination Agreement, the Amendment to City Declaration, and the Amendment to Tax Credit Declaration, including all other documents and certificates as shall be necessary and appropriate in connection with the execution and delivery of the Series 2010 Notes. The City hereby authorizes the Office of the City Attorney and Kennedy & Graven, Chartered, as bond counsel, to prepare, execute, and deliver any approving legal opinions that may be requested in connection with the execution and delivery of the HUD Amendment to Regulatory Agreement, the HOME Subordination Agreement, the Amendment to City Declaration, and the Amendment to Tax Credit Declaration.

13. SUBSEQUENT AMENDMENTS. On any date subsequent to the date of execution and delivery of the HUD Amendment to Regulatory Agreement, the HOME Subordination Agreement, the Amendment to City Declaration, and the Amendment to Tax Credit Declaration, the Finance Officer is hereby authorized to execute and deliver any amendments or supplements to any of the documents referred to in this resolution if, after review by bond counsel, the Finance Officer determines that the execution and delivery of such amendment or supplement is in the interests of the City. The Finance Officer may impose any terms or conditions on his execution and delivery of any such amendment or supplement as the Finance Officer deems appropriate.

14. LIMITATIONS OF LIABILITY. No covenant, stipulation, obligation, or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation, or agreement of any member of the City Council of the City, or any officer, agent, or employee of the City in that person's individual capacity, and neither the City Council of the City nor any officer or employee executing the HUD Amendment to Regulatory Agreement, the HOME Subordination Agreement, the Amendment to City Declaration, and the Amendment to Tax Credit Declaration shall be personally liable on any obligations of the City referred to in such documents or be subject to any personal liability or accountability thereunder. No provision, covenant, or agreement contained in the aforementioned documents, the Series 2002 Bonds, the Series 2010 Notes, or in any other document relating to the Series 2002 Bonds or the Series 2010 Notes, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or any pecuniary liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Loan Agreement or the Note Agreement which are to be applied to the payment of the Series 2002 Bonds or the Series 2010 Notes, as provided therein.

Except as herein otherwise expressly provided, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the City, and any holders of the Series 2002 Bonds or the Series 2010 Notes, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the City, and any holders from time to time of the Series 2002 Bonds and the Series 2010 Notes.

15. SEVERABILITY. In case any one or more of the provisions of this resolution, other than the provisions limiting the liability of the City, or of the aforementioned documents shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, but this resolution and the aforementioned documents shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

16. ADDITIONAL ACTIONS. The officers of the City, bond counsel, other attorneys, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution and the aforementioned documents for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the aforementioned documents and this resolution.

17. EFFECTIVE DATE. This resolution shall take effect and be in force from and after its approval and publication. Pursuant to Chapter 4, Section 9, of the Charter of the City, only the title of this resolution and a summary of this resolution conforming to Minnesota Statutes, Section 331A.01, subdivision 10, shall be published in the official paper of the City.