



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

Date: July 9, 2013

To: Council Member Lisa Goodman, Community Development Committee

Referral to:

**Subject: Bottineau Lofts (1929 2<sup>nd</sup> St NE) –Authorization to Amend Existing City Financing Agreements**

**Recommendation:** Adopt attached Resolution authorizing amendment of existing city financing agreements to accommodate a HUD-insured 1<sup>st</sup> mortgage refinance and consent to assignment of the previously issued TIF Note.

**Previous Directives:**

**On July 26, 2002, City Council approved issuance of Multifamily Housing Revenue Bonds (GNMA Collateralized Mortgage Loan) Series 2002 Bonds in the original aggregate principal amount of \$3,640,000 for the benefit of Bottineau Lofts Limited Partnership and Bottineau Lofts Project under Resolution 2002R-258.**

**On July 15, 2002, MCDA Board of Commissioners authorized issuance of a pay-as-you-go TIF Note under Resolution 2002-2624M.**

**On August 24, 2001, City Council approved Bottineau Redevelopment Plan and Bottineau Tax Increment Finance Plan under Resolution 2001R-372**

**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

Bottineau Lofts was the positive conversion of the East Side Neighborhood Service Building into an affordable rental housing development completed in 2003. Located at 1929 2<sup>nd</sup> St NE in the Bottineau Neighborhood, the project is comprised of 37 rental units affordable at or below 60% AMI. 9 of the 37 affordable rental units are subject to a project-based Section 8 contract.

Bottineau Lofts' current 1<sup>st</sup> mortgage is a loan made available through the City's Multifamily Housing Revenue Bond Program at an interest rate of 5.798% maturing on November 1, 2043. Bottineau Lofts' owner, Bottineau Lofts Limited Partnership, has secured a HUD-insured FHA 223(a)(7) loan commitment that will facilitate refinance of the current 1<sup>st</sup> mortgage. The newly originated HUD-insured 1<sup>st</sup> mortgage is anticipated to have a 35-year term (maturing in 2048) and will take advantage of the current low interest rate environment by locking-in an anticipated 3.05% interest rate. The lower interest rate will reduce debt service operating costs on the 1<sup>st</sup> mortgage by approximately \$65,000 annually and serve to remedy historically negative project cash flows. Positive cash flows resulting from this refinancing are projected to be about \$15,000 annually. Bottineau Lofts balance sheet reflects accrued liabilities to the general partner of approximately \$750,000 as of December 31, 2012. Cash advances made by the general partner in ongoing support of the project represent \$377,410 of this amount. An additional \$348,581 is remaining unpaid deferred developer fee. Future project cash flows, to the extent they can be realized, will be used to stabilize the project and pay down these accrued liabilities.

As a condition to providing the 1<sup>st</sup> mortgage insurance, HUD requires that the previous financing and regulatory agreements be subordinated to the lien, covenants and enforcement of the new financing.

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

- HUD Amendment to the Bond Regulatory Agreement
- Amendment and Subordination of Declaration of Restrictive Covenants connected to the TIF Note
- Subordination Agreement
- Consent to assignment of the TIF Note

This refinance will result in the early retirement of the Multifamily Housing Revenue Bonds though rental and occupancy restrictions will remain in place for the remaining term of the Bond Regulatory Agreement (through 2018) and the City will be required to assume rental and occupancy monitoring requirements previously performed by the Trustee. Bottineau Lofts 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 all of the project's 37 rental units be occupied by income-qualified households at or below 60% AMI. Annual tax credit compliance monitoring has occurred since the project's initial occupancy in 2003. 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 2033. This monitoring effort is sufficient to establish ongoing occupancy requirements for the remaining years of the Bond Regulatory Agreement.

## RESOLUTION

Of the

City of Minneapolis

**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 BOTTINEAU LOFTS PROJECT INITIALLY FINANCED WITH REVENUE BONDS ISSUED BY THE CITY FOR THE BENEFIT OF BOTTINEAU LOFTS LIMITED PARTNERSHIP; 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 December 31, 2002, the City issued its \$2,950,000 Multifamily Housing Revenue Bonds (GNMA Collateralized Mortgage Loan – Bottineau Lofts Project), Series 2002 and \$650,000 Multifamily Housing Revenue Note (Bottineau Lofts Project), Subordinated Series 2002 (together, the "Series 2002 Bonds), for the benefit of Bottineau Lofts Limited Partnership, a Minnesota limited partnership (the "Company"). The Series 2002 Bonds were issued pursuant to the terms of Resolution No. 2002R-258, adopted by the City Council of the City on July 26, 2002, and approved by the Mayor of the City on July 31, 2002, and an Indenture of Trust, dated as of December 1, 2002 (the "Indenture"), between the City and U.S. Bank National Association, as trustee (the "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

December 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 33-unit multifamily housing facility located 1929 2<sup>nd</sup> Street N.E. in the City (the "Project").

3. THE 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 Housing Regulatory Agreement, dated as of December 1, 2002 (the "Regulatory Agreement"), was executed by the City, the Company and the Trustee, and delivered in conjunction with the issuance of the Series 2002 Bonds. The Regulatory Agreement was filed with the County Recorder of Hennepin County on December 30, 2002, as Document Number 7900805.

4. TIF NOTE. The Council of the City by the passage of Resolution No. 2001R-372 adopted on August 24, 2001 and approved by the Mayor of the City on August 30, 2001 approved the Bottineau Redevelopment Plan and the Bottineau Tax Increment Finance Plan to provide additional financial assistance to the Project. Pursuant to and in accordance with Bottineau Redevelopment Plan and the Bottineau Tax Increment Finance Plan, the Minneapolis Community Development Agency, whose interests have been succeeded to by the City, issued a TIF Note to the Company, the current unpaid balance of which is \$300,010.07. The assignment of the TIF Note and the documents related thereto requires the consent of the City.

5. 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 a Declaration of Restrictive Covenants, dated December 27, 2002, from the Company in favor of the City, as successor in interest to the Minneapolis Community Development Agency (the "Declaration"), filed December 30, 2002 with the County Recorder of Hennepin County, as Document Number 7900811.

6. REFINANCING OF INDEBTEDNESS. The Company has obtained mortgage loan financing (the "Mortgage Loan") from Oak Grove Commercial Mortgage, LLC (the "Lender"), the proceeds of which are to be applied to the redemption and prepayment of all outstanding Series 2002 Bonds. The Mortgage Loan will be insured by HUD and, as a condition to providing such insurance, HUD requires that the Regulatory Agreement and the Declaration be subordinated to the lien, covenants, and enforcement of the mortgage from the Borrower in favor of the Lender.

7. CITY AS PARTY TO THE AMENDED REGULATORY AGREEMENT. Once the Series 2002 Bonds are redeemed and prepaid, the 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 Regulatory Agreement. In order to ensure that the obligations of the Company under the terms of the Regulatory Agreement are enforced, the City will continue to be a party to the Regulatory Agreement as further amended by the HUD Amendment to Regulatory Agreement (as hereinafter defined).

8. 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 July 1, 2013 (the "HUD Amendment to Regulatory Agreement"), between the City, the Company, and the 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.

9. OTHER DOCUMENT AMENDMENTS. The Finance Officer is hereby authorized and directed to execute and deliver: (i) a Subordination Agreement, Form HUD-92420M, dated on or after July 1, 2013 (the "HUD Subordination Agreement"), between the Lender, the City, and the Company; (ii) an Amendment to and Subordination of Declaration of Restrictive Covenants, dated on or after July 1, 2013 (the "Amendment to City Declaration"), between the Company and the City and (iii) a Consent of City of Minneapolis, dated on or after July 1, 2013 (the "City Consent") pursuant to which the City gives its consent to the Assignment of the TIF Note and certain documents related thereto. All of the provisions of the HUD Subordination Agreement, the Amendment to City Declaration and the City Consent, 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 Subordination Agreement, the Amendment to City Declaration and the City Consent, 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.

10. 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 HUD Subordination Agreement, the Amendment to City Declaration, and the City Consent, including all other documents and certificates as shall be necessary and appropriate in connection with the Mortgage Loan. The City hereby authorizes the Office of the City Attorney and

Best & Flanagan, LLP, 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 HUD Subordination Agreement, the Amendment to City Declaration, and the City Consent.

11. SUBSEQUENT AMENDMENTS. On any date subsequent to the date of execution and delivery of the HUD Amendment to Regulatory Agreement, the HUD Subordination Agreement, the Amendment to City Declaration, and the City Consent, 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.

12. 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 HUD Subordination Agreement, the Amendment to City Declaration, and the City Consent 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 TIF Note, or in any other document relating to the Series 2002 Bonds or the TIF Note, 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 Bottineau Tax Increment Finance Plan which are to be applied to the payment of the Series 2002 Bonds or the TIF Note, 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 TIF Note, 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 TIF Note.

13. 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.

14. **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.

15. **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.