



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

Date: June 17, 2014

To: Council Member Lisa Goodman, Chair, Community Development & Regulatory Service Committee

Subject: Commons @ Penn Avenue - Public Hearing and Request for Final Approval of up to \$5.6 million in Tax Exempt Multi-family Housing Entitlement Revenue Bonds

Recommendation: Adopt the attached Resolution giving Final Approval of up to \$5.6 million in Tax-Exempt Multi-family Housing Entitlement Revenue Bonds for the Commons @ Penn Avenue mixed use housing project.

Previous Directives: On August 3, 2012, the City Council authorized the submission of a TBRA brownfield investigation grant on behalf of this project. On October 19, 2012, the City Council accepted a TBRA brownfield investigation grant that had been awarded for this project. On November 2, 2012, the City Council approved an award of Affordable Housing Trust Funds in an amount up to \$1,125,000 for this project. On December 7, 2012, the City Council authorized the issuance of up to \$5 million in tax exempt multifamily housing entitlement revenue bonds. On April 12, 2013, the City Council authorized the submission of an application to the Metropolitan Council for LCDA-TOD funds on behalf of this project. On November 1, 2013 the City Council authorized the submission of an application for Hennepin County ERF Grant funding for this project.

Prepared by: Tiffany Glasper, CPED Senior Project Coordinator (612) 673-5221

Approved by: Cathy Polasky, Director, Economic Development
Charles T. Lutz, Interim CPED Director

Presenter in Committee: Tiffany Glasper

Financial Impact

- The project will generate semi-annual administrative fees.

Community Impact

- Neighborhood Notification – The Northside Residents’ Redevelopment Council has been afforded an opportunity to review and comment on the development proposal.

- City Goals: A Safe Place To Call Home; Eco-Focused; Many People, One Minneapolis; Jobs & Economic Vitality; Livable Communities, Healthy Lives; A City That Works
- Sustainability Targets: Affordable Housing Units – new construction.
- Comprehensive Plan: 4.10 Minneapolis will increase its housing that is affordable to low and moderate income households. 4.9.1 Minneapolis will grow by increasing its supply of housing. 4.11 Minneapolis will improve the availability of housing options for its residents.
- Zoning Code: The proposed development complies or will comply with the zoning code.

Supporting Information

Building Blocks Non Profit is proposing to purchase the City-owned properties at 1823 Penn Avenue North and 2201 Golden Valley Road and combine them with the properties they own at 2213, 2217 and 2221 Golden Valley Road for the purposes of constructing a four-story, mixed use building containing 45 units of affordable housing and approximately 4,500 square feet of community services and programming space.

The project is proposed to be 100% affordable to households at or below 50% MMI.

The project's community services space is proposed to be occupied by Building Blocks offices and programming space, North Point Health and Wellness Center and resident amenities.

Building Blocks is including surface and underground parking, Crime Prevention Through Environmental Design (CPTED) elements, public pedestrian-scale improvements, green space, a tot lot and attractive façade elements as part of this project.

The City-owned property at 2201 was acquired on July 1, 1980 via condemnation and the City owned property at 1823 Penn was acquired on October 25, 1979 via condemnation. Both properties are currently vacant lots that, prior to demolition, were occupied by blighted structures.

Financing Information

The total development cost (TDC) of the project is estimated at \$10.7 million and the project has already been approved for \$1,125,000 in Affordable Housing Trust Funds, \$1.59 million from Minnesota Housing, \$1 million from Metropolitan Council and several other sources. Please refer to the attached Project Data Worksheet for details.

Building Blocks has now submitted an application for housing entitlement revenue bond (HRB) financing and is requesting the issuance of up to \$5.6 million in tax-exempt housing revenue bonds from the City's 2012 entitlement allocation. The issue will be bifurcated into a Series A of \$1.6 million structured as permanent debt and Series B bonds estimated at \$4 million which will be structured as interim financing to be replaced with tax credit equity. The use of housing entitlement revenue bonds also automatically includes the availability of 4% low income

housing tax credits, which in this case are expected to generate \$3,551,874 in tax credit equity.

If this funding is approved as requested, the Commons @ Penn Avenue project will leverage approximately \$5.5 million in non-local funding sources. These sources represent approximately 51% of the combined total development cost (TDC) of \$10.7 million. Further analysis of the financing of the project shows that public funding makes up approximately 49% of the total development cost and private funds make up the remaining 51%.

Please refer to the attached Project Data Worksheet for more information on proposed funding sources.

The developer has proposed a total developer fee of approximately \$1,098,000 million that represents 10% of the total development cost, which is in compliance with the CPED Housing Developer Fee Policy.

The current status of the 2013/2014 HRB Entitlement allocation is shown below.

2013 Allocation Remaining	\$21,301,966
2014 Entitlement Allocation	\$48,759,326
Total Available Allocation	\$79,061,292
Current Projects	
Commons @ Penn Project	(\$ 5,600,000)
Cameron (prelim approval)	(\$ 7,500,000)
Balance Available for Other Projects	\$ 65,961,292

Bond Purchaser/Underwriter	To Be Determined
Bond Counsel	Kennedy & Graven
Council Member Informed	Yes, Ward 5

Attachments

- Project Data Worksheet
- Resolution

RESOLUTION 2014R-_____

AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF MULTIFAMILY HOUSING REVENUE NOTES (COMMONS AT PENN LIMITED PARTNERSHIP PROJECT); APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE NOTES AND RELATED DOCUMENTS; PROVIDING FOR THE SECURITY, RIGHTS, AND REMEDIES WITH RESPECT TO THE NOTES; 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, a home rule city and political subdivision duly organized and existing under its Charter and the Constitution and laws of the State of Minnesota (the "City"), is authorized by Minnesota Statutes, Chapter 462C, as amended (the "Housing Act"), to carry out the public purposes described in the Housing Act by issuing conduit revenue bonds or other conduit revenue obligations to finance 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 loans to finance multifamily housing developments, 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.

2. **THE BORROWER AND THE PROJECT.** Commons at Penn Limited Partnership, a Minnesota limited partnership (the "Borrower"), has requested the participation of the City in the financing of the acquisition and construction of an approximately 45-unit, multifamily, rental-housing development, and facilities functionally related and subordinate thereto, to be located at 1823 Penn Avenue North and 2201-2221 Golden Valley Road in the City (the "Project"). The Project will be owned and operated by the Borrower.

3. **THE HOUSING PROGRAM.** A Program for a Multifamily Housing Development (Commons at Penn Limited Partnership Project) (the "Housing Program") with respect to the Project and the proposed issuance of conduit revenue obligations to finance the Housing Program and the Project was prepared in accordance with the requirements of Section 462C.03, subdivision 1a, of the Housing Act, and is on file with the City. The Housing Program was submitted to the Metropolitan Council for its review and comments in accordance with the requirements of the Housing Act. An Amended and Restated Housing Program (the "Amended Housing Program") with respect to the Project has been prepared in accordance with the requirements of the Housing Act. The Amended Housing Program has been submitted to the Metropolitan Council for its review and comments in accordance with the requirements of the Housing Act.

4. INITIAL PUBLIC HEARING AND PRELIMINARY RESOLUTION. The Community Development Committee of the Minneapolis City Council, on behalf of the City, held a public hearing on November 27, 2012, with respect to the Housing Program and the proposed issuance of conduit revenue obligations to finance the Project. The public hearing was conducted at least fifteen (15) days after the publication in a newspaper of general circulation in the City of a notice of such public hearing. At a meeting held on December 7, 2012, the City Council of the City adopted Resolution 2012R-625 which approved and adopted the Housing Program and granted preliminary approval to the issuance of conduit revenue obligations of the City in a principal amount of approximately \$5,000,000 to finance the Project.

5. ADDITIONAL PUBLIC HEARING. The Community Development & Regulatory Services Committee of the Minneapolis City Council, on behalf of the City, held a second public hearing on June 17, 2014, with respect to the Amended Housing Program and the proposed issuance of conduit revenue obligations to finance the Project. This second public hearing was undertaken as a result of the lapse of time since the initial public hearing and due to a proposed increase in the principal amount of the conduit revenue obligations to finance the Project. The second public hearing was conducted at least fifteen (15) days after the publication in a newspaper of general circulation in the City of a notice of such public hearing.

5. THE SERIES 2014 NOTES. The Borrower has requested that the City issue the following revenue obligations of the City in an aggregate principal amount not to exceed \$5,600,000 for the benefit of the Borrower: (i) Multifamily Housing Revenue Note (Commons at Penn Limited Partnership Project), Series 2014A (the "Series 2014A Note"); and (ii) Multifamily Housing Revenue Note (Commons at Penn Limited Partnership Project), Series 2014B (the "Series 2014B Note"). The Series 2014A Note and the Series 2014B Note are hereinafter referred to collectively as the "Series 2014 Notes." The Borrower has requested that the City apply the proceeds derived from the sale of the Series 2014 Notes to make a loan (the "Loan") to the Borrower in accordance with the terms of a Loan Agreement, dated on or after July 1, 2014 (the "Loan Agreement"), between the City and the Borrower. The Borrower proposes to apply the proceeds of the Loan to the payment of a portion of the costs of the acquisition and construction of the Project and related costs.

6. OBLIGATIONS OF THE CITY. Based on an opinion of Kennedy & Graven, Chartered, rendered to the City in its capacity as bond counsel to the City ("Bond Counsel"), the City acknowledges, finds, determines, and declares that the issuance of the Series 2014 Notes is authorized by the Housing Act and is consistent with the purposes of the Housing Act and that the issuance of the Series 2014 Notes, and the other actions of the City under the Loan Agreement and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Series 2014 Notes for the financing of the Project and related costs, the City's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing a multifamily housing development for low and moderate income residents of the City and otherwise furthering the purposes and policies of the Housing Act. The Series 2014 Notes will be issued pursuant to this resolution and the Series 2014 Notes and the interest on the Series 2014 Notes: (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance,

legal or equitable, upon any property of the City other than the City's interest in the Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.

7. **ISSUANCE OF THE SERIES 2014 NOTES.** For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Series 2014 Notes in the maximum aggregate principal amount not to exceed \$5,600,000. The Series 2014 Notes shall bear interest at the rates, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, shall be secured and payable from such sources and on such terms, and shall have such other terms, details, and provisions as are prescribed in the Series 2014 Notes, in the forms now on file with the City, with the amendments referenced herein. The City hereby authorizes the Series 2014 Notes to be issued as "tax-exempt bonds," the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes (subject to certain limitations described in the opinion of Bond Counsel). The Series 2014 Notes shall be special, limited obligations of the City payable solely from the revenues, assets, and other security provided by the Borrower and related parties pursuant to the terms of the Loan Agreement and other documents delivered by the Borrower and related parties to secure the timely payment of the principal of and interest on the Series 2014 Notes. The City Council of the City hereby authorizes and directs the Finance Officer to execute the Series 2014 Notes and hereby provides that the Series 2014 Notes shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Series 2014 Notes and the City as set forth therein.

All of the provisions of the Series 2014 Notes, when executed 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 forms of the Series 2014 Notes now on file with the City are hereby approved, with such necessary and appropriate variations, omissions, and insertions as the Finance Officer of the City, in his discretion, shall determine (including changes to the aggregate principal amount of each of the Series 2014 Notes (subject to an aggregate principal amount not to exceed \$5,600,000), the stated maturities of the Series 2014 Notes, the interest rates on the Series 2014 Notes, the terms of the security and the sources of payment for the Series 2014 Notes, and the terms of redemption of the Series 2014 Notes). The execution of the Series 2014 Notes with the manual or facsimile signature of the Finance Officer and the delivery of the Series 2014 Notes by the City shall be conclusive evidence of such determination.

8. **THE LOAN AGREEMENT.** The Finance Officer is hereby authorized and directed to execute and deliver the Loan Agreement. The loan repayments to be made by the Borrower under the Loan Agreement are to be fixed so as to produce revenues sufficient to pay the principal of, premium, if any, and interest on the Series 2014 Notes when due. All of the provisions of the Loan 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 Loan 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. In the discretion of the Finance Officer, with the approval of the City Attorney and Bond Counsel, a separate loan agreement may be prepared for each of the Series 2014 Notes in order to more conveniently and expeditiously provide for the separate security and sources of payment for each of the Series 2014 Notes. Each such loan

agreement shall be substantially in the form of the Loan Agreement with such amendments as the Finance Officer, in his discretion, shall determine, and the execution of each loan agreement by the Finance Officer shall be conclusive evidence of such determinations.

9. THE ASSIGNMENT. Except for certain reserved rights, the interests of the City in the Loan Agreement (or the separate loan agreements) will be assigned to the owner or owners of the Series 2014 Notes (individually or collectively, the "Lender") pursuant to the terms of an Assignment of Loan Agreement, dated on or after July 1, 2014 (the "Assignment"), between the City, the Borrower, and the Lender. The Assignment 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, or as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determinations. All of the provisions of the Assignment, 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. In the discretion of the Finance Officer, with the approval of the City Attorney and Bond Counsel, if separate loan agreements are prepared and executed with respect to each of the Series 2014 Notes in accordance with the terms of Section 8 hereof, a separate assignment of loan agreement may be prepared for each of such loan agreements in order to more conveniently and expeditiously provide for the assignment of the interests of the City in such loan agreements to each Lender for each of the Series 2014 Notes. Each such assignment of loan agreement shall be substantially in the form of the Assignment with such amendments as the Finance Officer, in his discretion, shall determine, and the execution of each assignment of loan agreement by the Finance Officer shall be conclusive evidence of such determinations.

10. SECURITY. The City hereby approves the execution by the Borrower and delivery to the Lender of: (i) one or more mortgage documents granting mortgage liens on the Project to the Lender; (ii) one or more collateral assignments of the contracts between the Borrower and the architect and contractor with respect to the Project; (iii) one or more environmental indemnity agreements; and (iv) other security documents that are intended to secure timely payment of the Loan and the Series 2014 Notes. If required by the Lender, the City hereby approves the execution and delivery by one or more guarantors to the Lender of one or more guaranty agreements pursuant to which the obligations of the Borrower under the Loan Agreement are guaranteed by such guarantors. To provide for the disbursement of the proceeds of the Series 2014 Notes and the Loan, the City hereby approves a disbursing agreement or master disbursing agreement, between the Borrower, the Lender, a disbursing agent to be selected by the Borrower and the Lender, and other parties providing loans or grants to the Project, . All such security documents shall be substantially in the forms agreed to by the Borrower, the Lender, and the guarantors. At the request of the Borrower, and for the sole purpose of obtaining an exemption from payment of the mortgage registry tax with respect to the Project, the City may accept a mortgage document granting a mortgage lien on the Project to the City but only if the City assigns its interest in the mortgage document to the Lender under the terms of an Assignment of Mortgage, dated on or after July 1, 2014, from the City to the Lender.

11. THE REGULATORY AGREEMENT. To ensure continuing compliance with certain rental and occupancy restrictions imposed by the Housing Act and Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), and to ensure continuing

compliance with certain restrictions imposed by the City, the Finance Officer is hereby authorized and directed to execute and deliver a Regulatory Agreement, dated on or after July 1, 2014 (the "Regulatory Agreement"), between the City, the Borrower, and the Lender. The 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, or as the Finance Officer, in his discretion, shall determine, and the execution thereof by the Finance Officer shall be conclusive evidence of such determinations. All of the provisions of the 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.

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 issuance, sale, and delivery of the Series 2014 Notes, including one or more consents to the assignments of a development agreement, tax increment revenues, and other funds made available to the Borrower and the Project by the City, a master subordination agreement among the City and the other parties providing loans and grants to the Project, a master disbursing agreement among the City and the other parties providing loans and grants to the Project, various certificates of the City, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, with respect to the Series 2014 Notes, a certificate as to arbitrage and rebate, and similar documents, and all other documents and certificates as the Finance Officer, in consultation with the City Attorney and Bond Counsel, shall deem to be necessary or appropriate in connection with the issuance, sale, and delivery of the Series 2014 Notes. The City hereby authorizes Bond Counsel to prepare, execute, and deliver its approving legal opinions with respect to the Series 2014 Notes.

13. DISCLOSURE DOCUMENTS. The City will not participate in the preparation of an official statement or other disclosure documents relating to the offer and sale of the Series 2014 Notes (the "Disclosure Documents"), and will make no independent investigation with respect to the information contained in the Disclosure Documents, including any appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. As a condition to the execution and delivery of the Series 2014 Notes, the Finance Officer may require the receipt from the Lender of an investment letter containing such terms, covenants, representations, and warranties as the Finance Officer, with the advice of the City Attorney and Bond Counsel, shall deem necessary or appropriate.

14. SUBSEQUENT AMENDMENTS. On any date subsequent to the date of issuance of the Series 2014 Notes, the Finance Officer is hereby authorized to execute and deliver any amendments or supplements to any of the documents referred to in this resolution on behalf of the City if, after review by the City Attorney and 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, upon consultation with the City Attorney and Bond Counsel, deems appropriate.

15. 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 Series 2014 Notes shall be personally liable on the Series 2014 Notes or be subject to any personal liability or accountability by reason of the issuance thereof. No provision, covenant, or agreement contained in the aforementioned documents, the Series 2014 Notes, or in any other document relating to the Series 2014 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, which are to be applied to the payment of the Series 2014 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 2014 Notes issued under the provisions of this resolution, 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, the Borrower, and the Lender from time to time of the Series 2014 Notes issued under the provisions of this resolution.

16. SEVERABILITY. In case any one or more of the provisions of this resolution (other than the provisions limiting the liability of the City with respect to the aforementioned documents or the Series 2014 Notes issued hereunder) 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, or of the Series 2014 Notes, but this resolution, the aforementioned documents, and the Series 2014 Notes shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

17. VALIDITY OF THE SERIES 2014 NOTES. The Series 2014 Notes, when executed and delivered, shall contain a recital that they are issued in accordance with the terms of the Housing Act, and such recital shall be conclusive evidence of the validity of the Series 2014 Notes and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Series 2014 Notes, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

18. ADDITIONAL ACTIONS. The officers of the City, the City Attorney, Bond Counsel, other attorneys, engineers, 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, the aforementioned documents, and the Series 2014 Notes, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Series 2014 Notes, the aforementioned documents, and this resolution.

19. DESIGNATION AS PROGRAM BONDS. The Series 2014 Notes are hereby designated "Program Bonds" and are determined to be within the "Housing Program" and the "Governmental Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 1997R-402 of the City adopted December 12, 1997.

20. FEES AND INDEMNIFICATION. The Borrower has agreed to pay the administrative fees of the City in accordance with the policy and procedures of the City. It is hereby determined that any and all costs incurred by the City in connection with the financing of the Project shall be paid by the Borrower. By the terms of the Loan Agreement, the Borrower has agreed that the Borrower shall indemnify the City against all liabilities, losses, damages, costs, and expenses (including attorney's fees and expenses incurred by the City) arising with respect to the Project or the Series 2014 Notes, as provided for and agreed to by and between the Borrower and the City in the Loan Agreement.

21. 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.