| REFERRED TO (NAME OF) COMMITTEE: |
| --- |
| DATE: |

# RESOLUTION
# of the
# CITY OF
# MINNEAPOLIS

By _____

Authorizing the issuance of notes, in a principal amount not to exceed $24,000,000, in the form of one or more series of Multifamily Housing Revenue Notes (Midtown Exchange Apartments Project), Series 2004, and approving and authorizing the execution of various documents in connection therewith.

WHEREAS, pursuant to the Minnesota Municipal Housing Act, Minnesota Statutes, Chapter 462C, as amended (the "Act"), a city is authorized to carry out programs for the financing of multifamily housing for persons of low and moderate income, and to authorize its housing and redevelopment authority to act on its behalf; and

WHEREAS, the City Council (the "City Council") of the City of Minneapolis (the "City") has prepared the Housing Plan for Local Housing for the City of Minneapolis, Minnesota, revised June, 1984 (the "Plan") which plan was adopted pursuant to the Act on July 13, 1984; and

WHEREAS, the Act requires adoption of a housing finance program after a public hearing held thereon for which notice was published in a newspaper of general circulation in the City at least fifteen (15) days in advance of the hearing; and

WHEREAS, there has been proposed a program (the "Program") for the issuance of notes to finance the acquisition and construction by Midtown Exchange Limited Partnership, a Minnesota limited partnership (the "Developer"), of a 223-unit multifamily rental housing development to be located at 2929 Chicago Avenue South in the City (the "Project"); and

WHEREAS, the City on June 8, 2004 and on November 9, 2004 did conduct a public hearing on the Program; and

WHEREAS, by Resolution 2004R-253 adopted June 18, 2004, and published on June 26, 2004, the City gave its preliminary approval to the issuance of up to $21,000,000 of bonds, now notes, to finance the Program; and

WHEREAS, the cost of the Project has increased and the number of units in the Project has decreased since the City gave its preliminary approval and approval of the Program; and

WHEREAS, the City has reserved up to $24,000,000 of its 2003 housing revenue bond entitlement authority for the notes; and

WHEREAS, the City desires to facilitate the development of rental housing within the community, encourage the preservation of affordable housing opportunities for residents of the City, encourage the preservation of housing facilities designed for occupancy by persons of low or

moderate income within the boundaries of the City, and the maintenance of affordable units in the Project would assist the City in achieving these objectives; and

WHEREAS, the Program will result in the provision of decent, safe and sanitary rental housing opportunities to persons within the community; and

WHEREAS, this City Council has been advised that conventional, commercial financing to pay the capital costs of the Program is available only on a limited basis and at such high costs of borrowing that the economic feasibility of operating the Project would be significantly reduced, but the City Council has been further advised that with the aid of municipal financing and resulting low borrowing costs, the Project is economically more feasible; and

WHEREAS, the staff of the City considers the proposed Program to be in furtherance of the housing policies of the State of Minnesota as stated in the Act and of the City as stated in the Plan; and

WHEREAS, the Program is to be financed from the proceeds of notes, in an aggregate amount not to exceed $24,000,000 in one or more series being in the form of Multifamily Housing Revenue Notes (Midtown Exchange Apartments Project), Series 2004 (the "Notes"), to be issued by the City, and the revenues from the Project (as defined below) shall be pledged for the security and payment of the Notes (except as may otherwise be set forth in the Pledge Agreement hereinafter referred to); and

WHEREAS, the Note proceeds will be used by the City to fund a loan (the "Loan") to the Developer to finance the acquisition and construction of the Project; and

WHEREAS, the Notes will be issued under this Resolution (the "Resolution"), and the proceeds of the Notes will be loaned to the Developer pursuant to a Loan Agreement, dated as of December 1, 2004 (the "Loan Agreement"), and the Notes will be secured by a pledge of all rights and revenues derived by the City from the Loan Agreement (except certain retained rights of the City), and said Notes and the interest on said Notes shall be payable solely from the revenues pledged therefor and the Notes shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation nor give rise to a pecuniary liability of the City or a charge against its general credit or assets and 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 Project; and

WHEREAS, forms of the following documents (including the exhibits referred to therein) have been submitted to the City:

a. The Loan Agreement to be made and entered into between the City and the Developer providing for the loan of the proceeds of the Notes to the Developer, and for the repayment of such loan;

b. The Pledge Agreement to be made and entered into between the City and U.S. Bank National Association (the "Lender"), pledging the City's right, title and interest in the Loan

Agreement as the security of the Notes, and setting forth proposed covenants and agreements with respect thereto;

c. The Regulatory Agreement, dated as of December 1, 2004 between the City, the Lender and the Developer (the "Regulatory Agreement"); and

d. The form of Note from the City to the Lender.

The agreements described and referred to in paragraphs a through d above shall hereinafter sometimes be referred to collectively as the "Agreements";

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF MINNEAPOLIS:

That it is hereby found, determined and declared that:

a. The preservation of the quality of life in the City is dependent upon the maintenance, provision and preservation of an adequate housing stock which is affordable to persons and families of low or moderate income, that accomplishing this is a public purpose, and that many would-be providers of housing units in the City are either unable to afford mortgage credit at present market rates of interest or are unable to obtain mortgage credit because the mortgage credit market is severely restricted.

b. The development and implementation of the Program, and the issuance and sale of the Notes by the City, and the execution and delivery of the Agreements and the performance of all covenants and agreements of the City contained therein and of all other acts and things required under the Constitution and Laws of the State of Minnesota to make the Agreements and the Notes valid and binding obligations of the City in accordance with their terms, are authorized by the Act.

c. The implementation of the Program for the purposes and in the manner contemplated by the Agreements conforms or will conform to all pertinent statutes, regulations and ordinances of the State of Minnesota and the City.

d. It is desirable that the Notes be issued by the City in one or more series, in an aggregate principal amount not to exceed $24,000,000, on the terms set forth in the Resolution, the Loan Agreement, the Pledge Agreement, the Regulatory Agreement and the Notes.

e. The payments required or provided for by the Agreements are intended to produce income and revenues sufficient to provide for the payment when due of principal of and interest on all Notes issued under the Resolution, and payments are required to be made for such expenses of, among other things, administration of the Program as will be necessary to protect the interests of the City and the Lender.

f. Pursuant to the provisions of the Act, and as provided in the Agreements, the Notes shall be retired solely from the revenues of the Project.

BE IT FURTHER RESOLVED, that the City hereby ratifies preliminary approval of the Notes in an amount not to exceed $24,000,000 and the number of units in the Project as 221.

BE IT FURTHER RESOLVED, that the City hereby amends the Program to (i) provide for the issuance of Notes to finance the Project in an amount not to exceed $24,000,000 (ii) reflect the number of units in the Project as 221.

BE IT FURTHER RESOLVED, that the Agreements in substantially the forms submitted to the City at this meeting are hereby approved. Such of the documents as require the execution of the City are hereby authorized and directed to be executed or accepted, as the case may be, and delivered in the name and on behalf of the City by its Finance Officer upon execution thereof by the parties thereto as appropriate. The Notes and the Agreements shall be executed and delivered as provided therein. Copies of all the documents necessary for the consummation of the transactions described herein and in the Agreements shall be delivered, filed and recorded as provided herein and in the Agreements.

BE IT FURTHER RESOLVED, that the form and terms of the Agreements may be varied prior to execution and delivery by the parties thereto, provided that any such variance shall not be, in the opinion of the City's legal counsel and the Finance Officer, materially adverse to the interests of the City. The execution and delivery of the Agreements as provided above shall be conclusive evidence of the determination that any such variance was not materially adverse to the interests of the City.

BE IT FURTHER RESOLVED, that in anticipation of the collection of revenues of the Project, there shall be issued forthwith the Notes, which issuance is approved, substantially in the forms and upon the terms set forth in the Agreements and the Notes, the terms of which are for this purpose incorporated in this Resolution and made a part hereof as if fully set forth herein. The Notes shall be dated as of the date and shall mature on the dates (subject to redemption on such earlier dates as provided in the Notes), bear interest and be payable at the rates, all determined as set forth in the Agreements and the Notes, to be approved, executed and delivered by the officers of the City authorized to do so by the provisions of this Resolution, which approval shall be conclusively evidenced by such execution and delivery; provided that such rates shall result in an average coupon rate not greater than 7.00% per annum.

BE IT FURTHER RESOLVED, that all actions of the members, employees and staff of the City heretofore taken in furtherance of the Program are hereby approved, ratified and confirmed.

BE IT FURTHER RESOLVED, that the Notes are hereby designated "Program Bonds" and are determined to be within the "Housing Program" and the "Program," all as defined in Resolution 88R-021 of the City adopted January 29, 1988, and as amended by Resolution 97R-402 of the City adopted December 12, 1997.

BE IT FURTHER RESOLVED, that the sale of said Notes to the Lender is hereby approved, and the Notes are hereby directed to be sold to the Lender, upon the terms and conditions set forth in the Agreements and the Notes. The Finance Officer of the City is hereby authorized and directed to prepare and execute by manual or facsimile signature the Notes as described in the Agreements and

to deliver them to the Lender together with a certified copy of this Resolution, and the other documents required by the Agreements.

BE IT FURTHER RESOLVED, that the Finance Officer and other officers of the City are authorized and directed to prepare and furnish when the Notes are issued, certified copies of all proceedings and records of the City relating to the Notes and such other affidavits and certificates (including but not limited to those required by bond counsel) as may be required to show the facts relating to the legality, tax exemption and marketability of the Notes as such facts appear from the books and records in said officers' custody and control or as otherwise known to them; and all such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute representations of the City as to the truth of all statements made by the City and contained therein. The Finance Officer and said officers are further authorized to execute such additional documents as shall be determined by the Finance Officer to be necessary and desirable to provide for the issuance of the Notes.

BE IT FURTHER RESOLVED, that all covenants, stipulations, obligations and agreements of the City contained in this Resolution and the aforementioned documents shall be deemed to be the covenants, stipulations, obligations and agreements of the City to the full extent authorized or permitted by law, and all such covenants, stipulations, obligations and agreements shall be binding upon the City. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the City by the provisions of this Resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the City, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

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, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Council nor any officer or employee executing the Notes shall be liable personally on the 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 Notes or in any other document related to the Notes, and no obligation therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to 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 Project, the proceeds of the Notes which are to be applied to the payment of the Notes, as provided therein and in the Agreements. The Notes shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property or funds of the City except the revenue and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon. The holders of the Notes shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal of the Notes, or the interest thereon, or to enforce payment thereof against any property of the City. The Notes shall recite in substance that the Notes, including the interest thereon, are payable solely from the revenues and

proceeds pledged to the payment thereof. The Notes shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

BE IT FURTHER RESOLVED, that 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 or any holder of the 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 provision 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 holder from time to time of the Notes issued under the provisions of this Resolution.

BE IT FURTHER RESOLVED, that in case any one or more provisions of this Resolution, or of the aforementioned documents, or of the 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 Notes, but this Resolution, the aforementioned documents, the Notes shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

BE IT FURTHER RESOLVED, that the Notes, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the 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 Notes and to the execution of the aforementioned documents to happen, exist and be performed precedent to and in the enactment of this Resolution, and precedent to issuance of the Bonds, and precedent to the execution of the aforementioned documents have happened, exist and have been performed as so required by law.

BE IT FURTHER RESOLVED, that in the event any of the officers of the City authorized to execute documents on behalf of the City under this resolution have resigned or shall for any reason be unable to do so, any member of the City, or officer of the City, is hereby directed and authorized to do so on behalf of the City, with the same effect as if executed by the officer authorized to do so in this Resolution.

BE IT FURTHER RESOLVED, that the City hereby allocates up to $24,000,000 of its 2003 entitlement authority to issue tax-exempt notes pursuant to Minnesota Statutes, Chapter 474A, to the Notes, the actual amount of such allocation to be in the aggregate principal amount of Notes issued.

BE IT FURTHER RESOLVED, that this Resolution shall take effect upon publication.

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Certified as an official action of the City Council:

| RECORD OF COUNCIL VOTE (X INDICATES VOTE) | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| COUNCIL MEMBER | AYE | NAY | NOT VOTING | ABSENT | VOTE TO OVERRIDE | VOTE TO SUSTAIN | COUNCIL MEMBER | AYE | NAY | NOT VOTING | ABSENT | VOTE TO OVERRIDE | VOTE TO SUSTAIN |
| President Ostrow | | | | | | | Goodman | | | | | | |
| | | | | | | | Lilligren | | | | | | |
| Zerby | | | | | | | Schiff | | | | | | |
| Samuels | | | | | | | Niziolek | | | | | | |
| Johnson | | | | | | | Benson | | | | | | |
| Johnson Lee | | | | | | | Colvin Roy | | | | | | |
| Zimmermann | | | | | | | Lane | | | | | | |

**PASSED** _____ DATE

☐ **APPROVED** ☐ **NOT APPROVED** ☐ **VETOED**

**ATTEST** _____ CITY CLERK

_____ MAYOR DATE

Motn Rev 02/03