

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

Date: March 23, 2010

To: Council Member Lisa Goodman, Chair, Community Development Committee

Subject: Nokomis Senior Assisted Living Project: Public Hearing on Final Approval of up to \$1,300,000 in Tax Exempt Multi-Family Housing Revenue Bonds

Recommendations: Adopt the attached City Council Resolution granting Final Approval of up to \$1,300,000 in Tax-Exempt Multi-Family Housing Revenue Bonds

Previous Directives: 1) In December, 2007, the City Council approved up to \$614,000 from the Affordable Housing Trust Fund (AHTF) for the Nokomis Senior Assisted Living Project; 2) On December, 2007, the City Council approved a Project Analysis Authorization (PAA) to continue analysis for possible TIF assistance and negotiate terms and conditions of a redevelopment contract with the developer; 3) In February, 2008, the City Council granted Preliminary Approval of up to \$13,000,000 in Tax-Exempt Multi-Family Housing Revenue Bonds; and 4) In April 2009, the City Council: a) adopted the Nokomis Senior Assisted Living Tax Increment Finance Plan and Redevelopment plan; b) authorized the issuance of a Limited Revenue Pay-As-You-Go Tax Increment Financing Note in a principal amount not to exceed \$728,200; c) approved the proposed redevelopment contract business terms; d) granted Final Approval of up to \$2,500,000 in Tax-Exempt Multi-Family Housing Revenue Bonds.

Prepared by: Jerry LePage, Senior Project Coordinator (612) 673-5240

Approved by: Charles T. Lutz, CPED Deputy Director _____

Thomas A. Streitz, Director of Housing Development _____

Presenter in Committee: Jerry LePage

Financial Impact

- The project will generate semi-annual administrative fees.

Community Impact

- Neighborhood Notification – The Standish Ericsson Neighborhood Association (SENA) has supported the developer’s proposal and has also been notified that this report is being considered by the City Council.
- City Goals: In five years, all Minneapolis residents will have a better quality of life and access to housing and services; residents will live in a healthy environment and benefit from healthy lifestyles; the city’s infrastructure will be well-maintained and people will feel safe in the city.
- Sustainability Targets: Affordable Housing Units – new/positive conversion.
- 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: On October 1, 2007, the City Planning Commission approved the developer’s land use application, and the re-zoning from R4 to OR2 was approved the City Council on November 2, 2007.
- Living Wage/Business Subsidy Agreement Yes _____ No X
- Job Linkage Yes _____ No X

- Other

Supporting Information

Covenire Care, LLC will be developing the Nokomis Senior Assisted Living project (now known as "Waters Senior Living of Minnehaha"), which will be located at 3733 23rd Avenue South. The site, which is adjacent to the 231-bed Providence Place Skilled Nursing Facility, is currently a parking lot that is owned by Providence Place and used by its guests and residents. The project is designed to complement the existing Providence Place facility. In February, Covenire secured its first mortgage loan from HUD, which was the last piece of its financing. Now that it has its HUD loan, the developer is asking for the City to "refresh" its action on April 10, 2009, granting final approval of the subordinate housing revenue bond financing. At this point, there is a possibility that the closing could occur a few days beyond the 1-year point. Bond Counsel is therefore recommending an updated Council action as a back up measure to ensure that there is no question about proper authorization if the closing occurs later in April.

Covenire Care is a joint venture consisting of the principals of Shelter Corporation and Tealwood Care Centers. Shelter Corporation, which was founded in 1993, is a Minneapolis-based corporation that finances, develops, owns, and manages multifamily and senior rental communities throughout the United States. Shelter Corporation is owned and operated by Lynn Carlson Schell, Jay Jensen, and Garret Carlson. Tealwood Care Centers Inc. was formed in 1989 by principals Howard Groff, Steve Harl, and Gail Sheridan, and manages eight health care campuses (nursing homes and assisted living), eleven nursing homes, and nine assisted living facilities. Covenire Care recently decided that it will be changing its name to "The Waters Senior Living" which will serve as a new unified brand for this project and its other senior projects in Minnesota.

The developer's vision for this location is to create a senior housing campus consisting of the existing Providence Place nursing facility and a new assisted living development adjacent to this facility. These two complementary buildings will offer seniors a "continuum of care" that will include a traditional nursing home, transitional care, memory support units, and other specialty care units. In its applications for public assistance, Covenire outlined the evolution of senior care over the last 20 years, the specialized nature of this business, and the challenging financial parameters involved in the development and management of senior facilities. A major challenge is the risk and unpredictability inherent in reliance upon insurance and government reimbursement programs for a significant portion of operating revenues. In this emerging environment, the developer indicates that it is following a new business model designed to meet the changing needs of the senior population, and thereby protecting its investment in current facilities and insuring long term return on its investment. A critical part of this strategy is the development of assisted living facilities.

The Waters Senior Living of Minnehaha project will include a total of 77 units: 63 assisted living units, seven memory support units, and seven care suites for seniors. Of the 77 units, 16 units (20%) will be for residents with incomes below 50% of MMI, in compliance with the City's Affordable Housing Policy. The project consists of the construction of a 4-story building with a brick exterior as the predominant material, and will include one level of underground heated parking (approximately 50 spaces) and 41 surface spaces. The new parking spaces will accommodate both the needs of the new development as well as the existing Providence Place facility. Studio and one bedroom floor plans will be available in

addition to the 14 memory support units and the private care suites. Each senior resident will live independently in their apartments and receive various levels of services depending on their need. Community amenities will include: a dining room (with three meals served daily), a parlor, a café, an activity room, a screen porch, an outdoor patio/courtyard, secure entries, and professionally designed and maintained landscaping and walking paths.

The development plan also includes a beauty salon, which would be open to the public as well as the residents. The salon will be on the corner of the development at 38th Street and 23rd Avenue. Covenire has positioned the beauty salon and the community rooms along this portion of the building in order to encourage activity and to create a pedestrian-friendly environment along 38th Street. These areas will feature store front windows, awnings, specialty lighting, and a separate entrance on 38th Street. It has worked closely with the Standish Ericsson Neighborhood Association (SENA) in developing this project. A site plan and elevations of the project are attached as **Exhibit 1**. A Project Data Worksheet is attached as **Exhibit 2**.

In terms of job creation, the developer estimates that the project will create 40 new full time jobs that will complement the existing 200 jobs at the Providence Place facility.

Financing Overview

The total development cost (TDC) of the Nokomis project is approximately \$15.5 million. In December, 2007, the City Council approved \$614,000 in deferred loan funding from the Affordable Housing Trust Fund (AHTF). In April 2009, the City Council approved redevelopment contract terms, adopted a Tax Increment Finance Plan and Redevelopment plan, and authorized the issuance of a Pay-Go TIF Note in a principal amount not to exceed \$728,200.

In April 2009, the City Council also granted Final Approval of up to \$2,500,000 in Tax Exempt Multi-Family Housing Revenue Bonds (HRB). However, since almost a year has passed since this HRB approval and HUD primary financing has now been secured and the project is ready to proceed, the developer has requested, on the advice of Bond Counsel, an updating of this Final Approval by the City Council at a reduced amount of \$1.3 million in order to ensure compliance with federal laws and regulations.

The developer's original plan was to use housing revenue bonds for both its primary and subordinated debt. However, due to the instability in the financial markets, the developer decided not to utilize tax exempt housing revenue bonds for its primary financing, but instead to submit an application for the HUD 232 program, which was recently approved. The project financing is therefore structured as follows:

- The primary financing will be in the form of a GNMA mortgage loan for \$12.07 million through HUD's Section 232 Loan Program for housing with services. The 232 Program provides mortgage insurance for the construction or rehabilitation of skilled nursing, intermediate care, board and care, assisted living and specialized use facilities. In February, 2010, HUD approved the developer's 232 loan application and issued a 60-day mortgage commitment. This mortgage assumes a 14-month construction period, followed by a 40-year mortgage loan amortization.
- The junior piece of the financing will be in the form of unrated, tax-exempt subordinated multifamily housing revenue bonds of up to \$1.3 million, with the exact

amount determined prior to closing. These subordinated housing revenue bonds will be based on a 41-year amortization term with an interest rate fixed at time of sale. Currently, the interest rate is estimated at 8.5%. A Pay-Go TIF note will support a portion of these subordinated bonds, and the rest will be supported by project revenues. The redevelopment contract terms approved by the City Council in April 2009 also provide for the recapture of this TIF assistance, predicated upon the receipt of a 15% Internal Rate of Return (IRR) on developer equity.

Covenire has also agreed to pay 1% interest to the City on its \$614,000 30-year deferred AHTF loan on annual basis from its cash flow. It has also made a commitment not to take a developer fee.

Housing Revenue Bond Information

The developer is requesting Final Approval for the issuance of up to \$1.3 million in tax-exempt housing revenue bonds from the City's 2008 entitlement allocation. Of this amount, a portion will be TIF-supported through the issuance of a pay-go TIF note of up to \$728,200, and the rest will be supported by project revenues. The bonds will be credit-enhanced under the HUD/FHA 232 insurance program for housing with services. Dougherty & Company has served as the underwriter of the project financing and also as the processor of the mortgage application to HUD.

The current status of the 2008 HRB Entitlement allocation is shown below:

2008 HRB Entitlement	\$59,272,000
Blue Goose project	\$ 2,832,089
Lyndale Green	\$ 7,500,000
Single Family	\$11,011,512
Nokomis Senior Assisted Living	\$ 1,300,000
2008 Entitlement Remaining	\$36,628,399

Bond Purchaser/Underwriter	Dougherty & Company
Bond Counsel	Gray Plant Mooty
Council Member Informed	Yes, Ward 9

Project Timetable

March/April 2010	Consideration of final housing revenue bond approval by the City Council
April 2010	Closing and construction start
Fall 2011	Construction completion

Resolution

of the

City of Minneapolis

Relating to the City of Minneapolis, Minnesota Subordinate Assisted Living Facility Revenue Bonds (Covenire Care Nokomis, LLC Project) Series 2010; authorizing the issuance thereof pursuant to Minnesota Statutes, Chapter 462C.

Be It Resolved by the City Council of the City of Minneapolis, Minnesota (the "City"), as follows:

Section 1. Definitions.

1.01. In this Resolution the following terms have the following respective meanings unless the context hereof or use herein clearly requires otherwise:

"Act" means Minnesota Statutes, Chapter 462C, as amended;

"Agreement" means the Subordinate Financing Agreement to be entered into among the City, the Trustee and the Borrower relating to the Bonds;

"Assignment of Mortgage" means the Assignment of Mortgage relating to the Bonds from the City to the Trustee;

"Bond Documents" means the Agreement, the Regulatory Agreement, the Indenture, the Bond Purchase Agreement and the Bonds;

"Bond Purchase Agreement" means the Bond Purchase Agreement with respect to the Bonds, by and between the City, the Borrower and Dougherty & Company LLC;

"Bonds" means the Subordinate Assisted Living Facility Revenue Bonds (Covenire Care Nokomis, LLC Project), Series 2010 to be issued by the City pursuant to this resolution in the aggregate principal amount of up to \$1,300,000;

"Borrower" means Covenire Care Nokomis, LLC, a Minnesota limited liability company, its successors and assigns;

"Indenture" means the Subordinate Trust Indenture to be entered into among the City and the Trustee relating to the Bonds;

"Project" means the assisted living facility to be financed with the proceeds of the Bonds, as further defined in the Agreement;

"Regulatory Agreement" means the Regulatory Agreement to be entered into among the City, the Trustee and the Borrower relating to the Project;

"Resolution" means this resolution of the City;

"Trustee" means U.S. Bank National Association, and its successors and assigns.

Section 2. Findings.

2.01. It is hereby found and declared that:

(a) based upon representations made to the City by representatives of the Borrower as to the nature of the Project as described in the Agreement, the Project constitutes a project authorized by the Act;

(b) the purpose of the Project is and the effect thereof is to promote the provision of decent, sanitary and safe housing accommodations for elderly persons;

(c) the financing of the Project, the issuance and sale of the Bonds, the execution and delivery of the Bond Documents and the performance of all covenants and agreements of the City contained in the Bond Documents and of all other acts and things required under the charter of the City and the Constitution and laws of the State of Minnesota to make the Bond Documents valid and binding obligations of the City in accordance with their terms are authorized by the Act;

(d) it is desirable that the Bonds be issued by the City upon the terms set forth herein and that the City pledge its interest in the Agreement and grant a security interest therein to the Trustee as security for the payment of the principal of, premium, if any, and interest on the Bonds;

(e) the loan payments contained in the Agreement are fixed and are required to be revised from time to time as necessary, so as to produce income and revenue sufficient

to provide for prompt payment of the principal of, premium, if any, and interest on the Bonds when due, and the Agreement also provides that the Borrower is required to pay all expenses of the operation and maintenance of the Project, including, but not limited to, adequate insurance thereon and all taxes and special assessments levied upon or with respect to the Project and payable during the term of the Agreement;

(f) under the provisions of the Act, the Bonds are not to be payable from nor charged upon any funds of the City other than the revenue pledged to the payment thereof; the City is not subject to any liability thereon; no holder of the Bonds shall ever have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon nor to enforce payment thereof against any property of the City; the Bonds, premium, if any, and interest thereon shall not constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory limitation and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers and shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City;

(g) the execution and delivery of the Bond Documents shall not conflict with or constitute, on the part of the City, a breach of or a default under any existing agreement, indenture, mortgage, lease or other instrument to which the City is subject or is a party or by which it is bound; provided that this finding is made solely for the purpose of estopping the City from denying the validity of the Bond Documents by reason of the existence of any facts contrary to this finding;

(h) no litigation is pending or, to the best knowledge of the members of this City Council, threatened against the City questioning the organization of the City or the right of any officer of the City to hold his or her office or in any manner questioning the right and power of the City to execute and deliver the Bonds or otherwise questioning the validity of the Bonds or the execution, delivery or validity of the Bond Documents or questioning the pledge of revenues to payment of the Bonds or the right of the City to loan the proceeds of the Bonds to the Borrower;

(i) all acts and things required under the Constitution and the laws of the State of Minnesota to make the Bond Documents the valid and binding obligations of the City in accordance with their terms shall have been done upon adoption of this Resolution and execution of the Documents; provided that this finding is made solely for the purpose of estopping the City from denying the validity of the Bond Documents by reason of the existence of any facts contrary to this finding; and

(j) the City is duly organized and existing under the Constitution and the laws of the State of Minnesota and is authorized to issue the Bonds in accordance with the Act.

Section 3. Authorization and Sale.

3.01. Authorization. The City is authorized by the Act to issue revenue bonds and loan the proceeds thereof to finance the acquisition, construction and installation of facilities

constituting a "multifamily housing development" as defined in the Act, and to make all contracts, execute all instruments and do all things necessary or convenient in the exercise of such authority.

3.02. Approval of Documents. Pursuant to the foregoing, there have been prepared copies of the following documents, all of which are now or shall be placed on file in the office of the Minneapolis Department of Community Planning and Economic Development:

- (a) the Agreement;
- (b) the Indenture (which includes the form of the Bonds);
- (c) the Regulatory Agreement;
- (d) the Bond Purchase Agreement; and
- (e) the Assignment of Mortgage.

The forms of the documents listed above are approved, with such variations, insertions and additions as are deemed appropriate by the parties and approved by the City.

Section 4. Authorizations.

4.01. Upon the completion of the Bond Documents approved in Section 3.02 hereof and the execution thereof by the other parties thereto, the Finance Officer (or Assistant Finance Officer) shall execute the same on behalf of the City, and the foregoing person and other officers of the City shall execute such other certifications, documents or instruments as bond counsel shall require, subject to the approval of the City, and all certifications, recitals and representations therein shall constitute the certificates, recitals and representations of the City. Execution of any instrument or document by one or more appropriate officers of the City shall constitute and shall be deemed the conclusive evidence of the approval and authorization by the City and the City Council of the instrument or document so executed.

4.02 The City has not participated in the preparation of the Preliminary Limited Offering Memorandum or the Limited Offering Memorandum relating to the offer and sale of the Bonds (collectively, the "Limited Offering Memorandum"), and has made no independent investigation with respect to the information contained therein, including the appendices thereto, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the City hereby consents to the distribution and the use by Dougherty & Company LLC of the Limited Offering Memorandum in connection with the sale of the Bonds. The Limited Offering Memorandum is the sole material consented to by the City for use in connection with the offer and sale of the Bonds.

Section 5. The Bonds.

5.01. Form and Authorized Amount. The Bonds shall be issued substantially in the form described above with such appropriate variations, omissions and insertions as are permitted or required by this Resolution. The terms of the Bonds are set forth therein, and such terms, including, but not limited to, provisions as to interest rate, dates and amount of payment of principal and interest and prepayment privileges, are incorporated by reference herein. The average weighted interest rate on the Bonds shall not exceed an annual rate of 11%, and the Bonds shall mature on or before December 31, 2051.

5.02. Execution. The Bonds shall be executed on behalf of the City by the persons described in Section 4.01 hereof. In case any officer whose signature shall appear on the Bonds shall cease to be such officer before the delivery thereof, such signature shall, nevertheless, be valid and sufficient for all purposes.

5.03. Delivery and Use of Proceeds. Prior to delivery of the Bonds, the documents referred to in Section 3.02 hereof shall be completed and executed in form and substance as approved by the City. The City shall thereupon deliver to the holder the Bonds together with a certified copy of this Resolution and such closing certificates as are required by bond counsel.

Section 6. Limitations of the City's Obligations.

6.01. Notwithstanding anything contained in the Bonds or the Bond Documents, the Bonds, premium, if any, and interest thereon shall not constitute an indebtedness of the City within the meaning of any constitutional, charter or statutory limitation and shall not constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers and shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City, and no holder of the Bonds shall ever have the right to compel any exercise of the taxing power of the City to pay the Bonds or the interest thereon or to enforce payment thereof against any property of the City. The agreement of the City to perform the covenants and other provisions contained in this Resolution or the Bond Documents shall be subject at all times to the availability of revenues furnished by the Borrower sufficient to pay all costs of such performance or the enforcement thereof, and neither the City nor any of its officers, employees or agents shall be subject to any personal or pecuniary liability thereon.

Section 7. City Representative.

7.01. The Finance Officer or Assistant Finance Officer of the City is hereby designated and authorized to act on behalf of the City for purposes of the Bond Documents.

Section 8. Governmental Program.

8.01. The Bonds are hereby designated as "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.