

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

Date: March 31, 2009

To: Council Member Lisa Goodman, Chair, Community Development Committee
Council Member Paul Ostrow, Chair, Ways & Means/Budget Committee

Subject: Nokomis Senior Assisted Living Project: Public Hearing on Proposed TIF Plan and Redevelopment Plan; Issuance of a Pay-Go TIF Note; Proposed Redevelopment Contract Terms; Final Approval of up to \$2,500,000 in Tax Exempt Multi-Family Housing Revenue Bonds

Recommendations: 1) approve the attached City Council Resolution adopting the Nokomis Senior Assisted Living Tax Increment Finance Plan and Redevelopment plan; 2) approve the attached City Council Resolution authorizing the issuance of a Limited Revenue Pay-As-You-Go Tax Increment Financing Note to Covenire Care, LLC in a principal amount not to exceed \$728,200; 3) approve the proposed redevelopment contract business terms as described in this report; 4) approve the attached Resolution giving Final Approval of up to \$2,500,000 in Tax-Exempt Multi-Family Housing Revenue Bonds; and 5) authorize the appropriate City officials to execute the redevelopment and loan agreements with Covenire Nokomis, LLC, or its affiliates, based on the terms contained in this report, and all other necessary documents related to the above recommended actions.

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; and 3) In February, 2008, the City Council granted Preliminary Approval of up to \$13,000,000 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 _____
Mark Winkelhake, Acting Director, Development Finance _____
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 Covenire’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 Covenire'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 is proposing the development of the Nokomis Senior Assisted Living housing project that will be located at 3717 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 Providence Place facility.

Covenire Care, LLC 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'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 outlines 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, Covenire 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 Nokomis Senior Assisted Living 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. In its original proposal, Covenire was assuming that 25 (32%) of the units would be affordable at 50% of MMI, which went beyond the minimum required by City policy. However, this number has since been modified based on additional financial analysis and research of the assisted living market.

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.

Covenire's 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. Covenire 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 estimated at \$15.6 million. In December, 2007, the City Council approved \$614,000 in deferred loan funding from the Affordable Housing Trust Fund (AHTF). In February, 2008, the City Council authorized staff to analyze Covenire's request for TIF assistance and also granted preliminary approval of up to \$13,000,000 in Tax Exempt Multi-Family Housing Revenue Bonds

At this time, staff is presenting the proposed TIF plan, the Pay-Go TIF assistance, and the redevelopment contract terms. The tax increment assistance will be in the form of a pay-go TIF note in a principal amount not to exceed \$728,200, through the creation of a housing tax increment district. As a TIF financing mechanism, Covenire Care plans to use the TI income stream to support additional project debt.

Covenire Care's original plan was to use housing revenue bonds for its primary and subordinated debt. However, due to the current instability in the financial markets, Covenire has decided not to utilize tax exempt housing revenue bonds for its primary financing but instead to structure the project financing as follows:

- The primary financing will be in the form of a GNMA mortgage loan estimated at \$11.1 million that will be issued pursuant to 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. 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 ranging from \$1,750,000 to \$2,500,000, with the final 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 9.25%. A Pay-Go TIF note of up to \$728,200 will support a portion of these bonds, and the rest will be supported by project revenues. In addition to required reserves and the pledge of surplus cash flow, Covenire will also be providing a corporate guaranty to cover any debt service shortfalls.

In order to use the 232 program, Covenire is required to follow HUD's new "LEAN" Guidelines which basically compress HUD's review and approval process. One of the reasons that HUD made this change was to transfer responsibility for processing of Section 232 loans from the local housing offices to the FHA Office of Insured Healthcare Facilities (OIHF) based in Washington. HUD's intent is to reduce the processing timeframes by creating a unified single-source for the program with standardized checklists, documents, industry standard third party report requirements, etc. making it more consistent and user-friendly for borrowers, lenders and operators.

While the LEAN rules are expected to greatly reduce processing timeframes, it also means that the preliminary review step has been eliminated and all documents must be provided in final form at the time of application submission since HUD's counsel will only begin document review at that time. As a consequence, the developer and CPED staff will probably not know the final terms of the HUD financing until the end of April or early May. Dougherty & Company will be serving as the underwriter of the project financing and will also be the processor of the mortgage application to HUD.

Covenire will be providing approximately \$1.5 million in equity, consisting of approximately \$300,000 in cash and \$1.2 million in the form of a corporate guaranteed bank loan. Covenire has also made a commitment not to take a developer fee. Covenire has indicated that assisted living projects are different from independent senior apartment buildings or typical affordable housing projects where the developer's return on equity (ROE) generally comes through up-front fees and proceeds upon sale. In this case, Covenire will realize much of its return in the form of management fees collected over time from project cash flow (ranging from 5% to 6% of revenue). An analysis of the developer's Sources & Uses and Projected Cash Flow Schedule, which was prepared City Development Finance staff, is attached as **Exhibit 3**.

Housing Revenue Bond Information

The developer is requesting the issuance of up to \$2,500,000 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 current status of the 2008 HRB Entitlement allocation is shown below:

2008 HRB Entitlement	\$59,272,000
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Blue Goose project	\$ 2,832,089
Nokomis Senior Assisted Living	\$ 2,500,000
2008 Entitlement Remaining	\$53,939,911

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

Proposed Redevelopment Contract Terms

1. Covenire Care will develop the Nokomis Senior Assisted Living project consisting of the following:
 - (a) A rental housing component with a total of 77 units, 63 of which will be assisted living units. These 77 units will consist of 7 studios, 53 one-bedroom units, 3 two-bedroom units, 7 care suites, and 7 memory support units. There will be 16 units (20%) that will be affordable for residents with incomes below 50% of MMI, in compliance with the City's Affordable Housing Policy. There will also be one level of underground heated parking (approximately 50 spaces) and 41 surface spaces.
 - (b) A commercial component that will include approximately 620 net square feet.
2. The City will issue up to \$2,500,000 in Tax Exempt Multi-Family Housing Revenue Bonds from the City's 2008 HRB Entitlement allocation as subordinated financing for the project. These bonds will be unrated and tax-exempt.
3. The City will provide TIF assistance in the form of a pay-go note in a principal amount not to exceed \$728,200.
4. The City will provide a 30-year deferred HOME loan of \$614,000 at 1% interest from the Affordable Housing Trust Fund (AHTF). The developer agrees to pay the interest on this loan to the City from its cash flow on an annual basis, beginning in 2012.

Since final HUD approval of the mortgage financing will not occur until late April or early May, the contract terms for the bonds and TIF assistance are expressed in "up-to" and "not to exceed" amounts. This is intended to provide some administrative latitude to fine tune these terms based on City staff's analysis of the final terms of the HUD approval.

Project Timetable

April 2009	Consideration of redevelopment contract business terms, the creation of the Redevelopment Project and Housing TIF District, and final housing revenue bond approval by the City Council
April 2009	Developer submission of application for HUD/FHA 232 financing
April/May 2009	HUD financing approval
May-July 2009	Closing and construction start

**Resolution
of the
City of Minneapolis**

By Goodman and Ostrow

Authorizing the issuance of a tax increment limited revenue note in substantially the form recited herein in a principal amount not exceeding \$728,200 in connection with the Nokomis Senior Assisted Living Project.

Whereas, the City of Minneapolis (the "City"), acting pursuant to Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31-34, and Minneapolis Code of Ordinances, Chapter 415, has certain powers, including without limitation the powers set forth in Minnesota Statutes, Sections 469.001 through 469.047, as amended (the "HRA Act"), and Minnesota Statutes, Sections 469.174 through 469.179, as amended (the "TIF Act"); and

Whereas, in furtherance of the objectives of the HRA Act, the City has undertaken programs for the clearance and reconstruction or rehabilitation of blighted, deteriorated, deteriorating, vacant, unused, underused or inappropriately used, areas of the City, and the development of housing for persons of low and moderate incomes, and in this connection the City will carry out a redevelopment project known as the Nokomis Senior Assisted Living Redevelopment Project (the "Project") pursuant to the Nokomis Senior Assisted Living Redevelopment Plan, which will be adopted April 10, 2009 (the "Redevelopment Plan"); and

Whereas, in furtherance of the Redevelopment Plan, the City also is creating a housing tax increment district pursuant to the Nokomis Senior Assisted Living Tax Increment Financing Plan, which will be adopted April 10, 2009 (the "TIF Plan"); and

Whereas, pursuant to the TIF Act, and specifically Minnesota Statutes, Section 469.178, subd. 4, the City is authorized to issue its tax increment limited revenue note(s) to finance the public redevelopment costs of the Project as further described in Minnesota Statutes, Sections 469.176, subd. 4; and

Whereas, the City has entered or will enter into a redevelopment contract (the "Redevelopment Contract") with Covenire Care Nokomis, LLC, a Minnesota limited liability company (the "Developer"), pursuant to which the City will provide tax increment financing assistance and the Developer will develop a 77-unit rental housing facility with assisted living and memory care services, a small commercial component, and related site and public improvements;

Now, Therefore, Be It Resolved by The City Council of The City of Minneapolis:

1. That it is desirable that the City issue a tax increment limited revenue note (the "Note") in substantially the following form:

[Form of Note]
**UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF HENNEPIN
CITY OF MINNEAPOLIS**

**TAX INCREMENT LIMITED REVENUE NOTE
(Nokomis Senior Assisted Living Project)**

The City of Minneapolis (the "City"), hereby acknowledges itself to be obligated and, for value received, promises to pay to the order of Covenire Care Nokomis, LLC, a Minnesota limited liability company (the "Developer"), solely from the source, to the extent and in the manner hereinafter provided, the principal amount of this Note, being Seven Hundred Twenty-eight Thousand Two Hundred and No/100 Dollars (\$728,200) or such lesser amount as may equal the Public Redevelopment Costs, with interest at the Note Rate, in the installments specified in this Note, on the Payment Dates.

Capitalized terms not defined elsewhere in this Note shall have the meanings below:

"Available Tax Increment" means the Tax Increment received by the City during the period preceding each Payment Date, less (i) the amount of Tax Increment, if any, which the City must pay to the school district, the county and the state pursuant to *Minnesota Statutes*, Sections 469.177, Subds. 9, 10, and 11; 469.176, Subd. 4h; and 469.175, Subd. 1a, as the same may be amended from time to time; and (ii) actual administrative costs of the City in an amount not to exceed 10% of the Tax Increment.

"Contract" means that certain Redevelopment Contract by and between the City and the Developer dated *[insert date]*, 2009.

"District" means the Nokomis Senior Assisted Living Tax Increment Financing District within the Project.

"Maturity Date" means the earlier of (i) February 1 of the year following the final year of Tax Increment collection from the District; and (ii) the date when the principal and interest amount of this Note has been paid in full.

"Minimum Improvements" means new construction of a 77-unit rental housing facility with assisted living and memory care services, approximately 620 square feet of commercial space, and related parking and site improvements as further described in the Contract.

"Note Rate" means 7.75% annual interest, compounded semi-annually.

"Payment Date" means August 1 of the year of first increment collection from the District and each August 1 and February 1 thereafter until the Maturity Date.

"Project" means the Nokomis Senior Assisted Living Redevelopment Project.

"Property" means the real property legally described in the attached **Exhibit A**.

"Public Redevelopment Costs" means actual Public Redevelopment Costs as defined in and approved pursuant to the Contract.

"Public Redevelopment Costs Certification" means a certificate in substantially the form attached to the Contract, by which the City certifies the Public Redevelopment Costs pursuant to the terms of the Contract.

"Tax Increment" means that portion of the property taxes generated by the Property and Minimum Improvements that is actually remitted to the City as tax increment under the Tax Increment Act.

"Tax Increment Act" means *Minnesota Statutes*, Section 469.174-469.179, as amended, or any successor statutes applicable to the District.

On each Payment Date, the City shall pay the Developer an installment equal to the lesser of (i) the Available Tax Increment or (ii) the amount necessary to pay the accrued unpaid interest and the

unpaid principal amount of this Note in full. If before the issuance of the Certificate of Completion (as defined in the Contract) the Developer defaults under the Contract and such default has not been cured within the time period provided in the Contract, then the City may suspend payment on this Note until the default is cured or the Contract and the City's obligations under this Note are terminated. If the City suspends payments due under the Note, the City shall make the suspended payments to the Developer within five (5) business days after the Developer has cured the default. The City is not obligated to pay interest on the amount of the suspended payments between the date the payment is suspended and the last date on which the City is obligated to make the suspended payments to the Developer.

If all or a portion of the property taxes due and owing on the Minimum Improvements are not paid, then upon such failure to pay, no interest as required by the Note shall accrue on an amount equal to the amount of the Available Tax Increment that would have been paid to the City had such property tax amounts been paid.

Interest shall accrue on the initial principal amount of this Note from the date of issue of the Public Redevelopment Costs Certification. Each payment under this Note, whether a scheduled payment or any other payment, shall be applied first to current interest, then to accrued unpaid interest and then to the unpaid principal amount of this Note.

On the Maturity Date, this Note shall be deemed paid in full and the City shall have no further obligation under this Note even if the aggregate of the Available Tax Increment that has actually been paid to the Developer on the Payment Dates is less than the full principal and interest amount of this Note. The obligation of the City to make any scheduled payment shall terminate if and to the extent that the full principal and interest amount of this Note has been paid in full. This Note may be prepaid in full or in part at any time without penalty.

Each payment on this Note is payable in any coin or currency of the United States of America which on the date of such payment is legal tender for public and private debts and shall be made by wire transfer pursuant to written wire instructions provided by the Developer or by check or draft made payable to the Developer and mailed to the Developer at 1600 Hopkins Crossroad, Minneapolis, Minnesota 55305, or such other address as the Developer shall provide in writing to the City's notice address as set forth in the Contract.

The Note is a special and limited obligation and not a general obligation of the City, which has been issued by the City pursuant to and in full conformity with the Constitution and laws of the State of Minnesota, including *Minnesota Statutes*, Section 469.178, subdivision 4, to aid in financing a "project", as therein defined, of the City consisting generally of defraying certain public redevelopment costs incurred by the Developer within and for the benefit of the Project.

THE NOTE IS NOT A DEBT OF THE STATE OF MINNESOTA (THE "STATE"), OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY OF MINNEAPOLIS, MINNESOTA, EXCEPT THAT THE CITY SHALL BE OBLIGATED TO MAKE PAYMENTS FROM AVAILABLE TAX INCREMENT AS SET FORTH HEREIN, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING THE CITY, SHALL BE LIABLE ON THE NOTE, EXCEPT FOR THE CITY'S OBLIGATION TO MAKE PAYMENTS FROM AVAILABLE TAX INCREMENT AS SET FORTH HEREIN, NOR SHALL THE NOTE BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN AVAILABLE TAX INCREMENT AS SET FORTH HEREIN.

This Note shall not be transferred to any person, unless the City has been provided with an opinion of counsel acceptable to the City that such transfer is exempt from registration and official statement delivery requirements of federal and applicable state securities law and an investment letter reasonably acceptable to the City.

This Note shall not be payable from or constitute a charge upon any funds of the City, and the City shall not be subject to any liability hereon or be deemed to have obligated itself to pay hereon from any funds except the Available Tax Increment, and then only to the extent and in the manner herein specified.

The Developer shall never have or be deemed to have the right to compel any exercise of any taxing power of the City or of any other public body, and neither the City nor any person executing or registering this Note shall be liable personally hereon by reason of the issuance of registration thereof or otherwise.

IT IS HEREBY CERTIFIED AND RECITED that all acts, conditions and things required by the Constitution and the laws of the State of Minnesota to be done, to have happened, and to be performed precedent to and in the issuance of this Note have been done, have happened, and have been performed in regular and due form, time, and manner as required by law; that this Note is issued pursuant to the Tax Increment Act; and that this Note together with all other indebtedness of the City outstanding on the date hereof and on the date of its actual issuance and delivery, does not cause the indebtedness of the City to exceed any constitutional or statutory limitation thereon.

IN WITNESS WHEREOF, the City of Minneapolis, by action of its Mayor and City Council, has caused this Note to be executed by the manual signature of its Finance Officer, and has caused this Note to be dated _____, 200__.

CITY OF MINNEAPOLIS

By _____

Patrick Born

Its Finance Officer
Approved as to form:

Assistant City Attorney

EXHIBIT A TO NOTE

3733 23rd Avenue South
(PIN 01 028 24 34 0176)

Metes & Bounds:

LOTS 13 THRU 18 INCLUSIVE BLOCK 2
MARBLES ADDITION TO MINNEAPOLIS
ACCORDING TO THE RECORDED PLAT
THEREOF AND SITUATE IN HENNEPIN COUNTY

2. Be It Further Resolved that the form of the Note is hereby approved and shall be executed by the Finance Officer in substantially the form on file, with such changes therein not inconsistent with law as the Finance Officer may approve, which approval shall be conclusively evidenced by the execution thereof.

3. Be It Further Resolved that all actions of the members, employees and staff of the City heretofore taken in furtherance of the issuance of the Note are hereby approved, ratified and confirmed.

4. Be It Further Resolved that the sale of said Note to the Developer is hereby approved, and the Note is hereby directed to be sold to the Developer, upon the terms and conditions set forth in the Redevelopment Contract.

5. Be It Further Resolved that the Finance Officer is hereby authorized and directed to execute such other documents, agreements and certificates as may be required in connection with the Note.

6. Be It Further Resolved that no provision, covenant or agreement contained in the aforementioned documents, the Note or in any other document related to the Note, 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 tax increment revenues which are to be applied to the payment of the Note, as provided therein and in the Redevelopment Contract. The Note shall not constitute a charge, lien or encumbrance, legal or equitable upon any property or funds of the City except that revenue and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon. The holders of the Note shall never have the right to compel any exercise of the taxing power of the City to pay the outstanding principal on the Note or the interest thereon, or to enforce payment hereon against any property of the City. The Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation.

7. Be It Further Resolved that the Note, when executed and delivered, shall contain a recital that it is issued pursuant to the TIF Act, and such recital shall be conclusive evidence of the validity of the Note 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 Note 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 Note and precedent to the execution of the aforementioned documents have happened, exist and have been performed as so required by law.

8. Be It Further Resolved that this resolution shall be in full force and effect from and after its date of publication.

**RESOLUTION
OF THE
CITY OF MINNEAPOLIS**

By Goodman and Ostrow

Adopting the Nokomis Senior Assisted Living Redevelopment Plan and the Nokomis Senior Assisted Living Tax Increment Financing Plan.

Resolved by the City Council of the City of Minneapolis:

Section 1. Recitals

1.1. Pursuant to Laws of Minnesota 2003, Chapter 127, Article 12, Sections 31-34, and Minneapolis Code of Ordinances, Chapter 415, the City of Minneapolis (the "City"), acting by and through its department of Community Planning and Economic Development, has been granted the authority to propose and implement city development districts, housing and redevelopment projects and tax increment financing ("TIF") districts, all pursuant to Minnesota Statutes, Sections 469.001 through 469.134, and 469.174 through 469.179, as amended, and other laws enumerated therein (collectively, the "Project Laws").

1.2. It has been proposed and the City has caused to be prepared, and this Council has investigated the facts with respect to, the proposed Nokomis Senior Assisted Living Redevelopment Plan and the proposed Nokomis Senior Assisted Living Tax Increment Financing Plan (collectively, the "Plans"). The Plans create a new redevelopment project and housing TIF district. The Plans designate property to be included within the Project Area and the TIF district, indicate land uses, and identify a budget for expenditures, all pursuant to and in accordance with the Project Laws.

1.3. The City has performed all actions required by law to be performed prior to the adoption of the Plans, including, but not limited to, a review of the proposed Plans by the affected neighborhood group and the City Planning Commission, transmittal of the proposed Plans to the Hennepin County Board of Commissioners and the School Board of Special School District No 1 for their review and comment, and the holding of a public hearing upon published notice as required by law.

1.4. The Council hereby determines that it is necessary and in the best interests of the City at this time to approve the Plans.

Section 2. Findings for the Adoption of the Plans

2.1 The Council hereby finds, determines and declares that the objectives and actions authorized by the Plans are all pursuant to and in accordance with the Project Laws.

2.2. The Council hereby finds, determines and declares that the Plans conform to the general plan for the development or redevelopment of the city as a whole.

2.3. The Council further finds, determines and declares that the Plans will afford maximum opportunity, consistent with the sound needs of the city as a whole, for the redevelopment of the Project Area and TIF District by private enterprise.

2.4. The Council further finds, determines and declares that the land in the Project Area and TIF District would not be made available for redevelopment without the financial aid to be sought.

2.5. The Council further finds, determines and declares that the Nokomis Senior Assisted Living TIF District is a housing district pursuant to Minnesota Statutes, Section 469.174, Subdivision 11, and 469.1761, Subdivisions 1 and 3.

2.6. The Council further finds, determines and declares that the proposed development would not reasonably be expected to occur solely through private investment within the reasonably foreseeable future.

2.7. The Council further finds, determines and declares that the increased market value of the site that could reasonably be expected to occur without the use of tax increment financing would be less than the increase in the market value estimated to result from the proposed development after subtracting the present value of the projected tax increment for the maximum duration of the district permitted by the TIF plan.

2.8. The Council further finds, determines and declares that the reasons and facts supporting the findings in this resolution are described in the Plans.

2.9. The Council further elects the method of computation provided in Minnesota Statutes, Section 469.177, Subdivision 3, Paragraph (a). The Council acknowledges that, by making this election, the entire fiscal disparity contribution required of the City for development occurring within this district will be taken from outside the Nokomis Senior Assisted Living TIF District.

Section 3. Approval of the Plans

3.1. Based upon the findings set forth in Section 2 hereof, the Plans presented to the Council on this date are hereby approved and shall be placed on file in the office of the City Clerk.

Section 4. Implementation of the Plans

4.1. After passage and publication of this Resolution, the officers and staff of the City and the City's consultants and counsel are authorized and directed to proceed with the implementation of the Plans, and for this purpose to negotiate, draft, prepare and present to this Council for its consideration, as appropriate, all further modifications, plans, resolutions, documents and contracts necessary for this purpose.

4.2. As provided under Minnesota Statutes, Section 469.1781, Subdivision 7, this Council hereby authorizes the advance of revenues from other available development revenues of the City in the principal amount needed to offset any negative fund balances incurred with respect to this District as a result of expenditures incurred prior to or in excess of the collection of tax increment revenue. The interest rate paid on such advances shall be equal to the rate of interest those revenues would have generated in their fund. The term of this advance shall end upon the termination of the District, although as revenues are available in the fund for the District, the advance shall be offset by such amounts.

**Resolution
of the
City of Minneapolis**

By Goodman and Ostrow

Relating to the City of Minneapolis, Minnesota Subordinate Assisted Living Facility Revenue Bonds (Covenire Care Nokomis, LLC Project) Series 2009; 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;

"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 2009 to be issued by the City pursuant to this resolution in the aggregate principal amount of up to \$2,500,000;

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

"Indenture" means the Subordinate Indenture of Trust 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; and

(d) the Bond Purchase Agreement.

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 Official Statement or the Official Statement relating to the offer and sale of the Bonds (collectively, the "Official Statement"), 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 Official Statement in connection with the sale of the Bonds. The Official Statement 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.