

**Resolution authorizing the issuance and sale of the \$1,420,000 Multifamily Housing Revenue Note Series 2006 (Whittier Townhomes Project)**

RESOLVED by The City Council of the City of Minneapolis:

**Section 1. Findings.**

The City Council has heretofore determined, and does hereby determine, as follows:

**1.1.** The City proposes to assist in financing the acquisition and renovation of 12 two-story multifamily rental townhome units located at 333 East 25<sup>th</sup> Street and 2738 Stevens Avenue South in the City (the "Project") issued for the benefit of Minnesota Leased Housing Associates I, LP, a Minnesota limited partnership (the "Borrower") and to enter into a Loan Agreement with the Borrower (the "Loan Agreement") to provide for repayment of the Note for the public purposes expressed in Minnesota Statutes, Chapter 462C, as amended;

**1.2.** In authorizing the financing of the Project the City's purpose is, and in its judgment the effect thereof will be, to promote the public welfare by providing affordable housing facilities in the community;

**1.3.** It is desirable to issue one or more Multifamily Housing Revenue Notes, Series 2006 (Whittier Townhomes Project) in the aggregate amount not to exceed \$1,420,000 (collectively the "Note") to finance the Project; and

**1.4.** The Note and the interest accruing thereon do not constitute an indebtedness of the City within the meaning of any constitutional or statutory limitation and do not constitute or give rise to a pecuniary liability or a charge against the general credit or taxing powers of the City and neither the full faith and credit nor the taxing powers of the City is pledged for the payment of the Note or interest thereon.

**Section 2. The Note.**

**2.1. Authorized Amount and Form of Note.** The Note issued pursuant to this Resolution shall be in substantially the form set forth on Exhibit A to the Loan Agreement, with such appropriate variations, omissions and insertions as are permitted or required by this Resolution, and in accordance with the further provisions hereof; and the total principal amount of the Note that may be outstanding hereunder is expressly limited to \$1,420,000 unless a duplicate Note is issued pursuant to Section 2.7.

**2.2. The Note.** The Note shall be dated as of the date of delivery, shall be payable at the time and in the manner, shall bear interest at the rate, and shall be subject to such other terms and conditions as are set forth therein; provided that in no event shall the final maturity date of the Note be longer than December 31, 2036 and the interest rate shall not exceed eight percent (8%) per annum.

**2.3. Execution.** The Note shall be executed on behalf of the City by the signature of its Finance Officer, registered by the Finance Officer, and shall be sealed with the seal of the City. In case any officer whose signature shall appear on the Note shall cease to be such officer before

the delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if it had remained in office until delivery. In the event of the absence or disability of the Finance Officer such officers of the City as, in the opinion of the City Attorney, may act in their behalf, shall without further act or authorization of the City Council execute and deliver the Note.

**2.4. Delivery of Note.** Before delivery of the Note there shall be filed with U.S. Bank National Association (the "Lender") (except to the extent waived by the Lender) the following items:

- (a) an executed copy of each of the following documents:
  - (1) the Loan Agreement;
  - (2) the Pledge Agreement between the City and Lender (the "Pledge Agreement");
  - (3) the Mortgage, Security Agreement, Assignment of Rents and Leases and Fixture Financing Statement (the "Mortgage");
  - (4) the Regulatory Agreement among the City, the Borrower and the Lender (the "Amendment"); and
  - (5) such other security and disbursing documents as required by the Lender.
- (b) an opinion of Counsel for the Borrower as prescribed by Bond Counsel and the Lender;
- (c) the opinion of Bond Counsel as to the validity and tax exempt status of the Note; and
- (d) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (c) above or that the purchasers may reasonably require for the closing.

**2.5. Disposition of Note Proceeds.** Upon delivery of the Note, the purchase price paid will be disbursed in accordance with the Disbursing Agreement between the Borrower and the Lender.

**2.6. Registration of Transfer.** The City will cause to be kept with the transcript of the documents relating to the Note a Note Register in which, subject to such reasonable regulations as it may prescribe, the City shall provide for the registration of transfers of ownership of the Note. The Note shall be initially registered in the name of the original purchaser and shall be transferable upon the Note Register by the holders in person or by an agent duly authorized in writing, upon surrender of a Note together with a written instrument of transfer satisfactory to the Finance Officer, duly executed by the holder or its duly authorized agent. The following form of assignment shall be sufficient for such purpose.

For value received \_\_\_\_\_ hereby sells, assigns and transfers unto \_\_\_\_\_ the within Note of the City of Minneapolis, Minnesota, and does hereby irrevocably constitute and appoint \_\_\_\_\_ attorney to transfer such Note on the books of such City with full power of substitution in the premises. The undersigned certifies that the transfer be made in accordance with the provisions of Section 2.9 of the Resolution relating to the above Note.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Registered Owner

Upon such transfer the Finance Officer shall note the date of registration and the name and address of the new holder in the Note Register and in the registration blank appearing on the Note.

**2.7. Mutilated, Lost or Destroyed Note.** In case the Note issued hereunder shall become mutilated or be destroyed or lost, the City shall, if not then prohibited by law, cause to be executed and delivered, a new Note of like outstanding principal amount, number and tenor in exchange and substitution for and upon cancellation of such mutilated Note, or in lieu of and in substitution for such Note destroyed or lost, upon the holder's paying the reasonable expenses and charges of the City in connection therewith, and in the case of a Note destroyed or lost, the filing with the City of evidence satisfactory to the City with indemnity satisfactory to it. If the mutilated, destroyed or lost Note has already matured or been called for redemption in accordance with its terms it shall not be necessary to issue a new Note prior to payment.

**2.8. Ownership of Note.** The City may deem and treat the person in whose name the Note is last registered in the Note Register and by notation on the Note whether or not such Note shall be overdue, as the absolute owner of such Note for the purpose of receiving payment of or on account of the principal balance, redemption price or interest and for all other purposes whatsoever, and the City shall not be affected by any notice to the contrary.

**2.9. Limitation on Note Transfers.** The Note has been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or part, nor may a participation interest in the Note be given pursuant to any participation agreement, except in accordance with an applicable exemption from such registration requirements.

**2.10. Issuance of New Note.** Subject to the provisions of Section 2.9, the City shall, at the request and expense of a holder, issue a new note, in aggregate outstanding principal amount equal to that of the Note surrendered, and of like tenor except as to number, principal amount, and the amount of the monthly installments payable thereunder, and registered in the name of the holder or such transferee as may be designated by the holder.

**2.11. Designation as "Program Bonds."** The Note is hereby designated "Program Bonds" and are determined to be within the "Economic Development 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 August 12, 1997.

### **Section 3. General Covenants.**

**3.1. Payment of Principal and Interest.** The City covenants that it will promptly pay or cause to be paid the principal of and interest on the Note at the place, on the dates, solely from the source and in the manner provided herein and in the Note. The principal and interest are payable solely from and secured by revenues and proceeds derived from the Loan Agreement, the Pledge Agreement, the Mortgage and the other security documents required by the Lender (the "Security Documents"), which revenues and proceeds are hereby specifically pledged to the payment thereof in the manner and to the extent specified in the Note and the Security Documents; and nothing in the Note or in this Resolution shall be considered as assigning, pledging or otherwise encumbering any other funds or assets of the City.

**3.2. Performance of Covenants.** The City covenants that it will faithfully perform at all times any and all covenants, undertakings, stipulations and provisions contained in this Resolution, in the Note and in all proceedings of the City Council pertaining thereto. The City agrees to enforce all covenants and obligations of the Borrower under the Loan Agreement, upon request of the holders of the Note and being indemnified to the satisfaction of the City for all expenses and claims arising therefrom, and to perform all covenants and other provisions pertaining to the City contained in the Note and the Loan Agreement and subject to Section 3.4.

**3.3. Nature of Security.** Notwithstanding anything contained in the Note, the Security Documents or any other document referred to in Section 2.4 to the contrary, under the provisions of the Act the Note may not be payable from or be a charge upon any funds of the City other than the revenues and proceeds pledged to the payment thereof, nor shall the City be subject to any liability thereon, nor shall the Note otherwise contribute or give rise to a pecuniary liability of the City or, to the extent permitted by law, any of the City's officers, employees and agents. No holder of the Note shall ever have the right to compel any exercise of the taxing power of the City to pay the Note or the interest thereon, or to enforce payment thereof against any property of the City other than the revenues pledged under the Pledge Agreement; and the Note shall not constitute a charge, lien or encumbrance, legal or equitable, upon any property of the City; and the Note shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation. The City has made the covenants and agreements herein for the benefit of the purchaser; provided that in any event, the agreement of the City to perform or enforce the covenants and other provisions contained in the Note, the Loan Agreement, the Pledge Agreement and Regulatory Agreement shall be subject at all times to the availability of revenues under the Loan Agreement 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 4. Miscellaneous.**

**4.1. Severability.** If any provision of this Resolution shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions or in all cases because it conflicts with any provisions of

any constitution or statute or rule or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs in this Resolution contained shall not affect the remaining portions of this Resolution or any part thereof.

**4.2. Authentication of Transcript.** The officers of the City are directed to furnish to Bond Counsel certified copies of this Resolution and all documents referred to herein, and affidavits or certificates as to all other matters which are reasonably necessary to evidence the validity of the Note. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the City as to the correctness of all statements contained therein.

**4.3. Authorization to Execute Agreements.** The forms of the proposed Loan Agreement, the Pledge Agreement, Mortgage and Regulatory Agreement are hereby approved in substantially the form heretofore presented to the City Council, together with such additional details therein as may be necessary and appropriate and such modifications thereof, deletions therefrom and additions thereto as may be necessary and appropriate and approved by Bond Counsel prior to the execution of the documents, and the Finance Officer is authorized to execute the Loan Agreement, the Pledge Agreement, Mortgage and Regulatory Agreement in the name of and on behalf of the City and such other documents as Bond Counsel consider appropriate in connection with the issuance of the Note. In the event of the absence or disability of the Finance Officer such officers of the City as, in the opinion of the City Attorney, may act in his behalf, shall without further act or authorization of the City Council do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers. The execution of any instrument by the appropriate officer or officers of the City herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof.

Be It Further Resolved that this Resolution shall take effect upon publication.