

PROPOSED RESOLUTION

Adopting Modification No 2 to the Grant Park (formerly The Towers at Elliot Park) Tax Increment Finance (TIF) 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 On June 9, 2000, by Resolution No 2000R-256, the Minneapolis City Council (the "Council") approved the Towers at Elliot Park Redevelopment Plan, and The Towers at Elliot Park TIF Plan, Modification No 7 to the Elliot Park Redevelopment Plan, and Modification No 70 to the Common Plans, all pursuant to and in accordance with the Project Laws.
- 1.3 On July 12, 2002, by Resolution No 2002R-237, the Council approved Modification No 1 to the Grant Park (formerly the Towers at Elliot Park) TIF Plan, which Modification updated sections of the TIF plan to reflect the most current information available regarding the proposed development in the TIF district and the use of TIF for public project costs, including the name, size, scope and financing method, all pursuant to and in accordance with the Project Laws.
- 1.4 The City has prepared, and this Council has examined the proposed Modification No 2 to the Grant Park TIF Plan (the "Modification") that updates sections of the TIF Plan to reflect the most current information regarding the use of tax increment financing for paying public project costs and the maximum bonded indebtedness that the City may incur for the project.
- 1.5 The City and the Council have performed all actions required by law to be performed prior to the adoption of the Modification, including, but not limited to, a review of the proposed Modification by the affected neighborhood group and the Planning Commission, transmittal of the proposed Modification 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 after published and mailed notice as required by law.

Section 2. Findings for the ²Adoption of the Modification

- 2.1 The Council hereby finds, determines and reaffirms the findings required for approval of the original TIF plan in Resolution No 2000R-256.
- 2.2 The Council further finds, determines and declares that the Modification conforms to the general plan for the development or redevelopment of the City as a whole. Written comments of the Planning Commission with respect to the Modification were issued, are incorporated herein by reference, and are on file in the office of the City Clerk.
- 2.3 The Council further finds, determines and declares that the objectives and actions authorized by the Modification are all pursuant to and in accordance with the Project Laws.
- 2.4 The Council further finds, determines and declares that it is necessary and in the best interests of the City at this time to approve the Modification.

Section 3. Approval of the Modification

- 3.1 Based upon the findings set forth in Section 2 hereof, the Modification 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 Modification

- 4.1 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 Modification, and for this purpose to negotiate, draft, prepare and present to this Council for its consideration, as appropriate, all further plans, modifications, resolutions, documents and contracts necessary for this purpose.

Relating to the tax increment financing of public improvements with respect to the Grant Park multifamily housing development located in the Grant Park Tax Increment Financing District; authorizing the issuance of Tax Increment Refunding Revenue Bonds (Grant Park Project), Series 2006; and providing the form, terms, pledge of revenues, and findings, covenants, and directions relating to the issuance of such obligations

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

SECTION 1. BACKGROUND

1.01. The Minneapolis Community Development Agency (the “Agency”) and the City of Minneapolis (the “City”) established the Grant Park Tax Increment Financing District, formerly known as The Towers at Elliot Park Tax Increment Financing District (the “TIF District”) pursuant to authority granted by Minnesota Statutes, Sections 469.174-469.1799, as amended (the “Tax Increment Act”), within The Towers at Elliot Park Redevelopment Project Area (the “Redevelopment Project”), established pursuant to Minnesota Statutes, Section 469.001 to 469.047, as amended (the “Redevelopment Act”), and adopted a tax increment financing plan for the purpose of financing certain improvements within the TIF District and the Redevelopment Project. In order to provide for the redevelopment of the Redevelopment Project and the TIF District and, specifically, to provide for the development of a twenty-seven-story residential tower with 284 for-sale condominium units, an adjacent above-grade parking structure with approximately 533 surface and structured stalls, and 43 for-sale residential units located adjacent to the tower and parking structure (the “Project”), the Agency entered into a Contract for Private Redevelopment, dated August 1, 2002 (the “Contract”), between the Agency and Urban Condos, L. L. C. and its assignees (collectively, the “Redeveloper”).

1.02. On August 23, 2002, the Board of Commissioners of the Agency adopted Resolution No. 2002-2636M (the “Note Resolution”), which provided for the issuance and sale of its tax increment revenue notes. Pursuant to the terms of the Note Resolution, the Agency issued its Taxable Tax Increment Revenue Notes (Grant Park Project), Series 2002 (the “Series 2002 Notes”), in the principal amount of \$9,825,000, dated as of August 28, 2002, payable from a portion of the proceeds of the Series 2002 Notes and from available tax increment revenues generated from the TIF District.

1.03. Pursuant to Resolution No. 2003R-625, adopted by the City Council of the City on December 29, 2003, and Resolution No. 2003-2863M, adopted by the Board of Commissioners of the Agency on December 29, 2003, the duties of administering all programs, projects, and districts administered by the Agency, including the Redevelopment Plan, the TIF District, and the TIF Plan, were transferred to the City, effective January 1, 2004.

1.04. Pursuant to the terms of the Contract, the Agency agreed to refund the Series 2002 Notes with tax-exempt tax increment revenue bonds when the conditions set forth in the Contract for the issuance of such revenue bonds are satisfied.

1.05. The conditions set forth in the Contract for refunding the Series 2002 Notes with tax-exempt tax increment revenue bonds have been satisfied.

1.06. Pursuant to Section 469.178 of the Tax Increment Act, the City is authorized to issue and sell its bonds for the purpose of financing public development costs in a redevelopment project and to pledge tax

increment revenues derived from a tax increment⁴ financing district established within the redevelopment project to the payment of the principal of and interest on such obligations.

SECTION 2. ISSUANCE OF THE SERIES 2006 BONDS

2.01. In order to refund the outstanding principal amount of the Series 2002 Notes, there is hereby authorized to be issued by the City the Series 2006 Bonds, as hereinafter defined.

2.02. In order to refund the outstanding principal amount of the Series 2002 Notes, the City Council hereby authorizes the issuance of tax increment revenue bonds to be designated as the "Tax Increment Refunding Revenue Bonds (Grant Park Project), Series 2006 (the "Series 2006 Bonds"), in a principal amount not to exceed \$11,000,000. The Series 2006 Bonds shall be issued on such date and upon the terms and conditions determined by the Finance Officer of the City (the "Finance Officer"). The Series 2006 Bonds may be designated such other name or names as determined to be appropriate by the Finance Officer. The Series 2006 Bonds shall be issued in one or more series as the Finance Officer may determine, and shall be assigned a separate series designation determined by the Finance Officer for each series issued by the City. The Series 2006 Bonds are authorized to be issued as obligations the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes. This authorization to issue the Series 2006 Bonds is effective without any additional action of the City Council and shall be undertaken by the Finance Officer on such date or dates and upon such terms and conditions as are deemed reasonable by the Finance Officer. The City Council hereby authorizes the sale of the Series 2006 Bonds to Dougherty & Company LLC (the "Underwriter") upon the offer of the Underwriter to purchase the Series 2006 Bonds in accordance with the terms of a Bond Purchase Agreement, dated on or after August 1, 2006 (the "Bond Purchase Agreement"), between the City and the Underwriter.

2.03. There have been presented to the City Council forms of the following documents: (i) an Indenture of Trust, dated on or after August 1, 2006 (the "Indenture"), between the City and Wells Fargo Bank, National Association, as trustee (the "Trustee"); and (ii) the Bond Purchase Agreement. The Indenture and the Bond Purchase Agreement are hereby approved in substantially the forms on file with the City on the date hereof, subject to such changes not inconsistent with this resolution and applicable law that are approved by the Finance Officer of the City.

2.04. The Series 2006 Bonds shall have the maturities, interest rate provisions, shall be dated, numbered, and issued in such denominations, shall be subject to mandatory and optional redemptions and prepayment prior to maturity, shall be executed, sealed, and authenticated in such manner, shall be in such form, and shall have such other details and provisions as are prescribed in the Indenture. The form of the Series 2006 Bonds included in the Indenture is approved in substantially the form in the Indenture, subject to such changes not inconsistent with this resolution and applicable law, and subject to such changes that are approved by the Finance Officer. Without limiting the generality of the foregoing, the Finance Officer is authorized to approve the original aggregate principal amount of each series of Series 2006 Bonds to be issued under the terms of this resolution (subject to the maximum aggregate principal amount for all series authorized by this resolution), to establish the terms of redemption, the principal amounts subject to redemption, and the dates of redemption of the Series 2006 Bonds, and to approve other changes to the other terms of the Series 2006 Bonds which are deemed by the Finance Officer to be in the best interests of the City. The issuance and delivery of the Series 2006 Bonds shall be conclusive evidence that the Finance Officer has approved the terms and provisions of the Series 2006 Bonds in accordance with the authority granted by this resolution. The proceeds derived from the sale of the Series 2006 Bonds, and the earnings derived from the investment of such proceeds, shall be held, transferred, expended, and invested in accordance with determinations of the Finance Officer.

2.05. The Series 2006 Bonds shall be⁵ secured by the terms of the Indenture and shall be payable solely from Available Tax Increments (as defined in the Indenture) that are expressly pledged to the payment of the Series 2006 Bonds pursuant to the terms of the Indenture.

2.06. It is hereby found, determined, and declared that the issuance and sale of the Series 2006 Bonds, the execution and delivery by the City of the Indenture and the Bond Purchase Agreement (collectively, the "City Documents"), and the performance of all covenants and agreements of the City contained in the City Documents, and of all other acts required under the Constitution and laws of the State of Minnesota to make the Series 2006 Bonds the valid and binding special obligations of the City enforceable in accordance with their respective terms, are authorized by applicable Minnesota law, including, without limitation, the Tax Increment Act and this Resolution.

2.07. Under the provisions of the Tax Increment Act, and as provided in the Indenture and under the terms of the Series 2006 Bonds, the Series 2006 Bonds are not to be payable from or chargeable against any funds other than the revenues pledged to the payment thereof; the City shall not be subject to any liability thereon other than from such revenues pledged thereto; no holder of any Series 2006 Bonds shall ever have the right to compel any exercise by the City of its taxing powers (other than as contemplated by the pledge of tax increment revenues under the terms of the Indenture) to pay the principal of, premium, if any, and interest on the Series 2006 Bonds, or to enforce payment thereof against any property of the City other than the property expressly pledged thereto; the Series 2006 Bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City other than the revenues expressly pledged thereto; the Series 2006 Bonds shall recite that the Series 2006 Bonds are issued without a pledge of the general or moral obligation of the City, and that the Series 2006 Bonds, including interest thereon, are payable solely from the revenues pledged to the payment thereof; and the Series 2006 Bonds shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation of indebtedness.

SECTION 3. DISCLOSURE DOCUMENTS AND CLOSING CERTIFICATES

3.01. The preparation of an official statement or other form of disclosure document (the "Official Statement") in conjunction with the offer and sale of the Series 2006 Bonds is hereby authorized. When approved by the Finance Officer of the City, the Official Statement is authorized to be distributed in conjunction with the offer and sale of the Series 2006 Bonds. In order to provide for continuing disclosure with respect to the Series 2006 Bonds, the Finance Officer and the Trustee may execute and deliver a Continuing Disclosure Agreement, dated on or after August 1, 2006 (the "Continuing Disclosure Agreement"), between the City and the Trustee, or the Finance Officer may execute and deliver a Continuing Disclosure Certificate, dated on or after August 1, 2006 (the "Continuing Disclosure Certificate"), of the City.

3.02. The Finance Officer is authorized to furnish to the purchasers of the Series 2006 Bonds, on the date of issuance and sale of the Series 2006 Bonds, a certificate that, to the best of the knowledge of such officer, the Official Statement does not, as of the date of closing, and did not, as the time of sale of the Series 2006 Bonds, contain any untrue statement of a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading. Unless litigation shall have been commenced and be pending questioning the Series 2006 Bonds, the proceedings for approval of the Series 2006 Bonds, tax increment revenues generated or collected for payment of the Series 2006 Bonds, revenues pledged for payment of the Series 2006 Bonds, or the organization of the City, or incumbency of its officers, the Finance Officer shall also execute and deliver a suitable certificate as to absence of material litigation, and the Finance Officer shall also execute and deliver a certificate as to payment for and delivery of the Series 2006 Bonds, and the signed approving legal opinion of Kennedy & Graven, Chartered, as to the validity and enforceability of the Series 2006 Bonds and as to the tax-exempt status of interest on the Series 2006 Bonds.

3.03. The City Clerk, the Finance Officer,⁶ and other agents, officers, and employees of the City are hereby authorized and directed, individually and collectively, to furnish to the attorneys approving the Series 2006 Bonds, on behalf of the purchasers of the Series 2006 Bonds, certified copies of all proceedings and certifications as to facts as shown by the books and records of the City, and the right and authority of the City to issue the Series 2006 Bonds, and all such certified copies and certifications shall be deemed representations of fact on the part of the City. Such officers, employees, and agents of the City are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents that may be requested by bond counsel, the Underwriter, the Trustee, or other persons or entities in conjunction with the issuance of the Series 2006 Bonds and the expenditure of the proceeds of the Series 2006 Bonds. Without imposing any limitations on the scope of the preceding sentence, such officers and employees are specifically authorized to execute and deliver one or more UCC-1 financing statements, a certificate relating to federal tax matters including matters relating to arbitrage and arbitrage rebate, a receipt for the proceeds derived from the sale of the Series 2006 Bonds, an order to the Trustee, a general certificate of the City, and an Information Return for Tax-Exempt Governmental Obligations, Form 8038 (Rev. November 2000).

3.04. The City Clerk is hereby authorized and directed to certify a copy of this resolution and the Finance Officer is hereby authorized to cause the same to be filed with the Taxpayer Services Division Manager of Hennepin County, exercising the powers of the county auditor, in accordance with the terms of Minnesota Statutes, Section 475.63, and to obtain the certificate of the Taxpayer Services Division Manager of Hennepin County as to the registration of the Series 2006 Bonds.

SECTION 4. REDEMPTION OF SERIES 2002 NOTES

4.01. The City elects to apply the net proceeds of the Series 2006 Bonds to the optional prepayment of the Series 2002 Notes in accordance with their terms. Following the sale and issuance of the Series 2006 Bonds, the Finance Officer, as Registrar of the Series 2002 Notes, is directed to cause notice of redemption of the Series 2002 Notes to be given to the holders of the Series 2002 Notes in accordance with the terms of the Series 2002 Notes and to take all other actions necessary to cause the redemption and prepayment of the Series 2002 Notes to occur as soon as possible after the date of issuance of the Series 2006 Bonds.

SECTION 5. MISCELLANEOUS

5.01. All agreements, covenants, and obligations of the City contained in this resolution and in the above-referenced documents shall be deemed to be the agreements, covenants, and obligations of the City to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the City and enforceable in accordance with their terms. No agreement, covenant, or obligation contained in this resolution or in the above-referenced documents shall be deemed to be an agreement, covenant, or obligation of any member of the City Council, or of any officer, employee, or agent of the City in that person's individual capacity. Neither the members of the City Council, nor any officer executing the Series 2006 Bonds shall be liable personally on the Series 2006 Bonds or be subject to any personal liability or accountability by reason of the issuance of the Series 2006 Bonds.

5.02. Nothing in this resolution or in the above-referenced documents is intended or shall be construed to confer upon any person (other than as provided in the Indenture, the Series 2006 Bonds, and the other agreements, instruments, and documents hereby approved) any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provision of this resolution.

5.03. If for any reason the Finance Officer, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall for any reason cease to be an officer, employee, or agent of the City after the execution by such person of any

certificate, instrument, or other written document,⁷ such fact shall not affect the validity or enforceability of such certificate, instrument, or other written document. If for any reason the Finance Officer, or any other officers, employees, or agents of the City authorized to execute certificates, instruments, or other written documents on behalf of the City shall be unavailable to execute such certificates, instruments, or other written documents for any reason, such certificates, instruments, or other written documents may be executed by a deputy or assistant to such officer, or by such other officer of the City as in the opinion of the City Attorney has been delegated the authority to sign such document.

5.04. The City shall not take any action or authorize any action to be taken in connection with the application or investment of the proceeds of the Series 2006 Bonds or any related activity which would cause the Series 2006 Bonds to be deemed to be “private activity bonds,” within the meaning of Section 141 of the Internal Revenue Code of 1986, as amended (the “Code”). The City shall not take any action or authorize any action to be taken in connection with the application or investment of the proceeds of the Series 2006 Bonds or any related activity which would cause the Series 2006 Bonds to be deemed to be “arbitrage bonds,” within the meaning of Section 148 of the Code. Furthermore, the City shall take all such actions as may be required under the Code to ensure that interest on the Series 2006 Bonds is not and does not become includable in gross income for federal income tax purposes.

5.05. The authority to approve, execute, and deliver future amendments to the documents executed and delivered by the City in connection with the transactions contemplated hereby is hereby delegated to the Finance Officer, subject to the following conditions: (a) such amendments do not require the consent of the holders of the Series 2006 Bonds or, if required, such consent has been obtained; (b) such amendments do not materially adversely affect the interests of the City as the issuer of the Series 2006 Bonds; (c) such amendments do not contravene or violate any policy of the City; (d) such amendments are acceptable in form and substance to the City Attorney, bond counsel, or other counsel retained by the City to review such amendments; (e) the City has received, if necessary, an opinion of bond counsel to the effect that the amendments will not adversely affect the tax-exempt character of interest on the Series 2006 Bonds, if the Series 2006 Bonds are then tax-exempt obligations; and (f) such amendments do not materially prejudice the interests of the owners of the Series 2006 Bonds. The authorization hereby given shall be further construed as authorization for the execution and delivery of such certificates and related items as may be required to demonstrate compliance with the agreements being amended and the terms of this resolution. The execution of any instrument by the Finance Officer shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Finance Officer, any instrument authorized by this paragraph to be executed and delivered by the Finance Officer may be executed by such other officer of the City as in the opinion of the City Attorney has been delegated the authority to execute and deliver such instrument.

5.06. Effective Date. This Resolution shall take effect and be in force from and after its approval and publication.