



Legislation Details (With Text)

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In control: Bd. of Governors of Penfield Apartments, LLC
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Title: Resolution of the Penfield Apartments LLC Board of Governors Approving and Authorizing Distributions of Net Sales Proceeds From the Sale of the Penfield Apartments, Execution of Termination of Development Agreement, and Other Actions, District 17, Ward 2.

Sponsors: Rebecca Noecker

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Net Cash from Sale, 3. Sales Proceeds Distributions, 4. Map

Date	Ver.	Action By	Action	Result
10/12/2016	1	Bd. of Governors of Penfield Apartments, LLC	Adopted	Pass

Resolution of the Penfield Apartments LLC Board of Governors Approving and Authorizing Distributions of Net Sales Proceeds From the Sale of the Penfield Apartments, Execution of Termination of Development Agreement, and Other Actions, District 17, Ward 2.

WHEREAS, Penfield Apartments, LLC (the "Company") is a limited liability company established and existing under Minnesota Statutes, Chapter 322B; and

WHEREAS, by Resolution No. 16-103 adopted on March 30, 2016 the Company's Board of Governors approved and authorized the execution of a Purchase Agreement ("Purchase Agreement") for the sale of the Penfield Apartments located at 101 10th Street East, Saint Paul, Mn ("Penfield Apartments"); and

WHEREAS, as described in the accompanying staff report, on September 22, 2016 the Company closed on the sale of the Penfield Apartments and received net sales proceeds ("Sales Proceeds"); and

WHEREAS, as part of the sale, the sum of \$1,024,814.56 ("Escrow Funds") was placed into escrow to cover the potential cost for remediating a water problem at the Penfield Apartments and the distribution of those escrow monies is governed by a Water Remediation Escrow Agreement executed among the Company, the purchaser and Stewart Guaranty Title Company ("Escrow Agreement"); and a portion of the Escrow Funds will be held until one (1) year after substantial completion of the repairs made to the Penfield Apartments for the water problem; and such repairs are currently being made by Weis Builders, Inc., and Weis Builders, Inc has filed a \$350,000 Warranty Bond to secure its obligation to make these repairs which lowers the risk that any of the Escrow Funds will be needed to complete such repairs; and

WHEREAS, Penfield Apartments has maintained operating, non-operating and other accounts with respect to its ownership and management of this project and there are balances in these accounts ("Account Balances"); and

WHEREAS, by Resolution No. 13-01 adopted on June 26, 2013, the Company's Board of Governors approved the payment of \$500,000 ("Payment") to the Penfield Condominium LLC ("PC LLC") for its services and contributions to the success of the project and authorized payment as described in such

Resolution from cash flow and to date, no amount of this Payment has been made to PC LLC; and

WHEREAS, prior to the construction of Penfield Apartments the Company executed a Development Agreement with the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (“Authority”), the sole member of the Company, dated June 20, 2012 (“Development Agreement”), and as part of the Development Agreement the Authority executed and delivered to the Company a Taxable Tax Increment Revenue Note, Series 2012 dated June 22, 2012 in the original principal amount of \$8,295,500 (“TIF Note”); and

WHEREAS, as part of the Purchase Agreement the Company agreed to cancel the TIF Note following closing; and

WHEREAS, to cover the payment of certain post closing expenses the Company will be obligated to pay, Company staff is estimating that such expenses will be in the range of \$135,000 and is recommending that \$135,000 or such additional amount that may be needed and identified prior to the distribution of the Sales Proceeds and Account Balances to the Authority be retained by the Company and not presently distributed to the Authority until all of the Company’s obligations are fully satisfied; and

WHEREAS, staff recommends that the Company’s Board of Governors approve the proposed distribution of Sales Proceeds and Account Balances to the Authority less the Payment to PC LLC and the holdback of \$135,000 plus any additional amount needed to cover post closing expenses; and

WHEREAS, by this Resolution the Company Board of Governors finds a public purpose for the actions taken in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the Board of Governors of the Company that:

1. The Company’s Board of Governors hereby approves (a) the distribution of Sales Proceeds and Account Balances to the Authority less the amount of the Payment and \$135,000 plus any additional amount needed to cover post closing expenses as identified by the Chief Manager prior to such distribution to the Authority, and (b) the making of the Payment to PC LLC, or its successors and assigns.
2. The Company’s Board of Governors hereby approves the execution of the Termination of Development Agreement (“Termination Agreement”). The Termination Agreement obligates the Company to cancel the TIF Note and return the cancelled TIF Note to the HRA.
3. The Company’s Board of Governors hereby approves and directs the Company’s Chief Manager, staff and legal counsel to take all actions necessary to wind up the affairs of the Company and, upon satisfaction of all its post closing obligations and receipt of the balance of Escrow Funds, to distribute the remaining funds on hand by the Company to the Authority and to formally dissolve and terminate the corporate existence of the Company without further actions of the Company’s Board of Governors.
4. The Company’s Chief Manager, staff and legal counsel for the Company are directed and authorized to take all other actions necessary to implement this Resolution. The Company’s Chief Manager is authorized to negotiate and execute any further documents, agreements and instruments in connection with this Resolution.