



Legislation Text

File #: RES PH 21-131, **Version:** 1

Resolution authorizing the issuance and sale of conduit multifamily housing revenue obligations; approving related documents; and adopting a Housing Program for the PHS Highland Park Project, located at 822 Woodlawn Avenue, 820 Mount Curve Boulevard and 825 Mount Curve Boulevard, District 15, Ward 3 WHEREAS, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA"), is a political subdivision of the State of Minnesota, duly organized and existing under the Constitution and laws of the State of Minnesota; and

WHEREAS, pursuant to Minnesota Statutes, Chapter 462C, as amended (the "Act") and by ordinance of the City of Saint Paul, Minnesota (the "City"), the HRA is authorized to carry out the public purposes described in the Act by issuing revenue bonds or other obligations to finance or refinance multifamily housing developments located within the City, and as a condition to the issuance of such revenue bonds, adopt a housing program providing the information required by Section 462C.03, subdivision 1a, of the Act; and

WHEREAS, in the issuance of the HRA's revenue bonds and in the making of a loan to finance a multifamily housing development, the HRA may exercise, within the corporate limits of the City, any of the powers that the Minnesota Housing Finance Agency may exercise under Minnesota Statutes, Chapter 462A, as amended, without limitation under the provisions of Minnesota Statutes, Chapter 475, as amended; and

WHEREAS, PHS Highland Park, Inc., a Minnesota nonprofit corporation (or an affiliated entity, (the "Borrower") has requested that the HRA issue its revenue notes, in one or more series (including without limitation the Series 2021A Notes and the Series 2021B Note described below and any additional series issued to finance the Project defined below, collectively the "Notes") under the Act and lend the proceeds thereof to the Borrower to finance the following: (i) finance the acquisition, construction and equipping of an approximately 300-unit senior multifamily rental housing development consisting of 2 buildings connected via skyway, one building being 4 stories and one building being 5 stories, comprised of independent living, assisted living, memory care and functionally related facilities, with underground and surface parking, to be located at 822 Woodlawn Avenue, 820 Mount Curve Boulevard and 825 Mount Curve Boulevard in the City; (ii) fund one or more reserve funds to secure the timely payment of the Notes, if necessary; (iii) pay interest on the Notes during the construction of the Project, if necessary; and (iv) pay the costs of issuing the Notes, if necessary (collectively, the "Project"); and

WHEREAS, the HRA has prepared a housing program (the "Housing Program") to authorize the issuance by the HRA of tax-exempt revenue notes in one or more series to be issued to finance the Project in an aggregate principal amount not to exceed \$135,000,000; and

WHEREAS, public hearing on the Housing Program and the Project was held by the HRA on this date, following duly published notice in the *Legal Ledger*, a newspaper of general circulation in the City, with respect to: (i) the required public hearing under Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); (ii) the required public hearing under Section 462C.04, subdivision 2, of the Act; (iii) the Housing Program; and (iv) approval of the issuance of the Notes; and

WHEREAS, during said public hearing a reasonable opportunity was provided for interested individuals to express their views, both orally and in writing; and

WHEREAS, this resolution constitutes a reimbursement resolution and an official intent to reimburse

expenditures with respect to the Project from the proceeds of tax-exempt revenue bonds in accordance with the provisions of Treasury Regulations, Section 1.150-2; and

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "Board"), as follows:

SECTION 1. LEGAL AUTHORIZATION AND FINDINGS.

1.1 Findings. The HRA hereby finds, determines and declares as follows:

(a) The issuance and sale of the Senior Housing Facility Revenue Notes (PHS Highland Park Project), Series 2021A (the "Series 2021A Notes"), pursuant to the Act, is in the best interest of the HRA and the City, and the HRA hereby determines to issue the Series 2021A Notes and to sell the Series 2021A Notes to UMB Bank, n.a., and a syndicate of other "qualified institutional buyers" and "accredited investors", as defined in Section 2.5 hereof, selected by the Borrower (collectively, the "Series 2021A Lender"). The HRA will loan the proceeds of the Series 2021A Notes (the "Series 2021A Loan") to the Borrower in order to finance a portion of the cost of the Project.

(b) The issuance and sale of the Senior Housing Facility Entrance Deposit Revenue Notes (PHS Highland Park Project), Series 2021B (the "Series 2021B Note" and together with the Series 2021A Notes the "Series 2021 Notes"), by the HRA, pursuant to the Act, is in the best interest of the HRA and the City, and the HRA hereby determines to issue the Series 2021B Note and to sell the Series 2021B Note to Sunrise Banks, N.A., or another "qualified institutional buyer" and "accredited investor", as defined in Section 2.5 hereof, selected by the Borrower (the "Series 2021B Lender" and, together with the Series 2021A Lender and the holder of any other Notes issued to finance the Project, the "Lenders"). The HRA will loan the proceeds of the Series 2021B Note (the "Series 2021B Loan") to the Borrower in order to finance a portion of the cost of the Project.

(c) Pursuant to a Loan Agreement (the "Series 2021A Loan Agreement") to be entered into between the HRA and the Borrower, the Borrower will agree to repay the Series 2021A Loan in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Series 2021A Notes. In addition, the Series 2021A Loan Agreement contains provisions relating to the construction, maintenance and operation of the Project, indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the HRA and Borrower deem necessary or desirable for the financing of the Project.

(d) Pursuant to a Loan Agreement (the "Series 2021B Loan Agreement" and, together with the Series 2021A Loan Agreement, the "Loan Agreements") to be entered into between the HRA and the Borrower, the Borrower will agree to repay the Series 2021B Loan in specified amounts and at specified times sufficient to pay in full when due the principal of, premium, if any, and interest on the Series 2021B Note. In addition, the Series 2021B Loan Agreement contains provisions relating to the construction, maintenance and operation of the Project, indemnification, insurance, and other agreements and covenants which are required or permitted by the Act and which the HRA and Borrower deem necessary or desirable for the financing of the Project.

(e) Pursuant to an Assignment of Loan Agreement between the HRA and the Series 2021A Lender, (the "Series 2021A Assignment of Loan Agreement"), the HRA will pledge and grant a security interest in all of its rights, title, and interest in the Series 2021A Loan Agreement to the Series 2021A Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses).

(f) Pursuant to an Assignment of Loan Agreement between the HRA and the Series 2021B Lender, (the "Series 2021B Assignment of Loan Agreement" and, together with the Series 2021A Assignment

of Loan Agreement, the "Assignments of Loan Agreements"), the HRA will pledge and grant a security interest in all of its rights, title, and interest in the Series 2021B Loan Agreement to the Series 2021B Lender (except for certain rights of indemnification and to reimbursement for certain costs and expenses).

(g) The obligations of the Borrower under the Series 2021A Loan Agreement and payment of amounts due under Series 2021A Notes will be secured by certain security instruments required by the Series 2021A Lender and in forms authorized by the Borrower to be executed by or on behalf of the Borrower in favor of the Series 2021A Lender, which may include: (i) a mortgage or security agreements granting a mortgage lien or security interest with respect to the Project or any portion thereof to the Series 2021A Lender or to the HRA; (ii) one or more collateral assignments of the contracts between the Borrower and the architect and contractor with respect to the Project; (iii) one or more security agreements, guaranty agreements, and indemnity agreements; and (iv) other security documents that are intended to ensure timely payment of the loan and the Series 2021A Notes (collectively, the "Series 2021A Security Documents").

(h) The obligations of the Borrower under the Series 2021B Loan Agreement and payment of amounts due under the Series 2021B Note will be secured by certain security instruments required by the Series 2021B Lender and in forms authorized by the Borrower to be executed by or on behalf of the Borrower in favor of the Series 2021B Lender which may include: (i) a subordinate mortgage or security agreements granting a mortgage lien or security interest with respect to the Project or any portion thereof to the Series 2021B Lender or to the HRA; (ii) an Entrance Fee Pledge Agreement from the Borrower to the 2021B Lender (the "Entrance Fee Agreement"); (iii) one or more collateral assignments of the contracts between the Borrower and the architect and contractor with respect to the Project; (iv) one or more security agreements, guaranty agreements, and indemnity agreements; and (v) other security documents that are intended to ensure timely payment of the loan and the Series 2021B Notes (collectively, the "Series 2021B Security Documents").

(i) As determined by the Lenders, the proceeds of the Series 2021 Notes may be disbursed pursuant to one or more Disbursing Agreements (the "Disbursing Agreements") by and among one or more of the Lenders, Borrower and a title insurance company.

(j) Certain requirements of the City and the HRA that apply to the Project are set forth in a Bond Compliance Agreement between the HRA and the Borrower (the "Bond Compliance Agreement")

(k) The Series 2021 Notes will be special, limited revenue obligations of the HRA. The Series 2021 Notes shall not be payable from or a charge upon any funds other than the revenues pledged to the payment thereof, nor shall the HRA or the City be subject to any liability thereon. No holder of any of the Series 2021 Notes shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Series 2021 Notes or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. None of the Series 2021 Notes shall constitute a debt of the HRA or the City within the meaning of any constitutional, charter or statutory limitation.

(l) It is desirable, feasible and consistent with the objects and purposes of the Act to issue the Series 2021 Notes for the purpose of financing the costs of the Project.

(m) The purpose of the Project is, and the effect thereof will be, to promote the public welfare by the acquisition, construction and equipping of a facility for use as a senior housing development designed primarily for occupancy by elderly and handicapped persons.

(n) The Act authorizes (i) the acquisition, construction and equipping of the Project, (ii) the issuance and sale of the Series 2021 Notes, (iii) the execution and delivery by the HRA of related documents and the performance of all covenants and agreements of the HRA contained therein, and (iv) the performance of all other acts and things required under the constitution and laws of the State of Minnesota to make the

Series 2021 Notes and such agreement valid and binding obligations of the HRA in accordance with its terms.

(o) It is desirable that the Borrower be authorized, subject to the terms and conditions set forth in each of the Loan Agreements, which terms and conditions the HRA determines to be necessary, desirable and proper, to complete the acquisition, construction, equipping and installation of the Project by such means as shall be available to the Borrower and in the manner determined by the Borrower, and with or without advertisement for bids as required for the acquisition and installation of municipal facilities.

(p) The payments under each of the Loan Agreements are fixed to produce revenue sufficient to provide for the prompt payment of principal of, premium, if any, and interest on each of the Series 2021 Notes, as the case may be, when due, and the Loan Agreements also provides that the Borrower is required to pay all expenses of the operation and maintenance of the Project, including, but without limitation, adequate insurance thereon and insurance against all liability for injury to persons or property arising from the operation thereof, and all taxes and special assessments levied upon or with respect to the Project and payable during the terms of each of the Loan Agreements.

(q) The HRA hereby finds, determines and declares that it is in the public interest of the residents of the City that the Project be undertaken in order to further the public purposes of redeveloping blighted property and increasing the supply of decent, safe, and sanitary rental housing units available to residents of the City.

1.2 Authorization and Ratification of Project. The HRA does hereby authorize the Borrower, in accordance with the provisions of the Act and subject to the terms and conditions imposed by the applicable Lender, to provide for the acquisition, construction and equipping of the Project by such means as shall be available to the Borrower and in the manner determined by the Borrower, and without advertisement for bids as may be required for the construction and acquisition of other municipal facilities; and the HRA hereby ratifies, affirms, and approves all actions heretofore taken by the Borrower consistent with and in anticipation of such authority.

SECTION 2. THE SERIES 2021 NOTES.

2.1 Authorized Maximum Amount, Form of Series 2021 Notes and Interest Rate.

(a) Subject to approval by the City, the Series 2021 Notes are hereby approved and shall be issued pursuant to this Resolution in substantially the form on file with the Executive Director of the HRA with such appropriate variations, omissions and insertions as are necessary and appropriate and are permitted or required by this Resolution, and in accordance with the further provisions hereof. The Series 2021A Notes shall be in minimum denominations of at least \$100,000 and shall be numbered No. R-1 and upward. The Series 2021B Note shall be issued in a denomination equal to its entire principal amount and shall be numbered No. R-1 and upward. The Series 2021 Notes shall mature in the years and amounts and be subject to redemption as therein specified, as such may be modified by agreement of the Lenders, Borrower and the HRA; and the aggregate principal amount of the Series 2021 Notes that may be outstanding hereunder is expressly limited to \$135,000,000. The actual amount of the Series 2021 Notes shall be determined by the agreement of the Lenders and the Borrower and the HRA, as evidenced by the execution of the Series 2021 Notes by the Chair or a Commissioner, the Executive Director and the Director, Office of Financial Services of the City (the "Authorized Officers").

(b) The Series 2021 Notes will each bear interest at the fixed or variable rates determined by the Borrower and the Lenders, as the case may be, and set forth in the respective Series 2021 Notes as executed by the Authorized Officers; provided that such rates shall be subject to adjustment pursuant to the terms as set forth in the Series 2021 Notes, this Resolution, the Loan Agreements, the Assignment of Loan Agreements, a Syndicated Construction Loan Agreement with respect to terms and conditions of the purchase of the Series 2021A Notes by the Series 2021A Lender and dated as of the date of delivery of the Series 2021

Notes, between the Borrower and the Series 2021A Lender, and one or more Construction Loan Agreements or similar agreements with respect to the purchase of the Series 2021 Notes by the Series 2021B Lender and dated as of the date of delivery of the Series 2021 Notes, between the Borrower and the Series 2021B Lender, (collectively, the "Construction Loan Agreements"), the Series 2021A Security Documents or the Series 2021B Security Documents. The sale of the Series 2021 Notes to the respective Lender at a purchase price equal to each of their respective stated amounts is hereby accepted.

2.2 The Series 2021 Notes. The Series 2021 Notes shall be dated as of the date of delivery to the Lenders, shall be payable at the time and in the manner and shall be subject to such other terms and conditions as are set forth therein.

2.3 Execution of Series 2021 Notes. The Series 2021 Notes shall be executed on behalf of the HRA by the Authorized Officers. In case any Authorized Officer whose signature shall appear on the Series 2021 Notes shall cease to be such officer before the delivery of the Series 2021 Notes, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such signatory had remained in office until delivery. In the event of the absence or disability of any Authorized Officers, such officer(s) of the HRA as, in the opinion of the HRA Attorney, may act in their behalf, shall without further act or authorization of the Board execute and deliver the Series 2021 Notes.

2.4 Disposition of the Proceeds of the Series 2021 Notes. Upon delivery of the Series 2021 Notes to the respective Lender, the respective Lender shall, on behalf of the HRA, disburse the purchase price thereof for payment of Project costs in accordance with the terms of the Loan Agreements, any applicable Disbursing Agreement and any applicable Construction Loan Agreements .

2.5 Ownership of Series 2021 Notes. In accordance with the policy of the HRA, each Lender or holder of any of the Series 2021 Notes will be required to execute and deliver an investor letter or certification to the HRA, confirming that such Lender or holder is either (a) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (the "1933 Act"), that purchases the Series 2021 Notes for its own account or for the account of a qualified institutional buyer, or (b) an "accredited investor" as defined in Regulation D promulgated under the 1933 Act, that purchases the Series 2021 Notes for its own account and without registration under state or other securities laws, pursuant to an exemption for such sale. The HRA may deem and treat the person in whose name each Note is last registered in the Register and by notation on the respective 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 HRA shall not be affected by any notice to the contrary.

2.6 Registration of Transfer. The HRA will cause to be kept at the office of the Executive Director of the HRA a Register for each of the Series 2021 Notes in which, subject to such reasonable regulations as it may prescribe, the HRA shall provide for the registration of transfers of ownership of the Series 2021 Notes. The Series 2021 Notes shall each be initially registered in the name of the respective Lender thereof and, subject to the limitations on transfer provided herein, shall be transferable upon the Register for such Note by the respective Lender in person or by its agent duly authorized in writing, upon surrender of such Note together with a written instrument of transfer satisfactory to the Executive Director of the HRA, duly executed by the respective Lender or its duly authorized agent. The HRA will require, as a precondition to any transfer, that the transferee provide to the HRA an investor letter or certification in a form satisfactory to the HRA and other evidence satisfactory to the HRA that the transferee is a financial institution or other accredited investor under the securities laws. The following form of assignment shall be sufficient for purposes of assigning the Series 2021 Notes.

For value received _____ hereby sells, assigns and transfers unto _____ the attached Note of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, and does

hereby irrevocably constitute and appoint _____ attorney to transfer said Note on the books of said HRA, with full power of substitution in the premises. The undersigned certifies that the transfer is made in accordance with the provisions of Sections 2.5, 2.6 and 2.8 of the Resolution authorizing the issuance of the Note.

Dated: _____

Registered Owner

Upon such transfer the Executive Director of the HRA shall note the date of registration and the name and address of the successor Lender in the applicable Register for such Note and in the registration blank appearing on such Note; subject to receipt of a purchaser letter or certification as required by Section 2.8 hereof.

2.7 Mutilated, Lost or Destroyed Series 2021 Notes. In case any of the Series 2021 Notes shall become mutilated or be destroyed or lost, the HRA 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 payment by the applicable Lender of the reasonable expenses and charges of the HRA in connection therewith, and in the case of a Note destroyed or lost, the filing with the HRA of evidence satisfactory to the HRA 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 Limitation on Note Transfers. Each of the Series 2021 Notes will be issued to a “qualified institutional buyer” or an “accredited investor” and without registration under state or other securities laws, pursuant to an exemption for such sale; and accordingly the Series 2021 Notes may not be assigned or transferred in whole or part, except to another “accredited investor” or “qualified institutional buyer”. The HRA will require, as a precondition to any transfer, that the transferee provide to the HRA an investor letter or certification substantially in the form required of, and delivered upon issuance of the Series 2021 Notes by the Lenders in accordance with Section 2.5 hereof and other evidence satisfactory to the HRA that the transferee is a “qualified institutional buyer” or other “accredited investor”.

SECTION 3. MISCELLANEOUS.

3.1 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 contained herein invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or paragraphs contained in this Resolution shall not affect the remaining portions of this Resolution or any part thereof.

3.2 Authentication of Transcript. The officers of the HRA 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 Series 2021 Notes. All such certified copies, certificates and affidavits, including any heretofore furnished, shall constitute recitals of the

HRA as to the correctness of all statements contained therein.

3.3 Authorization to Execute Agreements. The forms of the proposed Series 2021 Notes, the Loan Agreements, the Assignments of Loan Agreements, the Bond Compliance Agreement and the Entrance Fee Agreement (collectively, and together with any Construction Loan Agreement, any Disbursing Agreement, the Security Documents, and such other documents as Bond Counsel considers appropriate in connection with the issuance of the Series 2021 Notes, the “Financing Documents”) are hereby approved in substantially the forms on file with the Executive Director of HRA, 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 Authorized Officers are authorized to execute, in the name of and on behalf of the HRA, the Financing Documents to which the HRA is a party. In the event of the absence or disability of any of the Authorized Officers, such officers of the HRA as, in the opinion of the City Attorney for the HRA, may act on their behalf shall without further act or authorization of the Board 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 HRA herein authorized shall be conclusive evidence of the approval of such documents in accordance with the terms hereof. The electronic signature of a party to the Financing Documents, including all acknowledgements, authorizations, directions, waivers and consents thereto (or any amendment or supplement thereto) shall be as valid as an original signature of such party and shall be effective to bind such party to the Financing Documents. Any electronically signed Financing Documents shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed, and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. For purposes hereof, (i) “electronic signature” means (a) a manually signed original signature that is then transmitted by electronic means or (b) a signature obtained through DocuSign, Adobe or a similarly digitally auditable signature gathering process; (ii) “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a portable document format (“pdf”) or other replicating image attached to an electronic mail or internet message; and, (iii) “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

3.4 Future Amendments. The authority to approve, execute and deliver future amendments to the Financing Documents entered into by the HRA in connection with the issuance of the Series 2021 Notes and consents required under the Financing Documents is hereby delegated to the Authorized Officers of the HRA, subject to the following conditions: (a) such amendments or consents do not materially adversely affect the interests of the HRA; (b) such amendments or consents do not contravene or violate any policy of the HRA, (c) such amendments or consents do not require the consent of the holder or such consent has been obtained; and (d) such amendments or consents are acceptable in form and substance to the counsel retained by the HRA to review such amendments. 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 Executive Director shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Executive Director, any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the HRA or the City authorized to act in his or her place and stead.

3.5 Governmental Program. The HRA has established a governmental program of acquiring purpose investments for qualified 501(c)(3) organizations. The governmental program is one in which the following requirements of §1.148-1(b) of the federal regulations relating to tax-exempt obligations shall be met:

(a) the program involves the origination or acquisition of purpose investments;

(b) at least 95% of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or

political subdivisions, 501(c)(3) organizations, persons who provide housing and related facilities, or any combination of the foregoing;

(c) at least 95% of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption;

(d) the program documents prohibit any obligor on a purpose investment financed by the program or any related party to that obligor from purchasing bonds of an issue that finances the program in an amount related to the amount of the purpose investment acquired from that obligor; and

(e) the HRA shall not waive the right to treat the investment as a program investment.

3.6 Adoption of Housing Program. The preparation of the Housing Program is hereby ratified, confirmed, and approved in all respects. The Housing Program is hereby adopted, ratified, and approved. The Executive Director of the HRA is hereby authorized to do all other things and take all other actions as may be necessary or appropriate to carry out the Housing Program in accordance with the Act and any other applicable laws and regulations.

3.7 Costs; Indemnification by Borrower. The Borrower has agreed and it is hereby determined that any and all costs incurred by the HRA in connection with the financing of the Project whether or not the Project is carried to completion will be paid by the Borrower, as the case may be. It is understood and agreed that the Borrower shall indemnify the HRA against all liabilities, losses, damages, costs and expenses (including attorney's fees and expenses incurred by the HRA) arising with respect to the Project, the Financing Documents, or the Series 2021 Notes, as further provided for and agreed to by and between the Borrower and the HRA in each Loan Agreement

3.8 Property Taxation. The approval granted in this Resolution is subject to the condition that at no time prior to December 31, 2049, shall the Borrower take or permit others under the Borrower's control to take any action to cause the Project or any portion thereof to be no longer subject to real property taxation and prior to such date, the Borrower shall not:

(a) Seek administrative review or judicial review of the applicability of any tax statute relating to the taxation of the Project determined by any tax official to be applicable or raise the inapplicability of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;

(b) Seek administrative review or judicial review of the constitutionality of any tax statute relating to the taxation of the Project determined by any tax official, or raise the unconstitutionality of any such tax statute as a defense in any proceedings, including delinquent tax proceedings;

(c) Seek any tax deferral or abatement, either presently or prospectively authorized under any state or federal law, of the taxation of the Project;

(d) Cause a reduction in the real property taxes paid in respect of the Project through: (i) willful destruction of the Project or any part thereof; or (ii) willful refusal to reconstruct damaged or destroyed property; or

(e) Apply for an exemption from or a deferral of property tax on the Project pursuant to any law, or transfer or permit transfer of the Project to any entity whose ownership or operation of the Project

would result in the Project being exempt from real property taxes under State law.

3.9 Headings; Terms. Paragraph headings in this resolution are for convenience of reference only and are not a part hereof, and shall not limit or define the meaning of any provision hereof. Capitalized terms used, but not defined, herein shall have the meanings given them in, or pursuant to, the Financing Documents. This Resolution shall be in full force and effect from and after its approval.