



## Legislation Text

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**File #:** RES PH 15-288, **Version:** 1

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Resolution (i) Approving and Authorizing Execution of a Purchase Agreement and Related Documents for the Sale of the Lofts at Farmers Market and Related Budget Amendment, and (ii) Providing for the Redemption of Certain Taxable Limited Tax Bonds, Series 2010A (Build America Bonds - Direct Pay) and Taxable Limited Tax Bonds, Series 2010B (The Lofts at Farmers Market Project) of the HRA and Approving Related documents, District 17, Ward 2.

WHEREAS, the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA") is a public body corporate and politic established pursuant to the provisions of Minnesota Statutes section 469.001, et seq. (the "Act"); and

WHEREAS, the HRA has the power to engage in development or redevelopment activities under Minnesota law, and is authorized to engage in activities relating to (a) housing projects and development, (b) removal and prevention of the spread of conditions of blight or deterioration, (c) bringing substandard buildings and improvements into compliance with public standards, (d) disposition of land for private redevelopment, and (e) improving the tax base and the financial stability of the community, and to engage in the aforementioned activities when these needs cannot be met through reliance solely upon private initiative and which can also be undertaken in targeted neighborhoods; and

WHEREAS, the HRA has received proposals to purchase the HRA-owned Lofts at Farmers Market ("Property"), located at 260 5th Street East in Saint Paul, Minnesota; and

WHEREAS, after reviewing the proposals received, staff recommends accepting the proposal of Weidner Investment Services, Inc., or an affiliate thereof ("Buyer") to purchase the Property ("Proposal"), as described in the staff report submitted to the HRA Board with this resolution and on the terms described in the purchase agreement on file with the HRA ("Purchase Agreement"); and

WHEREAS, the Board of Commissioners of the HRA considered the Proposal pursuant to due notice thereof that was published in the Saint Paul Pioneer Press on September 12, 2015, after a public hearing held on Wednesday, September 23, 2015 at 2:00 pm, central time, on the third floor of City Hall, 15 West Kellogg Boulevard, Saint Paul, Minnesota; and

WHEREAS, by this resolution the Board of Commissioners of the HRA finds a public purpose for acceptance of the Proposal and conveyance of the Property; and

WHEREAS, to finance the construction of an approximately 58 unit market rate rental housing development, designated as The Lofts at Farmers Market (the "Project"), the HRA issued its Taxable Limited Tax Bonds, Series 2010A (Build America Bonds - Direct Pay) (The Lofts at Farmers Market Project) (the "2010A Bonds"), on December 22, 2010, in the original aggregate principal amount of \$7,170,000, all of which remains outstanding as of the date hereof; and

WHEREAS, the 2010A Bonds were issued in accordance with the terms of a resolution adopted by the HRA on December 2, 2010 (the "Bond Resolution"). Section 9(b) of the Bond Resolution provides for the redemption of the 2010A Bonds upon the occurrence of a Determination of Ineligibility and provides that a "Determination of Ineligibility" will have occurred if a change has occurred to Section 54AA or 6431 of the Internal Revenue Code (the "Code") (as such Sections were added by Section 1531 of the Recovery Act pertaining to "Build America Bonds") pursuant to which the HRA's 35% direct payment credit from the United

States Treasury shall be reduced or eliminated; and

WHEREAS, in accordance with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act of 2011, and the Taxpayer Relief Act of 2012, reductions are required to be made in refundable credits under Section 6431 of the Internal Revenue Code of 1986, as amended. These reductions apply to the direct payments required to be made with respect to Build America Bonds. As a result, the reduction in direct payments, including the payment due to the HRA from the Internal Revenue Service with respect to interest payable on the 2010A Bonds, (i) for the period from March 1, 2013 through September 30, 2013, was 8.7% of the amount otherwise payable under the terms of Section 54AA of the Code, (ii) for the period from October 1, 2013 through September 30, 2014, was 7.2% of the amount otherwise payable under the terms of Section 54AA of the Code and (iii) for the current period (October 1, 2014 through September 30, 2015), is 7.3% percent of the amount otherwise payable under the terms of Section 54AA of the Code; and

WHEREAS, pursuant to the Bond Resolution, to finance a portion of the cost of the Project, the HRA also issued its Taxable Limited Tax Bonds, Series 2010B (The Lofts at Farmers Market Project), dated December 22, 2010 (the "2010B Bonds"), in the original aggregate principal amount of \$685,000, \$475,000 of which remains outstanding as of the date hereof; and

WHEREAS, upon satisfaction of certain conditions, the sale of the Project to the Buyer is proposed to occur not later than 90 days after the date hereof (as adjusted, the "Sale Date"); and

WHEREAS, the sale of the Project to the Buyer, a private entity, would cause the private business use tests delineated in Section 141(b) of the Internal Revenue Code of 1986, as amended (the "Code") to be exceeded with respect to the 2010A Bonds. In order to remediate the deliberate action of the sale of the bond-financed property and cure any negative tax consequences that may arise because the private business use tests would be exceeded, the HRA proposes to use cash from the sale of the Project or other available funds to prepay and redeem the outstanding principal amount of the 2010A Bonds, all pursuant to Section 1.141-12 (d) of the Treasury Regulations promulgated under Section 141 of the Code (the "Remedial Action Regulations"); and

WHEREAS, in connection with the sale of the Project, the HRA has determined to defease the 2010B Bonds by appropriating cash from the sale of the Project or other legally available funds in an amount that, if invested in cash or securities which are authorized by law to be so deposited, will provide for the payment, when due, of the principal of and interest on the 2010B Bonds on or before February 1, 2019; and

WHEREAS, the Board of Commissioners finds that a budget amendment is necessary in connection with the transactions described herein.

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") that:

1. The Board hereby approves the Proposal for sale and conveyance of the Property to the Buyer, on the terms described in the staff report and reflected in the Purchase Agreement.

2. The HRA Executive Director is authorized and directed to execute the Purchase Agreement in substantially the form on file, with such modifications and amendments as are approved by the City Attorney and do not materially and adversely affect the rights of the HRA, and to negotiate and finalize all other documents and agreements necessary to effectuate the conveyance of the Property to the Buyer.

3. The HRA Executive Director, staff and legal counsel for the HRA are further directed and authorized to take all actions necessary to implement this Resolution. The HRA's Executive Director is

authorized to execute any documents and instruments in connection with this Resolution, except that the HRA Chair/Commissioner shall execute the deed of conveyance.

4. The budget amendment set forth as ATTACHMENT C is approved.

5. The Board hereby determines that the extraordinary redemption and prepayment of the 2010A Bonds is consistent with covenants made with the holders of the 2010A Bonds and is in the best interests of the HRA.

6. It is determined that it is in the sound financial management of the HRA that the 2010A Bonds be prepaid and redeemed on the earliest date after the Sale Date for which proper notice of call may be given, and, contingent upon closing on the sale of the Project and subject to a final determination by the Executive Director of the HRA, the 2010A Bonds are hereby called for redemption on such date.

7. To accomplish the defeasance of the 2010B Bonds the HRA will establish an Escrow Account (the "Escrow Account") with a bank qualified by law as an escrow agent for this purpose (the "Escrow Agent"). A form of escrow agreement (the "Escrow Agreement") has been prepared on behalf of the HRA. The Executive Director is authorized to engage an Escrow Agent on behalf of the HRA and also an agent to hold the amounts to be used for the redemption of the 2010A Bonds.

8. Upon the Sale Date, in connection with the sale of the Project, there will be and are hereby authorized to be transferred, pledged, and appropriated to the Escrow Account cash from the sale of the Project or other available funds in the amount that is needed for payment of the principal and interest of the defeased 2010B Bonds on or before February 1, 2019.

9. Subject to the approval of the Saint Paul City Attorney and the provisions of Sections 10 and 11 hereof, the forms of the Escrow Agreement and such other documents as Bond Counsel considers appropriate in connection with the redemption of the 2010A Bonds and the 2010B Bonds (collectively, the "Financing Documents") are approved substantially in the forms prepared for consideration by the Board. Subject to the provisions of Section 10 hereof, the Financing Documents to which the HRA is a party, in substantially the forms submitted, are authorized and directed to be executed in the name and on behalf of the HRA by the Chair or Commissioner and Executive Director of the HRA and by the Director, Office of Financial Services of the City. Any other HRA documents and certificates necessary to the transaction described above may be executed by one or more appropriate officers of the HRA, including but not limited to the Executive Director.

10. The approval hereby given to the Financing Documents includes approval of 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 the Saint Paul City Attorney to the HRA, the appropriate HRA staff person or by the officers authorized herein to execute or accept, as the case may be, said documents prior to their execution; and said officers or staff members are hereby authorized to approve said changes on behalf of the HRA. 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 document in accordance with the terms hereof. In the event of absence or disability of the officers, any of the documents authorized by this Resolution to be executed may be executed without further act or authorization of the Board by any member of the Board or any duly designated acting official, or by such other officer or officers of the Board as, in the opinion of the Saint Paul City Attorney, may act in their behalf.

11. The authority to approve, execute and deliver future amendments to Financing Documents entered into by the HRA in connection with the issuance of the Obligations and consents required under the financing documents is hereby delegated to the Executive Director, subject to the following conditions: (a) such amendments or consents do not require the consent of the respective holders of the Obligations or such consent has been obtained; (b) such amendments or consents to not materially adversely affect the interests

of the HRA; (c) such amendments or consents do not contravene or violate any policy of the HRA; 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 and Director, Office of Financial Services shall be conclusive evidence of the approval of such instruments in accordance with the terms hereof. In the absence of the Executive Director or Director, Office of Financial Services, any instrument authorized by this paragraph to be executed and delivered may be executed by the officer of the HRA or the City of Saint Paul authorized to act in their place and stead.

12. On the Sale Date, the Executive Director is authorized and directed to request that Treasurer of the City of Saint Paul, Minnesota, the paying agent and bond registrar (the "Registrar"), mail the Notice of Call for Redemption with respect to the 2010A Bonds in substantially the form attached hereto as EXHIBIT A to the registered owners of each Bond to be redeemed at the addresses shown on the registration books kept by the Registrar and cause notice of the redemption of the 2010B Bonds to be given in accordance with the Escrow Agreement.

## EXHIBIT A

### NOTICE OF CALL FOR REDEMPTION

#### TAXABLE LIMITED TAX BONDS, SERIES 2010A (BUILD AMERICA BONDS - DIRECT PAY) HOUSING AND REDEVELOPMENT AUTHORITY OF THE CITY OF SAINT PAUL, MINNESOTA

NOTICE IS HEREBY GIVEN that, by order of the Board of Commissioners of the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota, there have been called for redemption and prepayment on

\_\_\_\_\_, 2015

all outstanding bonds of the HRA designated as Taxable Limited Tax Bonds, Series 2010A (Build America Bonds - Direct Pay), dated December 22, 2010, having stated maturity dates of February 1 in the years and amounts set forth below, totaling \$7,170,000 in principal amount:

<u>Year of Maturity</u>	<u>Amount</u>	<u>CUSIP</u>
2019	\$85,000	792893 GH6
2020	165,000	792893 GJ2
2021	170,000	792893 GK9
2022	180,000	792893 GL7
2023	205,000	792893 GM5
2024	220,000	792893 GN3
2026	490,000	792893 GQ6
2030	1,205,000	792893 GP8
2035	1,660,000	792893 GR4
2040	2,790,000	792893 GS2

The bonds are being called at a price of par plus accrued interest to \_\_\_\_\_, 2015, on which date all interest on said bonds will cease to accrue. Holders of the bonds hereby called for redemption are requested to present their bonds for payment at the Office of Financial Services at the City of Saint Paul, Minnesota, on

or before \_\_\_\_\_, 2015.

City of Saint Paul, Minnesota  
Office of Financial Services  
700 City Hall  
15 West Kellogg Boulevard  
Saint Paul, MN 55102  
(651) 266-8837  
City of Saint Paul, Minnesota

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Important Notice: In compliance with the Jobs and Growth Tax Relief Reconciliation Act of 2003, federal backup withholding tax will be withheld at the applicable backup withholding rate in effect at the time the payment by the redeeming institutions if they are not provided with your social security number or federal employer identification number, properly certified. This requirement is fulfilled by submitting a W-9 Form, which may be obtained at a bank or other financial institution.

The Registrar/Paying Agent will not be responsible for the selection or use of the CUSIP number, nor is any representation made as to the correctness indicated in the Redemption Notice or on any Bond. It is included solely for convenience of the bondholders.

Dated: \_\_\_\_\_, 2015.

BY ORDER OF THE BOARD OF COMMISSIONERS