



Legislation Text

File #: RES 16-652, **Version:** 1

Resolution Approving the Issuance and Sale of Conduit Multifamily Housing Revenue Notes (Model Cities BROWNstone Residential Project), Authorizing the Execution of Documents Relating thereto, Authorizing the Execution of Development Agreements and Certain Loan Agreements for the BROWNstone Residential and Commercial Projects and the Execution of Documents Relating thereto. District 7, Ward 1

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 notes 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 or notes 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, the HRA has received a proposal that it issue housing revenue notes in one or more series (the "Notes") in an aggregate amount not to exceed \$5,000,000 to provide funds to be loaned to Model Cities BROWNstone Limited Partnership, a Minnesota limited partnership (the "Borrower") to (i) finance the acquisition, construction and equipping of a multifamily housing facility consisting of approximately 35 units to be known as BROWNstone and to be located at 839 University Avenue in the City of Saint Paul, Minnesota (the "City"); (ii) pay costs of issuance and other costs related to the issuance of the bonds; and (iii) fund capitalized interest and certain reserves (collectively, the "Residential Project"); and

WHEREAS, the Residential Project is being developed in a mixed-use building, which will also contain certain commercial space (the "Commercial Project"), to be owned and operated by Model Cities BROWNstone Commercial, LLC (the "Commercial Owner"), an affiliate of Model Cities of St. Paul, Inc., a Minnesota nonprofit corporation ("Model Cities"); and

WHEREAS, the HRA has prepared a housing program (the "Housing Program" or "Program") to authorize the issuance by the HRA of the Notes in the maximum principal amount of \$5,000,000 to finance the acquisition, construction, renovation and equipping of the Residential Project; and

WHEREAS, a notice of public hearing (the "Public Notice") was published in the Pioneer Press, 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, the Public Notice was published at least 15 days before the regularly scheduled meeting of the City Council of the City (the "City Council"), and on June 17, 2015, the City Council conducted a

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

WHEREAS, the HRA has heretofore established, within the Saint Paul Neighborhood Redevelopment Project Area, the Saint Paul Neighborhood Scattered Site Tax Increment Financing District (the "TIF District"), as a redevelopment tax increment financing district, and adopted a Tax Increment Financing Plan therefor (the "TIF Plan"); all pursuant to Minnesota Statutes, Sections 469.174 through 469.1794 (the "TIF Act");

WHEREAS, the Borrower has been unable to identify a feasible financing plan with necessary sources of funds for the successful development of the Residential Project and the Borrower has requested the HRA provide tax increment assistance to the Borrower to finance certain public redevelopment costs of the Residential Project

WHEREAS, the HRA has determined that \$1,668,248 of tax increment funds from the TIF District (the "Residential Pooled TIF Funds") is available to provide a loan (the "Residential Pooled TIF Loan") to finance a portion of the cost of the Residential Project and has caused to be prepared a Pooled TIF Loan Agreement (the "Residential TIF Loan Agreement") between the HRA and the Borrower setting forth the terms and conditions under which the HRA will provide the Residential Pooled TIF Loan to the Borrower, copy of which is on file with the Executive Director of the HRA; and

WHEREAS, the Borrower also requested and the HRA has determined to provide HOME Loan funds in the amount of approximately \$750,000 (the "HOME Loan") to finance a portion of the costs of the Residential Project; and

WHEREAS, the Commercial Owner has been unable to identify a feasible financing plan with necessary sources of funds for the successful development of the Commercial Project and the Commercial Owner has requested the HRA provide tax increment assistance to the Commercial Owner to finance certain public redevelopment costs of the Commercial Project;

WHEREAS, the HRA has determined that \$105,236 of tax increment funds from the TIF District (the "Commercial Pooled TIF Funds") is available to provide a loan (the "Commercial Pooled TIF Loan") to finance a portion of the cost of the Commercial Project and has caused to be prepared a Commercial Pooled TIF Loan Agreement (the "Commercial TIF Loan Agreement") between the HRA and the Commercial Owner setting forth the terms and conditions under which the HRA will provide the Commercial Pooled TIF Loan to the Commercial Owner, copy of which is on file with the Executive Director of the HRA;

WHEREAS, the Borrower also requested and the HRA has determined to provide \$2,300,000 of funds ("Foundation Loan") from The Saint Paul Foundation and provide a loan ("Foundation Loan Agreement") to finance a portion of the costs of the Commercial Project; and;

WHEREAS, the Borrower also requested and the HRA has determined to provide \$356,000 of CDBG funds ("CDBG Loan") to finance a portion of the costs of the Commercial Project; and;

WHEREAS, sufficient details of the revenue notes and other aspects of the financing have been agreed to that this final bond resolution should be adopted on this date accepting a proposal for issuance of the revenue notes:

NOW, THEREFORE, BE IT RESOLVED by the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (the "HRA"), 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 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 Notes and to sell the Notes to Anchor Bank or another financial institution selected by the Borrower (the "Lender"). The HRA will loan the proceeds of the Notes (the "Loan") to the Borrower in order to finance the Residential Project.

(b) Pursuant to a Loan Agreement (the "Loan Agreement") to be entered into between the HRA and Borrower, the HRA has agreed to loan to the Borrower the proceeds of the Notes as set forth therein to pay in full when due the principal of, premium, if any, and interest on the Notes. In addition, the Loan Agreement contains provisions relating to the construction, maintenance and operation of the Residential 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 Residential Project.

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

(d) The obligations of the Borrower under the Loan Agreement and payment of amounts due under the Notes will be secured by certain security instruments required by the Lender and in forms authorized by the Borrower to be executed by or on behalf of the Borrower in favor of the Lender which may include: (i) a mortgage or security agreements granting a mortgage lien or security interest with respect to the Residential Project or any portion thereof to the Lender or to the HRA and assigned to the Lender pursuant to an Assignment of Mortgage to be executed by the HRA (the "Assignment"); (ii) one or more collateral assignments of the contracts between the Borrower and the architect and contractor with respect to the Residential 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 Notes (collectively, the "Security Documents").

(e) As determined by the Lender, the proceeds of the Notes may be disbursed pursuant to a Disbursing Agreement (the "Disbursing Agreement") by and among the Lender, Borrower and a title insurance company.

(f) Certain requirements of federal and state law which require that a portion of the housing units in the Residential Project be occupied by families of low and moderate income are set forth in a Regulatory Agreement (the "Regulatory Agreement") by and among the HRA, Borrower and the Lender.

(g) The Notes will be special limited obligations of the HRA. The Notes shall not be payable from or charged 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 Notes shall ever have the right to compel any exercise of the taxing power of the HRA or the City to pay the Notes or the interest thereon, nor to enforce payment thereof against any property of the HRA or the City. Neither of the Notes shall constitute a debt of the HRA or the City within the meaning of any constitutional, charter or statutory limitation.

(h) It is desirable, feasible and consistent with the objects and purposes of the Act to issue

the Notes for the purpose of financing the costs of the Residential Project.

(i) The Residential Project constitutes a “qualified residential rental project” within the meaning of Section 142(d) of the Code, and a “multifamily housing development” authorized by the Act, and furthers the purposes of the Act.

(j) The purpose of the Residential Project is, and the effect thereof will be, to promote the public welfare by the acquisition and construction of a facility for use as a multifamily housing development designed primarily for occupancy by persons of low and moderate income.

(k) The Act authorizes (i) the acquisition and construction of the Residential Project, (ii) the issuance and sale of the Notes, (iii) the execution and delivery by the HRA of the Loan Agreement, Regulatory Agreement, and Pledge Agreement, (iv) the performance of all covenants and agreements of the HRA contained in the Loan Agreement, Regulatory Agreement, and Pledge Agreement and any other documents reasonably necessary to effectuate the intent of this resolution, and (v) the performance of all other acts and things required under the constitution and laws of the State of Minnesota to make the Loan Agreement, Regulatory Agreement, Pledge Agreement and Notes valid and binding obligations of the HRA in accordance with its terms.

(l) It is desirable that the Borrower be authorized, subject to the terms and conditions set forth in the Loan Agreement, which terms and conditions the HRA determines to be necessary, desirable and proper, to complete the acquisition, construction and installation of the Residential 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.

(m) The payments under the Loan Agreement are fixed to produce revenue sufficient to provide for the prompt payment of principal of, premium, if any, and interest on the Notes when due, and the Loan Agreement also provides that the Borrower is required to pay all expenses of the operation and maintenance of the Residential 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 Residential Project and payable during the term of the Loan Agreement.

(n) Pursuant to a Development Agreement to be entered into between the HRA, the City and the Borrower (the “Residential Development Agreement”) and certain loan agreements and related security agreements described therein including the Residential TIF Loan Agreement and a HOME Loan Agreement, the HRA and the Borrower agree to the terms and conditions under which the HRA will provide Residential Pooled TIF Loan and the HOME Loan for the Residential Project (collectively, the “Residential Supplemental Funding Agreements”).

(o) Pursuant to a Development Agreement to be entered into between the HRA, the City and the Commercial Owner (the “Commercial Development Agreement”) and certain loan agreements and related security agreements described therein including the Commercial TIF Loan Agreement, the CDBG Loan Agreement and a Foundation Loan Agreement, the HRA and the Commercial Owner agree to the terms and conditions under which the HRA will provide Commercial Pooled TIF Loan, the CDBG Loan, and the Foundation Loan for the Commercial Project (collectively, the “Commercial Supplemental Funding Agreements”).

(p) There is no litigation pending or, to the actual knowledge of the HRA, threatened against the HRA questioning the due organization of the HRA, or the powers or authority of the HRA to issue

the Notes and undertake the transactions contemplated hereby.

(q) The execution, delivery and performance of the HRA's obligations under the Notes, Regulatory Agreement, Pledge Agreement, Assignment, Loan Agreement, Residential Development Agreement, Residential Supplemental Funding Agreements, Commercial Development Agreement, and Commercial Supplemental Funding Agreements, do not and will not violate any order against the HRA of any court or other agency of government, or any indenture, agreement or other instrument to which the HRA is a party or by which it or any of its property is bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument.

(r) The HRA hereby finds, determines and declares that it is in the public interest of the residents of the City that the Residential Project and the Commercial 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 and, based on the representations of the Borrower, that without the use of tax increment financing for the Residential Project and the Commercial Project, it would not be financially feasible and would not proceed.

1.2 Authorization and Ratification of Residential Project. The HRA has heretofore and does hereby authorize the Borrower, in accordance with the provisions of the Act and subject to the terms and conditions imposed by the Lender, to provide for the acquisition and construction of the Residential 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 NOTES.

2.1 Authorized Maximum Amount and Form of Notes and Interest Rate. The Notes issued pursuant to this Resolution shall mature in the years and amounts and be subject to redemption as therein specified, as such may be modified by agreement of the Lender, Borrower and the HRA; and the principal amount of the Notes that may be outstanding hereunder is expressly limited to \$5,000,000, unless a duplicate of either of the Notes is issued pursuant to Section 2.7. The actual amount of the Notes shall be determined by the agreement of the Lender and the Borrower and any of the officers specified in Section 2.3 prior to the issuance of the Notes. The Notes will each bear interest at the rates and mature on the dates determined by the Borrower and the Lender and set forth in the respective executed by the Authorized Officers. The sale of the Notes to the Lender at a purchase price equal to each of their respective stated amounts is hereby accepted.

2.2 The Notes. The Notes shall be dated as of the date of delivery to the Lender, 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 Notes. The Notes shall be executed on behalf of the HRA by the Chair or a Commissioner, the Executive Director and the Director, Office of Financial Services (the "Authorized Officers"). In case any Authorized Officer whose signature shall appear on the Notes shall cease to be such officer before the delivery of the 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 the Authorized Officer, such officers of the HRA as, in the opinion of the HRA Attorney, may act in their behalf, shall without further act or authorization of the HRA execute and deliver the Notes.

2.4 Volume Cap; Automatic Tax Credits. The Notes will be issued as exempt facility bonds to finance a qualified residential rental project, within the meaning of Section 142(d) of the Code, and requires an

allocation of private activity bond volume cap for purposes of Section 146 of the Code. The HRA authorizes the use of volume cap of the City either carried forward for the purpose of qualified residential rental projects, or a portion of the City's 2016 entitlement volume cap, for the Notes. The Borrower has applied to the Minnesota/Saint Paul Housing Finance Board ("MHFB") for an automatic allocation of 4% low income housing tax credits based on the issuance of the Notes and the use of proceeds of the Notes to finance more than 50% of the basis of the Residential Project. The HRA authorized the execution and delivery of a 42(m)(2)(D) letter, evidencing the determination of the HRA, as the issuer of the Notes, that the amount of tax credits to be allocated to the Residential Project will not exceed the amount necessary for the financial feasibility of the Residential Project and its viability as a qualified low-income housing project throughout the applicable credit period.

2.5 Delivery of Notes. Before delivery of the Notes there shall be filed with the HRA and the Lender (except to the extent waived by the Lender) the following items:

(a) an executed copy of each of the following documents:

- (i) the Loan Agreement;
- (ii) the Pledge Agreement;
- (iii) the Regulatory Agreement;
- (iv) the Residential Development Agreement;
- (v) the Residential Supplemental Funding Agreements;
- (vi) the Security Documents;

(vii) a Bond Compliance Agreement between the HRA and the Borrower (the "Bond Compliance Agreement");

(b) an opinion of Counsel for the Borrower;

(c) the opinions of Bond Counsel as to the validity of the Notes and tax exempt status of Notes; and

(d) such other documents and opinions as Bond Counsel may reasonably require for purposes of rendering its opinion required in subsection (b) above or that the Lender may require as a precondition to their purchase of the Notes.

2.6 Disposition of Note Proceeds. Upon delivery of the Notes to the Lender, the Lender shall, on behalf of the HRA, disburse the purchase price thereof for payment of Residential Project Costs in accordance with the terms of the Loan Agreement.

2.7 Registration of Transfer. The HRA will cause to be kept at the office of the Executive Director of the HRA a Note Register for each of the 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 Notes. The Notes shall each be initially registered in the name of the Lender and shall be transferable upon the Note Register for such Note by the 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, duly executed by the Lender or its duly authorized agent. The HRA may require, as a precondition to any transfer, that the transferee provide to the HRA an investor letter 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 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 Section 2.7 of the Resolution authorizing the issuance of the Note.

Dated: _____

Registered Owner

Upon such transfer the Executive Director shall note the date of registration and the name and address of the successor holder in the Note Register and in the registration blank appearing on either of the Notes, as the case may be.

2.8 Mutilated, Lost or Destroyed Notes. In case either of the 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 registered holder thereof 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.

2.9 Ownership of Notes. The HRA may deem and treat the person in whose name the Note is last registered in the Note 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.

2.10 Limitation on Note Transfers. The Notes have been issued without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Notes may not be assigned or transferred in whole or part, nor may a participation interest in the Notes be given pursuant to any participation agreement, except as an exempt security or as an exempt transaction and in principal amounts of at least \$100,000 and in accordance with Section 2.7 hereof.

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 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 Loan Agreement, Pledge Agreement, Regulatory Agreement, the Bond Compliance Agreement and an Assignment, if required, are hereby approved in substantially the forms on file with the 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 the Notes, Loan Agreement, Regulatory Agreement, Pledge Agreement, Assignment, and Bond Compliance Agreement in the name of and on behalf of the HRA, together with such other documents as Bond Counsel considers appropriate in connection with the issuance of the Notes (collectively, the "Financing Documents"). 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 in their behalf shall without further act or authorization of the Board of Commissioners of the HRA 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.

3.4 Approval of Supplemental Funds; Execution of Documents. The Board hereby approves the provision of the supplemental funds described above in amounts and from such sources as set forth in the Residential Development Agreement, the Residential Supplemental Funding Agreements, the Commercial Development Agreement and the Commercial Supplemental Funding Agreements, and authorizes the execution and delivery by the Authorized Officers of the Residential Development Agreement, the Residential Supplemental Funding Agreements, the Commercial Development Agreement and the Commercial Supplemental Funding Agreements documents, including without limitation, loan or grant agreements, promissory notes, mortgages, declaration and any other documentation required by and subject to the approval of the Saint Paul City Attorney (the "Supplemental Financing Documents"), in the name and on behalf of the HRA. 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. Copies of all of the documents necessary to the transaction herein described shall be delivered, filed and recorded as provided herein and in the Supplemental Financing Documents.

3.5 Future Amendments. The authority to approve, execute and deliver future amendments to the Financing Documents or the Supplemental Financing Documents entered into by the HRA in connection with the issuance of the Notes and consents required under the Financing Documents or the Supplemental Financing Documents is hereby delegated to the Executive Director of the HRA, subject to the following conditions: (a) such amendments or consents to 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 authorized to act in his or her place and stead.

3.6 Program. The HRA has established a governmental program of acquiring purpose investments for qualified residential rental projects. 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.

3.7 Costs; Indemnification by Borrower and Commercial Owner. 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 Residential Project whether or not the Residential Project is carried to completion will be paid by the Borrower. The Commercial Owner has agreed and it is hereby determined that any and all costs incurred by the HRA in connection with the financing of the Commercial Project whether or not the Commercial Project is carried to completion will be paid by the Commercial Owner. It is understood and agreed that the Borrower and the Commercial Owner 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 Residential Project and the Commercial Project, respectively, the Financing Documents, the Supplemental Financing Documents, or the Notes, as further provided for and agreed to by and between the Borrower and the HRA in the Loan Agreement and by and between the Commercial Owner and the HRA in the Supplemental Financing Documents.

3.8 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 Loan Agreement.

3.9 Budget. The budget as detailed in Attachment A is hereby approved.