



Legislation Text

File #: RES PH 22-173, **Version:** 1

Resolution authorizing the issuance and sale of conduit multifamily housing revenue bonds for the Twelve22 Apartment Project to be located at 1222 University Avenue West; approving the execution of related documents; adopting a Housing Program; and approving a Pooled TIF Loan and related documents, District 13, 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 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, 1222 Partners Limited Partnership, a Minnesota limited partnership (or an affiliated entity, the "Borrower"), has requested that the HRA issue its housing revenue bond, in one or more series (collectively, the "Note") under the Act and lend the proceeds thereof to the Borrower to: (i) finance the acquisition, construction and equipping of an approximately 4-story, 55 unit multifamily rental housing development and functionally related facilities, with related parking, to be located at 1222 University Avenue West in the City of Saint Paul, Minnesota; (ii) fund one or more reserve funds to secure the timely payment of the Note, if necessary; (iii) pay interest on the Note during the construction of the Project, if necessary; and (iii) pay the costs of issuing the Note, 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 and taxable revenue bonds in one or more series to be issued to finance the Project in an amount not to exceed \$12,500,000; and

WHEREAS, a public hearing on the Housing Program and the Project was held by the HRA on this date, following duly published notice 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 Note; 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

WHEREAS, the proceeds derived from the sale of the Note will be loaned by the HRA to the Borrower pursuant to the terms of a Borrower Loan Agreement, dated on or after June 1, 2022 (the "Borrower Loan Agreement"), between the HRA and the Borrower, whereby the HRA will apply the proceeds derived from the sale of the Note to fund a loan to the Borrower; and

WHEREAS, the Borrower's repayment obligations under the Borrower Loan Agreement will be evidenced by a Borrower Note delivered by the Borrower and endorsed by the HRA (the "Borrower Note"), which will be assigned to U.S. Bank Trust Company, National Association, a national banking association (the "Fiscal Agent") pursuant to an Assignment of Mortgage and Funding Loan Documents (the "Assignment") dated on or after June 1, 2022 from the Borrower for the benefit of the Fiscal Agent and consented to by the HRA and will be secured by a mortgage granting a mortgage lien on the Project or a portion thereof (the "Mortgage") to be delivered by the Borrower to the HRA and assigned to the Fiscal Agent, pursuant to the Assignment; and

WHEREAS, the HRA will assign its interest in the Borrower Loan Agreement to the Fiscal Agent pursuant to a Funding Loan Agreement, dated on or after June 1, 2022 (The "Funding Loan Agreement") by and among the HRA, the Fiscal Agent and Allianz Life Insurance Company of North America or such other entity designated by R4 Capital Funding LLC (the "Funding Lender"); and

WHEREAS, the Note and the interest on the Note: (i) shall be payable solely from the revenues pledged therefor under the Borrower Loan Agreement and the Funding Loan Agreement or other security documents described therein; (ii) shall not constitute a debt of the City or the HRA within the meaning of any constitutional or statutory limitation; (iii) shall not constitute nor give rise to a pecuniary liability of the City or the HRA or a charge against its general credit or taxing powers; (iv) shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the City or the HRA other than the HRA's interest in the Funding Loan Documents (as defined in the Assignment); and (v) shall not constitute a general or moral obligation of the City or the HRA; 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:

1. The HRA acknowledges, finds, determines, and declares that the issuance of the Note is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Note, and the other actions of the HRA under the Funding Loan Agreement, the Borrower Loan Agreement, and this resolution constitute a public purpose and are in the interests of the HRA. The 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. In authorizing the issuance of the Note for the financing of the Project and the related costs, the HRA's purpose is and the effect thereof will be to promote the public welfare of the City and its residents by providing multifamily housing developments for low or moderate income residents of the City and otherwise furthering the purposes and policies of the Act.

2. The preparation of the Housing Program is hereby ratified, confirmed, and approved. The Housing Program is hereby adopted, ratified, and approved in all respects without amendment. 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. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Note in one or more series in a maximum aggregate principal amount not to exceed \$12,500,000, provided that the City's and HRA's current year or carryforward bonding authority allocated to the Note shall not exceed the lesser of \$12,500,000 or 53% of the Borrower's basis in the Project. The Note shall bear interest at the rate, shall be designated, shall be numbered, shall be dated, shall mature, shall be in the aggregate principal amount, shall be subject to redemption prior to maturity, shall be in such form, and shall have such other

terms, details, and provisions as are prescribed therein or in the Funding Loan Agreement, in substantially the form now on file with the Executive Director of the HRA, with necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Note, the stated maturity of the Note, the interest rate or rate on the Note and the terms of redemption of the Note) as are approved as evidenced by the execution thereof as provided in Section 8. The Note shall be in minimum denominations of at least \$100,000. The Note shall be issued in a denomination equal to its entire principal amount. The HRA hereby authorizes Kennedy & Graven, Chartered, as bond counsel, to prepare, execute, and deliver its approving legal opinions with respect to the Note.

All of the provisions of the Note, when executed as authorized herein, shall be deemed to be a part of this resolution as fully and to the same extent as if incorporated verbatim herein and shall be in full force and effect from the date of execution and delivery thereof. The Note shall be substantially in the form in the Funding Loan Agreement or otherwise on file with the Executive Director of the HRA, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Note, the stated maturity of the Note, the interest rate on the Note and the terms of redemption of the Note) as the Chair or Commissioner, Executive Director and the Director, Office of Financial Services of the City (collectively, the "Authorized Officials"), in their discretion, shall determine. The execution of the Note with the manual or facsimile signatures of the Authorized Officials and the delivery of the Note by the HRA shall be conclusive evidence of such determination. The Board of Commissioners hereby authorizes the Authorized Officials to execute the Funding Loan Agreement, and to deliver the Funding Loan Agreement to the Fiscal Agent, and hereby authorizes the execution of the Note in accordance with the terms of the Funding Loan Agreement, and hereby provides that the Funding Loan Agreement shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Note, the HRA, and the Fiscal Agent as set forth therein. The Paying Agent and the Registrar for the Note shall be the Fiscal Agent or other appropriate entity appointed by the Borrower.

4. The Note shall be a special, limited revenue obligation of the HRA payable solely from the revenues provided by the Borrower pursuant to the Borrower Loan Agreement, and other funds pledged pursuant to the Funding Loan Agreement; the HRA does not pledge its general credit or taxing powers or any funds of the City or the HRA to the payment of the Note.

No covenant, stipulation, obligation or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member of the Board, or any officer, agent or employee of the HRA in that person's individual capacity, and neither the Board nor any officer or employee executing the Note shall be personally liable on the Note or be subject to any personal liability or accountability by reason of the issuance thereof.

5. The Borrower shall apply the proceeds of the loan made pursuant to the terms and conditions of the Borrower Loan Agreement to the payment of a portion of the capital costs of the Project and related costs. The loan repayments to be made by the Borrower under the Borrower Loan Agreement are to be fixed so as to produce revenues sufficient to pay the principal of, premium, if any, and interest on the Note when due.

6. To ensure compliance with certain rental and occupancy restrictions imposed by the Act and Section 142(d) of the Code and to ensure compliance with certain restrictions imposed by the HRA, the Project will be subject to a Regulatory Agreement, dated as of or after June 1, 2022 (the "Regulatory Agreement"), among the HRA, the Borrower, and the Fiscal Agent.

7. To ensure compliance with certain requirements imposed by the City and the HRA, the Project will be subject to a Bond Compliance Agreement dated as of or after June 1, 2022 (the "Bond Compliance Agreement") between the HRA and the Borrower.

8. Subject to approval by the City Council, the Board hereby approves the American Rescue Plan Act and Pooled TIF Loan Agreement, between the City, the HRA and the Borrower, (the "ARPA and Pooled TIF Loan Agreement") which includes authorization of the Pooled TIF Loan (as defined therein) in an aggregate principal amount of up to of \$748,983, in substantially the form on file with the Executive Director, together with any related documents necessary in connection therewith, including, without limitation, all documents, exhibits, certifications or consents referenced in or attached to the ARPA and Pooled TIF Loan Agreement including, without limitation, a promissory note, mortgage, assignment of rents and leases, and a disbursing agreement and any subordinations, assignments or consents necessary in connection with the Developer's financing, (collectively, the "ARPA and Pooled TIF Loan Documents").

9. The Authorized Officials are hereby authorized to execute and deliver the Funding Loan Agreement, the Borrower Loan Agreement, the Assignment, the Note, the Regulatory Agreement, the Bond Compliance Agreement, the ARPA and Pooled TIF Loan Documents to which it is a party and any consents, subordinations, and such other documents as are City necessary or appropriate in connection with the issuance, sale, and delivery of the Note, including without limitation various certificates of the HRA, the Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, a certificate as to arbitrage and rebate, and similar documents (collectively, the "Financing Documents").

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 as determined by the parties thereto 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.

10. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the HRA or the Board by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the HRA or by such members of the Board, or such officers, board, body or agency thereof as may be required or authorized by law to exercise such powers and to perform such duties.

No provision, covenant or agreement contained in the aforementioned documents, the Note, or in any other document relating to the Note, and no obligation therein or herein imposed upon the HRA or the breach thereof, shall constitute or give rise to a general or moral obligation of the City or the HRA or any pecuniary liability of the City or the HRA or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the HRA has not obligated itself to pay or remit any funds or revenues, other than funds and revenues derived from the Borrower Loan Agreement which are to be applied to the payment of the Note, as provided therein.

Except as otherwise expressly provided herein, nothing in this resolution or in the aforementioned documents expressed or implied, is intended or shall be construed to confer upon any person or firm or corporation, other than the HRA, any holder of the Note issued under the provisions of this resolution, any right, remedy or claim, legal or equitable, under and by reason of this resolution or any provisions hereof, this resolution, the aforementioned documents, and all of their provisions being intended to be and being for the sole and exclusive benefit of the HRA, and any holder from time to time of the Note issued under the provisions of this resolution.

11. In case any one or more of the provisions of this resolution, other than the provisions contained in Sections 4, 10 or 15, or of the aforementioned documents, or of the Note issued hereunder shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution, or of the aforementioned documents, or of the Note, but this resolution, the aforementioned documents, and the Note shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

12. The Note, when executed and delivered, shall contain a recital that they are issued pursuant to the Act, and such recital shall be conclusive evidence of the validity of the Note and the regularity of the issuance thereof, and that all acts, conditions, and things required by the laws of the State of Minnesota relating to the adoption of this resolution, to the issuance of the Note, and to the execution of the aforementioned documents to happen, exist, and be performed precedent to the execution of the aforementioned documents have happened, exist, and have been performed as so required by law.

13. The Note will be issued to the Funding Lender or another "qualified institutional buyer" and without registration under state or other securities laws, pursuant to an exemption for such issuance; and accordingly the Note may not be assigned or transferred in whole or part, except to another "Approved Transferee" in accordance with Section 2.6 of the Funding Loan Agreement. The HRA will require, as a precondition to any transfer, that the transferee provide to the HRA an investor letter in substantially the form attached to the Funding Loan Agreement as EXHIBIT B or in any other form satisfactory to the HRA.

14. The officers of the HRA, bond counsel, other attorneys, engineers, and other agents or employees of the HRA are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Note, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Note, the aforementioned documents, and this resolution. If for any reason any of the Authorized Officials is unable to execute and deliver the documents referred to in this Resolution, such documents may be executed by any member of the Board or any officer of the HRA delegated the duties of any such Authorized Officials with the same force and effect as if such documents were executed and delivered by such Authorized Officials.

15. The Borrower shall pay the administrative fee of the HRA as provided in the Borrower Loan Agreement. The Borrower will also pay, or, upon demand, reimburse the HRA for payment of, any and all costs incurred by the HRA in connection with the Project and the issuance of the Note, whether or not the Note are issued, including any costs for attorneys' fees. 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 or the Note, as provided for and agreed to by the Borrower in the Borrower Loan Agreement.

16. The authority to approve, execute and deliver future amendments to the Financing Documents herein authorized entered into by the HRA in connection with the issuance of the Note and any consents required under the Financing Documents is hereby delegated to the Authorized Officials, subject to the following conditions: (a) such amendments or consents do not require the consent of the holder of the Note or such consent has been obtained; (b) such amendments or consents do 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 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/her place and stead.

17. 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 the Note 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.

18. Capitalized terms used but not defined herein shall have the meanings given them in the Financing Documents.

19. This Resolution shall be in full force and effect from and after its approval.