



Request for City Council Committee Action from the Department of Community Planning and Economic Development - CPED

Date: October 21, 2014

To: Council Member Lisa Goodman, Committee Chair
Community Development & Regulatory Services Committee

Referral to:

Subject: **Symphony Place Apts (1117 Marquette Ave)** – Authorization to Extend Bond Maturity Date 5 Years

Recommendation: **Adopt attached resolution authorizing 5-year extension of maturity date on Symphony Place Project Series 1988 Housing Development Revenue Refunding Bonds.**

Previous Directives:

On November 20, 1987, City Council granted final approval of Housing Development Revenue Refunding Bonds (Symphony Place Project) Series 1987 in an amount up to \$19,660,000 under Resolution 87R-493.

On September 25, 1987, City Council granted preliminary approval of Housing Development Revenue Refunding Bonds (Symphony Place Project) Series 1987 in an amount up to \$19,660,000 under Resolution 87R-408.

Department Information

Prepared by: Scott Ehrenberg, Loan Portfolio Specialist, 612-673-5067

Approved by: Cathy Polasky, Director of Economic Development

Charles T. Lutz, CPED Deputy Director

Presenters in Committee: Scott Ehrenberg

Language Reviewed by Development Finance:

Financial Impact *(delete all lines not applicable to your request)*

- Loan Administration Fee of \$2,000 to be collected to offset staff costs in processing request.

- City to continue receiving semi-annual Bond Administration Fees of approximately \$25,000 for the additional term of the bonds.

Community Impact

- Neighborhood Notification
- City Goals
- Comprehensive Plan
- Zoning Code
- Other

Supporting Information

Symphony Place Apartments is a 250-unit mixed-use rental housing project located at 1117 Marquette Ave in the Downtown West Neighborhood of Ward 7. The project was built in 1983.

TIAA CREF is pursuing the purchase of Symphony Place Apts from its current owner Waterton Associates, L.L.C. through its Fund IX SP Minneapolis, L.L.C. TIAA CREF is an active national investor in rental housing acquisition and rehabilitation projects with existing tax exempt bond financing. TIAA CREF's interest in acquiring and rehabilitating Symphony Place Apartments is largely contingent on the Housing Development Revenue Refunding Bonds remaining in place with the project. To help facilitate its acquisition of Symphony Place Apartments, TIAA CREF has requested the City authorize a 5-year extension of the bonds current maturity date of December 1, 2014. CPED staff recommends the City adopt the attached resolution to authorize a 5-year extension of the maturity date of the existing Housing Development Revenue Refunding Series 1988 Bonds in accommodation of TIAA CREF's acquisition of Symphony Place Apts.

**RESOLUTION
OF THE
CITY OF MINNEAPOLIS**

By Goodman

Relating to Symphony Place, a multifamily housing development financed with the proceeds of the Housing Development Revenue Refunding Bonds (Symphony Place Project), Series 1988, issued by the City in the original aggregate principal amount of \$19,660,000; consenting to the transfer of the development to a new owner; approving the extension of the maturity date of the Series 1988 Bonds; approving certain documents and authorizing the execution and delivery of such documents by the City

RESOLVED BY THE CITY COUNCIL OF THE CITY OF MINNEAPOLIS:

SECTION 1. BACKGROUND

1.01. Symphony Place. Symphony Place (the “Project”) is a multifamily housing development located at 1117 Marquette Avenue in the City of Minneapolis (the “City”). The Project is comprised of a single twenty-six-story building containing 250 residential rental dwelling units. In 1982, the City issued its Housing Development Revenue Bonds (Symphony Place Project), Series 1982 (the “Series 1982 Bonds”), in the original aggregate principal amount of \$20,000,000, under the terms of an Indenture of Trust, dated as of December 1, 1982 (the “Indenture”), between the City and the predecessor to U.S. Bank Trust National Association, as trustee (the “Trustee”), to finance the Project. The proceeds derived from the sale of the Series 1982 Bonds were loaned by the City to Orchestra Hall Associates, a Minnesota limited partnership (“Orchestra Hall Associates”), and Orchestra Hall Associates applied the proceeds of the loan to the acquisition and construction of the Project.

1.02. Prior Transfers. Under the terms of an Indenture of Trust, dated as of December 1, 1987 (the “Series 1987 Indenture”), between the City and U.S. Bank National Association (formerly known as First Trust Company, Inc.), as trustee (the “Trustee”), the City issued the following obligations: (i) Housing Development Revenue Refunding Bonds (Symphony Place Project), Series 1987A (Taxable) (the “Series 1987A Bonds”) in the original aggregate principal amount of \$19,660,000; and (ii) Housing Development Revenue Refunding Bonds (Symphony Place Project), Series 1987B (Taxable) (the “Series 1987B Bonds”), in the original aggregate principal amount of \$2,640,000. The proceeds of the Series 1987A Bonds and Series 1987B Bonds (collectively, the “Series 1987 Bonds”) were loaned by the City to Orchestra Hall Associates under the terms of a Loan Agreement, dated as of December 1, 1987 (the “Original Loan Agreement”), between the City and Orchestra Hall Associates. The proceeds of the loan were applied by Orchestra Hall Associates to the defeasance and redemption of the Series 1982 Bonds and to the payment of certain related costs.

Under the terms of the Series 1987 Indenture, as supplemented by a First Supplemental Indenture of Trust, dated as of September 1, 1988 (the “First Supplemental Indenture”), between the City and the Trustee, the City issued its Housing Development Revenue Refunding Bonds (Symphony Place Project), Series 1988 (the “Series 1988 Bonds”), in the original aggregate principal amount of \$19,660,000, and loaned the proceeds derived from the sale of the Series 1988 Bonds to Orchestra Hall Associates under the terms of the Original Loan Agreement, as amended by the terms of Amendment No. 1 to Loan Agreement, dated as of September 1, 1988 (“Amendment No. 1”), between the City, Orchestra Hall

Associates, and the Trustee. The proceeds of the loan were applied to the defeasance and redemption of the Series 1987A Bonds.

The Series 1988 Bonds were secured by a letter of credit issued by Citibank, N.A. (the "Citibank Letter of Credit"). In 1992, as a result of financial difficulties with respect to the Project, Citibank, N.A. exercised its remedies against the Project and transferred title to the Project to Marquette Avenue, Inc., a corporation created by Citibank, N.A. for the sole purpose of owning the Project. In 1997, the Project was sold to 1117 Marquette Corp., a Delaware corporation formed by Heitman Capital Management Group for the sole purpose of owning the Project ("1117 Marquette Corp."). In conjunction with the transfer of the Project: (i) a Second Supplemental Indenture of Trust, dated as of February 13, 1997 (the "Second Supplemental Indenture"), between the City and the Trustee was authorized, executed, and delivered; (ii) Amendment No. 2 to Loan Agreement, dated as of February 13, 1997 ("Amendment No. 2"), between the City, 1117 Marquette Corp., and the Trustee, was authorized, executed, and delivered; and (iii) the Citibank Letter of Credit was replaced with a letter of credit issued by American National Bank and Trust Company of Chicago, a national banking association ("American Letter of Credit").

The Project was conveyed from 1117 Marquette Corp. to Oakwood Minneapolis, LLC, a Delaware limited liability company ("Oakwood Minneapolis LLC") on September 29, 1999. The American Letter of Credit was replaced with a Direct Pay Credit Enhancement Agreement, dated as of November 1, 1999 (the "Freddie Mac Credit Agreement"), between the Federal Home Loan Mortgage Corporation ("Freddie Mac") and the Trustee. In conjunction with the substitution of the Freddie Mac Credit Agreement for the American Letter of Credit: (i) a Third Supplemental Indenture of Trust, dated as of November 1, 1999 (the "Third Supplemental Indenture"), between the City and the Trustee was authorized, executed, and delivered; and (ii) Amendment No. 3 to Loan Agreement, dated as of November 1, 1999 ("Amendment No. 3"), between the City and Oakwood Minneapolis LLC, was authorized, executed, and delivered.

1.03. Proposed Transfer. The current owner of the Project is Fund IX SP Minneapolis, L.L.C., a Delaware limited liability company. The Project is proposed to be conveyed from the current owner to MLVI Symphony Place Apartments, LLC, a Delaware limited liability company (the "New Owner"). In conjunction with the transfer of the Project to the New Owner, the New Owner has requested that: (i) the maturity date of the Series 1988 Bonds be extended by five (5) years; and (ii) certain documents be authorized, executed, and delivered by the City to facilitate the transfer of the Project to the new owner, the extension of the maturity date of the Series 1988 Bonds, and the extension of the Freddie Mac Credit Agreement.

SECTION 2. TRANSFER AND AMENDMENTS

2.01. Consent to Transfer. The Council hereby consents to the transfer of the Project from Fund IX SP Minneapolis, L.L.C. to the New Owner (or to any related person or entity formed by TIAA-CREF to acquire and own the Project). The transfer is subject to the condition that the City receives an opinion of Kennedy & Graven, Chartered, in its capacity as bond counsel to the City ("Bond Counsel"), to the effect that: (i) the transfer of the Project to the New Owner is authorized by (A) applicable law; (B) the Series 1987 Indenture, as supplemented by the First Supplemental Indenture, the Second Supplemental Indenture, and the Third Supplemental Indenture (collectively, the "Indenture"), and any additional supplement to the Indenture; (C) the Original Loan Agreement, as amended by Amendment No. 1, Amendment No. 2, and Amendment No. 3 (collectively, the "Loan Agreement"), and any additional amendment to the Loan Agreement; and (D) the Freddie Mac Credit Agreement; and (ii) the transfer will not cause interest on the Series 1988 Bonds to become includable in gross income for federal income tax purposes.

2.02. Consent to Extension of Maturity Date. The Council hereby consents to the extension of the maturity date of the Series 1988 Bonds by up to five (5) years and a corresponding extension of the effective date of the Freddie Mac Credit Agreement by up to five (5) years. The approvals of the extension of the maturity date of the Series 1988 Bonds and of the effective date of the Freddie Mac Credit Agreement are subject to the condition that the City receives an opinion of Bond Counsel to the effect that: (i) the extension of the maturity date of the Series 1988 Bonds will not cause the Series 1988 Bonds to be deemed reissued for federal income tax purposes; and (ii) will not cause interest on the Series 1988 Bonds to become includable in gross income for federal income tax purposes.

2.03. Consent to Substitution of Remarketing Agent. The Council hereby consents to the substitution of Citi Global Markets, Inc. (successor to Newman and Associates, Inc.), as the current Remarketing Agent under the Remarketing Agreement, dated November 1, 1999, and the appointment of Stern Brothers & Co. as the successor Remarketing Agent.

2.04. Authorized Documents. The Finance Officer is hereby authorized and directed to execute any instruments, agreements, and other documents (the "Documents") that are determined by Bond Counsel to be necessary or appropriate to facilitate the transfers, extensions, substitutions, and amendments authorized by the terms of this resolution and, in particular, to approve the transfer of the Project to the New Owner and the extension of the maturity date of the Series 1988 Bonds and the effective date of the Freddie Mac Credit Agreement. The Documents may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall together constitute one and the same instrument.

2.05. Certifications. The Finance Officer and other officers, employees, and agents of the City are hereby authorized and directed, individually and collectively, to furnish certified copies of all proceedings and certifications as to facts as shown by the books and records of the City, and the right and authority of the City to execute and deliver the Documents and to consent to the transfer of the Project, and all such certified copies and certifications shall be deemed representations of fact on the part of the City. Such officers, employees, and agents of the City are hereby authorized to execute and deliver, on behalf of the City, all other certificates, instruments, and other written documents that may be requested by Bond Counsel, and with the approval of Bond Counsel, as may be requested by the Trustee or other persons or entities in conjunction with the transfer of the Project or the execution and delivery of the Documents.

SECTION 3. MISCELLANEOUS

3.01. Agreements Binding. Any agreements, covenants, or obligations of the City contained in this resolution and in the above-referenced Documents shall be deemed to be the agreements, covenants, and obligations of the City to the full extent authorized or permitted by law, and all such agreements, covenants, and obligations shall be binding on the City and enforceable in accordance with their terms. No agreement, covenant, or obligation contained in this resolution or in the above-referenced Documents shall be deemed to be an agreement, covenant, or obligation of any member of the City Council, or of any officer, employee, or agent of the City in that person's individual capacity. Neither the members of the City Council, nor any officer executing the above-referenced Documents shall be liable personally on the above-referenced Documents or be subject to any personal liability or accountability by reason of the execution and delivery of the above-referenced Documents.

3.02. Rights Conferred. Nothing in this resolution or in the above-referenced Documents is intended or shall be constructed to confer upon any person (other than as provided in the Documents and

the other agreements and instruments hereby approved) any right, remedy, or claim, legal or equitable, under and by reason of this resolution or any provision of this resolution.

3.03. Validity. If for any reason the Finance Officer, or any other officers, employees, or agents of the City authorized to execute the Documents or other certificates, instruments, or other written materials on behalf of the City shall for any reason cease to be an officer, employee, or agent of the City after the execution by such person of any Document, certificate, instrument, or other written materials, such fact shall not affect the validity or enforceability of such Document, certificate, instrument, or other written material. If for any reason the Finance Officer, or any other officers, employees, or agents of the City authorized to execute Documents, certificates, instruments, or other written materials on behalf of the City shall be unavailable to execute such Documents, certificates, instruments, or other written materials for any reason, such Documents, certificates, instruments, or other written materials may be executed by a deputy or assistant to such officer, or by such other officer of the City as in the opinion of the City Attorney is authorized to sign such document.

3.04. Amendments. The authority to approve, execute, and deliver future amendments to the Documents executed and delivered by the City in connection with the transactions contemplated by this resolution is hereby delegated to the Finance Officer, subject to the following conditions: (a) such amendments do not require the consent of the holders of the Series 1988 Bonds or, if required, such consent has been obtained; (b) such amendments do not materially adversely affect the interests of the City as the issuer of the Series 1988 Bonds; (c) such amendments do not contravene or violate any policy of the City; (d) such amendments are acceptable in form and substance to the City Attorney, Bond Counsel, or other counsel retained by the City to review such amendments; and (e) such amendments do not materially prejudice the interests of the owners of the Series 1988 Bonds. 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 Finance Officer shall be conclusive evidence of the approval of such instrument in accordance with the terms hereof. In the absence of the Finance Officer, any instrument authorized by this paragraph to be executed and delivered by the Finance Officer may be executed by such other officer of the City as in the opinion of the City Attorney is authorized to execute and deliver such document.

3.05. Effective Date. This resolution shall be effective immediately after the date of adoption and publication hereof. Pursuant to Chapter 4, Section 9, of the Charter of the City, only the title of this resolution and a summary of this resolution conforming to Minnesota Statutes, Section 331A.01, subdivision 10, shall be published in the official paper of the City.