

CITY OF SHAKOPEE

RESOLUTION NO. R2021-048

RESOLUTION AUTHORIZING THE ISSUANCE, SALE, AND DELIVERY OF
MULTIFAMILY HOUSING REVENUE BONDS FOR THE BENEFIT OF
SHAKOPEE HOUSING PARTNERS, LP, AND AUTHORIZING THE EXECUTION
AND DELIVERY OF DOCUMENTS RELATED THERETO

BE IT RESOLVED by the City Council (the “City Council”) of the City of Shakopee, Minnesota (the “City”), as follows:

Section 1. Recitals.

1.01. Pursuant to Minnesota Statutes, Chapter 462C, as amended (the “Act”), the City is authorized to issue revenue bonds to provide funds to finance multifamily rental housing developments located within the City.

1.02. Shakopee Housing Partners, LP, a Minnesota limited partnership, or its assigns or affiliates (the “Borrower”), has proposed that the City issue one or more series of taxable or tax-exempt multifamily housing revenue bonds (the “Bonds”) in the approximate aggregate principal amount not to exceed \$6,825,000, for the benefit of the Borrower, for the purposes of financing all or a portion of (i) the acquisition, rehabilitation, and equipping of an approximately 62-unit existing multifamily rental housing facility and facilities functionally related and subordinate thereto located at 1428 Fourth Avenue East in the City known as Shakopee Village Apartments (the “Project”), for occupancy by seniors of low and moderate income; (ii) one or more reserve funds to secure the timely payment of the Bonds, if necessary; (iii) capitalized interest on the Bonds during the rehabilitation of the Project, if necessary; and (iv) the costs of issuing the Bonds. The head of household of each dwelling unit in the Project must be at least 62 years old or disabled.

1.03. In accordance with the Act, the City has prepared a housing program (the “Housing Program”) to authorize the City’s issuance of the Bonds to finance the acquisition, rehabilitation, and construction of the Project. The Housing Program was prepared and submitted to Metropolitan Council for its review and comment.

1.04. On October 6, 2020, the City Council adopted Resolution No. 2020-120, authorizing the submission of an application to the office of Minnesota Management and Budget for an allocation of bonding authority with respect to the Bonds to finance the Project in accordance with the requirements of Minnesota Statutes, Chapter 474A, as amended, and providing preliminary approval for the sale and issuance of the Bonds. Pursuant to Certificate No. 394, the Bonds received an allocation of bonding authority from the State of Minnesota in the principal amount of \$6,825,000.

1.05. A notice of public hearing (the “Public Notice”) was published in the *Shakopee Valley News*, the official newspaper of and a newspaper of general circulation in the City, with respect to the required public hearing under Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), and Section 462C.04, subdivision 2 of the Act.

1.06. The Public Notice was published at least fifteen (15) days before the regularly scheduled meeting of the City Council, and on the date hereof, 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.

Section 2. Housing Program. The Housing Program, in the form substantially on file with the City, is hereby approved.

Section 3. The Bonds.

3.01. The Borrower has requested that the City issue, sell, and deliver the Bonds in the approximate principal amount not to exceed \$6,825,000. The Bonds are proposed to be sold publicly and underwritten by Colliers Securities LLC, a Delaware limited liability company (the “Underwriter”).

3.02. The Bonds are proposed to be issued pursuant to this resolution, the Act, and an Indenture of Trust (the “Indenture”) between the City and U.S. Bank National Association, a national banking association (the “Trustee”).

3.03. The proceeds derived from the sale of the Bonds will be loaned by the City to the Borrower (the “Loan”) pursuant to the terms of a Loan Agreement (the “Loan Agreement”) between the City and the Borrower.

3.04. The Bonds and the interest on the Bonds (i) shall be payable solely from the revenues pledged therefor under the Loan Agreement and additional sources of revenue provided by or on behalf of the Borrower; (ii) shall not constitute a debt of the City within the meaning of any constitutional or statutory limitation; (iii) shall not constitute or give rise to a pecuniary liability of the City 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 other than the City’s interest in the Loan Agreement; and (v) shall not constitute a general or moral obligation of the City.

3.05. The loan repayments to be made by the Borrower under the Loan Agreement will be fixed so as to produce revenue sufficient to pay the principal of, premium, if any, and interest on the Bonds when due. Such loan repayments will be assigned to the Trustee under the terms of the Indenture.

3.06. The Borrower’s repayment obligations in respect of the Loan will be evidenced by a Promissory Note from the Borrower to the City and assigned to the Trustee and may be secured by one or more mortgage agreements or guaranties.

3.07. The City acknowledges, finds, determines, and declares that the issuance of the Bonds is authorized by the Act and is consistent with the purposes of the Act and that the issuance of the Bonds, and the other actions of the City under the Indenture, the Loan Agreement, and this resolution constitute a public purpose and are in the interests of the City. In authorizing the issuance of the Bonds to finance a portion of the Project and the related costs, the City’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.

3.08. For the purposes set forth above, there is hereby authorized the issuance, sale, and delivery of the Bonds in the approximate aggregate principal amount not to exceed \$6,825,000. The Bonds shall bear interest at the rates, 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 in the Indenture, substantially in the form now on file with the City, with the amendments referenced herein. The City

hereby authorizes all or a portion of the Bonds to be issued as “tax-exempt bonds,” the interest on which is not includable in gross income for federal and State of Minnesota income tax purposes.

All of the provisions of the Bonds, 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 Bonds shall be substantially in the form of the Indenture on file with the City, which form is hereby approved, with such necessary and appropriate variations, omissions, and insertions (including changes to the aggregate principal amount of the Bonds, the stated maturities of the Bonds, the interest rates on the Bonds and the terms of redemption of the Bonds) as the Mayor and the City Administrator, in their discretion, shall determine. The execution of the Bonds with the manual or facsimile signatures of the Mayor and the City Administrator and the delivery of the Bonds by the City shall be conclusive evidence of such determination.

3.09. The Bonds shall be special, limited obligations of the City payable solely from the revenues provided by the Borrower pursuant to the Loan Agreement and other funds pledged pursuant to the Indenture. The City Council hereby authorizes and directs the Mayor and the City Administrator to execute the Bonds in accordance with the terms thereof.

3.10. All of the provisions of the Indenture, 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 Indenture shall be substantially in the form on file with the City, which is hereby approved, with such necessary and appropriate variations, omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Administrator, in their discretion, shall determine, and the execution thereof by the Mayor and the City Administrator shall be conclusive evidence of such determination. The Mayor and the City Administrator are hereby authorized and directed to execute the Indenture, and to deliver the Indenture to the Trustee, and hereby authorizes and directs the execution of the Bonds in accordance with the terms of the Indenture, and hereby provides that the Indenture shall provide the terms and conditions, covenants, rights, obligations, duties, and agreements of the owners of the Bonds, the City, and the Bond Trustee as set forth therein.

3.11. The Mayor and the City Administrator are hereby authorized and directed to execute and deliver the Loan Agreement, a Bond Purchase Agreement between the City, the Borrower, and the Underwriter, and all other documents and assignments related to the Loan required to be executed by the City. All of the provisions of such documents, when executed and delivered 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 aforementioned documents shall be substantially in the forms on file with the City which are hereby approved, with such omissions and insertions as do not materially change the substance thereof, and as the Mayor and the City Administrator, in their discretion, shall determine, and the execution thereof by the Mayor and the City Administrator shall be conclusive evidence of such determinations.

3.12. The City will not participate in the preparation of the Preliminary Official Statement or the Official Statement (together, the “Official Statement”) relating to the offer and sale of the Bonds and will make no independent investigation with respect to the information contained therein, including the appendices thereto, except for the information set forth in the Official Statement regarding the City and certain matters relating to litigation, and the City assumes no responsibility for the sufficiency, accuracy, or completeness of such information. Subject to the foregoing, the City hereby consents to the distribution and the use by the Underwriter of the Official Statement in connection with the offer and sale of the Bonds. The Official Statement is the sole material consented to by the City for use in connection with the offer and sale of the Bonds.

3.13. The City hereby authorizes the Borrower to provide such security for payment of its obligations under the Loan Agreement and for payment of the Bonds, and the City hereby approves the execution and delivery of such security.

Section 4. Additional Findings and Certifications.

4.01. The Bonds are authorized to be issued in one or more series in the approximate aggregate principal amount not to exceed \$6,825,000.

4.02. 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 City, the Mayor and City Administrator are also hereby authorized and directed to execute and deliver a Regulatory Agreement (the "Regulatory Agreement") between the City, the Borrower, and the Trustee. All of the provisions of the Regulatory Agreement, when executed and delivered 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 Regulatory Agreement shall be substantially in the form on file with the City which is hereby approved, with such omissions and insertions as do not materially change the substance thereof, or as the Mayor and the City Administrator, in their discretion, shall determine, and the execution thereof by the Mayor and the City Administrator shall be conclusive evidence of such determination.

4.03. The Mayor and the City Administrator are authorized and directed to execute any additional documents deemed necessary to carry out the intentions of this resolution and to complete the financing described herein, so long as City staff and legal counsel approve such documents.

4.04. The Mayor, the City Administrator, and the Finance Director of the City are hereby authorized to execute and deliver, on behalf of the City, such other documents and certificates as are necessary or appropriate in connection with the issuance, sale, and delivery of the Bonds, including various certificates of the City, an Information Return for Tax-Exempt Private Activity Bond Issues, Form 8038, an endorsement of the City to the tax certificate of the Borrower, and similar documents, and all other documents and certificates as shall be necessary and appropriate in connection with the issuance, sale, and delivery of the Bonds. The City hereby authorizes Kennedy & Graven, Chartered, as bond counsel ("Bond Counsel"), to prepare, execute, and deliver its approving legal opinions with respect to the Bonds.

4.05. Except as otherwise provided in this resolution, all rights, powers, and privileges conferred and duties and liabilities imposed upon the City or the City Council by the provisions of this resolution or of the aforementioned documents shall be exercised or performed by the City or by such members of the City Council, 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 covenant, stipulation, Bond or agreement herein contained or contained in the aforementioned documents shall be deemed to be a covenant, stipulation, Bond or agreement of any member of the City Council, or any officer, agent or employee of the City in that person's individual capacity, and neither the City Council nor any officer or employee executing the Bonds shall be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

No provision, covenant or agreement contained in the aforementioned documents, the Bonds, or in any other document relating to the Bonds, and no Bond therein or herein imposed upon the City or the breach thereof, shall constitute or give rise to a general or moral Bond of the City or any pecuniary

liability of the City or any charge upon its general credit or taxing powers. In making the agreements, provisions, covenants, and representations set forth in such documents, the City has not obligated itself to pay or remit any funds or revenues, other than funds and revenues as described herein which are to be applied to the payment of the Bonds, as provided therein.

4.06. Except as herein otherwise expressly provided, 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 City, any holder of the Bonds 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 City, and any holder from time to time of the Bonds issued under the provisions of this resolution.

4.07. In case any one or more of the provisions of this resolution, other than the provisions contained in the first sentence of Section 3.09 hereof, or of the aforementioned documents, or of the Bonds 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 Bonds, but this resolution, the aforementioned documents, and the Bonds shall be construed and endorsed as if such illegal or invalid provisions had not been contained therein.

4.08. The Bonds, 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 Bonds 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 Bonds, 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.

4.09. The officers of the City, Bond Counsel, other attorneys, engineers, and other agents or employees of the City are hereby authorized to do all acts and things required of them by or in connection with this resolution, the aforementioned documents, and the Bonds, for the full, punctual, and complete performance of all the terms, covenants, and agreements contained in the Bonds, the aforementioned documents, and this resolution. If for any reason the Mayor or the City Administrator is unable to execute and deliver the documents referred to in this resolution, such documents may be executed by any member of the City Council or any officer of the City delegated the duties of the Mayor or the City Administrator with the same force and effect as if such documents were executed and delivered by the Mayor or the City Administrator.

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

Section 5. Effective Date. This resolution shall be in full force and effect from and after its approval. The approvals contained in the resolution are effective for one year after the date hereof.

Approved by the City Council of the City of Shakopee this 16th day of March, 2021.

Mayor

ATTEST:

City Clerk

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