

**MEMORANDUM**

VIA E-MAIL

**TO:** City of Ramsey  
Attn: Patrick Brama

**CC:** Kurt Ulrich  
Joe Langel

**FROM:** Thomas L. Bray *TLB*

**DATE:** March 18, 2015

**RE:** **Resolution Authorizing Various Actions Relating to F&C Ramsey Apartments, LLC's Sale of the Residence at the COR**

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In February, F&C Apartments, LLC ("F&C") asked the City Council to adopt certain Resolutions approving the City's execution of a First Amendment to Development Agreement and issuance of the TIF Note to F&C in connection with F&C's closing on a refinancing with PNC Bank. As part of the refinancing F&C Ramsey Member, LLC (the "Borrower") was to repay Loan No. 1 and Loan No. 2, as defined in the Development Agreement, and the February Resolutions also authorized the City to take certain actions to acknowledge the repayment of Loan No. 1 and Loan No. 2.

Before it could close on that refinancing, F&C received another offer to purchase the the Residence at the COR. F&C chose not to proceed with the refinancing and instead have entered into a Purchase Agreement to sell the Residence at the COR to Residence at the COR Apartments, LLC, a Minnesota limited liability company. We have been told that the sale is currently scheduled to close on or about April 9, 2015, but we have been advised that the closing date could change

To facilitate the sale, F&C Apartments, LLC, its purchaser, Residence at the COR Apartments, LLC and the purchaser's lender, P&C Bank, National Association are asking the City to enter into a First Amendment to Purchase Agreement is the same form as the City approved in February and to enter into various other Agreements related to the transaction.

We have reviewed, negotiated and approved the documents that the City is being asked to sign, and we have prepared a draft Resolution to approve those documents. The purpose of this Memorandum is to summarize and explain the proposed Resolution. In the paragraphs below, I identify each action the proposed Resolution authorizes and explains the purpose for the action in

the context of the pending sale transaction between F&C Apartments, LLC and Residence at the COR Apartments LLC:

1.     Resolution Number 1. As an initial matter, the Resolution rescinds Resolution #15-02-044, which the City Council approved on February 10, 2012. Although several of the actions that the City Council is taking pursuant to the current Resolution are substantively the same as the actions that the Council authorized pursuant to Resolution #15-02-044. Resolution #15-02-044 and the First Amendment to Development Agreement it approved were drafted in the context of a refinancing. The City Council is being asked to rescind Resolution #15-02-044 simply to provide a “clean slate” for the proposed Resolution.

2.     Resolution Number 2. The City Council is ratifying an Assignment and Assumption Agreement that the City and the HRA executed on February 12, 2015 and a Memorandum of Assignment and Assumption Agreement the City and the HRA executed to provide a recordable instrument evidencing the Assignment and Assumption Agreement. Although the City’s and the HRA’s prior Resolutions authorizing the transfer of the HRA’s assets to the City and the dissolution of the HRA are, in my opinion, legally sufficient to authorize the execution of the Assignment and Assumption Agreement and the Memorandum of Assignment and Assumption Agreement, the Anoka County Registrar of Titles will not record the Memorandum of Assignment and Assumption Agreement without a City Council Resolution that expressly authorizes the City’s execution of the Memorandum of Assignment and Assumption Agreement. I have added Resolution Number 2 to this Resolution simply to provide a very direct and concise statement of authority that we can present to the Anoka County Registrar of Titles to avoid any delays in the recording of the Memorandum of Assignment and Assumption Agreement.

3.     Resolution Number 3. Resolution No. 3 authorizes the Mayor and the City Administrator to execute nine separate documents relating to (a) F&C Apartments, LLC’s sale of Residence at the COR Apartments and assignment of the right to receive the TIF Note to Residence at the COR Apartments LLC and (b) Residence at the COR Apartments LLC’s financing with PNC Bank. Below is an explanation of the purpose of each of the nine documents the City Council is authorizing the Mayor and City Administrator to execute:

(a)     First Amendment to Development Agreement. The First Amendment to Development Agreement is substantively identical to the First Amendment to Development Agreement that the City Council authorized the Mayor and City Administrator to execute on February 10, 2015 pursuant to Resolution #15-02-044. The only changes to the First Amendment are modifications to reflect the fact that the First Amendment is now being executed in the context of a sale, rather than in the context of a refinancing. The purpose of the First Amendment remains to modify the Development Agreement to remove provisions that would allow the City to terminate the TIF Note based upon a default under the Development Agreement. Since the Housing Bonds that were used to finance Note No. 2 will be repaid as a result of the repayment of Note No. 2, the Amendment also removes the rental restriction included in the Development Agreement. After the First Amendment to the Development

Agreement is fully executed and recorded, the only significant obligations the Development Agreement will impose on the owner of the development are a contractual obligation to pay real estate taxes and to indemnify and defend the City in the event a third-party commences litigation related to the development or the Development Agreement and names the City as a party. The City's remedy in the event the owner of the development property breaches one of these two obligations, will be to commence an action for damages against the owner in Anoka County District Court.

(b) Development Agreement Estoppel. This is a simple estoppel certificate, pursuant to which the City confirms, for the benefit of F&C, Residence at the COR Apartments LLC and PNC Bank, that the Development Agreement, as recorded in the Anoka County Land Records, is a true, accurate and complete copy of the Development Agreement, that the only amendments to the Development Agreement are as described in the Estoppel Certificate, and that to the City's knowledge, F&C is not currently in default in the performance of any of its obligations under the Development Agreement.

(c) PUMA Estoppel. As with the Development Agreement Estoppel, the purpose of the PUMA Estoppel is to certify, for the benefit of F&C, Residence at the COR Apartments, LLC and PNC Bank that the recorded copy of the Amended and Restated Parking Use and Maintenance Agreement, as amended by the First Amendment to Amended and Restated Parking Use and Maintenance Agreement, are true, correct and complete copies of the Agreement, that the Agreement has not otherwise been amended and that to the best of the City's knowledge, F&C is not in default of the performance of its obligations under the Amended and Restated PUMA Agreement, as amended.

(d) Assignment of Development Agreement. The Assignment of Development Agreement is an agreement between F&C Ramsey Apartments, LLC, F&C Ramsey, LLC and Residence at the COR Apartments LLC, pursuant to which F&C Ramsey Apartments, LLC and F&C Ramsey, LLC assign their rights and obligations under the Development Agreement, including the right to receive the TIF Note, to Residence at the COR Apartments LLC. The City is asked to sign this Agreement to acknowledge its consent to the assignment.

(e) TIF Note. Upon the repayment of Loan No. 2 in connection with the closing, the City is obligated to issue the TIF Note. Since, at that time, F&C Ramsey, LLC will have assigned its rights under the Development Agreement to receive the TIF Note to Residence at the COR Apartments LLC, the City will issue TIF Note directly to Residence at the COR Apartments LLC.

(f) Collateral Assignment. Residence at the COR Apartments LLC, will collaterally assign its rights under the Development Agreement and its rights under the TIF Note to PNC Bank as a part of its acquisition financing. The City is being asked to sign the Collateral Assignment to evidence its consent to the Collateral Assignment of the Development Agreement and the TIF Note.

(g) Subordination Agreement. The Development Agreement gave the Buyer's lender, PNC Bank, an option to have the Development Agreement be prior to or subordinate to the mortgage PNC Bank will receive from Residence at the COR Apartments LLC. PNC Bank has elected to have the Development Agreement have priority over the mortgage so that a foreclosure of the mortgage will not extinguish the Development Agreement. The City, PNC Bank and Residence at the COR Apartments LLC are executing the Subordination Agreement to evidence that understanding.

(h) Maintenance Agreement. When the City constructed the addition to the parking ramp, the City, in anticipation of the development of the Residence at the COR, used footings that were capable of supporting both the parking ramp and the apartment building. The intent was to locate the footings on the common boundary line between the parking ramp property and the apartment property so that the parking ramp and the apartment building could each be constructed on the footings and on its side of the property line. In fact, the parking ramp and the common footing were constructed approximately 1.33 feet into the parking ramp property. When that fact was discovered, the City granted F&C Apartments, LLC an easement to allow the Residence at the COR building to encroach 1.33 feet onto the City property so that the building could be constructed using the shared footings. The grant of easement contemplated that when construction of the apartment was complete, the parties would enter into an agreement that addressed any shared maintenance issues associated with the fact that the two buildings abut one another. The primary maintenance issue is the maintenance of a "cap" at the top of the walls so that rain, snow, ice and debris does not make its way between the two walls. This Agreement addresses that maintenance issue.

(i) Encroachment Easement Amendment. The grant of encroachment easement contemplated that after completion of the Residence at the COR, the City and F&C Apartments would replat their respective lots to relocate the lot line, such that neither parties' building encroached onto the other parties' property. That did not occur, and because PNC Bank will ultimately assign a portion of its loan to Residence at the COR Apartments, LLC to Fannie Mae and because it is extremely difficult if not impossible to get Fannie Mae to sign documentation after the loan has closed, we think it is unlikely that the parties will be able to complete the contemplated replatting. Therefore, the Grant of Easement Agreement is being amended to provide a permanent easement for the existing encroachment of the building.

4. Resolution Number 4. When F&C Ramsey, LLC repays Loan No. 1 and Loan No. 2, the City must return the original Notes to F& C and must release the security interest it holds on the membership interest in F&C Ramsey Apartments, LLC. This Resolution authorizes the Mayor and City Administrator to sign the documents and take the actions necessary to evidence the repayment of those loans.

5. Resolution Number 5. Because there are numerous documents for the City to sign and because it may be necessary to make corrections or minor modifications to the documents prior to closing, Resolution No. 5 authorizes the Mayor and the City Administrator to approve minor modifications to the documents subsequent to the Council's adoption of the Resolution.