



TACOMA HOUSING AUTHORITY

RESOLUTION 2018-4-25 (2)

DATE: April 25, 2018
TO: THA Board of Commissioners
FROM: Michael Mirra
Executive Director
RE: Heritage Bank 2018 Line of Credit

This resolution will authorize Tacoma Housing Authority (THA) to issue a note to Heritage Bank for a line of credit.

Purpose

This resolution will authorize THA to issue a note to Heritage Bank to support THA's obligation to reimburse draws on a letter of credit to be established by Heritage Bank on THA's behalf. The letter of credit will be established to provide the money, if necessary, to compensate investors for loss of tax credits relating to certain of THA's tax credit entities.

Background

Between 2002 and 2005, THA participated in the formation of Hillside Terrace Phase I Limited Partnership, Hillside Terrace Phase II Limited Partnership, Salishan One LLC, Salishan Two LLC, and Salishan Three LLC (the "LIHTC Entities"), each of which was formed to develop and operate a low-income housing project that would qualify for federal low-income housing tax credits ("LIHTCs"). THA is the general partner or managing member of each LIHTC Entity. Boston Financial Investment Management or an affiliate ("BFIM"), owns all of the limited partner and investor member interests in the LIHTC Entities.

The periods during which LIHTCs can be claimed by each LIHTC have expired. Under federal income tax law, the Hillside Terrace partnerships are subject to potential loss of LIHTCs (and recapture of LIHTCs previously claimed) through December 31, 2018, and the Salishan limited liability companies are subject to potential loss of LIHTCs (and recapture of LIHTCs previously claimed) through December 31, 2020. The maximum aggregate amount of LIHTC losses and recapture for which THA could be subject is \$7,166,969.

THA has been advised that BFIM is willing to sell its interests in each LIHTC Entity to THA, or a THA affiliate, so long as THA (i) commits to comply with existing regulatory agreements applicable to each project, (ii) agrees to pay BFIM for any costs associated with the loss or recapture of LIHTCs suffered by the LIHTC Entities, and (iii) provides security to BFIM for THA's potential liability for LIHTC losses and recapture. BFIM has agreed to accept a letter of credit from Heritage Bank, in the stated amount of \$2,500,000, as security for THA's potential LIHTC liability to BFIM, and Heritage Bank has committed to make such letter of credit available

for THA. Heritage Bank has committed to accept a cash-secured note from THA to evidence THA's obligations to reimburse the Bank for draws made on the letter of credit.

THA is authorized by chapter 35.82 RCW to bonds, notes or other obligations for any of its corporate purposes. The issuance of the proposed note to Heritage Bank supports THA's acquisition of the limited partner and investor member interests in the LIHTC Entities will enable THA to obtain full operational and financial control of the Hillside Terrace Phases I and II, and Salishan One, Two and Three, housing projects. Such control will be in the best interests of THA and the tenants of such projects.

Recommendation

Approve Resolution No. 2018-04-25 (2).



TACOMA HOUSING AUTHORITY

THA BOC Resolution 2018-04-25 (2) (Heritage Bank 2018 Line of Credit)

A RESOLUTION providing for the issuance of a single revenue note of the Authority in the principal amount of not to exceed \$2,500,000 at any one time outstanding, the proceeds of which will be used to reimburse Heritage Bank for draws on a letter of credit to be established by Heritage Bank for the Authority; determining the form, terms and covenants of the note; authorizing the execution and delivery of documents and certificates in connection with the note; creating a note fund; and providing for the delivery of the note to Heritage Bank.

WHEREAS, The Housing Authority of the City of Tacoma (the “Authority”) seeks to encourage the provision of housing for low-income persons residing in the City of Tacoma, Washington; and

WHEREAS, RCW 35.82.070 authorizes the Authority, among other things, to “prepare, carry out, acquire, lease and operate housing projects,” to “provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof,” to “lease or rent any dwellings, buildings, structures or facilities embraced in any housing project,” and to “make and execute contracts and other instruments, including but not limited to partnership agreements”; and

WHEREAS, Pursuant to the authority provided by RCW 35.82.070, the Authority participated in the formation of, and is the general partner or managing member of, Hillside Terrace Phase I Limited Partnership, Hillside Terrace Phase II Limited Partnership, Salishan One LLC, Salishan Two LLC and Salishan Three LLC (each, a “LIHTC Entity”); and

WHEREAS, The LIHTC Entities developed and operate the following affordable rental housing projects in the City of Tacoma on property leased to the LIHTC Entities by the Authority (collectively, the “Projects”): the project commonly known as Hillside I, located at 2300 Block South G Street, the project commonly known as Hillside II, located at 2300 Block South G Street, the project commonly known as Salishan One, located at 1724 East 44th Street, the project commonly known as Salishan Two, located at 1725 East 44th Street, and the project commonly known as Salishan Three, located at 1724 East 44th Street; and

WHEREAS, Boston Financial Investment Management and/or its affiliates (collectively, “BFIM”) owns all of the limited partner interest and investor member interest in the LIHTC Entities; and

WHEREAS, BFIM is willing to transfer its investor interests in the LIHTC Entities to the Authority (or an affiliate of the Authority), so long as the Authority (i) commits to comply with existing regulatory agreements applicable to each Project, (ii) agrees to pay BFIM for any costs associated with the loss or recapture of LIHTCs suffered by the LIHTC Entities, and (iii) provides security to BFIM for THA’s potential liability for LIHTC losses and recapture; and

WHEREAS, BFIM has agreed to accept a letter of credit from Heritage Bank, in the stated amount of \$2,500,000, as security for the Authority’s potential LIHTC liability to BFIM, and Heritage Bank has committed to make such letter of credit available for the Authority; and

WHEREAS, Heritage Bank has committed to accept a cash-secured note from the Authority to evidence the Authority's obligations to reimburse the Bank for draws made on said letter of credit; and

WHEREAS, RCW 35.82.020(11) and 35.82.130 through 35.82.130, provide that a housing authority may issue bonds, notes or other obligations for any of its corporate purposes, may cause such obligations to be payable from all or part of its revenues or assets generally, and may pledge as security for such obligations all or any part of the Authority's rents, fees, revenues or assets; and

WHEREAS, RCW 35.82.040 provides that a housing authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper; and

WHEREAS, The Board of Commissioners of the Authority (the "Board") finds it necessary and advisable and in the best interest of the Authority to issue the Note (defined herein) to aid in financing housing projects (by providing for the acquisition of BFIM's interests therein) to provide dwelling accommodations for persons of low income within the City of Tacoma, Washington; and

WHEREAS, Heritage Bank has offered to extend a line of credit evidenced by the Note, on terms described herein, to provide money for those purposes; now, therefore, be it

Resolved by the Board of Commissioners of the Housing Authority of the City of Tacoma, Washington, as follows:

Section 1. **Definitions.** As used in this resolution, the following words have the following meanings:

"Authority" means the Housing Authority of the City of Tacoma, a public body corporate and politic duly organized and existing under and by virtue of the laws of the State of Washington.

"Bank" means Heritage Bank, as registered owner of the Note.

"Board" means the Board of Commissioners of the Authority.

"Commitment Letter" means the commitment letter with respect to the Note provided to the Authority by the Bank dated March 26, 2018, as it may be amended and supplemented, setting forth certain terms under which the Bank agrees to purchase the Note.

"Draws" means incremental draws upon the Note.

"Event of Default" has the meaning ascribed to such term in Section 11 of this resolution.

"Executive Director" means the Executive Director of the Authority.

“General Revenues” means all revenues of the Authority from any source, but only to the extent that those revenues are available to pay debt service on the Note and are not now or hereafter pledged, by law, regulation, contract, covenant, resolution, deed of trust or otherwise (including restrictions relating to funds made available to the Authority under the U.S. Housing Act of 1937), solely to another particular purpose.

“HUD” means the U.S. Department of Housing and Urban Development.

“Letter of Credit” means the irrevocable letter of credit with a stated amount of \$2,500,000 provided by

“Interest Payment Date” means the first business day of each calendar month.

“Interest Period” means, with respect to any principal amount of the Note bearing interest at the Note Rate, any of the following periods of time, as applicable: (i) the period from (and including) the date of the Draw with respect to such principal to (and including) the day immediately preceding the earlier of (a) the date such principal is prepaid pursuant to Section 7 of this resolution and (b) the first Interest Payment Date occurring after the date of said Draw; and (ii) the period from (and including) an Interest Payment Date to (and including) the day immediately preceding the earlier of (a) the next succeeding Interest Payment Date and (b) the date such principal is prepaid pursuant to Section 7 of this resolution. No Interest Period may extend beyond the Maturity Date.

“Maturity Date” means January 1, 2021, as such date may be extended in accordance with Section 3.

“Note” means the Taxable Revolving Line of Credit Revenue Note, 2018 of the Authority issued pursuant to, under the authority of, and for the purposes provided in this resolution.

“Note Fund” means the Authority’s Taxable Revolving Line of Credit Revenue Note, 2018, created by this resolution for the purpose of paying principal of and interest on the Note.

“Note Rate” means, for each Interest Period, the rate of interest *per annum* equal to the sum of (i) the average rate paid by the Bank on the Authority’s deposits maintained with the Bank during such Interest Period, and (ii) 2.0%.

“Note Register” means the books or records maintained by the Note Registrar containing the name and mailing address of the registered owner of the Note.

“Note Registrar” means the Executive Director.

“Registered Owner” means the Bank, as registered owner of the Note, or any subsequent owner of the Note.

Section 2. **Authorization and Description of Note.** For the purpose of reimbursing the Bank from draws made on the Letter of Credit, the Authority may borrow money from time to time pursuant to a revolving line of credit extended by the Bank under the terms of this resolution and the Commitment Letter, and shall issue the Note in a principal amount of not to exceed \$2,500,000 at any one time outstanding. The Note shall be designated the Taxable Revolving Line of Credit Revenue Note, 2018 of the Authority; shall be issued in registered form; shall be dated its date of delivery to the Bank; and shall mature on the Maturity Date.

The Authority may request Draws upon the Note in any amount on any business day during the term of the Note for the purposes identified above, subject to the terms of the Commitment Letter. No Draw may exceed the total amount to be reimbursed to the Bank from a draw made on the Letter of Credit, and the proceeds of each Draw shall be used immediately to pay such amount. Draws shall be recorded in such form as the Authority and the Bank may agree. Draws shall be limited to an aggregate principal amount of \$2,500,000 outstanding at any time.

The outstanding principal of the Note shall bear interest at the applicable Note Rate for each Interest Period, and shall be paid in arrears on each Interest Payment Date. Interest on the Note shall be computed on the basis of a 360-day year and the actual number of days elapsed for the actual number of days the principal amount is outstanding. The principal of the Note, together with all accrued and unpaid interest thereon, is due on the Maturity Date.

If the Note is not paid when properly presented at the Maturity Date, the Authority shall be obligated to pay interest on the Note from and after the Maturity Date until the principal of and interest on the Note is paid in full.

Section 3. **Authorization for Extension and Modification of Note.** The Executive Director is authorized, without further action of the Board but only with the consent and approval of the Bank, in the Bank's sole discretion, to (A) extend the then-current Maturity Date of the Note to any date on or before January 1, 2022, and (B) modify the interest rate or interest rate formulae applicable to Draws on the Note, so long as the interest rate formula selected to be applicable to the Note immediately after such modification does not cause the Note to bear interest at a rate in excess of 5% per annum as of the effective date of such modification, if the Executive Director determines that such extension and/or modification is in the best interest of the Authority, all as long as the provisions of Section 8 of this resolution regarding security for the Note are not changed in any material respect. The Executive Director is authorized to do everything necessary for the execution and delivery of such documents as are useful or necessary to such extension of maturity and modification of the interest rate formula, including but not limited to the payment of Bank fees and execution of documents. The Executive Director's execution of documents in connection with the modification or extension of the Note as described herein will constitute conclusive evidence of his or her approval of the extensions and/or modifications described therein and the approval of the Authority of such extensions and/or modifications.

Section 4. **Designation of Officers to Make Draws.** The Board authorizes the Executive Director or his or her designee to make Draws against the Note in such amounts, at such times as he or she may determine hereafter, those Draws to be made in accordance with the terms and provisions set forth herein and in the Commitment Letter.

Section 5. **Note Registrar; Registration and Transfer of Note.** The Executive Director shall serve as Note Registrar for the Note. The Note Registrar shall keep, or cause to be kept, at his or her office in Tacoma, Washington, sufficient books for the registration of the Note (the "Note Register"), which shall contain the name and mailing address of the registered owner of the Note. The Note Registrar is authorized, on behalf of the Authority, to authenticate and deliver the Note in accordance with the provisions of the Note and this resolution, to serve as the Authority's paying agent for the Note and to carry out all of the Note Registrar's powers and duties under this resolution.

The Note shall be issued only in registered form as to both principal and interest and recorded on the Note Register. The Note may not be assigned or transferred by the Bank, except that the Bank may assign or transfer the Note to any successor to the business and assets of the Bank.

Section 6. **Place, Manner and Medium of Payment.** Both principal of and interest on the Note shall be payable in lawful money of the United States of America solely out of the Note Fund. Payment of interest on each Interest Payment Date, and of principal at maturity or prepayments of principal, shall be paid by check or draft of the Authority mailed or by immediately available funds delivered on or before each Interest Payment Date or the maturity or prepayment date to the registered owner at the address appearing on the Note Register on the last day of the month preceding the payment date. Upon the final payment of principal of and interest on the Note, the registered owner shall surrender the Note at the principal office of the Note Registrar in Tacoma, Washington, for destruction or cancellation in accordance with law.

Section 7. **Prepayment of Note.** The Authority reserves the right to prepay all or a portion of the principal of the Note at any time without penalty. Any prepayment shall be accompanied by the amount of accrued interest on the principal amount prepaid. Written notice to the Bank of any intended prepayment or redemption of the Note shall not be required. Interest on the Note or the portion thereof so prepaid shall cease to accrue on the date of such prepayment.

Section 8. **Note Fund; Security for the Note.** The Note Fund is created as a special fund of the Authority and is to be known as the Taxable Revolving Line of Credit Revenue Note Fund, 2018. The Note Fund shall be drawn upon for the sole purpose of paying the principal of and interest on the Note. The Authority pledges to deposit General Revenues into the Note Fund in amounts sufficient to pay the principal of and interest on the Note when due.

The Authority reserves without limitation the right to issue other obligations, the principal of and interest on which are to be paid from the General Revenues on a

parity with payments on the Note. At its option, the Authority may pledge any portion of the General Revenues to the payment of other obligations of the Authority, such payments to have priority over the payments to be made on the Note with respect to that portion of the General Revenues so pledged.

The Note shall not be a debt of the City of Tacoma, the State of Washington or any political subdivision thereof, and the Note shall so state on its face. Neither the City of Tacoma, the State of Washington nor any political subdivision thereof (except the Authority from the sources specified herein) shall be liable for payment of the Note nor in any event shall principal of and interest on the Note be payable out of any funds other than the Note Fund. The owner of the Note shall not have recourse to any other fund of the Authority other than the Note Fund, or to any other receipts, revenues or properties of the Authority other than as described herein and in the Note. The Authority has no taxing power.

Neither the Authority (except to the extent of the pledge of its General Revenues) nor any of the Commissioners, officers or employees of the Authority shall be personally liable for the payment of the Note.

Section 9. Covenants. The Authority hereby covenants as follows with respect to the Note and the Authority's obligation to make payments thereon:

- (a) The Authority shall, at all times until the later of the Maturity Date or the date all principal of and interest on the Note, maintain the following accounts at the Bank: Account No. 307110072 (designated "Accounts Payable"); Account No. 307112128 (designated "Section 8"); and Account No. 10055000681 (designated "Salishan 7") (collectively, the "Accounts"). The Authority shall maintain an aggregate balance in the Accounts at any time equal to the amount then available to be drawn on the Letter of Credit (which amount shall not exceed \$2,500,000). The Bank is authorized to limit withdraws from the Accounts at any time the combined balance on deposit in the Accounts is less than one-third of the amount then available to be drawn on the Letter of Credit.
- (b) The Authority shall provide to the Bank the Authority's audited annual financial statements within 30 days after the Authority's receipt of the Washington State Auditor's opinion letter pertaining thereto.
- (c) The Authority shall provide to the Bank, by September 30 of each year, internally prepared six-month interim financial statements of the Authority.

Section 10. Representations. The Authority hereby makes the following representations to the Bank:

- (a) The Authority is a duly organized public body corporate and politic of the State of Washington, validly existing under the laws of the State of Washington, and has full power and authority to perform its obligations under this resolution and the Note.

- (b) The execution and delivery of this resolution and the Note, and the performance of the Authority's obligations hereunder and thereunder, will be duly authorized by all requisite Authority actions and proceedings, and this resolution and the Note will each constitute the legal, valid and binding obligation of the Authority, enforceable against it in accordance with its terms.
- (c) There are no liens or encumbrances on the Accounts other than those disclosed to the Bank.
- (d) The Authority is in compliance in all material respects with all laws, rules, restrictions, orders and regulations applicable to the Authority where a the failure to so comply could reasonably be expected to have a material adverse effect on the Authority's ability to repay the Note.
- (e) There is no litigation or claim pending or, to the best knowledge of the Authority, threatened against the Authority, to the extent that any such litigation or claim could reasonably be expected to have a material adverse effect on the Authority's ability to repay the Note.

Section 11. **Events of Default and Remedies.** If an Event of Default occurs then, at the option of the Bank, the principal of and interest on the Note shall become immediately due and payable. "Event of Default" means the declaration by the Bank of an event of default as a result of a determination by the Bank that:

- (a) There has been a failure to pay principal or interest on the Note, when due;
- (b) There has been a failure by the Authority to comply with any of its obligations, or to perform any of its duties, under this resolution or the Note, which failure continues, and is not cured, for a period of more than 60 days after the Lender has made written demand on the Authority to cure such failure;
- (c) Any representation made in Section 10 of this resolution proves to have been materially incorrect, as reasonably determined by the Bank after investigation and discussion with the Authority;
- (d) The Authority shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of the Authority, or of all or a substantial part of the assets of the Authority, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against the Authority in any bankruptcy, reorganization, moratorium or insolvency proceeding;

- (e) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator for the Authority or of all or a substantial part of the assets of the Authority, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days; or
- (f) The Authority suffers a material adverse change to its financial condition that could reasonably be expected to have a material adverse effect on the Authority's ability to repay the Note.

Section 12. Form and Execution of Note. The Note shall be prepared in a form consistent with the provisions of this resolution and state law, shall bear the manual or facsimile signatures of the Chair of the Board and Executive Director and shall be impressed with the seal of the Authority or shall bear a facsimile thereof.

The Note shall not be valid or obligatory for any purpose, or entitled to the benefits of this resolution, unless the Note bears a Certificate of Authentication manually signed by the Note Registrar stating: "This Note is the fully registered Taxable Revolving Line of Credit Revenue Note, 2018, of the Housing Authority City of Tacoma described in the Note Resolution." A minor deviation in the language of such certificate shall not void a Certificate of Authentication that otherwise is substantially in the form of the foregoing. The authorized signing of a Certificate of Authentication shall be conclusive evidence that the Note so authenticated has been duly executed, authenticated and delivered and is entitled to the benefits of this resolution.

If any officer whose facsimile signature appears on the Note ceases to be an officer of the Authority authorized to sign notes before the Note is authenticated or delivered by the Note Registrar or issued by the Authority, the Note nevertheless may be authenticated, delivered and issued and, when authenticated, issued and delivered, shall be as binding on the Authority as though that person had continued to be an officer of the Authority authorized to sign the Note. The Note also may be signed on behalf of the Authority by any person who, on the actual date of signing of the Note, is an officer of the Authority authorized to sign notes, although he or she did not hold the required office on the date of issuance of the Note.

Section 13. Authorization of Documents and Execution Thereof. The Authority authorizes and approves the execution and delivery of, and the performance by the Authority of its obligations contained in, the Note and this resolution and the consummation by the Authority of all other transactions contemplated by this resolution in connection with the issuance of the Note. The appropriate Authority officials are authorized and directed to do everything necessary for the issuance, execution and delivery of the Note. The Executive Director is authorized to execute the Note and any other documents reasonably required to be executed in connection with the issuance of the Note and to ensure the proper use and application of the proceeds of the Note, and to effect any extension of the maturity of the Note as described in Section 3.

The Note will be prepared at the Authority's expense and will be delivered to the Bank together with the approving legal opinion of Foster Pepper PLLC regarding the Note.

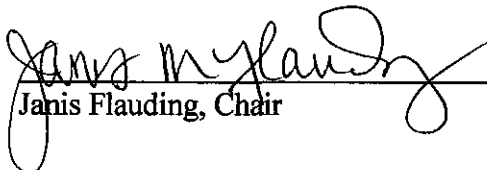
Section 14. Approval of Transaction. The Bank has issued a Commitment Letter proposing to purchase the Note at a price of par, under the terms and conditions contained in this resolution and the Commitment Letter, including the payment of a fee to the Bank in the amount of \$500.00 plus the fees and expenses of the Bank's legal counsel and any other out-of-pocket costs incurred by the Bank, each payable at closing. The Board finds that the Bank's proposal is in the best interest of the Authority and authorizes the Executive Director to accept an offer on the same terms and conditions as contained in the Commitment Letter, and covenants that the Authority will comply with all terms and conditions of the Commitment Letter.

Section 15. Acting Officers Authorized. Any action required by this resolution to be taken by the Chair of the Board or the Executive Director may in the absence of such person be taken by the Vice Chair of the Board or a duly authorized acting Executive Director of the Authority, respectively.

Section 16. Ratification and Confirmation. Any actions of the Authority or its officers prior to the date hereof and consistent with the terms of this resolution are ratified and confirmed.

Section 17. Effective Date. This resolution shall be in full force and effect from and after its adoption and approval.

Approved: April 25, 2018



Janis Flauding, Chair

CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting Executive Director of the Housing Authority of the City of Tacoma (the "Authority") and keeper of the records of the Authority, CERTIFY:

1. That the attached Resolution No. 2018-04-25 (2) (the "Resolution") is a true and correct copy of the resolution of the Board of Commissioners of the Authority as adopted at a meeting of the Authority held on April 25, 2018, and duly recorded in the minute books of the Authority.

2. That such meeting was duly convened and held in all respects in accordance with law, and, to the extent required by law, due and proper notice of such meeting was given; that a quorum was present throughout the meeting and a majority of the members of the Board of Commissioners of the Authority present at the meeting voted in the proper manner for the adoption of the Resolution; that all other requirements and proceedings incident to the proper adoption of the Resolution have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand on April 25, 2018.

HOUSING AUTHORITY OF THE CITY OF
TACOMA

By: Michael Mirra
Michael Mirra, Executive Director