

THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA

and for Special Districts, Agencies and Authorities Governed by the Board

Adopted this Resolution on 10/22/2019 by the following vote:

John Gioia
AYE: **Candace Andersen**
 Diane Burgis
 Karen Mitchoff

NO:

ABSENT: **Federal D. Glover**

ABSTAIN:

RECUSE:



Resolution No. 2019/608

Resolution Approving the Issuance of Multifamily Housing Revenue Bonds by the California Statewide Communities Development Authority in an Approximate Amount of Eighty-Five Million Dollars (\$85,000,000) for the Purpose of Providing Financing for Hilltop Commons Apartments Located in the Unincorporated Area of the County near San Pablo, Approving Transfer of Ownership of the Project and Termination of a related Regulatory Agreement and Declaration of Restrictive Covenants.

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is authorized pursuant to the provisions of California Government Code Section 6500 et seq. and the terms of an Amended and Restated Joint Exercise of Powers Agreement, dated as of June 1, 1988 (the "Agreement"), among certain local agencies throughout the State of California, including the County of Contra Costa (the "County"), to issue revenue bonds in accordance with the provisions of Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code for the purpose of financing multifamily rental housing projects; and

WHEREAS, Fairfield Hilltop LP, a California limited partnership (the "Borrower"), has requested that the Authority adopt a plan of financing providing for the issuance of multifamily housing revenue bonds in one or more series issued from time to time, including bonds issued to refund such multifamily housing revenue bonds in one or more series from time to time, in the principal amount of approximately \$85,000,000 (the "Bonds") to finance or refinance the acquisition and rehabilitation of a 322-unit multifamily rental housing project located at 15690 Crestwood Drive in the unincorporated area of the County near the City of San Pablo known as Hilltop Commons Apartments (the "Project"); and

WHEREAS, the Bonds or a portion thereof will be "private activity bonds" for purposes of the Internal Revenue Code of 1986 (the "Code"); and

WHEREAS, pursuant to section 147(f) of the Code, prior to their issuance, private activity bonds are required to be approved by the "applicable elected representative" of a governmental unit having jurisdiction over the area in which any facility financed by such bonds is, or is to be, located, after a public hearing held following reasonable public notice; and

WHEREAS, the members of the Board of Supervisors are the applicable elected representatives of the County and the Project is located in the County; and

WHEREAS, the Affordable Housing Program Manager of the Department of Conservation and Development of the County has, following notice duly given, held a public hearing regarding the financing of the Project and the issuance of the Bonds by the Authority, and a summary of any oral or written testimony received at the public hearing has been presented to the Board of Supervisors for its consideration; and

WHEREAS, the Board of Supervisors now desires to approve the issuance of the Bonds by the Authority; and

WHEREAS, the Board of Supervisors has heretofore adopted a Debt Management Policy for the County, Appendix 5 to which includes Multifamily Mortgage Revenue Bond Program Policies and Procedures (the "County Multifamily Bond Policies"); and

WHEREAS, Section X of the County Multifamily Bond Policies in effect that the County will be the issuer of multifamily housing bonds for projects located in the unincorporated area of the County, and the Board of Supervisors now desires to waive that requirement so that the Authority can issue the Bonds for the Project in light of limitations on the principal amount of private

activity bonds that can be issued and the Authority's stated expectation that it will have the ability to issue the Bonds in the principal amount needed to finance the acquisition and rehabilitation of the Project; and

WHEREAS, in October of 2004, the County issued its Multifamily Housing Revenue Bonds (Hilltop Commons Apartments Project) 2001 Series A, 2001 Series A-T and 2001 Series B (collectively, the "2001 Bonds"), and the proceeds of the 2001 Bonds were used at that time to provide financing for the Project; and

WHEREAS, Steadfast Hilltop Commons, L.P., a California limited partnership, the current owner of the Project (the "Current Owner") is expected to sell the Project to the Borrower prior to the issuance of the Bonds, and the agreements related to the 2001 Bonds require the prior written consent of the County to such transfer after the submission of certain documents to the County specified in the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of July 1, 2001 (the "2001 Bond Document"), between the County and the Current Owner; and

WHEREAS, the Borrower has indicated that it is expected that a redemption of all of the outstanding 2001 Bonds will occur concurrently with the transfer of the Project to the Borrower; and

WHEREAS, the Borrower has also indicated that, upon the issuance of the Bonds, it desires that the County terminate the 2001 Bond Document and the County is amendable to such termination, subject to certain conditions set forth in this Resolution; and

WHEREAS, the Borrower has agreed to pay all costs of the County in connection with the conduct of the public hearing and approval of the issuance by the Authority of the Bonds, and the County's approval of the transfer of ownership of the Project and the termination of the 2001 Bond Document; and

WHEREAS, the Board of Supervisors now desires to approve the issuance of the Bonds by the Authority, the sale and transfer of the ownership of the Project to the Borrower, and otherwise to authorize County Staff to assist the Borrower with the redemption of the 2001 Bonds and the termination of the 2001 Bond Document.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Contra Costa, as follows:

Section 1. The Board hereby finds and declares that the foregoing recitals are true and correct.

Section 2. For purposes of Section 147(f) of the Code, the Board of Supervisors hereby approves the issuance of Bonds by the Authority to provide financing for costs of the Project. The County shall have no responsibility or liability whatsoever with respect to the issuance or administration of the Bonds.

Section 3. The Board of Supervisors hereby waives the requirement of the County Multifamily Bond Policies to the effect that the County be the issuer of bonds to finance the Project, and hereby consents to the Authority issuing the Bonds for the Project; and

Section 4. The Board of Supervisors hereby approves the sale and transfer of the Project from the Current Owner to the Borrower, subject to the receipt by the Affordable Housing Program Manager of an Assignment and Assumption of Regulatory Agreement and Declaration of Restrictive Covenants (the "Assignment Agreement") and an opinion of counsel to the Borrower regarding the enforceability of the Assignment Agreement against the Borrower, as required by the 2001 Bond Document in forms acceptable to the Affordable Housing Program Manager, upon consultation with Bond Counsel, and an opinion of Bond Counsel as referenced in Section 12 of the 2001 Bond Document. The Director of the Department of Conservation and Development is hereby authorized and directed to execute and deliver the Assignment Agreement in the form approved by the Affordable Housing Program Manager, and the execution and delivery by the Director of the Department of Conservation and Development of the Assignment Agreement shall be conclusive evidence of the approval by the County of the sale and transfer of the Project to the Borrower.

Section 5. The Board of Supervisors hereby authorizes Staff of the Department of Conservation and Development of the County to assist with the redemption of the 2001 Bonds, and authorizes the Director of the Department of Conservation and Development to execute such documents, upon consultation with Bond Counsel, as are necessary to be executed by the County in connection therewith.

Section 6. The Board of Supervisors hereby approves the termination of the 2001 Bond Document and authorizes the Director of the Department of Conservation and Development to execute a termination agreement related thereto in a form acceptable to Bond Counsel and the Director, provided that (a) the obligation of the Borrower to pay the annual Issuer Fee for the remainder of the Qualified Project Period (as such capitalized terms are used in the 2001 Bond Document) is set forth in a regulatory agreement and declaration of restrictive covenants executed in connection with the issuance of the Bonds (the "New Regulatory Agreement"), (b) the County is an intended third party beneficiary of the New Regulatory Agreement and is thereby legally able to enforce the provisions of the New Regulatory Agreement against the Borrower, (c) the New Regulatory Agreement is

otherwise in form and substance acceptable to the Director of the Department of Conservation and Development, upon consultation with Bond Counsel to the County, and (d) the Borrower delivers to the County an opinion of its counsel as to the enforceability of the New Regulatory Agreement against the Borrower.

Section 7. The adoption of this Resolution does not (a) relieve or exempt the Borrower from obtaining any permits or approvals that are required by, or determined to be necessary from, the County in connection with the acquisition, rehabilitation or operation of the Project, nor (b) obligate the County to incur any obligation or provide financial assistance with respect to the Bonds or the Project.

Section 8. Quint & Thimmig LLP is hereby approved as Bond Counsel to the County with respect to the approval by the Board of Supervisors of the issuance of the Bonds, the sale and transfer of ownership of the Project, the redemption of the 2001 Bonds, and the termination of the 2001 Bond Document; provided that the fees and expenses of Bond Counsel shall be paid by the Borrower.

Section 9. All actions heretofore taken by the officers and agents of the County with respect to the approval of issuance of Bonds by the Authority, the sale and transfer of ownership of the Project, the redemption of the 2001 Bonds and the termination of the 2001 Bond Document, all as described in this Resolution are hereby approved, ratified and confirmed, and the officers of the County are hereby authorized and directed, for and in the name and on behalf of the County, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents, which any such officer may deem necessary or advisable in order to effectuate the purposes of this Resolution. Section 10. This Resolution shall take effect upon its adoption.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

Contact: Kristen Lackey (925) 674-7888

ATTESTED: October 22, 2019

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Stephanie Mello

By: Stephanie Mello, Deputy



cc: