



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Leslye Corsiglia
Julia H. Cooper

SUBJECT: SEE BELOW

DATE: March 8, 2012

Approved

Date

3-15-12

COUNCIL DISTRICT: 3

SNI AREA: RINCON DE LOS ESTEROS

SUBJECT: APPROVAL OF THE ISSUANCE OF A TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE AND LOAN OF NOTE PROCEEDS AND RELATED DOCUMENTS FOR THE 1ST AND ROSEMARY FAMILY APARTMENTS PROJECT

APPROVAL OF THE ISSUANCE OF A TAX-EXEMPT MULTIFAMILY HOUSING REVENUE NOTE AND LOAN OF NOTE PROCEEDS AND RELATED DOCUMENTS FOR THE 1ST AND ROSEMARY SENIOR APARTMENTS PROJECT

APPROVAL OF THE CONVERSION OF A FUNDED ACQUISITION LOAN TO A CONSTRUCTION / PERMANENT LOAN COMMITMENT FOR THE 1ST AND ROSEMARY SENIOR APARTMENTS PROJECT

RECOMMENDATION

ROSEMARY FAMILY APARTMENTS

- (a) Adopt a resolution of the City Council:
- (1) Amending and superseding Resolution No. 76008 adopted on September 27, 2011;
 - (2) Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (1st and Rosemary Family Apartments), Series 2012C" in an aggregate principal amount not to exceed \$35,500,000 (the "Series 2012C Note");
 - (3) Approving a loan of Series 2012C Note proceeds to 1st and Rosemary Family Housing, L.P., a California limited partnership created by ROEM 1st and Rosemary Family, LLC, to finance the construction of the 1st and Rosemary Apartments located at 60 East Rosemary Street in San José;
 - (4) Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, Assignment of Deed of Trust, and Regulatory Agreement and

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Declaration of Restrictive Covenants (collectively, the "Series 2012C Documents") and;

- (5) Authorizing and directing the City Manager, Acting Director of Finance and Director of Housing, or their designees, to execute and, deliver the Series 2012C Documents and other related Series 2012C Note documents as necessary.

ROSEMARY SENIOR APARTMENTS

- (b) Adopt a resolution of the City Council:
 - (1) Authorizing the issuance of a tax-exempt multifamily housing revenue note designated as "City of San José Multifamily Housing Revenue Note (1st and Rosemary Senior Apartments), Series 2012D" in an aggregate principal amount not to exceed \$15,500,000 (the "Series 2012D Note");
 - (2) Approving a loan of Series 2012D Note proceeds to 1st and Rosemary Senior Housing, L.P., a California limited partnership created by ROEM 1st and Rosemary Senior, LLC, to finance the construction of the 1st and Rosemary Senior Apartments located at 1290 N. First Street, at the corner of Rosemary Street in San José;
 - (3) Approving in substantially final form the Borrower Loan Agreement, Funding Loan Agreement, Assignment of Deed of Trust, and Regulatory Agreement and Declaration of Restrictive Covenants (the "Series 2012D Documents");
 - (4) Authorizing and directing the City Manager, Acting Director of Finance and Director of Housing, or their designees, to execute and, deliver the Series 2012D Documents and other related Series 2012D Note documents as necessary; and
 - (5) Approving the conversion of a funded acquisition loan in the amount of \$3,700,000 to a construction/permanent loan of up to \$3,700,000 for the Senior Project

OUTCOME

Approval of the recommended actions will enable the issuance of two multifamily housing revenue notes: (1) the Series 2012C Note for the purpose of constructing a 184 unit rental apartment project, composed of 182 units that will be affordable for a period of at least 55 years and two managers' units that will be unrestricted and (2) the Series 2012D Note for the purpose of constructing a 106-unit rental apartment project, composed of 105 units that will be affordable for a period of at least 55 years and one manager's unit. Collectively, these projects will serve low- and extremely low-income residents with current annual incomes between \$22,050 and \$63,000.

In addition, approval of the recommended action will enable the City to convert its existing \$3,700,000 acquisition loan to a construction/permanent loan for the 1st and Rosemary Senior Project (the "Senior Project"). The acquisition loan was approved by Council on December 16,

2008 and disbursed on February 25, 2009 to allow the ROEM Development Corporation (the "Developer") to acquire the Senior Project site.

EXECUTIVE SUMMARY

In accordance with the requirements under the City's Policy for Issuance of Multifamily Housing Revenue Bonds, the Developer has requested that the City issue two series of tax-exempt multifamily housing revenue notes, with each series being structured as non-rated, non-credit-enhanced and privately-placed with Citibank, N.A., as the initial purchaser:

- The proceeds of the Series 2012C Note will be loaned to 1st and Rosemary Family Housing, L.P., a California limited partnership (the "Family Borrower") in an amount not to exceed \$35,500,000. These proceeds, together with other funds, will be used by the Family Borrower to finance the construction of 184-unit rental apartment housing project to be known as 1st and Rosemary Family Apartments (the "Family Project"). The Family Project will consist of 182 units that will be affordable for at least 55 years and two (2) manager's units that will be unrestricted. The affordable units are comprised of 55 one-bedroom units, 97 two-bedroom units, and 30 three-bedroom units.
- The proceeds of the Series 2012D Note will be loaned to 1st and Rosemary Senior Housing, L.P., a California limited partnership (the "Senior Borrower") in an amount not to exceed \$15,500,000. These proceeds, together with other funds, will be used by the Senior Borrower to finance the construction of 106-unit rental apartment housing project to be known as 1st and Rosemary Senior Apartments (the "Senior Project"). The Senior Project will consist of 105 units that will be affordable for at least 55 years and one (1) manager's unit that will be unrestricted. The affordable units are comprised of 105 one-bedroom units.

Additionally, the following actions will be occurring with respect to the City's existing acquisition loans for the Family Project and Senior Project, each approved by Council on December 16, 2008 and funded by the Housing Department on February 20, 2009 from 20% housing set-aside tax increment funds. First, the Family Borrower will repay, in full, an existing \$6,300,000 City acquisition loan for the Family Project, plus accrued interest of approximately \$775,000. Second, the City, through the Housing Department, will be converting an existing \$3,700,000 acquisition loan for the Senior Project to a construction/ permanent loan. The repayment of the Family Project acquisition loan and the conversion of the Senior Project acquisition loan will occur in early April 2012.

On September 27, 2011, Council originally approved the issuance of a tax-exempt note for the Family Project, in an amount not to exceed \$30,700,000, to have been purchased by Citibank, N.A. As a condition to its purchase of the tax-exempt note, Citibank required that a California Department of Housing and Community Development ("HCD") grant, which provides a source of funding for both the Family Project and Senior Project, be restructured as separate grant or

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that HCD enter into a waiver agreement in the event that the Senior Project did not proceed. HCD was unable to accomplish either approach within the timeframe allowed by the California Debt Limit Allocation Committee ("CDLAC") for the issuance of the tax-exempt note for which it had provided private activity bond allocation. As a result, the Family Borrower turned back its allocation to CDLAC in early November 2011. In addition, the Borrower returned the tax credit allocation it received from the California Tax Credit Allocation Committee ("CTCAC")

On November 18, 2011, the Family Borrower reapplied to CDLAC for a private activity bond allocation in the increased amount of \$35,500,000 for the Family Project. At the same time, the Senior Borrower submitted an application to CDLAC for a private activity bond allocation of \$15,500,000 for the Senior Project. The Family Borrower and Senior Borrower also applied to CTCAC for new tax credit allocations, which were approved on February 1, 2012.

BACKGROUND

ROSEMARY FAMILY APARTMENTS

Borrower. The Family Borrower, 1st and Rosemary Family Housing, L.P., is a California limited partnership. The Family Borrower will consist of: (1) Pacific Housing, Inc., a California non-profit affordable housing developer, as the Managing General Partner, (2) ROEM 1st and Rosemary Family Housing, LLC, a limited liability corporation formed by the Developer, as General Partner and (3) Alliant Capital, or an affiliate thereof, as the tax credit investor limited partner.

The Developer has requested that the City issue the Series 2012C Note for the purpose of lending Series 2012C Note proceeds to the Family Borrower. The proceeds of the Series 2012C Note, together with other funds, will be used by the Family Borrower to finance the construction of the Family Project.

Project Overview. The Family Project involves the construction of 184 one-bedroom, two-bedroom and three-bedroom apartment units. Upon completion of the Family Project, 10% of the units (19 units) will be initially rented to individuals and families with incomes that do not exceed 50% of the area median income ("AMI"); and 90% of the units (163 units) will be rented to families with incomes that do not exceed 60% of AMI. Two of the Family Project's 184 units will be unrestricted manager's units. The rental restrictions for the Family Project will remain for a period of 55 years and conform to the City's rental affordability requirements.

City Loan for the Project. On December 16, 2008, Council adopted Resolution No. 74734 approving a funding commitment for a site acquisition loan (the "Family Acquisition Loan") in the amount of \$6,300,000 for the development of the Family Project. The funding source of the Family Acquisition Loan was 20% housing set-aside tax increment funds. On February 20, 2009, the Developer used \$6,300,000 in loan proceeds to acquire the Family Project site. On June 24, 2011, Council adopted Resolution No. 75932 approving the conversion of the Acquisition Loan

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to a construction/ permanent loan for the Family Project, with an expected closing in early October 2011. The Family Borrower was able to qualify for more tax credit equity and a larger permanent loan for the Family Project and is now able to repay the Family Acquisition Loan in full, plus accrued interest of approximately \$775,000, at the closing of the Series 2012C Note. The loan is expected to close in early April 2012.

City as Issuer of Multifamily Housing Bonds. The City’s Policy for Issuance of Multifamily Housing Revenue Bonds requires that if the Housing Department makes a project loan, the City must be the issuer of tax-exempt multifamily housing revenue bonds for the purpose of lending the bond proceeds to the project. As the Series 2012C Note is the equivalent of a multifamily housing bond, the Policy applies.

Sources of Project Funding. The Series 2012C Note will be structured initially as a variable rate obligation in the principal amount of \$35,500,000 during construction and a fixed rate obligation of approximately \$27,822,000 following construction and lease-up (“at permanent”). Series 2012C Note proceeds will fund a portion of the total Family Project costs, which are currently estimated to be \$57,535,913. The estimated sources of funding for the Project’s construction phase and permanent phase are as follows:

City of San José		
1 st and Rosemary Family Apartments		
Plan of Finance – Sources of Funding ¹		
Source	Construction	Permanent
Note Proceeds.....	\$ 35,500,000	\$ 27,822,000
City Loan *	0	0
State of California Proposition IC Funds (Infill Grant).....	7,883,968	7,883,968
Tax Credit Equity	10,909,996	20,584,897
Lease-up Income	412,450	537,691
Deferred Fees and Reserves	2,829,499	707,357
Total	<u>\$ 57,535,913</u>	<u>\$ 57,535,913</u>

*Initial City loan in the amount of \$6.3 million to be repaid with interest in early April.

¹ Estimated as of the date of this report. The actual amounts may vary from these estimates.

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Financing History of Family Project – Key Dates.

- On December 9, 2008, the City's Assistant Director of Finance, pursuant to Municipal Code Section 5.06.430, held a TEFRA Hearing to receive public comment regarding the issuance of bonds by the City for the Family Project.
- On March 10, 2011, the Assistant Director of Finance held a second TEFRA hearing regarding the issuance of tax-exempt multifamily housing revenue bonds in an amount not to exceed \$33,000,000 to finance the construction of the Family Project.
- On March 18, 2011, the Director of Housing submitted an application to CDLAC for an allocation of up to \$30,700,000 in private activity bonds for the Family Project, pursuant to the Joint Authority of the Directors of Housing and Finance under San José Municipal Code Section 5.06.425.
- On May 18, 2011, the City received a private activity bond allocation of \$30,700,000 from CDLAC as requested.
- On June 24, 2011, Council approved the conversion of a \$6,300,000 acquisition loan to a construction/permanent loan.
- On September 27, 2011, Council approved the issuance of a \$30,700,000 tax-exempt note.
- On November 18, 2011, the Family Borrower returned the \$30,700,000 allocation back to CDLAC and reapplied for a private activity bond allocation in the amount of \$35,500,000.
- On December 12, 2011, the Acting Director of Finance held a third TEFRA hearing regarding the issuance of tax-exempt multifamily housing bonds in an amount not to exceed \$36,000,000 to finance the construction of the Family Project.
- On January 18, 2012, the City received a private activity bond allocation in the amount of \$35,500,000 as requested.
- On February 1, 2012, the Family Project received from CTCAC a tax credit allocation of \$1,941,557 per year.

ROSEMARY SENIOR APARTMENTS

Borrower. The Senior Borrower, 1st and Rosemary Senior Housing, L.P., is a California limited partnership. The Senior Borrower will consist of: (1) Pacific Housing, Inc., a California non-profit affordable housing developer, as the Managing General Partner, (2) ROEM 1st and Rosemary Senior Housing, LLC, a limited liability corporation formed by the Developer, as General Partner and (3) Alliant Capital, or an affiliate thereof, as the tax credit investor limited partner.

The Developer has requested that the City issue the Series 2012D Note for the purpose of lending Series 2012D Note proceeds to the Senior Borrower. The proceeds of the Series 2012D Note, together with other funds, will be used by the Senior Borrower to finance the construction of the Senior Project.

Project Overview. The Senior Project involves the construction of 106 one-bedroom apartment units. Upon completion of the Senior Project, 10% of the units (11 units) will be restricted pursuant to TCAC regulations to individuals and families with incomes that do not exceed 50% of the AMI and 90% of the units (94 units) will be restricted to individuals and families with incomes that do not exceed 60% of AMI. Notwithstanding these income restrictions, a City Affordability Restriction will be recorded, requiring the rents on 10% of the units (11 units) be restricted to individuals and families with incomes that do not exceed 30% of AMI, the rents on 7% of the units (7 units) be restricted to individuals and families with incomes that do not exceed 45% of AMI, the rents on 12% of the units (13 units) be restricted to individuals and families with incomes that do not exceed 50% of AMI and the rents on 70% of the units (74 units) be restricted to individuals and families with incomes that do not exceed 60% of AMI². One of the Senior Project's 106 units will be an unrestricted manager's unit. The rental restrictions for the Senior Project will remain for a period of 55 years and conform to the City's rental affordability requirements. The Senior Project documents define the term "Senior" to be a person of at least 62 years of age. Eligibility to reside in the Senior Project requires that at least one person in a given household meet this definition.

City Loan for the Project. On December 16, 2008, Council adopted Resolution No. 74733 approving a funding commitment for a site acquisition loan (the "Senior Acquisition Loan") in the amount of \$3,700,000 for the development of the Senior Project. The funding source of the Senior Acquisition Loan was 20% housing set-aside tax increment funds. On February 20, 2009, the Developer used \$3,700,000 in loan proceeds to acquire the Senior Project site. Staff is recommending approval to convert the Senior Acquisition Loan to a construction / permanent loan, with specific business terms to be approved by the Director of Housing through the City's Delegation of Authority, Chapter 5.06 of the San José Municipal Code. Those terms will include a loan term of up to 396 months, simple interest at 4% per annum during the construction period and due at conversion and, after conversion, 4% per annum simple interest, with interest and principal payable annually from 50% of operational residual receipts or "net cash flow."

² Percentages of units by income restriction do not add to 100% due to individual rounding.

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City as Issuer of Multifamily Housing Bonds. The City’s Policy for Issuance of Multifamily Housing Revenue Bonds requires that if the Housing Department makes a project loan, the City must be the issuer of tax-exempt multifamily housing revenue bonds for the purpose of lending the bond proceeds to the project. As the Series 2012D Note is the equivalent of a multifamily housing bond, the Policy applies.

Sources of Project Funding. The Series 2012D Note will be structured as a variable rate obligation in the amount of \$15,500,000 during construction and as a fixed-rate obligation in the principal amount of approximately \$9,403,000 following project completion and lease-up (“at permanent”). Series 2012D Note proceeds will fund a portion of the total Senior Project costs, which are currently estimated to be \$29,864,129. The estimated sources of funding for the Project’s construction phase and permanent phase are as follows:

City of San José		
1st and Rosemary Senior Apartments		
Plan of Finance – Sources of Funding³		
Source	Construction	Permanent
Note Proceeds.....	\$ 15,500,000	\$ 9,403,000
City Loan.....	3,700,000	3,700,000
State of California Proposition IC Funds (Infill Grant).....	4,499,004	4,499,004
Tax Credit Equity	3,356,512	10,171,248
Lease-up Income	181,763	195,069
Deferred Fees and Reserves	2,626,850	1,895,808
Total	<u>\$ 29,864,129</u>	<u>\$ 29,864,129</u>

Financing of Senior Project – Key Dates.

- On December 9, 2008, the City’s Assistant Director of Finance, pursuant to Municipal Code Section 5.06.430, held a TEFRA Hearing to receive public comment regarding the issuance of bonds by the City for the Senior Project.
- On December 12, 2011, the Assistant Director of Finance held a second TEFRA hearing regarding the issuance of tax-exempt multifamily housing revenue bonds in an amount not to exceed \$15,500,000 to finance the construction of the Senior Project.
- On November 18, 2012, the Director of Housing submitted an application to CDLAC for an allocation of up to \$15,500,000 in private activity bonds for the Senior Project,

³ Estimated as of the date of this report. The actual amounts may vary from these estimates.

pursuant to the Joint Authority of the Directors of Housing and Finance under San José Municipal Code Section 5.06.425.

- On January 18, 2012, the City received a private activity bond allocation of \$15,500,000 from CDLAC as requested.
- On February 1, 2012, the Senior Project also received a tax credit allocation of \$984,586 annually.

ANALYSIS

This portion of the report is divided into several sections to address the items in staff's recommendation to proceed with the financing for the Family Project and Senior Project. These sections describe financing structure, financing documents, existing City funding commitments, financing team participants, and financing schedule.

Note Financing Structure

Overview of the Multifamily Note Financing

General. Multifamily housing financing typically involves the issuance of bonds on behalf of private developers of qualifying affordable rental apartment projects. The bonds are issued by the City with the proceeds loaned to the developer/borrower. The bonds are typically issued as tax-exempt obligations. The advantages of tax-exempt financing to developers include: below-market interest rates and low-income housing tax credits – features not available with a conventional multifamily housing mortgage loan. The bonds are limited obligations of the City, payable solely from loan repayments by the borrower.

The Series 2012C and 2012D Notes (collectively, the “Notes”) operate in a very similar manner to multifamily housing bonds. The Notes are issued pursuant to the same provisions of state law (California Health and Safety Code Section 52075 -52098) and use a portion of the State’s federal tax-exempt private activity cap allocated by CDLAC. The Notes also allow the projects they finance to qualify for tax credits provided through the California Tax Credit Allocation Commission (TCAC). The Notes are limited obligations of the City, payable solely from loan repayments by the Family or Senior Borrower, as the case may be.

The Note structure is being utilized because of a ruling of the Office of the Comptroller of the Currency (“OCC”) that distinguished loans from bonds for purposes of counting maximum Community Reinvestment Act (“CRA”) credit. The change occurred when the regulatory compliance of Citibank, N.A., the lender for the Project, was shifted to OCC from the Office of Thrift Supervision (“OTS”). OTS had viewed tax-exempt financing activity as lending and not as an investment, whether structured as a bond or note, since

proceeds of the financing were loaned to the borrower. However, OCC will only treat tax-exempt bond financing activity as an investment, which is considerably less beneficial to Citibank N.A. than a loan. Citibank N.A. believes that the Note financing approach meets OCC's definition of a CRA loan as well as CDLAC's requirements for tax-exempt financing.

Requirements for Tax-Exemption. For a multifamily housing revenue note or bond to qualify for tax-exemption, federal law generally requires that one of two restrictions must apply: either (1) at least 20% of the units in the housing development must be reserved for occupancy by individuals and families whose income is 50% or less of area median income or (2) at least 40% of the units must be reserved for occupancy by individuals and families whose income is 60% or less of area median income. This second restriction will be incorporated into the Regulatory Agreements for the Notes. Further, in consideration of the City loans, Senior Project will be subject to the deeper affordability requirements described in the Background section above.

Structure of the Notes

Private Placement Structure. Each Note will be structured as non-rated and non-credit-enhanced obligations that are privately placed with Citibank, N.A. ("Citibank, N.A." or "Private Placement Purchaser") as the initial private placement purchaser. Pursuant to the City's policies regarding non-credit-enhanced notes, the Private Placement Purchaser will sign Investor Letters acknowledging that it is a "qualified institutional buyer" or an "accredited investor", that is, a large institutional investor who understands and accepts the risks associated with unrated note secured solely by the project rents. If the Private Placement Purchaser wishes to transfer either of the Notes, the new Note holder must sign and deliver a similar Investor Letter to the Fiscal Agent. Minimum denominations of each Note will be \$100,000.

Principal Amounts and Terms. The Series 2012C Note and Series 2012D Note are anticipated to be issued in the amounts of \$35,500,000 and \$15,500,000, respectively. After the Project financed by each such Note is completed and leased up, and conversion to the permanent loan phase occurs (the "Conversion Date"), the principal balance of such Note is expected to be paid down with tax credit equity funds. The initial balance after the Conversion Date is expected to be \$27,822,000 in the case of the Series 2012C Note and \$9,403,000 in the case of the Series 2012D Note.

After each Project's Conversion Date, estimated to be no later than 30 months after the issuance of the Notes, each Note will convert to a fixed-rate tax-exempt note with a maturity of approximately 30 years, amortized on a 35 year basis and prepayable after 15 years. The remaining balance will be due at maturity to be repaid either from a refinancing or another funding source to be identified by the Borrower at that time.

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Interest Rates. During the construction period, the Notes will pay interest only at a variable rate equal to the Securities Industry and Financial Markets Association (“SIFMA”) Index plus a margin of 2.95% per year.

After the Conversion Date, the interest will be paid at a fixed rate that is estimated to be approximately 5.25% based on current market conditions.

Financing Documents

The following is a brief description of each document Council is being asked to approve and authorize its execution. Copies of these documents for both the Family Project and the Senior Project will be available in the City Clerk’s Office on or about March 14, 2012. With the exception of the principal amount of the Note, the name of the Borrower and the name of the Project, the documents for the Family Project and Senior Project are identical. *For purposes of this section only, the term “Note,” “Borrower” and “Project” are used without regard to the specific transaction.* Each project will be financed separately with no recourse to the investor from one project to the other.

Funding Loan Agreement. The Note will be issued under a Funding Loan Agreement (the “Agreement”) between the City, Citibank, N.A., as funding lender, and Wells Fargo Bank, National Association, as the fiscal agent (the “Fiscal Agent”). The Agreement will be executed by the Acting Director of Finance, Acting Assistant Director of Finance, or other authorized officers on behalf of the City, and attested by the City Clerk. Pursuant to the Agreement, the Fiscal Agent is authorized to receive, hold, invest, and disburse Note proceeds and other funds established under the Agreement; to authenticate the Note; to apply and disburse payments to the Noteholder(s); and to pursue remedies on behalf of the Noteholder(s). The Agreement sets forth the guidelines for the administration, investment and treatment of investment earnings generated by each fund and account, and restrictions relating to any subsequent transfer of the Note. The Borrower Loan Agreement (described below) obligates the Borrower to compensate the Fiscal Agent for services rendered under the Agreement.

Borrower Loan Agreement. This document (the “Loan Agreement”) will be entered into by the City and the Borrower. The Loan Agreement will be executed by the Acting Director of Finance, Acting Assistant Director of Finance or other authorized officer on behalf of the City. The Loan Agreement provides for the loan of Note proceeds to the Borrower for construction and permanent financing of the Project, and for the repayment of such loan by the Borrower. The loan is evidenced by a note (the “Loan Note”) in an amount that corresponds to the principal amount of the Note. The City’s rights to receive payments under the Loan Note will be assigned to the Fiscal Agent, along with certain other rights under the Agreement, the Loan Agreement and the Note; however, certain reserved rights have been retained by the City, such as the City’s right to indemnification.

Regulatory Agreement and Declaration of Restrictive Covenants. Additionally, there is an agreement (the "Regulatory Agreement") among the City, the Fiscal Agent, and the Borrower that contains certain covenants and restrictions regarding the Project and its operations intended to assure compliance with the Internal Revenue Code of 1986. The Regulatory Agreement is executed by the Acting Director of Finance, Assistant Director of Finance and Director of Housing, or other authorized officers on behalf of the City. The Regulatory Agreement restricts the rental of Project units (except for the two manager's units) to low-income residents for a period of at least 55 years as previously described.

Assignment of Deed of Trust. The Borrower's loan repayment obligations to the City will be secured by a Deed of Trust, of which the City is the beneficiary. The sole source of funds for the City's repayment of the Note will be payments from the Borrower with respect to such loan from the City. Therefore, at closing the City will assign (without recourse) its rights as beneficiary under the Deed of Trust, thereby permitting the holder(s) of the Note to pursue the remedies set forth in the Deed of Trust against the Borrower directly.

Financing Team Participants

The financing team participants for both the Series 2012C Note and Series 2012D Note consist of:

- City's Financial Advisor: Ross Financial
- Bond Counsel: Orrick, Herrington & Sutcliffe LLP
- Fiscal Agent: Wells Fargo Bank, National Association
- Private Placement Purchaser: Citibank, N.A.

All costs associated with the financial advisor, bond counsel and fiscal agent are contingent upon the sale of each Note and will be paid from Note proceeds and/or Borrower equity.

Financing Schedule

The current proposed schedule is as follows:

- Council Approval of Notes/Note Documents March 27, 2012
- Pre-Close March 29, 2012
- Close Notes April 3, 2012
- CDLAC Deadline for Note Closing April 17, 2012

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City Subordinate Funding

On December 16, 2008, Council approved funding commitments for acquisition loans of \$6,300,000 for the Family Project and \$3,700,000 for the Senior Project. The funding source for each acquisition loan was 20% housing set-aside tax increment. On February 20, 2009, these loans were disbursed in full to enable the Developer to acquire the Family Project and Senior Project sites.

Pursuant to AB1X 26, the redevelopment dissolution legislation, the City elected to retain housing assets acquired with funds from the Low and Moderate Income Fund. These loans were among the assets retained by the City. These loans are not subject to review by the Oversight Board, but are assets of the City to be used for affordable housing purposes as required under the California redevelopment law.

For the Family Project, the existing acquisition loan will be repaid in the amount of \$6,300,000 plus accrued interest of approximately \$775,000. The repayment of the acquisition loan for the Family Project, by law, must be used for affordable housing purposes. The Housing Department has been given blanket authorization by Council to accept loan repayments from affordable housing borrowers and will deposit the income received into fund 346. This loan payment has been included in the Department's projected loan repayment schedule.

For the Senior Project, the Housing Department, with Council approval of the recommended action, will convert its existing acquisition loan to a construction/permanent loan to the Senior Borrower in an amount up to \$3,700,000. No new City funds will be used for the Senior Project.

EVALUATION AND FOLLOW-UP

This Memorandum presents the set of recommendations related to the Council's approval of the issuance of the Series 2012C Note and the Series 2012D Note for the Family Project and the Senior Project, respectively, and requires no follow-up to the Council. Once the Notes close, anticipated in early April 2012, and the construction of the Family Project and Senior Project commence, the Housing Department will provide updates in its Quarterly Construction Reports to the Council.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings and Notice in appropriate newspapers)**

This action does not meet any of the above Criteria. The method of notifying the community of the City's intent to issue a tax-exempt private activity note is the Tax Equity and Fiscal Responsibility Act (TEFRA) Hearing. TEFRA Hearings were held on December 9, 2008, March 10, 2011, and December 12, 2011, by the Assistant Director of Finance or Acting Assistant Director of Finance. The public hearing notice for the December 12, 2011 hearing was published in the *San José Mercury News* on November 25, 2011.

COORDINATION

This report has been prepared by the Finance Department in coordination with the Housing Department and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This action is consistent with the City's *2007-2012 Five-Year Housing Investment Plan*, adopted by Council on June 12, 2007, to increase the supply of affordable housing, and with the City's *Consolidated Plan 2010-2015* to provide housing units for very low- and extremely low-income households.

COST SUMMARY/IMPLICATIONS

All issuance costs will be paid from proceeds of the Notes and/or Family Borrower/Senior Borrower equity. Each Note is a tax-exempt obligation secured by a mortgage loan payable from Family Project or Senior Project revenues, as the case may be. Neither Note will be paid from, nor secured by, the general taxing power of the City or any other City asset. Based on initial sizes of \$35,500,000 for the Series 2012C Note and \$15,500,000 for the Series 2012D Note, the City will receive upfront issuance fees of \$113,750 and \$63,750, respectively. The City will also receive annual fees for monitoring the Family Project and Senior Project. Under the City's

HONORABLE MAYOR AND CITY COUNCIL

March 8, 2012

Subject: 1st and Rosemary Family Apartments and First and Rosemary Senior Apartments

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Policy for the Issuance of Multifamily Housing Revenue Bonds, the annual fee is equal to the greater of one-eighth of a point (0.125%) of the original principal amount of the bonds (or notes), with a minimum fee of \$7,500. Based on this formula and initial amounts of the Series 2012C Note and Series 2012D Note, the annual fees will be \$44,375 and \$19,375, respectively.

No appropriation of funds is required at this time. Compensation for the financing team participants (financial advisor, bond counsel, and fiscal agent), as well as the costs of the financings, are contingent on the sale of each Note and will be paid from Note proceeds and/or Family Borrower/Senior Borrower equity.

CEQA

EIR resolution 72768 adopted June 21, 2005, file number PDC07-101

/s/
JULIA H. COOPER
Acting Director of Finance

/s/
LESLYE CORSIGLIA
Director of Housing

For questions, please contact Arn Andrews, Acting Assistant Director of Finance at (408) 535-7041.