



# Lake County Illinois

## Legislation Text

File #: 22-1251, Version: 1

Resolution authorizing the execution and delivery by the County of Lake, Illinois of an assignment and assumption agreement and related documents relating to a land use restriction agreement entered into by said County at the time of issuance of its Variable Rate Demand Multifamily Housing Revenue Bonds (Rosewood Apartments Project) Series 2004; and other provisions in connection therewith.

- In 2004, Lake County issued \$8,800,000 in tax-exempt bonds to finance the acquisition and improvement of affordable housing at the Rosewood Apartments, 318 W. Forest Avenue, Round Lake.
- In order to maintain the tax-exempt status of the bonds as well as maintain Section 8/Housing Unit and Development (HUD) and other affordable housing assistance, the owner of the Apartments was required to agree to certain affordable housing covenants and commitments, which are contained in a Land Use Restriction Agreement among Rosewood Apartments Limited Partnership, the bond trustee and Lake County.
- In May 2021, Rosewood Harmony Housing LLC purchased the project from the original borrower.
- Rosewood Harmony Housing, LLC now proposes to sell the Apartments to TMO Acquisitions LLC and then its affiliate, Rosewood Essential Housing LLC. Because the Apartments will continue to be subject to affordable housing covenants and commitments, Rosewood Essential Housing LLC will continue to comply with those requirements.
- Lake County's consent is required to authorize the assignment of the obligations of the Land Use Restriction Agreement to Rosewood Essential Housing LLC.

### RESOLUTION

**WHEREAS**, The County of Lake, Illinois (the "Issuer"), is a duly organized and existing unit of local government within the meaning of Section 1 of Article VII of the 1970 Constitution of the State of Illinois and is a body politic and corporate operating under the general laws of the State of Illinois and is not a home rule unit of local government; and

**WHEREAS**, the Issuer is authorized under the Industrial Building Revenue Bond Act, 50 ILCS 445/1 et seq. (the "Bond Act"), to issue its revenue bonds to finance, in whole or in part, the cost of the construction, rebuilding, acquisition, improvement, or extension of an "industrial project," as defined in Section 2 of the Bond Act; and

**WHEREAS**, the Issuer previously issued its Variable Rate Demand Multifamily Housing Revenue Bonds (Rosewood Apartments Project) Series 2004, in an aggregate principal amount of \$8,800,000 (the "Bonds") and loaned the proceeds thereof to Rosewood

Apartments Limited Partnership, a limited partnership formed under the laws of the State of Illinois (the “Borrower”), in order to finance the costs of the acquisition and construction of a multifamily rental housing facility, located in the Village of Round Lake of The County of Lake, Illinois (the “Project”); and

**WHEREAS**, in connection with the issuance of the Bonds, the Borrower, the Issuer and The Bank of New York Mellon Trust Company, N.A. as trustee and as successor to J.P. Morgan Trust Company, National Association (the “Trustee”) entered into a Land Use Restriction Agreement, dated as of October 1, 2004 (the “LURA”), governing the Borrower’s use of the Project; and

**WHEREAS**, pursuant to Section 7 of the LURA and as a condition to the transfer of the Project, the Borrower and any subsequent owner shall require any purchaser to assume in writing the duties and obligations of the Borrower under the LURA, in a form acceptable to the Issuer and the Trustee; and

**WHEREAS**, in 2021, the Borrower sold the Project to Rosewood Harmony Housing, LLC, a Delaware limited liability company (the “Owner”), and the assignment of the LURA to the Owner was approved by resolution of the County Board of The County of Lake, Illinois (the “County Board”) on May 11, 2021; and

**WHEREAS**, the Owner has entered into a purchase and sale agreement dated June 22, 2022 with TMO Acquisitions LLC pursuant to which the Project will be sold by the Owner to TMO’s affiliate, Rosewood Essential Housing LLC, an Illinois limited liability company (“Purchaser”); and

**WHEREAS**, in connection with the transfer of the Project, the Owner desires to assign, and the Purchaser desires to assume from and after the date of the transfer, all the duties and obligations of the Owner which arise on and after the such transfer date under the LURA; and

**WHEREAS**, the Owner and the Purchaser will enter into an Assignment and Assumption Agreement (the “Assignment”) relating to the Owner’s transfer, and the Purchaser’s assumption, of the obligations under the LURA, which Assignment will be consented to by the Trustee, and it is necessary and desirable that the Issuer execute and deliver the Assignment evidencing its consent; and

**WHEREAS**, the Purchaser and the Issuer will enter into a Performance Security Agreement (“PSA”) to ensure the Purchaser’s performance of its obligations under the LURA and the Assignment and the Issuer, the Owner and the Purchaser will enter into an Assignment of Security Deposit and Termination Agreement to confirm the transition of ownership of the deposited funds held by the County (the “ATA”); and

**WHEREAS**, there has been presented to the County Board at this meeting, the proposed

form of the Assignment, the PSA and the ATA; and

**WHEREAS**, the County Board finds the form and substance of the Assignment, the PSA and the ATA to be satisfactory and proper and hereby determines to proceed with the execution and delivery of the Assignment, the PSA and the ATA and the taking of such other actions as may be necessary and appropriate in connection therewith.

**NOW THEREFORE, BE IT RESOLVED BY THE COUNTY BOARD OF THE COUNTY OF LAKE, ILLINOIS, THAT:**

**SECTION 1:** The foregoing recitals are hereby incorporated in this Resolution as if fully set forth herein.

The Assignment is hereby approved in substantially the form and substance presented to the County Board and on file with the County Clerk of the Issuer with such changes or additions thereto as may be required or approved by counsel to the Issuer and approved by the officers of the Issuer executing and attesting the same, as evidenced by their execution and delivery thereof and the Chair or Vice Chair of the County Board is authorized and directed, for and on behalf of the Issuer, to execute the Assignment and the County Clerk of the Issuer is hereby authorized to attest the Assignment on behalf of the Issuer, and such officers are hereby authorized to deliver the Assignment. Upon execution by the parties thereto and delivery thereof, the Assignment shall be binding upon the Issuer in accordance with the terms and provisions thereof.

**SECTION 2:** The PSA and the ATA are hereby approved in substantially the form and substance presented to the County Board and on file with the County Clerk of the Issuer with such changes or additions thereto as may be required or approved by counsel to the Issuer and approved by the officers of the Issuer executing and attesting the same, as evidenced by their execution and delivery thereof and the Chair or Vice Chair of the County Board is authorized and directed, for and on behalf of the Issuer, to execute the PSA and ATA and the County Clerk of the Issuer is hereby authorized to attest the PSA and ATA on behalf of the Issuer, and such officers are hereby authorized to deliver the PSA and ATA. Upon execution by the parties thereto and delivery thereof, the PSA and ATA shall be binding upon the Issuer in accordance with the terms and provisions thereof.

No pledge, agreement, covenant, representation, obligation or undertaking by the Issuer contained in this Resolution and no other pledge, agreement, covenant, representation, obligation or undertaking by the Issuer contained in any other document executed by the Issuer in connection with the Project or the Bonds shall give rise to any pecuniary liability of the Issuer or charge against its general credit, or shall obligate the Issuer financially in any way except out of payments to be made by the Purchaser under the PSA and ATA. No failure of the Issuer to comply with any term, condition, covenant, obligation or agreement herein or therein shall subject the Issuer to liability for any claim for damages, costs, or other financial or pecuniary charge except to the extent the same is paid by the Purchaser; and no execution of any claim, demand, cause of action or judgment shall be

levied upon or collected from the general credit, general funds or other property of the Issuer.

**SECTION 3:** The Borrower agrees to pay to the Issuer, immediately upon presentation of a written demand or demands therefor, all legal and other consulting and administrative fees, costs, and expenses incurred or accrued in connection with the negotiation, preparation, consideration, and review of this Resolution and the performance by the Issuer of its obligations under this Resolution, and all fees, costs, and expenses that the Issuer may incur at the request of the Borrower or as a result of or arising out of this Resolution or in connection with the execution and delivery of the Assignment, the PSA and the ATA.

The provisions of this Resolution are hereby declared to be separable and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions; provided, however, that no holding of invalidity shall impose any personal liability on any director, member, elected or appointed officer, official, employee, attorney, or agent of the Issuer.

[Signatures appear on the next page]

Adopted: October \_\_, 2022.

Filed: October \_\_, 2022.

<b>THE COUNTY OF LAKE, ILLINOIS</b>	
By:	_____
	Sandy Hart Chair

[SEAL]

ATTEST:

By:	_____
	Robin M. O'Connor County Clerk and <i>ex officio</i> Clerk of the County Board