



Lake County Illinois

Legislation Details (With Text)

File #: 21-0749 **Version:** 2 **Name:** Assignment Assumption Agreement - Rosewood Apartments
Type: resolution **Status:** Passed
File created: 4/26/2021 **In control:** Financial & Administrative Committee
On agenda: **Final action:** 5/11/2021
Title: 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.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Assignment and Assumption Agreement - Rosewood Apartments, 2. Performance Security Agreement - Rosewood Apartments, 3. Resolution - LURA Assumption - Rosewood Apartments.pdf, 4. Rosewood Original Agreement

Date	Ver.	Action By	Action	Result
5/11/2021	2	Lake County Board	adopted	Pass
5/6/2021	1	Financial & Administrative Committee	recommended for adoption to the regular agenda	Pass

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.
- Rosewood Apartments Limited Partnership now proposes to sell the Apartments to Rosewood Harmony Housing, LLC, Inc. and use proceeds from the sale to pay off the balance of the outstanding Bonds. Because the Apartments will continue to be subject to the affordable housing covenants and commitments due to other continuing financing, Rosewood Harmony 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 Harmony 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, the Borrower has continuously owned and operated the Project since October 2004 in accordance with, among other documents, the LURA; and

WHEREAS, the Borrower and Harmony Housing Advisors, Inc., a Delaware corporation (“Harmony”) have entered into a Real Estate Purchase and Sale Agreement with Escrow Instructions (the “Purchase Contract”), dated as of December 14, 2020, with respect to the sale and transfer of the Project and Harmony subsequently assigned its rights under the Purchase Contract to its affiliate, Rosewood Harmony Housing, LLC, a Delaware limited liability company (the “Purchaser”); and

WHEREAS, pursuant to Section 7 of the LURA and as a condition to the transfer of the Project, the Borrower 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 connection with the transfer of the Project, the Borrower desires to assign, and the Purchaser desires to assume from and after the date of the transfer, all the duties and obligations of the Borrower which arise on and after the such transfer date under the LURA; and

WHEREAS, the Borrower and the Purchaser will enter into an Assignment and Assumption Agreement (the "Assignment") relating to the Borrower'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 County will enter into a Performance Security Agreement ("PSA") to ensure the Purchaser's performance of its obligations under the LURA and the Assignment; and

WHEREAS, there has been presented to the County Board of The County of Lake, Illinois (the "County Board") at this meeting, the proposed form of the Assignment and the PSA; and

WHEREAS, the County Board finds the form and substance of the Assignment and the PSA to be satisfactory and proper and hereby determines to proceed with the execution and delivery of the Assignment and the PSA 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.

SECTION 2: 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. It is expected that Freddie Mac will deliver a letter indicating that the Freddie Mac Rider attached to the Land Use Restriction Agreement will terminate on the effective date of the Assignment. Counsel to the Issuer is authorized to approve the attachment of the Freddie Mac letter as Exhibit A to 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 3: The PSA 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 PSA and the County Clerk of the Issuer is hereby authorized to attest the PSA on behalf of the Issuer, and such officers are hereby authorized to deliver the PSA. Upon execution by the parties thereto and delivery thereof, the PSA shall be binding upon the Issuer in accordance with the terms and provisions thereof.

SECTION 4:

(a) 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 Borrower under the Agreement other than payments to be made by the Borrower pursuant to the Issuer's Unassigned Rights (as defined in the Indenture). 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 Borrower; 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.

(b) The principal or purchase price of, premium, if any, and the interest on the Bonds are special, limited obligations of the Issuer. No owner of the Bonds shall have the right to compel any exercise of the taxing power of the Issuer, the State of Illinois or any political subdivision thereof to pay the Bonds or the interest or premium, if any, thereon. The Bonds shall not and shall never constitute or give rise to any pecuniary liability of the Issuer or a charge against its general credit or taxing powers. The Bonds shall not and shall never constitute or evidence an indebtedness of the Issuer, the State of Illinois, or any political subdivision thereof or a loan of credit thereof within the meaning of any constitutional or statutory provision.

SECTION 5: 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 and the PSA.

SECTION 6: 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: May __, 2021.

Filed: May __, 2021.

[SEAL]

ATTEST:

THE COUNTY OF LAKE, ILLINOIS

By:

Sandy Hart
Chair

By:

Robin M. O'Connor
County Clerk and *ex*
officio Clerk of the
County Board