

HAYWARD CITY COUNCIL

RESOLUTION NO. 16-_____

Introduced by Council Member _____

RESOLUTION OF THE CITY OF HAYWARD
AUTHORIZING THE ISSUANCE, SALE AND DELIVERY
OF CITY OF HAYWARD 2016 MULTIFAMILY HOUSING
REVENUE NOTE (HAYWARD FOUR APARTMENTS);
AUTHORIZING THE EXECUTION AND DELIVERY OF A
FUNDING LOAN AGREEMENT, A CONSTRUCTION AND
PERMANENT LOAN AGREEMENT AND A REGULATORY
AGREEMENT AND DECLARATION OF RESTRICTIVE
COVENANTS; AND AUTHORIZING THE EXECUTION
AND DELIVERY OF AND APPROVING OTHER RELATED
DOCUMENTS AND APPROVING OTHER RELATED
ACTIONS IN CONNECTION THEREWITH

WHEREAS, Chapter 7 of Part 5 of Division 31 of the California Health and Safety Code, as the same may be amended (the "Act"), and City of Hayward Ordinance No. 81-023, adopted on June 16, 1981 and codified at Article 10 of Chapter 8 of the City of Hayward Municipal Code, as the same may be amended (the "Ordinance" and together with the Act, the "Note Law") authorizes the City of Hayward (the "City") to incur indebtedness for the purpose of financing the acquisition, construction, rehabilitation and development of multifamily rental housing facilities to be occupied in whole or in part by persons of low and very low income; and

WHEREAS, the City has been requested to issue its 2016 Multifamily Housing Revenue Note (Hayward Four Apartments) (the "Note") in accordance with the Note Law, pursuant to a Funding Loan Agreement (the "Funding Loan Agreement"), between MUFG Union Bank, N.A., as the funding lender (the "Bank") and the City; and

WHEREAS, the proceeds of the Note are proposed to be loaned (the "Borrower Loan") by the City to CHHP, L.P., a California limited partnership (the "Borrower") affiliated with Eden Housing, Inc., pursuant to a Construction and Permanent Loan Agreement, among the City, the Bank and the Borrower (the "Borrower Loan Agreement"), to finance the acquisition and rehabilitation of a 118-unit, scattered site, multifamily rental housing project to be known as the Hayward Four Apartments (the "Project"), consisting of four separate multifamily residential rental housing facilities, all located on separate sites in the City, including (i) the 742 Harris Apartments, a four-unit facility located at 742 Harris Court, (ii) the Harris Court Apartments, a 20-unit facility located at 734, 735, 743, 750 and 751 Harris Court, (iii) the Cypress Glen Apartments, a 54-unit facility located at 25100 Cypress Avenue, and (iv) the Huntwood Commons Apartments, a 40-unit facility located at 27901 Huntwood Avenue; and

WHEREAS, as a condition to undertaking the foregoing transactions the City will require the Borrower to enter into one or more Regulatory Agreements and Declarations of Restrictive Covenants, between the City and the Borrower (the "Regulatory Agreements") for the separate facilities described in the preceding clause; and

WHEREAS, there have been placed on file with the City Clerk prior to this meeting the following documents and agreements in furtherance of the transactions described above:

- (1) A proposed form of Funding Loan Agreement;
- (2) A proposed form of Borrower Loan Agreement; and
- (3) A proposed form of Regulatory Agreement; and

WHEREAS, the City has received an allocation from the California Debt Limit Allocation Committee of private activity note volume cap in an amount sufficient to provide for the issuance of the Note (the "Allocation"); and

WHEREAS, all other conditions, things and acts required to exist, to have happened and to have been performed precedent to and in the issuance of the Note as contemplated by this resolution and the documents referred to herein exist, have happened and have been performed in due time, form and manner as required by the laws of the State of California, including the Act.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward, as follows:

Section 1. The City hereby finds and declares that the above recitals are true and correct.

Section 2. Pursuant to the Act and the Funding Loan Agreement, the City is authorized to issue a limited obligation revenue note, designated as "City of Hayward 2016 Multifamily Housing Revenue Note (Hayward Four Apartments)" in an aggregate principal amount not to exceed \$30,000,000 (the "Note"), in draw-down form or all at one time, and to deliver such Note to the Bank in exchange for the purchase price thereof. The Note shall be executed by the manual or facsimile signature of the City Manager of the City, and attested by the manual or facsimile signature of the City Clerk of the City, in the form set forth in and otherwise in accordance with the Funding Loan Agreement. The Note shall be a limited obligation of the City, payable solely from and secured solely by the pledge and assignment of certain payments from the Borrower under the Borrower Loan Agreement or funds otherwise provided under the loan documents for the Borrower Loan. None of the City, the State of California or any of its subdivisions shall be directly, indirectly, contingently or morally obligated to use any other moneys or assets to pay all or any portion of the debt service on the Note, to levy or pledge any form of taxation whatever therefor or to make any appropriation for the payment of the Note.

Section 3. The form of Funding Loan Agreement on file with the City Clerk is hereby approved. The City Manager or her designee is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Funding Loan Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the authorized signatory upon consultation with note counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Funding Loan Agreement.

Section 4. The proceeds of the Note are authorized to be loaned to the Borrower pursuant to the Borrower Loan Agreement, to acquire, rehabilitate and develop the Project. The form of Borrower Loan Agreement on file with the City Clerk is hereby approved. The City Manager or her designee is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver the Borrower Loan Agreement in said form, with such additions thereto or changes therein as are recommended or approved by the authorized signatory upon consultation with note counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the Borrower Loan Agreement.

Section 5. The form of Regulatory Agreement on file with the City Clerk is hereby approved. The City Manager or her designee is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver one or more Regulatory Agreements in said form, with such additions thereto or changes therein as are recommended or approved by the authorized signatory upon consultation with note counsel to the City, the approval of such additions or changes to be conclusively evidenced by the execution and delivery by the City of the applicable Regulatory Agreements.

Section 6. The Note, when executed, shall be delivered to MUFG Union Bank, N.A., as the initial holder thereof, upon the funding of the initial advance of the Funding Loan (as defined in the Funding Loan Agreement) with the purchase price for the initial draw of the Note.

Section 7. The law firm of Jones Hall, A Professional Law Corporation, is hereby appointed note counsel to the City in connection with the issuance of the Note. The financial advisory firm of CGS Advisors, Inc. is hereby appointed financial advisor to the City in connection with the issuance of the Note. The fees and expenses of note counsel and the financial advisor are to be paid solely from the proceeds of the Note or directly by the Borrower.

Section 8. All actions heretofore taken by the officers and agents of the City with respect to the sale and issuance of the Note are hereby approved, confirmed and ratified, and the proper officers of the City, including the City Manager or her designee, are hereby authorized and directed, for and in the name and on behalf of the City, 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 they, or any of them, may deem necessary or advisable in order to consummate the lawful issuance and delivery of the Note in accordance with this Resolution and resolutions heretofore adopted by the City and in order to carry out the City's program of assistance in the financing of affordable housing, including but not limited to those certificates, agreements, deeds of trust and other documents described in the Funding Loan Agreement, the Borrower Loan Agreement, the Regulatory Agreements, and the other documents herein approved and any certificates, agreements or documents as may be necessary to further the purpose hereof, including, but not limited to, any subordination agreement required to be executed in connection with the proposed financing, but which shall not create any obligation or liability of the City other than with respect to the revenues and assets derived from the proceeds of the Note.

Section 9. This resolution shall take effect immediately upon its adoption.

IN COUNCIL, HAYWARD, CALIFORNIA, January 26, 2016.

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward