

Memo

To: Kennesaw Development Authority

From: Tom Owens, Managing Director Raymond James & Associates

Date: August 23, 2021

Subject (1) Revenue Sharing Agreement and (2) Supplemental Bond Resolution for Walton Ridenour Project, 2021 for Adoption at KDA Regularly Scheduled Meeting August 25, 2021.

Background:

1. Revenue Sharing Agreement:

When the Revenue Sharing Agreement between Kennesaw Development Authority (“KDA”) and Housing Authority of Cobb County (the “Cobb Authority” and together with Cobb Authority’s two applicable wholly owned subsidiary non-profit corporations, CHA 2 Walton Ridenour, Inc. and HCA 2 Development, Inc., collectively “Cobb Housing”), was negotiated and became final on November 11, 2020 (“the 2020 Agreement”) there were several unknown deal structuring and deal participating entities in connection with Walton Ridenour Apartment Homes acquisition (the “Project”) and after renovation the (“Renovated Project”). Consequently, the 2020 Agreement made assumptions and provides that the financial arrangement between Cobb Housing and KDA as set forth on the Excel spreadsheet attached to the 2020 Agreement would change once the transaction closed and final deal structure known. The 2020 Agreement essentially provides that within ten days of closing on the acquisition, Walton will provide a revised pro-forma from which applicable numbers will be reflected in the Excel spreadsheet resulting in a probable revision of the percentages revenue split between Cobb Housing and KDA. This is a one-time revision, following which the Excel spreadsheet will be marked “FINAL.” The revenue sharing percentages shown are final going forward.

Since the Project financing is expected to close on August 31, Scott Cochran, as General Counsel to Cobb Housing and Fred Bentley, as General Counsel to KDA, believe KDA’s August 25 meeting to be a good opportunity to revise the November 2020 Agreement to be effective September 1, 2021 applying more current information and to resolve certain open items. They decided that the best way to do this is to amend and restate the November 2020 Agreement rather than just amend it so that the entire final agreement will be all in one document.

There are five major change areas:

- a. At adoption of the November 2020 Agreement it was not known whether the KDA annual 1/8th of 1% financing fee would be paid directly from the bond trustee to KDA or if it

would come from Walton to Cobb Housing to KDA. The bond documents provide that the Series A Bond trustee (the "Trustee") will collect the KDA annual bond fee on both the Series A Bonds and the Series B Bonds and pay it annually directly to KDA. The Amended and Restated Agreement removes obligation of Cobb Housing to pay these monies since it will not receive the monies with which to make this payment.

- b. Since the Project closes on August 31, 2021, Walton will have a final pro-forma within few days of the closing. The Amended and Restated Agreement removes the Excel spreadsheet replacement requirement and provides a blank in the text that will state the percentage of available revenues going to KDA each year. This blank will be completed before KDA Chairman executes the Amended and Restated Agreement.
- c. The November 2020 Agreement provides for payment from a \$70,000 Administrative Fee paid by the Limited Partnership to the General Partner and from the General Partner to Cobb Housing. Within ten days of receipt of the \$70,000 Cobb Housing is required to pay such monies to KDA. KDA and the City have agreed in a separate agreement that these monies will, from time to time, go to the City for certain projects. This \$70,000 assumes that the Renovated Project is removed from the City's tax digest beginning in 2022. The November 2020 Agreement failed to recognize that if the Renovated project is on the City's tax digest in any year beginning with calendar year 2022, revenues available to the General Partner from the Limited Partnership will be correspondingly reduced, since the Limited Partner will pay the property taxes directly to the City. Consequently, language in the Amended and Restated Agreement provides a dollar for dollar credit of City property taxes received (up to \$70,000 in any calendar year) against the \$70,000 Cobb Housing payment obligation. Neither Cobb Housing, KDA or the City intended the November 2020 Agreement to result in the City receiving a \$70,000 payment twice in any year.
- d. Fred recognized during the 2020 Agreement negotiations that KDA is not party to any of the agreements between Cobb Housing and any Walton entities. Not being a party, Cobb Housing and the Walton entities could amend these agreements without KDA approval in a manner that raises revenues to Cobb Housing and lowers them to KDA. Scott Cochran and Fred orally agreed that once the entire deal structure was finalized, they would figure out a way to solve this problem. Fred and Scott asked Gordon for suggested solutions and as he is prone to do, Gordon developed a complicated solution. Scott saved the day with a simple idea. His idea is that if Cobb Housing without prior approval of KDA amends any agreements that raise revenue to Cobb Housing but lower revenues to KDA, Cobb Housing will pay the extra revenues Cobb Housing receives to KDA.
- e. The Excel spreadsheet attached to the November 2020 Agreement failed to include line numbers, but the agreement referred to line numbers as does the Amended and Restated Agreement. The new Final Excel spreadsheet when attached to the Amended and Restated Agreement will have line numbers.

The motion requested is:

"Move approval of the "Amended and Restated Agreement as of September 1, 2021", subject to such changes as agreed by KDA Chairman, General Counsel and Executive Director, and

signature of such Amended and Restated Agreement as of September 1, 2021 by the Chairman is authorized upon completion of the blank percentage of Available Revenues to be paid to KDA and attachment of the Final Excel spreadsheet to the Amended and Restated Agreement.”

2. Supplemental Bond Resolution:

At the July 28, 2021 KDA called meeting, KDA approved the Bond Resolution. Fred stated that once the Series A Bonds were sold, KDA would be asked to approve a Supplemental Resolution to set the final terms of the Series A and B Bonds, approve Series A Series B Bond purchase agreements for each series of bonds and other matters.

The attached draft Supplemental Bond Resolution accomplishes all the above, and also approves an Amended and Restated Land Use Restriction Agreement. Initially, this agreement was intended to be in two parts. One part a termination of the existing land use restriction agreement, and the second approval of a new land use restriction agreement since the 2013 bonds are being paid off on August 31, 2021. It has since been determined that amending and restating the existing 2013 agreement is a better plan and the Supplemental Bond Resolution accomplishes this task.

The Supplemental Bond Resolution also approves the final Official Statement, which essentially is the draft KDA saw on July 28, 2021 updated to reflect authorized changes to various documents and blanks completed based on sale of the Series A Bonds and placement of the Series B Bonds, subject to issuance and delivery on August 31, 2021.

The Series A Bonds will be marketed on the morning of August 25 and the Series B Bonds placed on the morning of August 25. The Supplemental Bond Resolution and attachments with all blanks completed will be presented at the August 25 meeting. The enclosed most current drafts of the Supplemental Resolution and documents to be attached thereto cannot be finalized until the afternoon of August 25.

The Motion Request is:

“Move approval of the Supplemental Bond Resolution as presented subject to such changes as are approved by KDA Chairman, General Counsel and Executive Director and authorization of signature of all documents related thereto and related to issuance and delivery of the Series A and Series B Bonds.”

General:

If you have a question, call me (Tom Owens), at (404) 240-6854 and ask. I will either answer the question or get the appropriate person on the phone to answer the question. I will attend the August 25 meeting to answer question as will Gordon Mortin.