



## **Staff Report**

**Date:** June 7, 2016

**To:** City Council

**From:** Valerie J. Barone, City Manager

**Reviewed by:** Victoria Walker, Director of Community and Economic Development

**Prepared by:** John Montagh, Economic Development and Housing Manager  
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**Subject:** **Consideration of adoption of Resolution No. 16-33 approving and authorizing the execution and delivery of various documents related to the sale of Virginia Lane Apartments and the defeasance and redemption of related bonds**

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### **Report in Brief**

On December 8, 2015, the City Council adopted Resolution No. 15-74 authorizing the City Manager to negotiate with Eden Housing to enter into a new loan and regulatory agreement for the rehabilitation of 91 affordable housing units located at 1121 and 1140 Virginia Lane (the "Project"). The two properties that comprise the Project were previously known as Maplewood Apartments and Golden Glen Apartments, and are now operated as a single development known as Virginia Lane Apartments. The City's new loan will refinance existing City loans of approximately \$3,431,816 and provide new funding not to exceed \$1.3 million, for a total not to exceed \$4,731,816 (the "New City Loan"). The New City loan is planned to be closed by the end of June, and is part of a larger refinancing that will fund new substantial rehabilitation work on the Project.

The original acquisition and rehabilitation of the Project was funded from several sources, including bonds in the principal amount of \$4,125,000 issued by the City of Concord (the 2001 Bonds). As part of the new refinancing, Eden has proposed that the 2001 Bonds be paid off, or defeased, and new bonds will be issued by Contra Costa County to help pay for the rehabilitation of the Project.

However, Resolution No. 15-74 did not contemplate authorizing the City Manager to take actions necessary to pay off the 2001 Bonds. Eden Housing subsequently informed staff there are actions that the City must take in order to pay off the 2001

Bonds as part of the overall refinancing that is funding the new rehabilitation of the Project.

### **Recommended Action**

Staff recommends the City Council adopt Resolution No.16-33 (Attachment 1) approving and authorizing the execution and delivery of various documents related to the sale of Virginia Lane Apartments and the defeasance and redemption of related bonds.

### **Background**

Virginia Lane Apartments is owned by Virginia Lane Limited Partnership (“Borrower”), a limited partnership established and managed by Eden Housing. Borrower originally acquired the Project to be operated as an affordable housing development in 1999, and the City issued \$4,590,000 in multifamily housing revenue bonds and loaned the proceeds of the 1999 bonds to Borrower, to finance costs of acquisition and rehabilitation of the Virginia Lane Apartments. In 2001, the City issued the 2001 Bonds in the principal amount of \$4,125,000, to refund (or refinance) the outstanding principal on the 1999 Bonds. As a condition of the 2001 Bonds, two Amended and Restated Regulatory Agreements (the “2001 Regulatory Agreements”) were recorded against the Project to ensure that Borrower would comply with the bond covenants, including the requirement that the units be leased to eligible households at affordable rents.

In 1999 and 2006 the City provided additional loans to Borrower (the “Original City Loans”) for the acquisition and rehabilitation of the Project. A balance of approximately \$3,431,816 is owed to the City from Original City Loans.

On December 8, 2015, the City Council adopted Resolution No. 15-74 authorizing the City Manager to negotiate with Eden Housing to enter into new loan and regulatory agreements for the rehabilitation of the Project that will refinance Original City Loans and provide an additional loan not to exceed \$1.3 million, for a total amount not to exceed \$4,731,816. The following table provides a breakdown of the affordability levels provided housing at the Virginia Lane apartments:

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Number of Bedrooms	Quantity	Affordability Area Median Income
1	4	30%
2	6	30%
2	3	40%
1	28	50%
2	36	50%
2	12	60%
1	2	Manager's Units
Total	91	

**Analysis**

The overall refinancing will fund new rehabilitation work at the Project. The total budget for the proposed rehabilitation is approximately \$19 million and includes refinancing the existing loans and proposed development with a new allocation of low income housing tax credits and tax exempt bonds. Existing debt from the City, the County, and the State of California will remain in place. The non-City sources of funds are as follows:

Tax Exempt Bank Permanent Loan	\$ 1,978,000.00
HCD – Multifamily Housing Program Assume/Recast	\$ 1,414,580.00
Contra Costa County - Assume/Recast	\$ 425,029.00
New County Housing Opportunities for Persons With Aids	\$ 1,030,000.00
New County HOME Investment Partnership Program	\$ 503,750.00
General Partner Equity	\$ 30,333.00
Income from Operations prior to Conversion	\$ 302,936.00
Deferred Developer Fee	\$ 267,573.00
General Partner	\$ 1,249,243.00
Limited Partner (LIHTC Equity)	\$ 7,547,372.00
Total "Non-City" Contributions	\$ 14,748,816.00

As part of the overall financing structure, Borrower will sell the Project to VL, L.P. (“Buyer”), a new limited partnership established by Eden to facilitate the refinancing. The County will issue new tax exempt bonds, the proceeds of which will be used by Buyer to purchase the Project from Buyer, and to partially fund the rehabilitation work. In order for Borrower to sell the Project to Buyer, however, the 2001 Bonds must be paid off, and the deeds of trust and related agreements securing repayment of the Bonds must be released from the Project. Bond Counsel assisting the County and

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Eden with this new bond issuance has determined that the 2001 Bonds cannot be paid off while the current variable interest rate for those bonds is in effect. In order to allow the 2001 Bonds to be paid off, the existing Bond Indenture (the legal contract between the City as issuer and the bond trustee governing the 2001 Bonds) needs to be amended through a proposed First Supplemental Indenture (an agreement that modifies the terms of the original Bond Indenture). This First Supplemental Indenture must be executed by the City. City staff has consulted with outside counsel Ethan Walsh of Best Best & Krieger, and he agrees that these steps are necessary to pay off the 2001 Bonds.

Eden has requested that, at the time the 2001 Bonds are defeased, the City also agree to the termination of the 2001 Regulatory Agreements. Buyer is required enter into two new regulatory agreements with the County (the "2016 Regulatory Agreements") as a condition of the new bond issuance. The 2016 Regulatory Agreements will ensure that the units in the Project are leased at affordable rents in accordance with state and federal tax law applicable to the 2016 Bonds. The County has agreed to make the City a third party beneficiary of the 2016 Regulatory Agreements, with rights to enforce their terms. Because the 2016 Regulatory Agreements contain restrictions on the Project that are at least as restrictive as those required by the 2001 Regulatory Agreements, and because the City will have the ability to enforce those agreements, City staff is willing to recommend termination of the 2001 Regulatory Agreements. The County will have responsibility to monitor compliance of the Project with the 2016 Regulatory Agreements, including maintaining affordability levels for tenants. Additionally, the City will still have a separate regulatory agreement that Buyer will enter into as a condition of the New City Loan, which will also ensure the continued affordability of the Project.

Finally, in order to complete the defeasance the 2001 Bonds, the City must execute an acknowledgement of escrow instructions of Borrower, and a written request and certificate to be delivered to the trustee for the 2001 Bonds, which are required to implement the defeasance of the 2001 Bonds.

The attached resolution authorizes the City to execute the documents necessary to pay off (defease) the 2001 Bonds, terminate the 2001 Regulatory Agreements, and take the associated steps necessary to complete the financing for the rehabilitation of the Project.

#### **Financial Impact**

There is no fiscal impact as a result of executing the various documents associated with adoption of Resolution No.16-33.

As previously approved by City Council in its adoption of Resolution No.15-74, the City will be refinancing existing loans of approximately \$3.4 million and providing new a new loan of approximately \$1,286,312 through the City's Affordable Housing Fund Balance.

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**Public Contact**

The City Council Agenda was posted.

**Attachments**

1. Resolution No. 16-33

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD  
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Approving and Authorizing the  
Execution and Delivery of Various Documents  
Related to the Sale of Virginia Lane Apartments and  
the Defeasance and Redemption  
of Related Bonds**

**Resolution No. 16-33**

**WHEREAS**, on March 1, 2001, the City of Concord (the “City”) issued \$4,125,000 principal amount of Multifamily Housing Revenue Refunding Bonds (Maplewood and Golden Glen Apartments Project), 2001 Series A (the “Bonds”) pursuant to an Indenture, dated as of March 1, 2001 (the “Indenture”), between the City and U.S. Bank Trust National Association, as trustee (the “Trustee”), and loaned the proceeds of the Bonds (the “Loan”) to Virginia Lane Limited Partnership, a California limited partnership (the “Borrower”) pursuant to a Loan Agreement, dated as of March 1, 2001, among the City, the Borrower and the Trustee, to be used by the Borrower to refinance the Maplewood and Golden Glen Apartments, which are now collectively known as Virginia Lane Apartments (collectively, the “Project”) located at 1140 and 1121 Virginia Lane, respectively, in the City; and

**WHEREAS**, the Borrower is selling the Project to VL, L.P., a California limited partnership (the “Buyer”), and in order to provide funds for the acquisition and rehabilitation of the Project, the County of Contra Costa (the “County”) is borrowing funds from Citibank, N.A. (“Citibank”), and is delivering to Citibank its Multifamily Housing Revenue Note (Virginia Lane Apartments) Series 2016B (the “Note”) to evidence the borrowing, and the County will be loaning the proceeds of the Note to the Buyer; and

**WHEREAS**, in connection with the sale of the Project by the Borrower to the Buyer, the Borrower would like to prepay the Loan resulting in a redemption of the Bonds, so that certain deeds of trust securing the repayment of the Loan and related agreements may be released; and

**WHEREAS**, in order to allow for the prepayment of the Loan and the redemption of the Bonds, the Indenture must be amended; and

1           **WHEREAS**, in connection with the issuance of the Bonds, the Borrower, the City and the  
2 Trustee entered into two Amended and Restated Regulatory Agreements and Declarations of  
3 Restrictive Covenants (collectively, the “2001 Regulatory Agreements”), one with respect to each of  
4 the two street addresses for the Project, which Regulatory Agreements place various restrictions on  
5 the operation of the Project required under California and federal tax law applicable to the Bonds;  
6 and

7           **WHEREAS**, in connection with the delivery of the Note, the County and the Buyer will be  
8 entering into two new Regulatory Agreements and Declarations of Restrictive Covenants  
9 (collectively, the “2016 Regulatory Agreements”), which will place restrictions on the operations of  
10 the Project that are at least as restrictive, and for a term at least as long, as the restrictions in the 2001  
11 Regulatory Agreements; and

12           **WHEREAS**, the County has agreed to make the City and the owners of the Bonds third  
13 party beneficiaries of the 2016 Regulatory Agreements so that they can enforce the provisions of the  
14 2016 Regulatory Agreements against the Buyer, all to ensure that the Project continues to be  
15 operated as if the 2001 Regulatory Agreements remained in place; and

16           **WHEREAS**, in light of the aforementioned provisions of the 2016 Regulatory Agreements,  
17 the Buyer has requested that the City enter into agreements to terminate the 2001 Regulatory  
18 Agreements so that the City can obtain the benefits of the 2016 Regulatory Agreements, but not have  
19 the obligation to continue to monitor the Project as is contemplated by the 2001 Regulatory  
20 Agreements; and

21           **WHEREAS**, in order to allow for the continued affordability of the Project to low income  
22 tenants and to facilitate the rehabilitation by the Buyer of the Project, the City is amenable (a) to  
23 entering into a First Supplemental Indenture amending the Indenture to allow for the defeasance and  
24 redemption of the Bonds, (b) to entering into two termination agreements (collectively, the  
25 “Termination Agreements”) terminating the 2001 Regulatory Agreements, and (c) executing a  
26 related certificate and escrow instructions, all as provided in this Resolution.

27           **NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES**  
28 **RESOLVE AS FOLLOWS:**

1           **Section 1.** The Council hereby approves the sale of the Project by the Borrower to the Buyer.

2           **Section 2.** The below-enumerated documents, in substantially the forms on file with the City  
3 Clerk, be and are hereby approved, and the Mayor, the City Manager and the Finance Director (each,  
4 a “Designated Officer”), each acting alone, are hereby authorized and directed to execute said  
5 documents in such forms, together with such changes as may be approved by the official executing  
6 the documents for the City upon consultation with the City Attorney and special counsel to the City,  
7 and the execution thereof to be conclusive evidence of such approval:

8           (a) a First Supplemental Indenture, between the City and U.S. Bank Trust National  
9           Association, successor by merger to the Trustee (U.S. Bank”),

10          (b) two Termination Agreements, one with respect to each of the 2001 Regulatory  
11          Agreements, among the City, the Borrower and U.S. Bank,

12          (c) a Written Request and Certificate of the City related to the defeasance of the Bonds, and

13          (d) Irrevocable Instructions of the Borrower to U.S. Bank with respect to the defeasance and  
14          redemption of the Bonds.

15           **Section 3.** The Mayor, the City Manager, the Finance Director, the City Clerk and all other  
16 appropriate officials of the City are hereby authorized and directed to execute such other agreements,  
17 documents and certificates as may be necessary to effect the sale of the Project by the Borrower to  
18 the Buyer, the prepayment of the Loan, the redemption of the Bonds and the termination of the 2001  
19 Regulatory Agreements, all as contemplated by this Resolution.

20           **Section 4.** This Resolution shall take effective immediately upon its passage and adoption.

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1           **PASSED AND ADOPTED** by the City Council of the City of Concord on June 7, 2016, by  
2 the following vote:

3 **AYES:**       Councilmembers -

4 **NOES:**       Councilmembers -

5 **ABSENT:**   Councilmembers -

6 **ABSTAIN:** Councilmembers -

7           **I HEREBY CERTIFY** that the foregoing Resolution No. 16-33 was duly and regularly  
8 adopted at a regular meeting of the City Council of the City of Concord on June 7, 2016.

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Joelle Fockler, MMC  
City Clerk

12 **APPROVED AS TO FORM:**

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Susanne Meyer Brown  
City Attorney