(passed 9-0)

ORDINANCE 08-08

ORDINANCE AUTHORIZING THE CITY OF BLOOMINGTON, INDIANA TO ISSUE ITS "CITY OF BLOOMINGTON, INDIANA ECONOMIC DEVELOPMENT REVENUE BONDS, SERIES 2008 (HENDERSON COURT APARTMENTS PROJECT)" AND APPROVING AND AUTHORIZING OTHER ACTIONS IN RESPECT THERETO

WHEREAS, the Bloomington Economic Development Commission conducted a public hearing on May 14, 2008, and adopted a resolution on May 14, 2008, which Resolution has been transmitted hereto, finding that the financing of certain economic development facilities of SY Henderson Court Investors, L.P., a Indiana limited partnership, complies with the purposes and provisions of I.C. 36-7-11.9 and -12, as amended, that such financing will be of benefit to the health and welfare of the City of Bloomington and its citizens and, based upon representations made by SY Henderson Court Investors, L.P., that the amount of tax credits to be allocated to the Project (as defined herein) under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the project and its viability as a qualified housing project throughout the credit period for the Project and that the Project satisfies the requirements for the allocation of a housing credit dollar amount under the Indiana Housing and Community Development Authority's qualified allocation plan; and

WHEREAS, the Bloomington Economic Development Commission has heretofore approved and recommended the adoption of this form of Ordinance by this Common Council, has considered the issue of adverse competitive effect and has approved the forms of and has transmitted for approval by the Common Council the Financing Agreement, the Indenture of Trust, the Official Statement, the Bond Purchase Agreement, the Land Use Restriction Agreement, the Bond Mortgage Note, and the Intercreditor Agreement; now therefore,

NOW THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, INDIANA, THAT:

SECTION I. It is hereby found that the financing of the economic development facilities referred to in the Financing Agreement approved by the Bloomington Economic Development Commission and presented to this Common Council, the issuance and sale of its Economic Development Revenue Bonds, Series 2008 (Henderson Court Apartments Project) (the "Bonds"), the loan of the proceeds of the Bonds to SY Henderson Court Investors, L.P., a Indiana limited partnership (the "Borrower"), to pay a portion of the costs of the acquisition, construction, renovation and equipping of such facilities, the payment of debt service on the Bonds from the payments by the Borrower under the Financing Agreement, and the securing of said Bonds under the Indenture of Trust, complies with the purposes and provisions of I.C. 36-7-11.9 and -12, as amended, and will be of benefit to the health and welfare of the City of Bloomington and its citizens.

SECTION II. The proceeds of the Bonds will be used to finance a portion of the costs of the acquisition, construction, renovation and equipping of a 150-unit multifamily housing facility, to be known as Henderson Court Apartments, together with functionally related facilities such as carports, garages and parking areas, located at 2475 S. Winslow Ct., in the City of Bloomington, Indiana (the "Project").

SECTION III. At the public hearing held on May 14, 2008, by the Bloomington Economic Development Commission, the Commission considered whether the economic development facilities would have an adverse competitive effect on any similar facilities located in the City of Bloomington, and subsequently found, based on special findings of fact set forth in the Resolution transmitted hereto, that the facilities would not have an adverse competitive effect. This Common Council hereby confirms the findings set forth in the Commission's Resolution, and concludes that the economic development facilities will not have an adverse competitive effect on any other similar facilities in the City of Bloomington and the facilities will be of benefit to the health and welfare of the citizens of the City of Bloomington.

SECTION IV. The substantially final forms of the Financing Agreement, the Indenture of Trust (including the Form of the Bond), the Official Statement, the Bond Purchase Agreement, the Bond Mortgage Note, the Intercreditor Agreement and the Land Use Restriction Agreement approved by the Bloomington Economic Development Commission are hereby approved (herein collectively referred to as the "Financing Agreement" referred to in I.C. 36-7-11.9 and -12, as amended), and the Financing Agreement shall be incorporated herein by reference and shall be inserted in the minutes of the Common Council and kept on file by the Clerk. In accordance with the provisions of I.C. 36-1-5-4, two (2) copies of the Financing Agreement are on file in the office of the Clerk for public inspection.

SECTION V. The City of Bloomington shall issue its Bonds in an amount not to exceed Seven Million Two Hundred and Fifty Thousand Dollars ($7,250,000) and maturing no later than 40 years from the date of issuance. Said Bonds are to be issued for the purpose of procuring funds to finance or refinance a portion of the costs of acquisition, construction, renovation and equipping of economic development facilities as more particularly set out in the above-referenced Indenture of Trust and Financing Agreement incorporated herein by reference, which Bonds will be payable as to accreted amount, principal, premium, if any, and interest from payments made by the Borrower under the Financing Agreement or as otherwise provided in the above-referenced Indenture of Trust. The Bonds shall be issued in fully registered form in Authorized Denominations (as defined in the Indenture of Trust), and shall be redeemable as provided in the Indenture of Trust. Payments of principal, interest and accreted amount are payable in lawful money of the United States of America at the principal corporate trust office of the Trustee (as defined in the Indenture of Trust) or its successor in trust or by check mailed or delivered to the registered owners as provided in the Indenture of Trust. The Bonds shall never constitute a general obligation of, an indebtedness of, or a charge against the general credit of the City of Bloomington, Indiana, nor are the Bonds payable in any manner from revenues raised by taxation.

SECTION VI. The Mayor and the Clerk are authorized and directed to sell the Bonds to the original purchasers thereof at the price of no less than 98% of the accreted value of the principal amount thereof. The Bonds shall bear interest and accrete at a rate not to exceed 12%.

SECTION VII. The President of the Common Council and the City Clerk are authorized and directed to execute, attest, affix or imprint by any means the City seal to the documents constituting the Financing Agreement approved herein on behalf of the City and any other document which may be necessary or desirable prior to, on or after the date hereof to consummate or facilitate the transaction, including the Bonds authorized herein. The Mayor and Clerk are hereby expressly authorized to deem the Official Statement relating to issuance of the Bonds as nearly final and the distribution of the nearly final Private Placement Memorandum is hereby approved. The Mayor and the Clerk are hereby expressly authorized to approve any modifications or additions to the documents constituting the Financing Agreement which take place after the date of this Ordinance with the review and advice of counsel to the City; it being the express understanding of this Common Council that said Financing Agreement is in substantially final form as of the date of this Ordinance. The approval of said modifications or additions shall be conclusively evidenced by the execution and attestation thereof and the affixing of the seal thereto or the imprinting of the seal thereon; provided, however, that no such modification or addition shall change the maximum principal amount of, the maximum interest rate on or maximum term of the Bonds as approved by the Common Council by this Ordinance without further consideration by the Common Council. The signatures of the Mayor and the Clerk on the Bonds may be either manual or facsimile signatures. The Clerk is authorized to arrange for delivery of such Bonds to the Trustee named in the Indenture of Trust, and payment for the Bonds will be made to the Trustee named in the Indenture of Trust and after such payment, the Bonds will be delivered by the Trustee to the purchasers thereof. The Bonds shall be originally dated the date of delivery thereof, unless changed by approval of the Mayor and the Clerk.

SECTION VIII. The provisions of this Ordinance and the Indenture of Trust securing the Bonds shall constitute a contract binding between the City of Bloomington, Indiana and the holders of the Bonds, and after the issuance of said Bonds, this Ordinance shall not be repealed or amended, except in accordance with the amendment provisions of the Indenture, in any respect which would adversely affect the rights of such holders so long as any of said Bonds or the interest thereon remains unpaid.

SECTION IX. The City of Bloomington hereby finds and determines that the amount of tax credits to be allocated to the Project under Section 42 of the Internal Revenue Code of 1986, as amended, does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project. In making the foregoing determination, the City of Bloomington has relied upon representations of the Borrower. The foregoing determinations shall not be construed to be a representation or warranty by the City of Bloomington as to the feasibility or viability of the Project. The City of Bloomington hereby authorizes and directs the Mayor to review and make the foregoing determination again for and on behalf of the City of Bloomington at the request of the Borrower, following receipt of supporting materials submitted by the Borrower to the Indiana Housing and Community Development Authority ("IHCDA") and either written representations of the Borrower or of IHCDA to the effect that (i) the amount of tax credits to be allocated to the Project under Section 42 of the Code does not exceed the amount necessary for the financial feasibility of the Project and its viability as a qualified housing project throughout the credit period for the Project and (ii) the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan. Such determinations shall occur on or about the date of the sale of the Bonds to the Purchasers thereof and on or about the date that each building is placed in service. In reliance upon the representations of the Borrower, it is hereby found and determined that the Project satisfies the requirements for the allocation of a housing credit dollar amount under IHCDA's qualified allocation plan.

SECTION X. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Bond Ordinance, or in the Bonds, the Financing Agreement, the Indenture, the Bond Purchase Agreement, the Land Use Restriction Agreement, the Bond Mortgage Note, the Intercreditor Agreement or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, under or independent of the Financing Agreement, shall be had against any member, director, or officer or attorney, as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of the Bonds secured thereby, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of such Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such member, director, or officer or attorney, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to any owner or holder of the Bonds, or otherwise, of any sum that may remain due and unpaid upon the Bonds hereby secured or any of them, shall be expressly waived and released as a condition of and consideration for the execution and delivery of the Financing Agreement, the Indenture, the Land Use Restriction Agreement, the Official Statement and the Bond Purchase Agreement, the Bond Mortgage Note, the Intercreditor Agreement and the issuance of the Bonds.

SECTION XI. The Bonds shall not constitute a debt or pledge of the faith and credit of the Issuer, the State or any political subdivision thereof, and the holders or owners thereof shall have no right to have taxes levied by the Issuer, the State or of any political subdivision, for the payment of the principal thereof or interest thereon. Moneys raised by taxation shall not be obligated or pledged for the payment of premium, accreted value or principal of or interest on the Bonds, and the Bonds shall be payable solely from the revenues and security interests pledged for their payment as authorized by the Indenture.

SECTION XII. This Ordinance shall be in full force and effect from and after its passage.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana upon this 21st day of May, 2008.

Susan Sandberg

SUSAN SANDBERG, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 22nd day of MAY, 2008.

Regina Moore
REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 22nd day of MAY, 2008.

MARK KRUZAN, Mayor
City of Bloomington

SYNOPSIS

This ordinance approves a request by SY Henderson Court Investors, L.P., for an amount not to exceed $7,250,000 in multi-family housing revenue bonds for the acquisition and rehabilitation of Henderson Court Apartments, 2475 Winslow Court. Henderson Court will continue to house persons whose income is at or below 60% of the Area Median Income.

Signed copies to:
legal (10)
controller
econ dev.
CA/CA (3)
clerk
file
webmistress