

RESOLUTION NO.: R-2015-003

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLUMBIA, SOUTH CAROLINA, APPROVING THE ISSUANCE BY THE PUBLIC FINANCE AUTHORITY OF NOT TO EXCEED \$14,690,000 PUBLIC FINANCE AUTHORITY MULTIFAMILY RENTAL HOUSING REVENUE BONDS, IN ONE OR MORE SERIES, PURSUANT TO SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, North Pointe Affordable Housing, LLC, a South Carolina limited liability company (the "Company"), the sole member of which is The Banyan Foundation, Inc., a North Carolina not-for-profit, 501(c)(3) corporation (the "Foundation"), desires to finance the acquisition and renovation of a multifamily residential rental facility for individuals and families of low or moderate income located within the corporate limits of the City of Columbia, South Carolina, known as the North Pointe Estates apartments (the "North Pointe Project"); and,

WHEREAS, based upon information from the Company, the Foundation, through Apple Manor Affordable Housing, LLC, a Mississippi limited liability company, the sole member of which is the Foundation, is undertaking financing the acquisition and renovation of a multifamily residential rental facility for individuals and families of low or moderate income in Jackson, Mississippi (the "Mississippi Project," collectively with the North Pointe Project, the "Projects"); and,

WHEREAS, the Company has represented to the City Council of the City of Columbia, South Carolina (the "City Council") that it will recognize substantial cost savings by financing the Projects through a single plan of finance consisting of the issuance by the Public Finance Authority (the "Issuer") of its multifamily rental housing revenue bonds, in one or more series, in the aggregate principal amount not to exceed \$14,690,000 (the "Revenue Bonds") to finance the Projects, of which an amount not to exceed \$11,690,000 will be issued with respect to the North Pointe Project; and,

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended, including the U.S. Treasury Regulations promulgated thereunder (collectively, the "Code"), requires as a condition of exclusion from gross income for federal income tax purposes of the interest on private activity bonds, that the issuance of private activity bonds, as defined in Section 141(a) of the Code, such as the Revenue Bonds be approved, after a public hearing following reasonable public notice, by the governmental unit on behalf of which such bonds are to be issued and the governmental unit having jurisdiction over the area in which the bond financed property is located; and,

WHEREAS, the City Council constitutes the elected legislative body of the City of Columbia, South Carolina (the "City"); and,

WHEREAS, the Company has represented to the City that the Issuer, as the issuer of the Bonds, has approved or will approve prior to the issuance of the Revenue Bonds, the issuance of the Revenue Bonds and the financing of the Projects consistent with all applicable requirements of federal and state law (including but not limited to Section 147(f) of the Code); and,

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WHEREAS, the Company has requested the City Council, pursuant to Section 147(f) of the Code, to approve the issuance by the Issuer of the Revenue Bonds for the purpose of providing funds to the Company and Apple Manor Affordable Housing, LLC to finance the Projects, including the North Pointe Project; and,

WHEREAS, on January 12, 2015, the Company published in The State, a newspaper of general circulation in the City, a notice of public hearing to be held on January 27, 2015, at 6:-00 p.m. or as soon thereafter as such matters may be heard in the City Council Chambers of the City Hall of the City of Columbia, 1737 Main Street, Columbia, South Carolina, to consider the issuance by the Issuer of the Revenue Bonds and nature of the North Pointe Project to be financed with a portion of the proceeds of the Revenue Bonds; and,

WHEREAS, the public hearing so noticed, as indicated by the copy of the notice as it appeared in The State attached hereto as Exhibit A, was duly held by the City Council on January 27, 2015, during which hearing members of the public were afforded the opportunity to express their views on the issuance by the Issuer of the Revenue Bonds and the use of a portion of the proceeds thereof to finance the North Pointe Project.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, SOUTH CAROLINA:

Section 1. The issuance by the Issuer of the Revenue Bonds for the purpose of providing funds to the Company to finance the Projects, including the North Pointe Project, is hereby approved pursuant to and in accordance with Section 147(f) of the Code.

Section 2. Such approval by the City Council shall not be construed as (i) an endorsement of the creditworthiness of the Issuer, the Company, the Foundation, Apple Manor Affordable Housing, LLC or the financial viability of either or both of the Projects, including the North Pointe Project, (ii) a recommendation to any prospective purchaser to purchase the Revenue Bonds, (iii) an evaluation of the likelihood of the repayment of the debt service on the Revenue Bonds, or (iv) approval of any building or other regulatory permits relating to the North Pointe Project, and the City Council shall not be construed by reason of its adoption of this resolution to make any such endorsement, finding or recommendation, to have waived any rights of the City, or to have caused the City to be estopped from asserting any rights or responsibilities it may have in such regard. Further, the Revenue Bonds shall not constitute an indebtedness of the State of South Carolina, the City or any political subdivision thereof, nor shall the Revenue Bonds pledge the full faith, credit or taxing power of the State of South Carolina, the City or any political subdivision thereof, but shall be payable solely from revenues of the Company and Apple Manor Affordable Housing, LLC pledged to the payment of the Revenue Bonds. The approval by the City Council of the issuance of the Revenue Bonds by the Issuer to finance the Projects, including the North Pointe Project, shall not be construed to obligate the City to incur any liability, pecuniary or otherwise, in connection with either the issuance of the Revenue Bonds or the acquisition and renovation of the Projects, including the North Pointe Project.

Section 3. This resolution shall take effect immediately upon its adoption.

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Section 4. That 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 or provisions of this Resolution.

Section 5. That all ordinances, resolutions or orders or parts thereof in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby superseded.

Adopted by the City Council of the City of Columbia, South Carolina, this 27th day of January, 2015.

Requested by:

City Manager _____



Mayor

Approved by:



City Manager

Approved as to form:



City Attorney

ATTEST:



City Clerk

Introduced: 1/27/2015
Final Reading: 1/27/2015

EXHIBIT A
COPY OF PUBLIC NOTICE

THE STATE, COLUMBIA, SOUTH CAROLINA MONDAY, JANUARY 12, 2015

**NOTICE OF
PUBLIC HEARING**

You are hereby notified that on the 27th day of January, 2015, at 6:00 p.m. or as soon thereafter as such matters may be heard in the City Council Chamber at the City Hall of the City of Columbia, 1737 Main Street, Columbia, South Carolina 29201, the Mayor and City Council (the "City Council") of the City of Columbia, South Carolina (the "City") will hold a public hearing on the proposed issuance by the Public Finance Authority (the "Issuer") of its multifamily rental housing revenue bonds, in one or more series, in the aggregate principal amount not to exceed \$14,690,000 (the "Revenue Bonds") for the purposes described below:

(1) Not to exceed \$11,690,000 of the proceeds of such Revenue Bonds, when and if issued, will be loaned by the Issuer to North Pointe Affordable Housing, LLC, a South Carolina limited liability company (the "South Carolina Company"). The sole member of the South Carolina Company is The Banyan Foundation, Inc., a North Carolina not-for-profit, 501(c)(3) corporation (the "Foundation"). The proceeds of the Revenue Bonds will be used by the South Carolina Company to finance the acquisition and renovation of the North Pointe Estates apartment project located at 100 Rippemeyer Avenue, Columbia, South Carolina 29203 (the "South Carolina Project"). The South Carolina Project will be owned and operated by the South Carolina Company.

(2) Not to exceed \$3,000,000 of the proceeds of such Revenue Bonds, when and if issued, will be loaned by the Issuer to Applo Manor Affordable Housing, LLC, a Mississippi limited liability company (the "Mississippi Company") and collectively with the South Carolina Company, the "Companies". The sole member of the Mississippi Company is the Foundation. The proceeds of the Revenue Bonds will be used by the Mississippi Company to finance the acquisition and renovation of the Applo Manor Apartments located at 1160 Joanne Street, Jackson, Mississippi, 39204 (the "Mississippi Project") and collectively with the South Carolina Project, the "Projects". The Mississippi Project will be owned and operated by the Mississippi Company.

The public hearing is required by Section 147(b) of the Internal Revenue Code of 1986, as amended (the "Code"). All interested parties are invited to present their comments at the time and place set forth above. The hearing is being held for the purpose of affording residents of the City of Columbia, South Carolina, and other interested persons, an opportunity to express their views, both orally and in writing, on the proposed issuance of the Revenue Bonds by the Issuer and the nature and location of the Projects funded with proceeds of the Revenue Bonds. Any person interested in the proposed issuance of the Revenue Bonds by the Issuer or the location or nature of the Projects may appear and be heard at the public hearing.

THE REVENUE BONDS WILL NOT CONSTITUTE AN INDEBTEDNESS OF THE STATE OF SOUTH CAROLINA, THE CITY OR ANY POLITICAL SUBDIVISION THEREOF, but will be payable by the Issuer solely from revenues of the Companies pledged to the payment of the Revenue Bonds. The Revenue Bonds will not constitute a charge against the general credit of the State of South Carolina, the City or any political subdivision thereof or the taxing powers of the State of South Carolina or the City.

Comments made at the hearing and the meeting are for the consideration of the City Council and will not bind any legal action to be taken by the City Council in connection with the consideration and approval of the issuance of the Revenue Bonds by the Issuer.
Dated: January 6, 2015
PUBLIC FINANCE AUTHORITY
CITY OF COLUMBIA,
SOUTH CAROLINA
1506920

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

AGREEMENT
(Resolution No.: R-2015-003)

WHEREAS, North Pointe Affordable Housing, LLC, a South Carolina limited liability company (hereinafter "North Pointe"), and Apple Manor Affordable Housing, LLC, a Mississippi limited liability company ("Apple Manor"), the sole member of each of which is The Banyan Foundation, Inc., a North Carolina not-for-profit, 501(c)(3) corporation (the "Foundation"), intend to undertake a plan of financing involving the issuance of Multifamily Rental Housing Bonds, in one or more series (the "Bonds") by the Public Finance Authority (the "Issuer") in an aggregate principal amount not to exceed \$14,690,000; and

WHEREAS, North Pointe has represented to the City of Columbia (the "City") that the proceeds of the Bonds would be loaned to North Pointe and Apple Manor, to be used to finance the acquisition and construction of multifamily residential rental facilities for individuals and families of low or moderate income located in Columbia, South Carolina, known as the North Pointe Estates apartments (the "North Pointe Project") and Jackson, Mississippi (the "Mississippi Project" and, together with the North Pointe Project, the "Projects"), and to pay certain costs of issuing the Bonds; and

WHEREAS, North Pointe has represented to the City that the North Pointe Project

WHEREAS, North Pointe has represented to the City that the Issuer will approve prior to the issuance of the Bonds, the issuance of the Bonds and the plan of financing, namely the financing of the Projects; and

WHEREAS, North Pointe has requested that the City, as the governmental unit having jurisdiction over the North Pointe Project, satisfy the requirements contained in Internal Revenue Code §147(f) by adopting a resolution of its City Council to approve the issuance of the Bonds and the plan of financing contemplated above; and

WHEREAS, North Pointe has agreed to hold the City harmless and defend and fully indemnify the City against all costs, expenses (including outside attorneys' fees, expenses, and court costs), liabilities, damages, claims, suits, actions and causes of actions whatsoever arising from the City's Internal Revenue Code §147(f) approval and the issuance by the Issuer of the Bonds; and

WHEREAS, as a result of such approval, the City may be considered a conduit issuer of the Bonds for financial accounting purposes, and therefore be required to include certain disclosures in its Comprehensive Annual Financial Report (hereinafter "CAFR"); and

WHEREAS, the City may require current and timely financial and other information from North Pointe in order to meet the City's deadlines to complete the CAFR;

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NOW, THEREFORE, North Pointe does hereby represent, warrant and covenant as follows:

(a) North Pointe has caused to be prepared a notice of public hearing, in substantially the form attached hereto as Exhibit A (the "Notice"), which Notice is intended to provide reasonable public notice of a public hearing to be held by the City Council with respect to the Bonds and the Projects (the "Public Hearing"). North Pointe will, at its expense, cause to be published and take such other steps as necessary to publish the Notice in a newspaper of general circulation in the City, in a timely manner prior to the Public Hearing.

(b) North Pointe agrees to defend and hold harmless and shall fully indemnify the City of its elected and appointed officials, employees, agents and representatives against any and all claims, losses, expenses, lawsuits, judgments and attorney fees to which the City, or its elected and appointed officials, employees, agents and representatives may incur or may be subject by reasons of any default or breach caused by or on the part of North Pointe or its officials, agents and representatives in connection with, involving or in any way relative to the Bonds or any other related financing objectives of North Pointe, including but not limited to any costs and expenses incurred by the City in connection with any actual, pending or threatened audit or investigation of the Internal Revenue Service, the Securities and Exchange Commission or any similar federal or state regulatory body.

(c) North Pointe agrees to provide and make available to the City any and all information or documents that may be requested by the City, in the City's sole and exclusive discretion, as the City deems necessary to timely complete its annual CAFR. North Pointe acknowledges that time is of the essence when such a request is made and agrees to provide such information or documentation to the City post haste when a request for the same is made. Should North Pointe fail to provide such information or documentation to the City within five (5) business days after written request has been made by the City, North Pointe consents to the entry of an order of specific performance by the Richland County Court of Common Pleas ordering such information or documentation to be provided to the City, immediately. If such an action is filed by the City, North Pointe shall be responsible for all costs associated therewith, including attorney fees.

(c) The City has not be obligated for the payment of the Bonds or any costs associated therewith.

Any modification of this Agreement shall be by a signed writing between the North Pointe and the City.

In the event North Pointe shall fail to comply with this Agreement, then the City shall be entitled to pursue any and all remedies provided under this Agreement or South Carolina law.

The failure of the City to insist upon the strict performance of any provision of this Agreement shall not be deemed to be a waiver of the right to insist upon strict performance of such provisions or of any other provision of this Agreement at any time. Waiver of any breach

of this Agreement by the City shall not constitute waiver of any subsequent breach of this Agreement.

Notice under this Agreement or the written request for information or documents for the City's CAFR shall be sent by U.S. Mail, postage prepaid, or hand delivered to:

To City: City Manager
City of Columbia
Post Office Box 147
Columbia, SC 29217

To North Pointe: North Pointe Affordable
Housing, LLC
c/o The Banyan Foundation
2001 Park Place North
Suite 900
Birmingham, AL 35203

With copy to: City Attorney
City of Columbia
Post Office Box 667
Columbia, SC 29202

With copy to: Peter M. Wright, Esq.
1819 Peachtree Rd, NW
Suite 450
Atlanta, GA 30305

Written notice may also be made by personal hand-delivery:

To City: City Manager
City of Columbia
City Hall
1737 Main Street, 2nd Floor
Columbia, SC 29201

To North Pointe: North Pointe Affordable
Housing, LLC
c/o The Banyan Foundation
2001 Park Place North
Suite 900
Birmingham, AL 35203

Ambiguities in the terms of this Agreement, if any, shall not be construed against the City. This Agreement shall be interpreted pursuant to the laws of the State of South Carolina.

If any provision of this Agreement is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have set forth their hands as of the day first above written.

NORTH POINTE AFFORDABLE HOUSING,
LLC

By: The Banyan Foundation, Inc., Sole Member

By:  _____
R.B. Coats III, President

CITY OF COLUMBIA, SOUTH CAROLINA

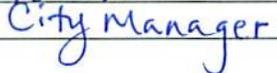
By:  _____
Its:  _____
City Manager

EXHIBIT A
NOTICE OF PUBLIC HEARING

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The public hearing is required by Section 14-7(f) of the Internal Revenue Code of 1986, as amended (the "Code"). All interested parties are invited to present their comments at the time and place set forth above. The hearing is being held for the purpose of affording residents of the City of Columbia, South Carolina, and other interested persons, an opportunity to express their views, both orally and in writing, on the proposed issuance of the Revenue Bonds by the Issuer and the nature and location of the Projects funded with proceeds of the Revenue Bonds. Any person interested in the proposed issuance of the Revenue Bonds by the Issuer or the location or nature of the Projects may appear and be heard at the public hearing.

THE REVENUE BONDS WILL NOT CONSTITUTE AN INDEBTEDNESS OF THE STATE OF SOUTH CAROLINA, THE CITY OR ANY POLITICAL SUBDIVISION THEREOF, but will be payable by the Issuer solely from revenues of the Companies pledged to the payment of the Revenue Bonds. The Revenue Bonds will not constitute a charge against the general credit of the State of South Carolina, the City or any political subdivision thereof or the taxing powers of the State of South Carolina or the City.

Comments made at the hearing and the meeting are for the consideration of the City Council and will not bind any legal action to be taken by the City Council in connection with the consideration and approval of the issuance of the Revenue Bonds by the Issuer.

Dated: January 8, 2015
PUBLIC FINANCE AUTHORITY
CITY OF COLUMBIA,
SOUTH CAROLINA
1506620