

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 12

DATE: January 6, 2004

STAFF: Alan Krcmarik

SUBJECT

First Reading of Ordinance No. 004, 2004, Approving and Authorizing the Execution and Delivery of a First Amendment to the Trust Indenture Relating to the City of Fort Collins, Colorado, Multifamily Housing Revenue Bonds, Series 1997 (the Bull Run Townhomes Project); and Authorizing the Preparation and Execution of Related Documents.

RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

FINANCIAL IMPACT

The City is the Issuer of the private activity bonds that provided the initial funding for the Bull Run Townhomes Project. Private activity bonds are structured according to federal and state law. These laws prohibit the City from assuming any direct financial responsibility for the bonds or their eventual repayment. The City is not allowed to make payments on behalf of the project or the bondholders. The debt associated with the bonds is not part of the City's legal or financial obligations.

EXECUTIVE SUMMARY

As one of its tools to facilitate the development of affordable housing, the City of Fort Collins occasionally issues private activity bonds on behalf of qualified projects. The interest on the bonds is not subject to income taxation. Therefore the rates are lower than taxable market rates. This allows a portion of the units in a qualified project to pay lower rents. To become qualified, the project must rent the housing units to individuals or families that meet low- or moderate-income guidelines. The City issued bonds for the Bull Run Townhomes Project in 1997.

The proposed changes to the Trust Indenture are being requested by AIG Retirement Services, Inc. AIG provides financial security for the 1997 bonds. The changes include a different means by which to calculate the interest on the bonds and a change in the repayment schedule to lower the annual payments.

BACKGROUND

The City of Fort Collins, Colorado (the "Issuer") has previously issued its Multifamily Housing Revenue Bonds, Series 1997 (The Bull Run Townhomes Project) in the original aggregate principal

amount of \$8,300,000 (the "Bonds") pursuant to a Trust Indenture (the "Indenture") dated as of November 1, 1997 between the Issuer and Texas Commerce Bank National Association, as trustee (the "Trustee").

In January, 2001, SunAmerica Inc., predecessor to AIG Retirement Services, Inc. ("AIG Retirement"), replaced Dynex Capital, Inc. as the Funding Facility Issuer under the Indenture, and AIG Retirement issued its Irrevocable Bond Payment and Purchase Agreement (the "Alternate Credit Facility") in order to secure the timely payment of the principal of and interest on, and to provide liquidity for, the Bonds, which Alternate Credit Facility is guaranteed by American International Group, Inc. ("AIG Guarantee"), of which AIG Retirement is a wholly-owned subsidiary.

AIG Retirement, as the Funding Facility Issuer under the Indenture, now desires to amend the Indenture in order to change the interest rate mode on the Bonds to a Term Rate Mode in which the interest will be calculated on a weekly basis and will be determined on the basis of an index (BMA plus 20 basis points) and modify the amortization schedule for the Bonds to provide approximately level debt service at a lower amortization rate. In connection with these amendments and pursuant to the terms of the Indenture, the Alternate Credit Facility and related AIG Guarantee will be released; AIG Retirement will assign its rights as Funding Facility Issuer under the Indenture to MM Enhancement, LLC; and the Bonds will be transferred to Freddie Mac for deposit into a securitization trust. The trust interests which are sold to the public will be credit enhanced by Freddie Mac.

AIG Retirement believes that these changes will solidify the financial foundation of the project for a long period of time.

These changes will cause a reissuance of the Bonds for federal tax purposes. As a result, a tax opinion will be necessary and Form 8038 must be filed with the Internal Revenue Service.

The Ordinance that makes the changes to the Trust Indenture was prepared by Loring Harkness of Ballard Spahr Andrews and Ingersoll. This firm has served as bond counsel to the City since the late 1970s. The Ordinance has been reviewed by legal and financial staff.

ORDINANCE NO. 004, 2004

AN ORDINANCE APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST AMENDMENT TO TRUST INDENTURE RELATING TO THE CITY OF FORT COLLINS, COLORADO MULTIFAMILY HOUSING REVENUE BONDS, SERIES 1997 (THE BULL RUN TOWNHOMES PROJECT); AND AUTHORIZING THE PREPARATION AND EXECUTION OF RELATED DOCUMENTS

WHEREAS, the City of Fort Collins, Colorado (the "City") is authorized by Part 1 of Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act"), to issue revenue bonds for the purpose of financing projects to the end that business enterprises will bring affordable housing to the City of Fort Collins, to enter into financing agreements with others for the purpose of providing revenues to pay such bonds, and further to secure the payment of such bonds; and

WHEREAS, the City has, pursuant to the Act, previously issued its Multifamily Housing Revenue Bonds, Series 1997 (The Bull Run Townhomes Project) in the original aggregate principal amount of \$8,300,000 (the "Bonds") pursuant to a Trust Indenture (the "Indenture") dated as of November 1, 1997 between the City and Texas Commerce Bank National Association, as trustee (the "Trustee"); and

WHEREAS, the City now desires to amend the Indenture, at the request of AIG Retirement Services, Inc. (formerly, AIG SunAmerica, Inc.), as the Funding Facility Issuer under the Indenture, to (i) change the interest mode on the Bonds to a Term Rate Mode in which the interest will be calculated on a weekly basis and will be determined on the basis of an index (BMA plus 20 basis points) and (ii) modify the mandatory sinking fund schedule for the Bonds; and

WHEREAS, there has been presented to the Council of the City (the "Council") and filed in the office of the City Clerk of the City (the "Clerk"), the proposed form of First Amendment to Trust Indenture, dated as of January 1, 2004 (the "First Amendment") by and between the City and the Trustee;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS, COLORADO:

Section 1. The proposed form of First Amendment is in all respects hereby approved, and the Mayor and the City Clerk are authorized to execute such First Amendment in the name of and on behalf of the City and such other documents as in the opinion of the City Attorney are necessary to effect the transactions contemplated thereby and are not inconsistent therewith. In the event of the absence or disability of the Mayor or the City Clerk, such officers of the City as, in the opinion of the City Attorney, may act on their behalf, shall without further act or authorization of the Council do all things

and execute all instruments and documents required to be done or executed by such absent or disabled officers.

Section 2. Counsel for the City is hereby authorized and directed to make or agree to any alterations, changes or additions in the instruments hereby approved as it deems necessary or proper to accomplish the purposes of this Ordinance.

Section 3. The Mayor and the City Clerk and other proper City officials, and each of them, are hereby authorized to execute and deliver for and on behalf of the City any and all additional certificates, documents and other papers and to perform all other acts they may deem necessary or appropriate in order to implement and carry out the matters herein authorized.

Section 4. If any provision of this Ordinance shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative or unenforceable to any extent whatever.

Section 5. All provisions of prior ordinances, or parts thereof, in conflict with the provisions of this Ordinance are, to the extent of such conflicts, hereby repealed.

Section 6. This Ordinance shall be in full force and effect on the tenth day following its passage.

INTRODUCED, READ, APPROVED ON FIRST READING AND ORDERED
PUBLISHED BY NUMBER AND TITLE ONLY this 6th day of January, A.D. 2004.

CITY OF FORT COLLINS, COLORADO

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

READ, FINALLY PASSED ON SECOND READING AND ORDERED
PUBLISHED BY NUMBER AND TITLE ONLY this 20th day of January, A.D. 2004.

CITY OF FORT COLLINS, COLORADO

By: _____
Mayor

(SEAL)

ATTEST:

City Clerk

Bull Run Apartment Project Location

Site Location

City of Fort Collins

