



**RBA: Elm Ridge Inducement
CITY OF AUSTIN
RECOMMENDATION FOR BOARD ACTION**

**AGENDA ITEM NO: 2
AGENDA DATE: 11/05/2009
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SUBJECT: Approve an inducement resolution for private activity bond financing to be submitted to the Texas Bond Review Board for an allocation of up to \$6 million in private activity volume cap multi-family non-recourse bonds for the acquisition and rehabilitation of the Elm Ridge Apartments, 1161 Harvey Street, by the bond financing applicant, Elm Ridge Affordable Partners, Ltd., Tuscaloosa, Alabama, or its affiliate.

AMOUNT & SOURCE OF FUNDING:

FISCAL NOTE: There is no unanticipated fiscal impact. A fiscal note is not required.

REQUESTING DEPARTMENT: Austin Housing Finance Corporation

FOR MORE INFORMATION CONTACT: Margaret R. Shaw, Treasurer, Austin Housing Finance Corporation, 974-3184

PRIOR COUNCIL ACTION:

PRIOR BOARD ACTION: October 15, 2009 – Approved financing award.

Request

Approval of this inducement resolution will permit staff to submit an application to the Texas Bond Review Board (BRB) requesting consideration to authorize the Austin Housing Finance Corporation (AHFC) to issue multi-family housing revenue bonds to assist with the acquisition and rehabilitation of the Elm Ridge Apartments by Elm Ridge Affordable Partners, Ltd. (the "Applicant").

Regulations governing the issuance of revenue bonds for the purpose of financing affordable housing specify that the bonds are non-recourse, and the full faith and credit of the AHFC or the City of Austin is not pledged to repay the bonds.

The Applicant

Elm Ridge Affordable Partners, Ltd., is an affiliate of Summit Housing Partners, Inc. ("Summit") which owns and operates affordable and workforce housing with approximately 12,500 units in 81 apartment communities in eight states. Summit's business model is to acquire, rehabilitate, and operate Project-Based Section 8 or Low-Income Housing Tax Credit properties.

Process

- If approved, the AHFC Board will have two additional opportunities to review the project before the bonds are issued.

- Upon securing confirmation from the Texas BRB of an allocation for this project, a public hearing will be conducted as required by the Tax Equity Financial Responsibility Act (TEFRA). The suggested date and time for this hearing is December 10, 2009 at 3:00 p.m. at Austin City Hall, 301 W. 2nd Street.
 - When the bond issue is structured, the item will be brought back to the AHFC Board for approval of the sale of the bonds within the allotted time allowed by the Texas BRB for closing.
- The Applicant will secure 4 percent Low-Income Housing Tax Credits from the Texas Department of Housing and Community Affairs. Such tax credits are automatically available to volume cap bond-financed projects. These tax credits help finance equity needed to carry out the project.

AHFC as Bond Issuer

- Since 1982, AHFC has issued 24 series of multi-family housing revenue bonds totaling \$221,000,000. These multi-family bonds have financed 32 multi-family properties, creating 6,452 low- and moderate-income rental units.
- The issuance of \$6 million in revenue bonds will generate an issuer's fee to AHFC of approximately \$30,000 (one-half of 1 percent of the amount of bonds issued).
- AHFC received a \$5,000 application fee from the Applicant.
- AHFC will receive approximately \$1,560 annually as a monitoring fee over the life of the bonds. The fee is calculated at .0003 times the amount of bonds issued.

Project Characteristics

- Elm Ridge Apartments is a Project-Based Section 8 property consisting of 130 units at 1161 Harvey Street, in Austin. Project-Based Section 8 properties receive a direct subsidy from the U.S. Department of Housing and Urban Development (HUD) for each unit for a specified period of time, up to 20 years. "Project-Based" means the HUD subsidy stays with the unit and is not portable for the resident to use elsewhere as is the case with the Housing Choice Voucher Program (formerly called "Section 8") administered by public housing authorities.
- The apartments were constructed in 1970 and consist of one, two, and three-bedroom units and were most recently renovated in 1994.
- The property is 100 percent occupied. No relocation of tenants will be necessary during renovations which are expected to be complete by December 31, 2010 and will include:
 - replacement of appliances with Energy Star-rated appliances,
 - replacement of windows with "low-e" windows,
 - new flooring,
 - new kitchen and bathroom cabinets and bathroom fixtures, and
 - replacement of heating and cooling systems (HVAC) with 14 SEER rated units.

Population Served

Incomes are capped at 50 percent of Median Family Income, currently \$36,650 for a family of four.

RESOLUTION NO. 20091105-AHFCXXX

WHEREAS, the Austin Housing Finance Corporation (Corporation) has been created and organized under the provisions of the Texas Housing Finance Corporations Act, Chapter 394, Local Government Code, V.T.C.A.(Act), for the purpose of providing a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices they can afford.

WHEREAS, the Issuer and/or an entity legally acting for and on behalf of the Corporation (either or both Issuer) is or are authorized to provide for the acquisition and construction of multifamily housing projects, and to provide for the issuance of revenue bonds for this purpose.

WHEREAS, Elm Ridge Affordable Partners, Ltd. is a limited partnership organized under the laws of the State of Alabama.

WHEREAS, the term "Borrower" shall mean Elm Ridge Affordable Partners, Ltd. and/or one of its subsidiary, affiliate or related corporations or entities.

WHEREAS, the Borrower has advised the Issuer that it is considering proceeding with the acquisition, construction, and/or improvement of a multi-family project described in Exhibit A (Project) within the City of Austin, Texas and within the jurisdiction of the Issuer.

WHEREAS, the Borrower has advised the Issuer that a contributing factor which would further induce the Borrower to proceed with providing for the acquisition, construction and/or improvement of the Project would be a commitment and agreement by the Issuer to issue revenue bonds pursuant to the Act (Bonds) to finance and pay for the Project.

WHEREAS, the Borrower has proposed to the Issuer that the Borrower will be further induced to proceed with providing for the acquisition, construction and/or improvement of the Project if the Issuer will make such commitment and agreement and adopt this Resolution.

WHEREAS, all or a portion of the expenditures relating to the Project (Expenditures) have been paid within 60 days prior to the passage of this Resolution or will be paid on or after the passage of this Resolution.

WHEREAS, the Issuer reasonably expects (based upon information supplied by the Borrower, upon which it is reasonable and prudent for the Issuer to rely) to reimburse the Borrower or persons acting on its behalf for the Expenditures with the proceeds of the Bonds.

WHEREAS, the Issuer declares that this Resolution shall, in accordance with its provisions, constitute the agreement of the Issuer to issue the Bonds in such aggregate principal amount, now estimated not to exceed \$6,000,000, as is actually required to finance and pay for the acquisition, construction and/or improvement of the Project.

WHEREAS, the Issuer finds, considers, and declares that the issuance of the Bonds in the amount identified above and for the purpose identified above will be appropriate and consistent with the objectives of the Act, and that the adoption of this Resolution constitutes, (i) an inducement to the Borrower to proceed with providing for the

acquisition, construction and/or improvement of the Project, (ii) the taking of affirmative official action by the Issuer, acting by and through its Board of Directors, towards the issuance of the Bonds, and that such action is similar to the adoption of a bond resolution, within the meaning of Section 1.103-8(a)(5) of the Federal Treasury Regulations and (iii) the declaration of the intention of the Issuer, in accordance with the provisions of Section 1.150-2 of the Federal Treasury Regulations, to reimburse the Expenditures for the Project at such time as the Bonds are issued; **NOW, THEREFORE,**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
AUSTIN HOUSING FINANCE CORPORATION THAT:**

Section 1. The Issuer agrees as follows:

(a) To adopt a bond resolution or bond resolutions prepared by its Bond Counsel, McCall, Parkhurst & Horton L.L.P., Dallas, Texas, when requested by the Borrower, authorizing the issuance of Bonds pursuant to the Act, and to issue the Bonds, subject to the requirements of the Act, the execution of the appropriate agreements or contracts described in (b), below, and the sale of the Bonds under terms and conditions satisfactory to the Issuer and the Borrower, to finance and pay for the acquisition,

construction and/or improvement of the Project, including amounts sufficient to pay the fees, expenses, and costs in connection with such issuance, including an amount adequate to reimburse the Issuer for its administrative and overhead expenses and costs with respect to the Bonds and the Project, with the Bonds to be payable from payments by the Borrower to the Issuer and/or to a corporate trustee in such sums as are necessary to pay the principal of, interest on, and redemption premium, if any, together with the paying agents' and trustee's fees on, the Bonds, as and when the same shall become due and payable.

(b) Prior to the issuance of the Bonds, when requested by the Borrower, to enter into such loan agreement, installment sale agreement, lease, and/or any other appropriate contracts or agreements between the Issuer and the Borrower as are mutually acceptable in all respects to the Issuer and the Borrower, under which the Borrower will be obligated to make payments to the Issuer and/or to a corporate trustee in such sums as are necessary to pay the principal of, interest on, and redemption premium, if any, together with the paying agents' and trustee's fees on, the Bonds, as and when the same shall become due and payable, and with such payments also to be sufficient to defray the Issuer's administrative,

overhead, and other expenses and costs with respect to the Bonds and the Project.

(c) To take, or cause to be taken, such other action, and to execute such additional contracts and agreements mutually agreeable to the parties in all respects, when requested by the Borrower as may be required in accordance with the Act and this Resolution to cause the issuance of the Bonds and to obtain an allocation of state volume cap for the Bonds.

Section 2. Subject to the provisions of Section 3 of this Resolution, by the acceptance of this Resolution and proceeding with the Project, the Borrower agrees that it will (i) fully indemnify and hold the Issuer harmless from any and all damages, losses, and reasonable expenses, including attorneys' fees, arising at any time from or with respect to the Bonds and the Project (except those resulting from gross negligence or willful misconduct of the Issuer), and (ii) pay or reimburse the Issuer for all reasonable and necessary out-of-pocket expenses, including attorneys' fees and expenses and the fees and expenses of other consultants, which the Issuer may incur at the request of the Borrower arising from the

performance or attempted performance by the Issuer of its obligations hereunder.

Section 3. Nothing contained in this Inducement Resolution shall be interpreted as to bind the Issuer to issue any bonds. The Issuer shall have the authority, without cause, not to issue bonds.

Section 4. Subject to the provisions of Section 3 of this Resolution, the adoption of this Resolution constitutes the acceptance of the Borrower's proposal that it be further induced to proceed with providing for the acquisition, construction and/or improvement of the Project, and this proposal and acceptance shall constitute an agreement between the Issuer and the Borrower in accordance with the provisions of this Resolution.

Section 5. With respect to this inducement resolution and because the Borrower will have to comply with federal and State of Texas rent control requirements in the event the Borrower is awarded Low Income Housing Tax Credits, the Issuer, to the extent the Borrower is awarded Low Income Tax Credits, waives its Affordable Rent requirements set forth in the Issuer's Rules.

Section 6. The Issuer reasonably expects (based upon information supplied by the Borrower, upon which it is reasonable and prudent for the Issuer to rely) to reimburse the Expenditures with the proceeds of the Bonds.

ADOPTED: _____, 2009 **ATTEST:** _____
Shirley A. Gentry
Secretary

EXHIBIT A

DESCRIPTION OF PROJECT

The Project consists of a 130 unit apartment community at 1161 Harvey Street, Austin, Texas. It consists of 68 one bedroom units and 48 two bedroom units and 14 three bedroom units. There is one leasing office, one community room, one clothes care facility and two playground areas.