



**Travis County Commissioners Court Agenda Request
TRAVIS COUNTY HOUSING FINANCE CORPORATION**

Meeting Date: March 13, 2012

Prepared By/Phone Number: Andrea Shields, Manager/854-9116

Elected/Appointed Official/Dept. Head: Leslie Browder, County Executive, Planning and Budget/854-9066

Commissioners Court Sponsor: Samuel T. Biscoe, President

AGENDA LANGUAGE:

1. Public Hearing concerning the Corporation's Multifamily Housing Revenue Bonds (Argosy at Crestview Apartments), Series 2012.

2. Consider and take appropriate action to approve Resolution Authorizing the Issuance, Sale and Delivery of Multifamily Housing Revenue Bonds (Argosy at Crestview Apartments), Series 2012; Approving the Form and Substance of and Authorizing the Execution and Delivery of Documents and Instruments Necessary to Carry Out the Financing of such Multifamily Rental Residential Development; and Containing other Provisions Relating to the Subject.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS: See attached backup.

STAFF RECOMMENDATIONS: Staff recommends approval.

ISSUES AND OPPORTUNITIES: None.

FISCAL IMPACT AND SOURCE OF FUNDING: None.

REQUIRED AUTHORIZATIONS: Andrea Shields, Manager/854-9116; Leroy Nellis, Budget Manager/854-9066

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, Cheryl.Aker@co.travis.tx.us by **Tuesdays at 5:00 p.m.** for the next week's meeting.



NAMAN HOWELL
SMITH & LEE^{PLLC}
ATTORNEYS AT LAW

MEMORANDUM
from
William C. Blount

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Fax (512) 474-1901
E-mail: blount@namanhowell.com

TO: Board of Directors of
Travis County Housing Finance Corporation

DATE: March 6, 2012

RE: Issuance of Multifamily Housing Revenue Bonds (Argosy at Crestview
Apartments), Series 2012

Agenda Date: March 13, 2012

This item is to approve of the financing of the purchase and rehabilitation of the Argosy at Crestview apartments located at 1003 Justin Lane, Austin, Texas. The principal amount of the Bonds is not to exceed \$17,500,000. Bond proceeds will be loaned to the borrower, ML CASA V, L.P., pursuant to the loan agreement, to provide the funds for the acquisition and rehabilitation of the apartments.

The bonds will be purchased by Bank of America, N.A. in a private placement. Bank of America is conducting its due diligence review and underwriting of the property and financing and will provide an investor letter at closing, stating that it is a sophisticated investor in bonds of this type and has received all the information it requires to make an informed investment decision.

The borrower agreed to the additional affordability restrictions so that the restrictions are (a) 20% of the units to residents at or below 50% of area median income as established by HUD; (b) 50% of the units to residents at or below 80% of area median income; and (c) 90% of the units to residents at or below 120% of area median income. The restrictions will be enforced by the recording of a Land Use Restriction Agreement in the real property records which sets forth the restrictions.

As always, the Attorney General's office will review the transcript and must approve the legality of the issuance of the bonds.

Enclosed with this memo is the proposed bond resolution and the principal bond documents for your review.

This matter is also on the Travis County agenda to approve the issuance of the Bonds by TCHFC.

Please give me a call if you have any questions or require any additional information regarding this matter before Tuesday.

cc: Andrea Shields
Ladd Pattillo

RESOLUTION AUTHORIZING THE ISSUANCE, SALE AND DELIVERY OF MULTIFAMILY HOUSING REVENUE BONDS (ARGOSY AT CRESTVIEW APARTMENTS), SERIES 2012; APPROVING THE FORM AND SUBSTANCE OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS NECESSARY TO CARRY OUT THE FINANCING OF SUCH MULTIFAMILY RENTAL RESIDENTIAL DEVELOPMENT; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

WHEREAS, Travis County Housing Finance Corporation (the "Issuer") has been duly created and organized pursuant to and in accordance with the provisions of the Texas Housing Finance Corporations Act, as amended, Texas Local Government Code, Chapter 394 (the "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 or rentals they can afford; and

WHEREAS, the Act authorizes the Issuer: (a) to make loans to any person to provide financing for rental residential developments located within Travis County, Texas (the "County"), and intended to be occupied substantially (at least 90 percent) by persons of low and moderate income, as determined by the Issuer; (b) to issue its revenue bonds for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; (c) to pledge all or any part of the revenues, receipts or resources of the Issuer, including the revenues and receipts to be received by the Issuer from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Issuer in order to secure the payment of the principal or redemption price of and interest on such bonds; and

WHEREAS, the Board of Directors of the Issuer (the "Board") has determined to authorize the issuance, sale and delivery of its Multifamily Housing Revenue Bonds (Argosy at Crestview Apartments), Series 2012 (the "Bonds") pursuant to and in accordance with the terms of a Trust Indenture dated as of March 1, 2012 (the "Indenture"), between the Issuer and Wilmington Trust, National Association, as trustee (the "Trustee"), for the purpose of lending the proceeds thereof to ML CASA V, L.P., a Delaware limited partnership (the "Borrower"), to provide financing for the acquisition and rehabilitation of a multifamily rental residential development to be known as Argosy at Crestview Apartments located within the County at 1003 Justin Lane, Austin, Texas 78757, described more fully on Exhibit A attached hereto (the "Project"), all in accordance with the Constitution and laws of the State of Texas; and

WHEREAS, the Board, by resolution adopted on February 28, 2012, declared its intent to issue its revenue bonds to provide financing for the Project; and

WHEREAS, in order to assist in carrying out such acquisition and rehabilitation of the Project, the Board has determined that the Issuer shall enter into a Loan Agreement dated as of March 1, 2012 (the "Agreement"), between the Issuer and the Borrower, pursuant to which (i) the Issuer will agree to make a loan funded with the proceeds of the Bonds (the "Loan") to the Borrower to enable the Borrower to finance the cost of acquisition and rehabilitation of the Project and related costs, and (ii) the Borrower will execute and deliver to the Issuer a promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Agreement; and

WHEREAS, in order to assure compliance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Code"), the Issuer will require the Borrower to enter into a Land Use Restriction Agreement dated as of March 1, 2012 (the "LURA") with respect to the Project; and

WHEREAS, it is anticipated that the Note will be secured by a Deed of Trust, Security Agreement, Assignment of Rents and Leases and Fixture Filing (the "Mortgage") from the Borrower for the benefit of the Issuer; and

WHEREAS, the Issuer's rights (except for certain reserved rights) under the Loan, including the Note and the Mortgage, will be assigned to the Trustee, as its interests may appear, pursuant to an Assignment of Bond Mortgage Documents (the "Assignment") between the Issuer and the Trustee and acknowledged, accepted and agreed to by the Borrower; and

WHEREAS, the Board desires to engage Naman, Howell, Smith & Lee, PLLC to act as Bond Counsel in connection with the authorization, issuance and delivery of the Bonds; and

WHEREAS, the Board desires to ratify certain other actions heretofore taken with respect to the Bonds; and

WHEREAS, the Issuer desires to authorize the Trustee to invest and reinvest the proceeds of the Bonds and all other funds received and held under the Indenture; and

WHEREAS, Section 147(f) of the Code requires that the Bonds be approved by the "applicable elected representative" (the "AER") after a public hearing following reasonable public notice; and

WHEREAS, with respect to bonds issued by the Issuer, the AER is the Commissioners Court of the County or the County Judge; and

WHEREAS, notice of a public hearing with respect to the Bonds and the Project held by the Issuer on March 13, 2012, was published no less than 14 days before such date in a newspaper of general circulation available to residents within the County; and

WHEREAS, the Board held such public hearing on the date and at the time and place set out in such published notice, and conducted such hearing in a manner that provided a reasonable opportunity for persons with differing views on the issuance of the Bonds and the Project to be heard; and

WHEREAS, the Board and its advisors have examined proposed forms of the Indenture, the Agreement, the LURA, the Note, the Mortgage and the Assignment, and have found the form and substance of such documents to be satisfactory and proper; and have determined to provide financing for the Project in accordance with such documents by authorizing the issuance of the Bonds, the execution and delivery of such documents and the taking of such other actions as may be necessary or convenient;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF TRAVIS COUNTY HOUSING FINANCE CORPORATION THAT:

Section 1. Public Hearing. The Board hereby finds, determines, recites and declares that a public hearing with respect to the Bonds and the Project was held on March 13, 2012; that notice of such public hearing was published no less than 14 days before such date in a newspaper of general circulation available to residents within the County; that such notice included the date, time and place of the public hearing, the location, general nature and the initial owner of the Project and the maximum aggregate principal amount of the Bonds; that all comments from interested persons were taken at such

public hearing and were provided to the AER; and it is anticipated that on March 13, 2012, the Commissioners Court of the County will adopt a resolution approving the Bonds for purposes of Section 147(f) of the Code.

Section 2. Issuance, Execution, Sale and Delivery of the Bonds. The issuance of the Bonds is hereby authorized, according to the conditions set forth herein and in the Indenture, and that, upon execution and delivery of the Indenture, the President or any Vice President and Secretary of the Issuer each are authorized hereby to execute, attest and affix the Issuer's seal to the Bonds and to deliver the Bonds to the Attorney General of the State of Texas for approval, the Comptroller of Public Accounts of the State of Texas for registration and to the Trustee for authentication, and thereafter to sell the Bonds to the initial purchaser thereof and deliver the Bonds as provided in the Indenture.

Section 3. Interest Rate, Principal Amount, Maturity and Price. The officers of the Issuer are hereby authorized to fix and determine the interest rate, principal amount, maturity and price of the Bonds, all of which determinations shall be conclusively evidenced by the execution and delivery by such officers of the Indenture; provided, however, that: (a) the interest rate on the Bonds shall not exceed 7.0 % per annum, subject to adjustment as provided in the Indenture; provided that, in no event shall the interest rate on the Bonds (including any default interest rate) exceed the maximum interest rate permitted by applicable law; (b) the aggregate principal amount of the Bonds shall not exceed \$17,500,000; (iii) the final maturity of the Bonds shall occur not later than March 1, 2052; and (iv) the price at which the Bonds are sold to the initial purchaser thereof shall not exceed the principal amount thereof.

Section 4. Approval, Execution and Delivery of the Indenture. The form and substance of the Indenture are hereby approved; and that the President or any Vice President and the Secretary of the Issuer are each hereby authorized to execute, attest and affix the Issuer's seal to the Indenture and to deliver the Indenture to the Trustee. The Trustee is authorized to invest the moneys held under the Indenture as provided therein.

Section 5. Approval, Execution and Delivery of the Agreement. The form and substance of the Agreement are hereby approved; and that the officers of the Issuer are each hereby authorized to execute the Agreement and to deliver the Agreement to the Borrower.

Section 6. Approval, Execution and Delivery of the LURA. The form and substance of the LURA are hereby approved; and that the officers of the Issuer are each hereby authorized to execute, attest and affix the Issuer's seal to the Regulatory Agreement and to deliver the Regulatory Agreement to the Borrower and the Trustee.

Section 7. Determination of Moderate Income. That the Board has heretofore determined and hereby confirms, in accordance with the Act, for purposes of the Project, until revised by the Board, that the maximum amount constituting moderate income shall be 120% of area median income as defined by HUD, initially \$91,080.

Section 8. Acceptance of the Mortgage and the Note. That the Mortgage and the Note are hereby accepted by the Issuer; and that the President and any Vice President of the Issuer are each hereby authorized to endorse the Note to the order of the Trustee, without recourse.

Section 9. Approval, Execution and Delivery of the Assignment. That the form and substance of the Assignment are hereby approved; and that the officers of the Issuer are each hereby authorized to execute the Assignment and to deliver the Assignment to the Trustee.

Section 10. Approval of Bond Counsel. Naman, Howell, Smith & Lee, PLLC is hereby approved to serve as Bond Counsel with respect to the Bonds with all fees and expenses of Bond Counsel to be paid by the Borrower.

Section 11. Execution and Delivery of Other Documents. The officers of the Issuer are each hereby authorized to execute, deliver, attest and affix the Issuer's seal to such other agreements, assignments, bonds, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 12. Power to Revise Form of Documents. Notwithstanding any other provision of this Resolution, the officers of the Issuer are each hereby authorized to make or approve such revisions in the form of the documents hereby approved as, in the opinion of Bond Counsel, may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution; and approval of such changes by the Issuer shall be indicated by such officers' execution of the documents.

Section 13. Incorporation of Preamble. The recitals in the preamble of this Resolution are true, correct and complete and that each and all of such recitals and the findings therein are hereby incorporated by reference to the same extent as if set forth here in full.

Section 14. Approval of Submission to the Attorney General of Texas. The Board hereby authorizes and ratifies the submission by Bond Counsel to the Attorney General of Texas, for approval as required under Chapter 1202, Texas Government Code, of a transcript of legal proceedings relating to the issuance, sale and delivery of the Bonds.

Section 15. Ratification of Certain Prior Actions. That all prior actions taken for or on behalf of the Issuer in connection with the Bonds are hereby ratified, confirmed and approved.

Section 16. Purposes of Resolution. The Board has expressly determined and hereby confirms that the issuance of the Bonds to assist in the financing of the Project will promote the public purposes set forth in Section 394.002 of the Act and will accomplish a valid public purpose of the Issuer by assisting persons of low and moderate income in the County to obtain decent, safe and sanitary housing at affordable prices, thereby helping to relieve unemployment, to preserve and increase the tax base of the County, and to reduce public expenditures for crime prevention and control, public health, welfare and safety and for other valid public purposes.

Section 17. Limited Obligations. The Bonds and the interest thereon shall be special limited obligations of the Issuer payable solely from the revenues, funds and assets pledged under the Indenture, to secure payment of the Bonds, and under no circumstances shall the Bonds be payable from any other revenues, funds, assets or income of the Issuer.

Section 18. Obligations of Issuer Only. The Bonds shall not constitute an indebtedness, liability, general, special or moral obligation or a pledge or loan of the faith or credit or taxing power, within the meaning of any constitutional or statutory provision whatsoever, of the United States of America or any agency or instrumentality thereof, the State of Texas, the County or any other political subdivision or governmental unit.

Section 19. Approval Conditions. The actions and obligations authorized in this Resolution shall be subject to and conditioned upon receipt by the Issuer on the date of delivery of the Bonds to the initial purchaser thereof of the appropriate opinions of Bond Counsel with respect to the Bonds.

Section 20. Waiver of Guidelines. The Board hereby waives the Issuer's Policy Guidelines for Receiving and Approving Applications for Financial Participation in Residential Developments (the "Guidelines") to the extent such Guidelines are inconsistent with the terms of this Resolution and the bond documents authorized hereunder.

Section 21. Information Return for Tax-Exempt Private Activity Bonds. The Board further directs that an officer of the Issuer submit to the Secretary of the Treasury, not later than the 15th day of the second calendar month after the close of the calendar quarter in which the Bonds are issued, a statement containing the information required by Section 149(e) of the Code.

Section 22. Effective Date. That this Resolution shall be in full force and effect from and upon its adoption.

PASSED AND APPROVED this 13th day of March, 2012.

President

ATTEST:

Secretary

(SEAL)

Exhibit A

PROJECT AND BORROWER

Borrower: ML CASA V, L.P., a Delaware limited partnership

Project: The Project is a 288-unit multifamily rental residential development known as Argosy at Crestview Apartments and located at 1003 Justin Lane, Travis County, Texas 78757. It consists of 192 1-Bedroom/1-Bath units, 32 2-Bedroom/1-Bath units and 64 2-Bedroom/2-Bath units. Unit sizes range from approximately 512 square feet to 971 square feet.