Travis County Commissioners Court Agenda Request

TRAVIS COUNTY HOUSING FINANCE CORPORATION

Meeting Date: January 28, 2014

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

Elected/Appointed Official/Dept. Head: Leslie Browder, County Executive, Planning and Budget/854-9106

Commissioners Court Sponsor: Samuel T. Biscoe, President

AGENDA LANGUAGE: Consider and take appropriate action on request to approve transfer of Fort Branch Landing Apartments to Fort Branch, LLC.

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; Leslie Browder, County Executive, Planning and Budget/854-9106

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to the County Judge's office, agenda@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

(512) 479-0300
Fax (512) 474-1901
E-mail: blount@namanhowell.com

TO: Board of Directors of Travis County Housing Finance Corporation

DATE: January 21 2014

RE: Request to approve transfer of Fort Branch Landing Apartments

Agenda Date: January 28, 2014

We have received a request to approve a transfer of the above-referenced apartments to an affiliate of the Post Investment Group, LLC. This is the same group that purchased the Mountain Ranch apartments in 2011. The bonds were redeemed in 2008, however, the Regulatory Agreement continues in effect on the property for approximately 2 more years.

Attached is a copy of section 12 of the Regulatory Agreement as well as a draft of an Assignment and Assumption Agreement to be executed by the parties. Also attached is information on the purchaser, Post Investment Group.

As you can see from Section 12, Travis County HFC's consent to the transfer is required but shall be given upon receipt of:

(a) The purchaser covenants to operate the project in a compliance with the provisions of the Regulatory Agreement; and
(b) Receipt by TCHFC of:
  (i) Evidence reasonably satisfactory to you that the purchaser has assumed in writing and in full and is reasonably capable of performing the Borrower's duties under the Regulatory Agreement (the Loan Agreement and Indenture were discharged due to the redemption of the bonds in 2008);
  (ii) A certificate of the Borrower that no event of default has occurred or is continuing under the Regulatory Agreement;
  (iii) Payment to the Issuer of an assumption fee of $5500;
  (iv) Evidence of agreement to restrictions in order to maintain tax exempt status

of interest on the bonds;

(v) An opinion of counsel to the purchaser that the purchaser has duly assumed the obligations of the Borrower under the Regulatory Agreement and that the obligations are binding on the purchaser;

(vi) A Certificate of Continuing Compliance from the Borrower current within 45 days; and

(c) Payment of all costs of the transfer by the Borrower or purchaser.

The Assignment and Assumption Agreement address items (a), (b)(i), (b)(iv), and (b)(v) above.

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

cc: Andrea Shields

ASSUMPTION AGREEMENT AND CONSENT

This Assumption Agreement and Consent (this "Agreement") is entered into as of the 14th day of January, 2014, by and between the Travis County Housing Finance Corporation, a Texas public nonprofit corporation (the "Corporation"), _____, a _____ limited partnership (the "Transferor"), and Fort Branch, LLC, a Texas limited liability company (the "Transferee").

WHEREAS, Transferee is seeking to purchase the Fort Branch Landing Apartments in Austin, Texas, as more particularly described in Exhibit "A" attached hereto (the "Project"), from Transferor; and

WHEREAS, the Project is financed, in part, with the proceeds of the Corporation's Multifamily Housing Revenue bonds (Fort Branch Landing Apartments Project) Series 2000, which bonds were fully redeemed in December, 2008; and

WHEREAS, the Project is encumbered by and subject to a Regulatory Agreement and Declaration of Restrictive Covenants recorded as Document Number 2000197555 in the Official Public Records of Travis County, Texas (the "Regulatory Agreement"); and

WHEREAS, pursuant to Section 12 of the Regulatory Agreement, the prior written consent of the Corporation is required in order for the Transferee to acquire the Project; and

WHEREAS, a condition of obtaining said consent is the assumption by the Transferee of the obligations imposed by the Regulatory Agreement; and

WHEREAS, the Transferee desires to assume all obligations under the Regulatory Agreement and to thereafter own and operate the Project in compliance with the Regulatory Agreement until the Qualified Project Period expires.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter recited, and the acquisition of the Project by the Transferee and consents of the parties hereto, the parties agree as follows:

1. Assumption. The Transferee hereby agrees to, and does by these premises, assume all of the obligations of the Borrower under the terms of the Regulatory Agreement and the Transferee agrees to operate the Project in accordance with the requirements of the Regulatory Agreement as multi-family residential rental property in accordance with the Internal Revenue Code and Income Tax Regulations promulgated by the Department of the Treasury pursuant to the Internal Revenue Code, until such time as the Qualified Project Period described therein expires.

2. Representations and Warranties by Transferee. The Transferee hereby affirms, represents and warrants that:

(a) The Transferee is a limited liability company validly organized and existing and in good standing under the laws of the State of Texas and has full power and authority to purchase the Project, to enter into this Agreement and to execute, deliver and perform its obligations hereunder and under the Regulatory Agreement;

(b) This Agreement and the Regulatory Agreement shall constitute the valid and binding agreements of Transferee, enforceable against the Transferee in accordance with their terms;

(c) The Transferee has received no notice from the Transferor of any uncured default or event of default under the Bond Documents or that any event has occurred which, with the giving of notice, the passage of time, or both, would become a default or event of default under the Bond Documents;

(d) The execution, delivery and performance of this Agreement and the performance by the Transferee of its obligations under the Regulatory Agreement: (i) have been duly authorized on behalf of the Transferee by all necessary action; (ii) do not and will not contravene any federal, state or local law, statute, ordinance, rule or regulation, or any judgment, decree or order of any federal, state or local court of competent jurisdiction or governmental body or agency by which the Transferee or its properties and assets, including the Project, are bound; (iii) do not and will not violate or result in a default under any agreement, contract, indenture, mortgage, deed of trust, security agreement or other instrument to which the Transferee is a party or by which its properties and assets, including the Project, are bound; (iv) do not and will not result in the creation or imposition of (or the obligation to create or impose) any lien, charge, security interest or encumbrance upon any properties or assets of the Transferee, including the Project, except as set forth in the Regulatory Agreement; and (v) do not and will not violate the Transferee's organizational documents;

(e) There are no judgments outstanding against the Transferee, and there are no actions, suits, proceedings, inquiries or investigations, at law or in equity, or before or by any court, administrative agency, department or public body or arbitration panel, pending or, to the best knowledge of the Transferee, threatened against or affecting the Transferee, or, to the best knowledge of the Transferee, its assets and properties, including, but not limited to, the Project, nor, to the best knowledge of the Transferee, is there any basis therefor, wherein an unfavorable decision, ruling or finding would, in any way, adversely affect the Transferee's ability to comply with the Regulatory Agreement or adversely affect the operation of the Project or any part thereof, which might result in any material adverse change in the business, operations, properties, assets, liabilities or condition (financial or otherwise) of the Transferee;

(f) To the best of the Transferee's knowledge, the Transferee is not in default in any material respect under any contract, mortgage, deed of trust, lease, loan or credit agreement, limited liability company or partnership agreement or other instrument to which the Transferee is a party or, to the best knowledge of the Transferee, by which it or its properties and assets, including, but not limited to, the Project, are bound; and

(g) To the best of the Transferee's knowledge, the Project is in compliance with all applicable laws and ordinances and rules and regulations of governmental bodies and agencies thereunder, and the Transferee is in compliance with all orders and judgments of any court or governmental body or agency of competent jurisdiction affecting the existence, power and authority of the Transferee and its operation and use of the Project.

The representations and warranties made by the Transferee in this Agreement, or pursuant hereto, shall survive the execution hereof.

3. Representations and Warranties by Transferor. The Transferor hereby affirms, represents and warrants that:

(a) There are no facts or circumstances which, with the giving of notice or passage of time, or both, would constitute a violation of or default under any of its material obligations under the Regulatory Agreement as of the date hereof;

(b) The execution, delivery and performance of this Agreement by the Transferor, the performance by the Transferor of its obligations under this Agreement, and the sale of the Project by the Transferor to the Transferee: (i) have been duly authorized on behalf of the Transferor by all necessary action; (ii) do not and will not contravene any federal, state or local law, statute, ordinance, rule or regulation, or any judgment, decree or order of any federal, state or local court of competent jurisdiction or governmental body or agency by which the Transferor or its properties and assets, including the Project, are bound; (iii) do not and will not violate or result in a default under any agreement, contract, indenture, mortgage, deed of trust, security agreement or other instrument to which the Transferor is a party or by which its properties and assets, including the Project, are bound; (iv) do not and will not result in the creation or imposition of (or the obligation to create or impose) any lien, charge, security interest or encumbrance upon any properties or assets of the Transferor, including the Project; and (v) do not and will not violate the Transferor's organizational documents.

The representations and warranties made by the Transferor in this Agreement, or pursuant hereto, shall survive the execution hereof.

4. Consent. The Corporation hereby consents to the transfer of the Project to the Transferee and to the assumption of the Regulatory Agreement by the Transferee as herein provided, upon receipt of all items required by Section 12 of the Regulatory Agreement.

5. Governing Law. This Agreement shall be governed by the laws of the State of Texas.

6. Burden and Benefit. This Agreement shall be binding upon and inure to the benefit of the parties, and their successors and assigns, and the provisions hereof may not be modified without the written approval and consent of all parties hereto.

7. Multiple Counterparts. This Agreement may be simultaneously executed in

multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

8. Indemnification of Corporation. Transferee agrees to indemnify and hold the Corporation, and its members, directors, agents and employees harmless from and against all actions, costs, damages, expenses, liabilities or losses of any kind (including reasonable attorneys' fees incurred in connection with the investigation, settlement, litigation or appeal or otherwise incurred in connection therewith) suffered by the Issuer, or its members, directors, agents or employees, as a result of any claim or threatened claim made by any third party resulting from Transferee's execution of this Agreement or its purchase, ownership and operation of the Project.

IN WITNESS WHEREOF, the parties have executed this Agreement by duly authorized representatives, as of the date and year first above written.

Travis County Housing Finance Corporation, a Texas public nonprofit corporation

By:_____
Samuel T. Biscoe, President

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Samuel T. Biscoe, President of Travis County Housing Finance Corporation, a Texas public nonprofit corporation, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of the said Travis County Housing Finance Corporation.

Given under my hand and seal of office on this the ____ day of _____, 2014.

_____
Notary Public, State of Texas

Signature Page to Assumption Agreement and Consent

TRANSFEROR Signature Block

STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of _____, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of the said _____.

Given under my hand and seal of office on this the ____ day of _____, 2014.

_____
Notary Public, State of _____

FORT BRANCH, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____ §
COUNTY OF _____ §

BEFORE ME, the undersigned authority, on this day personally appeared _____, _____ of Fort Branch, LLC, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of the said Fort Branch, LLC.

Given under my hand and seal of office on this the ____ day of _____, 2014.

_____
Notary Public, State of _____

EXHIBIT A

PROPERTY DESCRIPTION

Lot 1B, Block "A," RESUBDIVISION OF LOT 1, BLOCK "A" FORT BRANCH LANDING SUBDIVISION, a subdivision in the City of Austin, Travis County, Texas, according to the map or plat thereof recorded under Document No. 2002100158, Official Public Records of Travis County, Texas.

TRAVIS COUNTY HOUSING FINANCE CORPORATION

RESOLUTION APPROVING TRANSFER OF FORT BRANCH LANDING APARTMENTS PURSUANT TO REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, the Travis County Housing Finance Corporation (the "Issuer") issued its Travis County Housing Finance Corporation MultiFamily Housing Revenue Bonds (Fort Branch Landing Apartments Project) Series 2000 (the "Bonds"); and

WHEREAS, the Issuer's consent to a transfer of the Fort Branch Landing Apartments has been requested, pursuant to the terms of an Assumption Agreement and Consent (the "Agreement"), a copy of which is attached hereto as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ISSUER THAT:

1. The Issuer, acting by and through this Board of Directors, hereby approves and authorizes the execution, delivery and acceptance of the Agreement in substantially the form presented to and considered at this meeting. Any officer of the Issuer is authorized to execute and deliver the Agreement, and any necessary collateral documents or certificates, on behalf of the Issuer, with such changes and revisions as the officer executing the same shall deem appropriate and consistent with the intent of this Resolution.

2. This Resolution shall be effective upon its passing.

CERTIFICATION

The above resolution, adopted by the Board of Directors of the Travis County Housing Finance Corporation at a meeting held on the 28th day of January, 2014, is hereby certified to be a true and correct copy of an official copy thereof on file among the official records of such Corporation.

WITNESS my hand and seal of office this 28th day of January, 2014.

_____

Margaret Gomez, Secretary