



UTAH HOUSING

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## MEMORANDUM

To: Rental Housing Developers  
From: Grant S. Whitaker,  
Senior Vice President  
Subject: Multifamily Tax-Exempt Bond Financing

This memorandum contains information regarding Utah Housing Corporation's ("UHC") tax-exempt bond financing for multifamily rental housing for low and moderate income households. Attached hereto is UHC's *Summary: Tax Exempt Bonds for Multifamily Rental Housing*, that provides some background and describes certain of the processes involved. A schedule of income limits, available on UHC's website, identifies the targeted incomes of eligible renters.

As further described in the referenced materials, adoption of a "Reimbursement Resolution", sometimes referred to as an "Inducement Resolution," is one of the first steps in the process of issuing bonds for a project, but its adoption does not establish a commitment for the financing by UHC.

We encourage you to obtain an allocation of Private Activity Bond Authority ("Cap") before submitting to us your Request for Reimbursement Resolution. UHC is not the allocating entity for the Cap. The Utah Private Activity Bond Review Board ("PAB Board") is charged with that responsibility. A separate application for Cap must be submitted to the PAB Board and they may charge additional application fees. The PAB Board staff may be reached at 801.538.8722 for more information.

You are encouraged to call UHC to discuss the process described in the information enclosed herewith, as well as the timing of your application and other matters before you prepare an application for submission for Cap to the PAB Board or a Request For Reimbursement Resolution to UHC.

Please note that UHC does not have a standard financing "program" for bond financed multifamily rental housing. It is the developer's responsibility to engage professionals to assist in obtaining adequate bond credit enhancement and in structuring a sale or placement of the bonds. UHC, as issuer, reserves the right to approve or disapprove the terms of any enhancement or structure.

Another important factor that you may wish to consider is that UHC is the allocating agency of Federal Low Income Housing Tax Credits. These tax credits, if allocated to your project, may be sold to help you raise equity for the project, thereby reducing your need for debt and reducing the amount of bonds that may be issued for the project. A separate application must be submitted to UHC for Low Income Housing Tax Credits. Additional application fees may be charged by UHC for the Tax Credits. In many cases project owners receive allocations of Private Activity Bond Authority conditioned upon the use of Federal Low Income Tax Credits.

Thank you for your interest in our programs.

Please contact us at 801.902.8200 for further information.

## **UTAH HOUSING CORPORATION**

### **SUMMARY: TAX EXEMPT BONDS FOR MULTIFAMILY RENTAL HOUSING**

#### **UHC**

Utah Housing Corporation (“UHC”) is an independent public corporation. Created by Utah law in 1975, UHC’s principal mission is to provide financing for housing low and moderate income residents of Utah. UHC receives no appropriations from the legislature. No tax dollars are allocated to UHC’s programs or its operations, and it is self supporting. UHC is a qualified issuer of tax-exempt municipal bonds, the interest on which paid to bond owners is excluded from gross income for federal tax purposes, pursuant to the Internal Revenue Code of 1986 (“Code”). Interest on UHC’s bonds is also exempt from Utah individual income taxes. The tax exemption results in lower borrowing costs to UHC, and the lower interest rates are passed on to a multifamily rental housing project owner by funding a mortgage loan with the proceeds of a bond issue. UHC also may issue Federally taxable bonds under certain circumstances. Neither the State of Utah nor any of its subdivisions is obligated to pay the Bonds and neither the faith and credit nor the taxing power of the State of Utah or of any its subdivisions is pledged to the payment of the principal or redemption price of or interest on the Bonds. UHC has no taxing power.

#### **PRIVATE ACTIVITY CAP LIMITS AMOUNT OF BONDS**

The Code provides for several categories of tax-exempt municipal bonds, one of which is referred to as Private Activity Bonds which are principally used for non-governmental purposes; i.e., facilities owned by non-governmental entities. School bonds, water bonds, municipal general obligation bonds, etc. are used to build facilities that are owned by governmental entities and usually do not fall within the Private Activity Bond category. Bonds issued for manufacturing facilities, student loans, and housing are usually Private Activity Bonds. The Code limits the annual amount of Private Activity Bonds that may be issued within each state (the “Cap”) and the amount is adjusted each calendar year for inflation. The allocation of Cap is administered under the direction of the Utah Department of Community and Culture. The Private Activity Bond Review Board (created by the Utah legislature at 9-4-501, et. seq.) employing the formulas established by state law, allocates the Cap to issuers who have requested allocations for specific projects, facilities and programs. The formula provides initial allotment accounts that are available beginning the first of each year for different types of facilities and programs. Multifamily rental housing for low and moderate income occupants and manufacturing facilities fall within the Small Issue Bond Account, for which an annual initial amount is set-aside. Additional amounts may be allocated for rental housing after July 1 of each year, if certain other allotment accounts have not been depleted before then. The Private Activity Bond Review Board is empowered to allocate Cap in amounts that it deems to be equitable. An additional benefit of utilizing tax-exempt private activity bonds is the availability of 4% (approximate) Federal Low Income Housing Tax Credits that may be used to reduce the amount of the owner’s debt and thereby enhance the affordability of the project.

#### **NEW CONSTRUCTION OR SUBSTANTIAL REHABILITATION**

The Code requires that the proceeds of a multifamily tax exempt bond issue be used to finance the acquisition and development of newly constructed multifamily rental housing or to finance the acquisition and rehabilitation of buildings and property to be used for multifamily rental housing. The Code requires that costs of rehabilitation equal or exceed 15% of the costs allocable to the purchase price of the buildings which are financed by tax exempt bonds. Generally the Code does not permit the simple refinancing or acquisition of an existing project.

## **REVENUE BONDS vs. GENERAL OBLIGATION BONDS**

The sole source of repayment of UHC's bonds, including all interest and any premiums, for multifamily rental housing are the revenue sources related to the projects financed by the bonds. Neither the bonds nor any interest or premium shall ever constitute a general indebtedness of UHC and UHC cannot use its resources to repay such bonds.

## **TENANT INCOME RESTRICTIONS**

The Code requires that a portion of the units of a rental project financed by tax exempt bonds be rented to, or if not rented, be vacant and available for, low income tenants. In each case the income requirements are determined by HUD and are based on family size adjustments. The Code requires that not less than

(A) 20% of the units of a project be occupied by, or vacant and available for, tenants with annual incomes of 50% or less of the "area median income" (AMI),

or

(B) 40% of the units of a project be occupied by, or vacant and available for, tenants with annual incomes of 60% or less of the AMI.

Additionally, the Private Activity Bond Review Board may require that all units be "rent restricted" and that the remaining units not restricted in (A) or (B) above, be rent-restricted and occupied by individuals whose income averages 80% or less of the AMI. In no case may the income of the occupants of a unit at the time of their initial occupancy exceed 130% of the AMI. A unit is rent-restricted if the gross rent does not exceed 30% of the imputed income limitation. If the owner utilizes Federal Low Income Housing Tax Credits, additional income and rent restrictions may apply.

## **INCOME CERTIFICATIONS**

Each qualified tenant's income must be re-verified at least once each year. Each tenant household will be treated as a qualified tenant unless their household income exceeds a level greater than 140% of the maximum level under which they qualified (50%, 60%, or 80%) of median. Tenants need not be evicted if their incomes have risen above qualifying income levels. However, the next project unit that becomes available for rent must be rented to, or if not rented, be vacant and available for, tenants with incomes that will enable the project to remain in compliance. The project owner must maintain records evidencing compliance with the rent and occupancy requirements. The project owner must file reports with the Treasury Department and with UHC at least annually, certifying that the project meets the income set-aside requirements.

## **FEDERAL PENALTIES**

The Code provides two penalties for projects that violate the federally mandated income set-aside requirements, if the non-compliance is not corrected within a reasonable period of time. First, the bonds may become taxable retroactive to the date of issuance. Second, the interest on the bond financed loan may no longer be deductible from gross income. If compliance is restored, the loan interest may again become deductible, but the interest on the bonds may remain taxable. Additional financial penalties may be charged to the owner by the Treasury Department if the annual reports referred to above are not filed completely or timely.

## **BOND RATINGS**

One or more national rating services must rate publicly offered bonds issued by UHC. A minimum rating of "A" or better is generally required. The rating will depend upon, among other factors, what type of "credit enhancement" backs the bond repayments. An additional backing for the bonds must be

in place to assure that the bond owners will be repaid even if the project and its underlying mortgage loan defaults. A loan funded with the proceeds of a bond sale is not sufficient collateral behind the bonds. Various enhancements have been used including letters of credit issued by banks with national ratings; bond insurance; certificates issued by one of the federal government sponsored enterprises such as Fannie Mae, Freddie Mac or Ginnie Mae; FHA insurance; and other forms of enhancement. UHC reserves the right to approve all forms of credit enhancement for the bonds. With certain restrictions UHC may permit bonds privately placed with institutional investors to be unrated.

**UNDERWRITING PROCESS**

Publicly offered bonds issued by UHC are sold to underwriter(s) with the financial backing and capability to generate cash at closing equal to the amount of the bonds, regardless of whether the bonds have been resold to investors. UHC encourages the use of Utah firms whenever possible. The underwriter is responsible to assist in the determination of the most efficient credit enhancement, structure the bond maturities and terms of the bonds, so that the project owner can obtain a satisfactory mortgage interest rate. UHC may appoint or may entertain the requests of the owner to use underwriters selected by the owner; however UHC reserves the right to approve any underwriter, and may appoint “co-underwriters” as it deems appropriate.

**LEGAL OPINION**

An opinion with respect to the tax exemption of the interest on the bonds must be rendered by an attorney with national recognition in the field of municipal law whose opinions are generally accepted by purchasers of municipal bonds (“Bond Counsel”). The tax opinion may only be rendered if the bond issue, the facilities financed by the bonds and the uses of the facility comply with the requirements of the Code. UHC appoints Bond Counsel.

**COSTS OF ISSUANCE**

Bonds issued for the financing of a multifamily rental housing project involve a substantial amount of work and effort by many parties to the transaction. The costs related to a bond financed transaction can be substantial. Some of the costs and fees that the owner can expect to pay include underwriter’s fees, bond counsel fees, underwriter’s counsel fees, credit enhancement fees, construction lender fees, permanent lender fees, real estate counsel fees, issuer fees, trustee fees, out of pocket expenses for any of the foregoing, printing costs, rating service costs, and the like. UHC’s issuer fee is based on the amount of bonds issued. The issuer fee varies depending upon the amount of bonds issued and may be estimated using the table below:

<b>Fee Scale:</b>	<b>Issue Increments</b>	<b>Max. Increment Fee</b>
Flat	<\$2.5M	\$ 25,000
0.00875	\$2.5 - \$7.5M	\$ 43,750
0.00750	\$7.5 - \$12M	\$ 33,750
0.00625	>\$12.0M	Varies

As an example, a \$10,500,000 issue would result in an issuer fee of \$91,250.

Each of the forgoing costs must be paid no later than closing and some perhaps as retainers, beforehand. Some costs may be charged only if a transaction closes, others will be charged for services whether the transaction closes or not. Costs of issuance financed with the proceeds of tax exempt bonds may not exceed 2% of the proceeds of such bonds.

## GENERAL REQUIREMENTS FOR ISSUANCE

### (A) CAP ALLOCATION

The recommended first step is for the owner to attempt to obtain an allocation of Cap from the Private Activity Bond Review Board. There is no assurance that the Private Activity Bond Review Board will make an allocation of Cap in the amount requested. Phone 801.538.8722 or visit the website at [http://community.utah.gov/housing\\_and\\_community\\_development/PAB/](http://community.utah.gov/housing_and_community_development/PAB/) to obtain information. The application form of the Private Activity Bond Review Board is the same form as the UHC Low Income Housing Tax Credit application and several copies of both must be submitted simultaneously to the Private Activity Bond Board. The owner must complete the application form and pay any application fees, confirmation fees, or extension fees required for the Cap. The Private Activity Bond Review Board generally meets quarterly and the application must be submitted several weeks in advance of the meeting.

If the Private Activity Bond Review Board allocates an amount of tax-exempt Private Activity Bond authority in an amount less than that which is desired by the owner of the project, the issuance of Federally taxable bonds by UHC is possible. The interest rate on the taxable bonds is typically somewhat higher than the tax-exempt rate for a similar maturity. However, when the taxable and tax-exempt rates are blended together to determine the rate required on the mortgage loan, there often remains a benefit over conventional financing.

### (B) REIMBURSEMENT RESOLUTION

The next step is for the owner, UHC's Bond Counsel and staff of UHC to discuss the project, the intended occupants, the requirements of the Code especially related to the income certifications of the tenants and the annual reports to be prepared by the owner, financial plans, the financing team and bond credit enhancements. This discussion should take place before the owner submits its Request for Reimbursement Resolution to UHC as described herein.

UHC requires the items listed below to be delivered to UHC's offices not less than 10 days in advance of the meeting at which the Reimbursement Resolution is expected to be adopted, in order to help UHC determine if it may wish to adopt a Reimbursement Resolution regarding the issuance of tax-exempt bonds for the financing of the multifamily rental housing project.

- **A non-refundable fee** of \$1,000 in the form of a check payable to Utah Housing Corporation.
- **Two copies** of the Request for Reimbursement Resolution reproduced on your letterhead.
- **Two copies** of your completed Comprehensive Reimbursement Resolution Certification.
- **Two copies** of your completed Multi-Family Housing Application for Private Activity Bond Authority/Low Income Housing Tax Credits, updated to reflect any changes made following the submission of the applications for Cap and Tax Credits.
- **Two copies** of your Certificate of Allocation from the Private Activity Bond Review Board.

UHC must be persuaded or "induced" that the project is one that should receive the scarce benefit of tax exempt financing. The owner must provide a sufficient amount of information to enable UHC to perform a review that will enable UHC to be persuaded of the social benefits and the financial integrity of the project. The Reimbursement Resolution and a subsequent public hearing must make reference to the correct and accurate project owner's name and entity type (e.g. XYZ, a Utah Limited Partnership) project address, number of residential units in the project, expected costs of the project, etc. Changes to the foregoing may require the adoption of a new Reimbursement Resolution which

may cause delays and may make costs incurred before the new Reimbursement Resolution to be ineligible for reimbursement from the proceeds of the bond sale. You are encouraged to immediately reserve the names of the project and ownership entity, or at a minimum ascertain whether the names are available for reservation, with the Utah Department of Commerce, Division of Corporations and Commercial Code (801.530.4849 or <http://corporations.utah.gov/index.html>).

The adoption of a Reimbursement Resolution is not a binding commitment by UHC to issue bonds, nor is it a commitment by the owner to accept such financing. If UHC adopts a Reimbursement Resolution, the bonds may finance the costs incurred by the owner thereafter, should the bonds be issued, and should the financing structure permit the inclusion of such costs in the debt. We encourage you to not incur such costs until such time that the terms of any possible financing are more defined and found to be mutually acceptable. Generally, costs incurred by an owner prior to the adoption of a Reimbursement Resolution may not be financed with the proceeds of the bonds. The loan underwriting criteria including loan to value ratios, debt service coverage ratios and so forth will determine the loan amount and consequently the amount of bond to be issued.

#### (C) BOND RESOLUTION / PUBLIC HEARING

The next step, generally, is for UHC to adopt a Bond Resolution that officially authorizes the sale of the bonds. Before the adoption of the Resolution takes place a determination of the credit enhancement, underwriters, bond trustee, loan amount and amount of bonds must have been made by the owner, including payment for their services, and approved by UHC. Those determinations must be documented in UHC's form of "Term Sheet" and delivered to UHC not less than 10 days in advance of the meeting at which the Bond Resolution is expected to be adopted. The Code requires that a public hearing, "TEFRA hearing" (TEFRA is an acronym for the Federal Tax Equity and Fiscal Responsibility Act of 1982) regarding the proposed financing and bond sale be held by UHC. The Reimbursement Resolution and TEFRA hearing must make reference to the correct and accurate project owner's name and entity type (e.g. XYZ, a Utah Limited Partnership), project address, number of living units in the project, expected costs of the project, etc. Changes to the foregoing may require an additional hearing for which the owner will be required to pay an additional non-refundable fee and any related expenses. Finally, the Code requires that the Governor of the state must approve the financing.

#### (D) FINANCING FEASIBILITY

Any of the steps in the preceding paragraphs can become a stumbling block for the owner to secure the bond financing. Additionally, the owner will incur costs in determining if the bond financing may occur. Small projects may find the costs of bond financing to be too expensive.

### **ADDITIONAL FORMS AND DOCUMENTS**

We recommend that you download additional forms and documents related to the multifamily tax-exempt bond program including the form of Request for Reimbursement Resolution, and the table of the current income limits for various household sizes throughout the State. We request that you carefully review each of the forms, and if you wish to have UHC consider the financing of your project, please feel free to contact UHC's Senior Vice President, Grant S. Whitaker at 801.902.8200, fax: 801.902.8350 or [gwhitaker@uthc.org](mailto:gwhitaker@uthc.org). UHC's internet site is found at <http://www.utahhousingcorp.org>.

**REQUEST FOR REIMBURSEMENT RESOLUTION**

\_\_\_\_\_  
(Date)

To: Utah Housing Corporation  
2479 Lake Park Blvd.  
West Valley City, Utah 84120  
Attn: Grant S. Whitaker, Senior Vice President

RE: [Insert Name of Project]

The undersigned hereby requests Utah Housing Corporation (“UHC”) to adopt a resolution evidencing its present intention to issue its revenue bonds pursuant to Part 9, Chapter 4, Title 9, Utah Code Annotated 1953, as amended (the "Act") and Section 142(d) of the Internal Revenue Code of 1986 (the "Code") to fund a mortgage loan to the undersigned or its designee to finance the multifamily residential rental housing project referred to above (the “Project”) to be located in the State of Utah and occupied by low and moderate income persons in compliance with the Act and the Code. In making this request, the undersigned hereby acknowledges that the adoption of such a resolution does not obligate UHC to finance the Project, and that UHC will only be obligated to issue its bonds if it executes a loan agreement with the undersigned having terms and conditions satisfactory to UHC in its sole discretion.

- Attached hereto are two separately bound completed copies of the following:
- List of Interested Parties
  - Comprehensive Reimbursement Resolution Certification for each person or entity on the List of Interested Parties
  - Multi-Family Housing Application for Private Activity Bond Authority/Low Income Housing Tax Credits
  - Certificate of Allocation from the Private Activity Bond Review Board

Attached hereto is an application fee in the form of a check payable to Utah Housing Corporation in the amount of \$1,000. The undersigned acknowledges that such fee is for the purpose of covering the costs of reviewing the application and preparation of a reimbursement resolution and related materials and such fee is non-refundable.

Name of Owner: \_\_\_\_\_ ,

a \_\_\_\_\_  
(State of registration and type of entity, e.g., a Utah Limited Liability Company)

By: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

## LIST OF INTERESTED PARTIES

The applicant hereby certifies that set forth below is a complete list of all persons and entities with a 5% or more projected interest (capital, management or profit, and either legally or beneficially) in either the Project, or the owner or developer of the Project, or the general partner or the managing member of the owner or developer of the Project.

**Please Note:** Entities that have been or will be organized solely for the purpose of owning the Project or an interest in the owner of the Project should not be listed, and entities the majority ownership of which consists of persons who are already listed should not be listed. This list is intended to cover only natural persons and public companies that meet the 5% threshold. Also, if a developer has not entered into a binding agreement with an investor (for example, the projected tax credit investor), the investor need not be listed. If you have any questions, please consult with UHC staff.

**Illustration:** Assume an experienced developer, Multifamily Development Company, has formed a limited partnership (“New Housing, LP”) for the purpose of acquiring and developing the Project, with a newly formed limited liability company (“NH LLC”) as the general partner, and John Johnson, a principal of the developer, as the limited partner (i.e. while the developer anticipates bringing in an investor as the limited partner in New Housing, LP, it has not done so at this time). Assume further that Multifamily Development Company owns 80% of NH LLC and Jane Hampton owns 20% of NH LLC. Assume further that John Johnson and Jim Gonzalez each owns 45% of Multifamily Development Company, and two other individuals own the rest equally. Only Jane Hampton, John Johnson and Jim Gonzalez need to be listed below.

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
% of Interest in  Project  Developer: \_\_\_\_\_%  
(check one box)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
% of Interest in  Project  Developer: \_\_\_\_\_%  
(check one box)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
% of Interest in  Project  Developer: \_\_\_\_\_%  
(check one box)

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
% of Interest in  Project  Developer: \_\_\_\_\_%  
(check one box)

[Add more if necessary]

## Comprehensive Reimbursement Resolution Certification

I hereby certify that the following statements and information, including information contained in any attachments to this Comprehensive Reimbursement Resolution Certification, are, to the best of my knowledge based upon due inquiry, true, accurate and complete.

The information is submitted to Utah Housing Corporation in order that \_\_\_\_\_  
\_\_\_\_\_ (an entity in which I have an interest) may obtain approval for passage of a  
reimbursement resolution for \_\_\_\_\_ (the  
Project).

If the answer to any of the following questions is YES, please provide a **signed**, comprehensive narrative regarding past and current facts describing the matter on separate pages. Include facts about such real estate developments including a listing of principals related to the real estate development, the financing and equity sources and the addresses.

For the period beginning ten (10) years prior to the date of this certification:

1.  Yes  No The undersigned is or was a principal in a residential rental project (located in any state) for which an allocation of Federal Low Income Housing Tax Credits under Section 42 of the Internal Revenue Code of 1986, or Private Activity Bond Volume Cap under Section 146 of the Internal Revenue Code of 1986 was made to the residential rental project or its developer or sponsor, but which allocation was not fully utilized and any portion of such allocation expired and was unable to be utilized within the state of its allocation.
2.  Yes  No Neither the undersigned, any Interested party (as set forth in the attached list), nor a person or entity related to the undersigned or any such Interested Party, had an ownership interest in the residential rental project (including the project site) to be financed at any time during the preceding five(5) years.
3.  Yes  No The undersigned is or was a principal in a real estate development (located in any state) in which there has been or was alleged to have been a default or non-compliance regarding:
  - Tax-exempt bond compliance requirements, or
  - Low Income Housing Tax Credit compliance requirements, or
  - A mortgage loan, construction, bridge or interim loan (including any assignment, deed-in-lieu of foreclosure, foreclosure, or lender relief) or
  - Real estate development partnership or operating (investor) agreements, or
  - Rent-up / vacancy requirements, or
  - Federal, state or local building, housing maintenance and/or construction codes or laws.
4.  Yes  No There is or has been litigation or a judgment related to:
  - The ownership or operation of any real estate which could materially and adversely impact the financial condition of the undersigned, or
  - The undersigned's ownership interest in any real estate ownership, development, or management entity, or
  - Any entity in which the undersigned owns a significant interest (5% or greater) which could materially and adversely impact the entity's financial condition.

5.  Yes  No There are unresolved findings raised as a result of audits, management reviews or other investigations by federal, state, or local government entities concerning the undersigned or real estate developments in which the undersigned is a principal.
6.  Yes  No The undersigned has been convicted of fraud, a felony, or securities violation or is presently the subject of a material civil complaint, criminal charge, or indictment charging fraud, felony, or securities violation. (A felony is defined as any offense punishable by imprisonment for a term exceeding one year but does not include any offense classified as a misdemeanor under the laws of a state and punishable by imprisonment of two years or less).
7.  Yes  No The undersigned has been suspended, disbarred, debarred or otherwise restricted by any department or agency of the federal government or any state from doing business with such department or agency.
8.  Yes  No The undersigned is or was the subject of any bankruptcy or insolvency proceeding or is subject to unsatisfied liens or judgments.
9.  Yes  No The Project or the land upon which it is located, or any other real estate development in which the undersigned is a principal has any environmental or hazardous violations claimed against it.
10.  Yes  No The Project is located in a jurisdiction in which there is a court decision or court entered plan to address housing desegregation or remedy some other violation of law. [If the Project is located in such a jurisdiction provide the evidence for your conclusion that it is consistent with such court decision or court entered plan in an attachment to this omnibus certification].

Name \_\_\_\_\_

Title \_\_\_\_\_

% of Interest in  Project  Developer: \_\_\_\_\_ %  
(check one box)

Signature \_\_\_\_\_

Date \_\_\_\_\_