

EDGEMONT ELMS HOUSING, INC.

AGENDA, MINUTES AND RESOLUTION

FOR

REGULAR MEETING OF THE BOARD OF DIRECTORS

JUNE 22, 2011

**Thomas M. Niemann
Chairman**

**Dallas J. Parks
Chief Executive Officer**

EDGEMONT ELMS HOUSING, INC.

MEMORANDUM

TO: Board of Directors

FROM: Thomas M. Niemann, Chairman

SUBJECT: Regular Meeting Held June 22, 2011

DATE: June 14, 2011

OFFICERS: Chairman – Thomas M. Niemann; Vice Chairman – David J. Haley;
Secretary – Dallas J. Parks; Assistant Secretary – Brenda B. Edwards

A regular meeting of Edgemont Elms Housing, Inc. will be held immediately following the regular meetings of the Board of Commissioners of the Housing Authority of the City of Durham and the Board of Director of Development Ventures Incorporated on Wednesday, June 22, 2011, at the Central Office of the Durham Housing Authority, located at 330 East Main Street, Durham, North Carolina.

AGENDA

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I. Call to Order	
II. Comments from the Public	
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EXECUTIVE SESSION

MINUTES OF REGULAR MEETING
EDGEMONT ELMS HOUSING, INC.
330 EAST MAIN STREET
DURHAM, NORTH CAROLINA
MARCH 23, 2011

AGENDA ITEM I

Call to Order

The regular meeting was called to order by the Chairman, Thomas M. Niemann, at 6:30 p.m.

Present:

- David J. Haley
- Barbara F. Lofton
- Gloria M. Nottingham
- George K. Quick
- John S. Ramsey
- Isaac A. Robinson

Absent:

None

Staff Present:

- | | |
|-----------------|------------------------|
| Dallas J. Parks | Clintess Johnson |
| Tammy Atkins | Kelvin Macklin |
| Jean Bolduc | Shannon McLean |
| Jeff Causey | Willie "Sonny" McMahan |
| Brenda Edwards | Sabrina Sinegal |
| Vickie Ellis | Rhega Taylor |

Also Present:

Eric Pristell, The Banks Law Firm

A quorum was present, and due notice had been published.

AGENDA ITEM II

Comments from the Public

There were none.

AGENDA ITEM III
Additions to the Agenda

There were none.

AGENDA ITEM IV
Deletions from the Agenda

There were none.

AGENDA ITEM V
Action Item

ACTION 1 – Board to Consider and Approve Resolution Approving Modification of Loans with Mechanics & Farmers Bank for Edgemont Elms Housing, Inc.

Jeff Causey said this matter was discussed at length during the DHA meeting during the Finance Committee’s report.

There being no additional comments or questions, the chairman introduced the following resolution:

RESOLUTION NO. 1

RESOLUTION APPROVING MODIFICATION OF LOANS WITH MECHANICS & FARMERS BANK FOR EDGEMONT ELMS HOUSING, INC.

WHEREAS, the Housing Authority of the City of Durham, through related entities, constructed the Edgemont Elms multi-family residential community in 1989 using a variety of funding sources, including a first mortgage funding jointly by Mechanics & Farmers Bank and Mutual Savings and Loan Association; and

WHEREAS, in the intervening years Mechanics & Farmers Bank acquired Mutual Savings and Loan Association; and

WHEREAS, in the intervening years ownership of the Edgemont Elms community has transitioned to Edgemont Elms Housing, Inc., a unit of the Housing Authority of the City of Durham; and

WHEREAS, staff has worked with representatives from Mechanics & Farmers Bank to merge and restructure the outstanding loans that comprise the first mortgage on the property; and

WHEREAS, Mechanics & Farmers Bank has proposed to restructure the loans as outlined in Attachment A to this Resolution; and

WHEREAS, staff has reviewed the proposed loan structure and terms and determined that they would be advantageous and beneficial to the financial position of Edgemont Elms Housing, Inc.; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors finds as follows:

1. That the proposed modifications to the outstanding loans comprising the first mortgage for Edgemont Elms, as set forth in Attachment A, are accepted;
2. That the Chairman, Chief Executive Officer and other appropriate staff of the Housing Authority of the City of Durham are authorized to execute all contracts or other documents necessary to effectively accept the proposal submitted by Mechanics & Farmers Bank and to enter into the new loan agreement;
3. That this resolution shall take effect immediately.

Done this 23rd day of March 2011.

John Ramsey moved that the foregoing resolution be adopted as introduced and read, which motion was seconded by George Quick and unanimously carried by the Board. The "Ayes" and "Nays" were as follows:

AYES

David J. Haley
Barbara F. Lofton
Thomas M. Niemann
Gloria M. Nottingham
George K. Quick
John S. Ramsey
Isaac A. Robinson

NAYS

None

The chairman thereupon declared said motion carried and said resolution adopted.

There being no further business before the meeting, it was on motion duly made and seconded adjourned at 6: 40 p.m.

Chairman

ATTEST:

(SEAL)

Secretary

EDGEMONT ELMS HOUSING, INC.

MEMORANDUM

TO: Board of Directors

FROM: Dallas J. Parks, President

DATE: June 22, 2011

SUBJECT: Resolution Considering and Approving the Substantial Renovation of the Edgemont Elms Property and Development Ventures Incorporated as the Developer

I. STATEMENT OF ISSUE

The Edgemont Elms community (the "Property") is in dire need of substantial renovations. Edgemont Elms Housing, Inc. is required to approve the renovation of the Property.

II. BACKGROUND

On October 28, 2009, the Development Ventures Incorporated (DVI) Board of Directors authorized the renovation of the Edgemont Elms multi-family rental development. On October 28, 2009, the Housing Authority of the City of Durham Board of Commissioners authorized the use of Turnkey III funds in the amount of \$1,600,000, Replacement Housing Factor funds in the amount of \$643,332 and Non-Federalized funds in the amount of \$50,000.

The Property is a 58-unit affordable housing complex built in 1989 that occupies 4.42 acres and is located at 912 Angier Avenue, Durham, NC 27701. It is located directly across the street from a newly constructed HOPE VI rental development. This site is occupied by Housing Choice Voucher participants and market rate renters. It has 11 dwelling unit buildings. The current unit size bedroom distribution includes 40 two-bedroom units and 18 three-bedroom units.

The Property has suffered substantial deterioration, declining occupancy and a negative cash flow. The estimated total development cost is approximately \$2.4 million. This amount also includes a developer fee in an amount of \$110,836, which will be paid to DVI via operating cash proceeds. The DHA has received approval to fund the renovations. DHA received written authorization from the U. S. Department of Housing and Urban Development (HUD) to utilize Turnkey III funds as a financing source for the substantial renovation of the Property. HUD and the DHA Board of Commissioners have authorized staff to utilize 16 of the

58 units as new public housing units through the use of Replacement Housing Factor (RHF) funds to renovate those units. RHF funds are Capital Fund Grants that are awarded to Public Housing Authorities that have removed units from its inventory for the sole purpose of developing new public housing units. DHA has removed from its inventory, units at the former Few Gardens and Fayette Place public housing sites.

Staff proposes to renovate 57 of the 58 units and occupy one as a management office/model apartment. The sources and amounts of funding will include:

- Turnkey Funding - \$1,600,000
- RHF funds - \$643,332
- Non-Federal Funding - \$50,000

III. RECOMMENDATION

It is recommended that the Board of Directors considers and approves the substantial renovation of the Edgemont Elms property, and Development Ventures Incorporated as the developer.

RESOLUTION NO. _____

RESOLUTION CONSIDERING AND APPROVING THE SUBSTANTIAL RENOVATION OF THE EDGEMONT ELMS PROPERTY AND DEVELOPMENT VENTURES INCORPORATED AS THE DEVELOPER

WHEREAS, the Edgemont Elms community (the "Property") has suffered substantial declines in its physical condition, occupancy and financial performance, and cannot continue to operate as such; and

WHEREAS, the Property consists of 58 market rate rental units in 11 dwelling buildings; and

WHEREAS, the Property was originally built in 1989 and is now in dire need of a substantial renovation and modernization; and

WHEREAS, Edgemont Elms Housing, Inc. proposes to renovate 57 of the 58 units and utilize one as a management office/model apartment; and

WHEREAS, the estimated total development cost is Two Million Four Hundred Thousand AND 00/100 (\$2,400,000); and

WHEREAS, on October 28, 2009, the Development Ventures Incorporated Board of Directors authorized the renovation of the Edgemont Elms multi-family rental development located in North East Central Durham, Durham, North Carolina; and

WHEREAS, the Housing Authority of the City of Durham received written authorization from the U.S. Department of Housing and Urban Development to utilize Turnkey III funds as a financing source for the substantial renovation of the Property; and

WHEREAS, on October 28, 2009, the Housing Authority of the City of Durham Board of Commissioners authorized the use of Turnkey III funds in the amount of One Million Six Hundred Thousand AND 00/100 (\$1,600,000), Replacement Housing Factor funds in the amount of Six Hundred Forty-Three Thousand Three Hundred Thirty-Two AND 00/100 (\$643,332) and Non-Federalized funds in the amount of Fifty Thousand AND 00/100 (\$50,000); and

WHEREAS, Edgemont Elms Housing, Inc. desires to utilize Development Ventures Incorporated as the developer, to renovate the Property pursuant to 24 CFR 85.36(b) (9), and pursuant to the Developer Services Agreement (Exhibit A); and

WHEREAS, Development Ventures Incorporated will receive a developers fee of One Hundred Ten Thousand Eight Hundred Thirty-Six AND 00/100 (\$110,836), which is included in the total development cost.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Edgemont Elms Housing, Inc. as follows:

1. That the actions necessary to proceed with the renovations of the Property are in all respects authorized and approved.
2. That Development Ventures Incorporated is in all respects authorized and approved to serve as the Developer.
3. That the President, Vice-President and/or Chairman of Edgemont Elms Housing, Inc. are authorized, empowered and directed, on behalf of Edgemont Elms Housing, Inc., to take such actions and to execute such documents and instruments as required by federal, state and local laws and regulations and the U.S. Department of Housing and Urban Development, and take any and all reasonable steps as they deem necessary or appropriate in connection with the matters described in this Resolution, and the signature of such President, Vice-President and/or Chairman on any documents or instrument or the performance of any such actions shall be conclusive evidence of such President's, Vice-President's and/or Chairman's authority to take such actions or execute such documents or instrument on behalf of Edgemont Elms Housing, Inc.
4. That any and all acts heretofore taken by the President, Vice-President and/or Chairman of Edgemont Elms Housing, Inc. in connection with the matters authorized by this Resolution are hereby ratified, confirmed, adopted and approved by Edgemont Elms Housing, Inc., including any and all acts taken prior to the passage of this Resolution.
5. That all motions, orders, resolutions and parts thereof in conflict with this Resolution are hereby repealed and superseded, and all other acts of Edgemont Elms Housing, Inc. that are in conformity with the purposes and intent of this Resolution are hereby ratified, confirmed and approved.
6. This Resolution shall take effect immediately.

Done this 22nd day of June 2011.

RECORDING OFFICER'S CERTIFICATION

I, Dallas J. Parks, the duly appointed Secretary of Edgemont Elms Housing, Inc., do hereby certify that this resolution was properly adopted at the regular meeting of Edgemont Elms Housing, Inc. held on June 22, 2011.

(SEAL)

By: _____
Dallas J. Parks, Secretary

Exhibit A
Developer Services Agreement
(See Attached)

EXHIBIT A

THE HOUSING AUTHORITY OF THE CITY OF DURHAM HOUSING AUTHORITY
DEVELOPMENT VENTURES INC.
EDGEMONT ELMS HOUSING, INC. (OWNER)

THIS DEVELOPMENT SERVICES AGREEMENT (this "Agreement") is made as of the ___ day of _____ 2011, by and between DVI-Edgemont Elms Housing, Inc., a North Carolina corporation ("Owner"), an affiliate of the Housing Authority of the City of Durham, an autonomous non-profit municipal corporation established in 1949 under the laws of the state of North Carolina and Development Ventures Incorporated ("DVI" or the "Developer").

RECITALS

A. Edgemont Elms is a residential housing development located at 912 Angier Avenue and 301 South Elm Street in the North East Central Durham neighborhood of Durham, North Carolina (the "Development"). The Owner is redeveloping the Development to a mixed-income residential housing with funds available to it through the Replacement Housing Factor (RHF) grant funds, Turnkey III and non-federal funds.

B. Upon completion, the Development is expected to include 57 units of affordable housing, of which 16 will be public housing units and one unit converted to a management office/model apartment.

C. Owner has requested the services of DVI in undertaking and completing the Development, and DVI has agreed to provide such services to Owner, as further set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration and intending to be legally bound, the parties agree as follows:

1. Services Provided. Developer, has provided, and shall continue to provide until the Development is completed, or shall cause to be provided, to the Owner, services ("Development Services") with respect to the Development, such services to include, but not be limited to:

i) Advising with respect to the selection of and consulting with architect(s) in connection with the planning and design of the Development, and in the selection of

attorney(s) and accountant(s) in connection with the development and construction thereof;

ii) Advising the Owner with respect to design and the scope of construction and improvements:

iii) Applying for and obtaining construction loan commitments and other loans to carry out the construction of the Development;

iv) Obtaining all permits necessary for the construction of the Development:

v) Interviewing, selecting, and advising with respect to the hiring of independent contractors to undertake the construction of the Development, and recommending plans to encourage participation by minority and locally owned businesses consistent with all local, state and federal law;

vi) Consulting and negotiating with community and civic leaders and organizations in order to rehabilitate and construct the Development in accordance with the needs of the surrounding neighborhood;

vii) Negotiating and coordinating with state, local and federal officials regarding construction of the Development in accordance with the needs of the surrounding neighborhood and the anticipated residents of the Development;

viii) Assisting in the procurement of all building permits and other governmental approvals, including any amendments or modifications thereto required in connection with the construction of the Development;

ix) Assisting the Owner in performing all its obligations relating to any agreement entered into with any governmental body or agency relating to the terms and conditions of construction;

x) Assuring compliance with, and coordinating disbursements under, any agreements with any funding sources providing funds for construction of the Development;

xi) Supervising the construction of the Development on behalf of the Owner;

xii) Maintaining all books of account and financial records of the construction of the Development;

xiii) Preparing and submitting to the Owner such reports relating to the construction of the Development as the Owner may reasonably require; and

xiv) Negotiating and enforcing all contracts, actions and arrangements which must be made or carried out, and doing all other things which are reasonably necessary or convenient in connection with the construction of the Development.

2. Level of Service. Developer shall use best efforts at all times in furnishing or performing such services to promote and advance the best interests of the Owner to the end that the Development shall be developed and constructed, to the extent practicable, in an economical and efficient manner. In providing services hereunder, Developer shall not be deemed insurer of the results of the Owner, and its obligations hereunder shall be limited to the performing of such services in good faith and in a diligent manner.

3. Termination. This Agreement shall terminate on the date of final completion of the Development, as evidenced by delivery to owner of a certificate of occupancy for the Development (“Final Completion”) and may be terminated at any time prior to Final Completion by either party upon thirty days’ written notice to the other party. In the event of termination, however, the Owner shall remain liable to the Developer for any accrued fee or expenses incurred by the Developer which remain unpaid on the date of termination.

4. Fees and Expenses. For the services of Developer with respect to the redevelopment of the Development, the Owner shall pay to Developer.

a) all of its out-of-pocket costs and disbursements in connection with the Development;

b) A fee for the Development Services (the “Development Fee”) in the amount of \$110,836, which shall be earned, due and payable as follows:

<u>Condition</u>	<u>Amount</u>
Final completion of construction	100%

5. Payment of Fees and Expenses. The amounts payable pursuant to paragraph 4 above, more specifically the Development Fee, shall be paid as follows: 2.8% or \$2,309.08 per month, for four (4) months after the construction is completed and every month thereafter, for a total of 48 consecutive months.

6. Miscellaneous.

a) Nothing herein contained shall be construed to constitute any party as the agent of another party, except as provided herein, or in any manner to limit the parties in the carrying on of their own respective business or activities.

b) All notices provided for herein shall be in writing and transmitted by registered or certified mail postage prepaid, by prepaid courier delivery, or by

telecopier to each party at its address as shown on this Agreement, or as changed by notice given to each party. Each party shall be responsible for notifying the other parties of any changes in its address.

c) It is the intent of the parties that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties shall be determined in accordance with the provisions of the laws of the State of North Carolina.

d) In the event that the parties are unable to agree on any material decision affecting the affairs contemplated in this Agreement, any party may notify the other parties that unless the issue is resolved within three business days from sending such notice, the matter will be referred to the American Arbitration Association. If the issue is not timely resolved following such notice, any party may refer the matter to arbitration as provided above, which arbitration shall be completed and a decision rendered within thirty days unless the parties mutually agree to a later date or unless the circumstances warrant a reduced period and the arbitrator so finds. The decision of the arbitrator shall be final, binding and conclusive judgment on the parties and the cost of arbitration shall be borne solely by the party(s) not prevailing in such arbitration.

e) This Agreement shall be assignable by any party only with the written consent of the other party.

f) This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto. Nothing herein shall be construed to be for the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

g) This Agreement may be amended only written instrument executed by all the parties hereto.

7. Limited Liability. Developer agrees that it shall look only to the Owner and its assets for performance of the Owner's obligations hereunder, and that Developer shall not have any recourse against any shareholder, member, general partner or limited partner of Owner.

8. Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one Agreement. The production of any executed counterpart of this Agreement shall be sufficient for all purposes, without producing or accounting for any other counterpart thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above written.

OWNER: EDGEMONT ELMS, INC., a North Carolina Limited liability company

By: Edgemont Elms Housing, Inc., its managing member

By: _____
Name: _____
Title: _____

DEVELOPER: DEVELOPMENT VENTURES, INC., a nonprofit affiliate of the Durham Housing Authority

By: _____
Name: _____
Title: _____