

CITY OF ROSWELL RESOLUTION. 01-09

A RESOLUTION RELATING TO REVENUE BONDS ENTITLED CITY OF ROSWELL, NEW MEXICO REVENUE BONDS (AMERICAN HOUSING FOUNDATION PROJECT), SERIES 2001, AND DECLARING THE INTENT OF THE CITY OF ROSWELL TO ISSUE SUCH REVENUE BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$5,000,000.00 IN CONNECTION WITH THE FINANCING OF A PROPOSED MEDICAL CLINIC OF AMERICAN HOUSING FOUNDATION.

WHEREAS, the City of Roswell, New Mexico (the "City") is a municipal corporation duly organized and existing under the laws of the State of New Mexico; and

WHEREAS, the City is authorized under the Industrial Revenue Bond Act, Sections 3-32-1 through 3-32-16, NMSA 1978, as amended (the "Act") to issue industrial revenue bonds and to use the proceeds to acquire and construct certain "projects" as defined in the Act; and

WHEREAS, the Council of the City (the "Council") constitutes the governing body within the meaning of the Act; and

WHEREAS, the City desires to promote public health, welfare, safety, convenience and prosperity of its citizens; and

WHEREAS, American Housing Foundation, a Texas non-profit corporation (the "Company"), has proposed that the City issue up to \$5,000,000.00 of its revenue bonds (the "Bonds") under the Act for the purpose of acquiring land, buildings, and equipment for use as a medical clinic; and

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into one or more leasing or financing agreements with the City pursuant to which the Company will be obligated to make payments to, or on behalf of, the City in the amounts and at the times necessary to make timely payments of principal of, interest on and redemption price of the Bonds; and

WHEREAS, the execution and delivery of the leasing or financing agreements describes in the previous paragraph are subject to the prior adoption by the Council of an ordinance and pricing resolution, if necessary, approving such agreement or agreements and authorizing issuance of the Bonds (the "Bond Ordinance"); and

WHEREAS, the Project has been considered by the Council and the Council has concluded that the Project will promote the local health, general welfare, safety and prosperity of the inhabitants of the City, and the Council desires to indicate its intent to proceed with the issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ROSWELL:

- Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the Council and the officers and employees of the City relating to the proposal of the Company, the acquisition and construction of the Project, and the sale and issuance of the Bonds, be and the same hereby are ratified, approved and confirmed.
- Section 2. The Council understands that:
- A. The Project will include land, an approximately 22,000 square foot building, and equipment, all for use as a medical clinic.
 - B. The maximum aggregate face amount of Bonds to be issued with respect to the Project is \$5,000,000.00.

- C. The Project will be leased by the Company to Covenant Health System, an affiliated member of the St. Joseph Health System.
- D. The location of the Project will be 402 West Country Club Rd., Roswell, New Mexico.

Based upon representation of the Company as described above, the Project qualifies under the Act as project for use by a nonprofit corporation engaged in health care services.

Section 3. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the City, it is the intent of the governing body to take all necessary and advisable steps to effect the issuance of the Bonds in the maximum aggregate principal amount not to exceed \$5,000,000.00, which Bonds may be issued in one or more series at one or more times. The City hereby declares its intent to reimburse, or to cause the Company to reimburse from the proceeds of the Bonds, all "original expenditures" within the meaning of Section 1.150-2(c)(1) of the Treasury Regulations, made by or on behalf of the Company. The City hereby finds that its expectations of making, or of having the Company make, a "reimbursement allocation", within the meaning of Section 1.150-2(c)(2) of the Treasury Regulations, with respect to the original expenditures made by or on behalf of the Company that the Project has been developed and approved by taxable or tax-exempt borrowing within 18 months of the date of the expenditure of moneys on the Project or the date upon which the Project is placed in service or abandoned (but in no event more than three years after the date of the original expenditure of such moneys), and to allocate a portion of the proceeds thereof to reimburse the Company for its actual expenditures in connection with the Project.

Section 4. The Bonds shall be payable from the revenues of the Project and by the Company and shall not constitute a debt or indebtedness of the City within the meaning of any provision or limitation of the constitution or statutes of the State of New Mexico. Nothing contained in this resolution or in any other instrument shall be considered as obligating the City to any pecuniary liability or a charge upon the general credit of the City and that all costs incurred by the City in connection with the Bonds are to be promptly reimbursed by the Company. The City is not obligating itself to pay out of its general funds, or otherwise contribute any part of the costs of acquiring or constructing the Project, any part of the cost of operating any part of the Project or any part of the costs of administering, defending, or otherwise acting or failing to act with respect to the Project or the business of the Company or in any manner except as lessor thereof.

The Bonds shall not be the general obligation of the City within the meaning of Article 9, Sections 12 and 13 of the Constitution of the State of New Mexico. The Bonds shall be payable solely out of the revenue derived from the Project, including amounts received under the lease agreement. The Bonds shall never constitute an indebtedness of the City within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the City or a charge against its general credit or taxing power.

Section 5. The City understands that the Company intends that the Company intends that the Bonds be "qualified private activity bonds", qualified 501(c)(3) bonds" and "qualified tax-exempt obligations" as those terms are defined in the Internal Revenue Code of 1986, as amended (the "Code").

Section 6. The Council, its members, and the officers and employees of the City are authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this resolution; provided, however, the issuance of the Bonds and the execution and delivery of any documents to which the City is a party in connection therewith shall be subject to the approval and authorization by the Council pursuant to the Bond Ordinance. The officers and employees of the City are authorized to publish or cause to be published public notice of the Council's intent to consider such Bond Ordinance at least fourteen (14) days prior to the consideration of the Bond Ordinance by the Council. No provision of this Resolution shall in any way obligate the City or any other person to issue the Bonds, any other bonds or in any way finance the Project; and the City retains full and complete discretion with respect thereto.

Section 7. The officers and employees of the City are authorized to publish or cause to be published notice of a public hearing with respect to the Bonds at least fourteen (14) days prior to such public hearing to be held by the Council pursuant to Section 147(f) of the Code.

Section 8. If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph clause or provision shall not affect any of the remaining provisions of this resolution.

Section 9. All orders and resolutions, or parts thereof, concerning the Bonds but directly in conflict with this resolution are hereby repealed; this repealer shall not be construed to revive any order, resolution or part thereof.

Section 10. The adoption of this resolution shall not be binding on the City or require any further action regarding the issuance of the Bonds or the terms and conditions of their issuance.

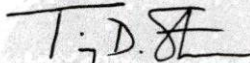
PASSED, ADOPTED, SIGNED AND APPROVED this 8 day of March, 2001



Bill B. Owen, Mayor

[Seal]

ATTEST:



Timothy D. Stoessel, City Clerk