

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
January 18, 2011

Consideration and Approval of
Waiver of the Penalties for Various Projects – Qualified Residential Rental Program
(Agenda Item No. 8)

ACTION:

Approve the Waiver of Forfeiture of Performance Deposit and Negative Points for the Harbor Park Apartments (11-100) and First & Rosemary Family Apartments (11-046); and a Waiver of the Forfeiture of the Performance Deposit for the Gateway Terrace Apartments (11-096) (the “Projects”).

BACKGROUND:

An Applicant bears the risk of forfeiting all or part of their performance deposit and receiving negative points if the Allocation is not used in accordance with the conditions and timeframes set forth in the Committee Resolution. As provided for under the Government Code, CDLAC permits an Applicant to request the waiver of the forfeiture of the performance deposit and negative points if the allocation is not used to issue the bonds within the set timeframe given. For a waiver to be approved, the CDLAC Executive Director subjects the request to two tests: 1) was the issue or event that prevented the issuance of the bonds unforeseen; and 2) was the issue or event wholly outside the control of the Applicant and Project Sponsor. A request must pass both tests.

DISCUSSION:

Harbor Park Apartments

Klein Financial, a 5% managing member of the original ownership entity, received written approval from CalPERS (a 95% member) on May 13, 2011 to proceed with submitting an application to CDLAC for tax-exempt bond allocation for the Project. However, CalPERS retained its right to instruct Klein Financial to modify, cancel or withdraw the application for CDLAC bond allocation at any time before June 30, 2011. CalPERS did not exercise its right to request that the bond application for the Project be withdrawn prior to this deadline; implying their consent to seeking and securing a bond allocation from CDLAC. However, later in September 2011, CalPERS’ in-house counsel later determined that they had a difference of opinion with the other bond counsel firms from whom Klein Financial obtained advice regarding the Project’s financing; subsequently asking the Project Sponsor in early November 2011 not proceed with the bond issue. This change in position by CalPERS was wholly unforeseen and outside the control of the Applicant and Project Sponsor.

First & Rosemary Family Apartments

The First & Rosemary Family Apartments’ (the Project) funding agreement between the Project Sponsor and the applicable redevelopment agency was delayed due to the 2011 Supreme Court-issued Stay; which among other imposed limitations, prevented the redevelopment agency from coordinating the closing and modifying the terms and conditions of the existing redevelopment agency agreement.

After returning their initial allocation, the Applicant and Project Sponsor reapplied for a new award of allocation intending to proceed with the closing of the Project financing immediately after a decision impacting the existence and authority of redevelopment agencies was determined and the Supreme Court-issued Stay was lifted. The Supreme Court decision was made on December 29, 2011. The Applicant has indicated that the decision does not impact the Project’s ability to proceed with its planned bond closing in the first quarter of 2012.

The award of the initial allocation for the Project was granted well before the Supreme Court Stay was issued; evidencing that the circumstances experienced by the Project were unforeseen and wholly outside the control of the Applicant and Project Sponsor.

Gateway Terrace Apartments

The Gateway Terrace Apartments (the Project) received \$8,546,206 of 2010 Carryforward allocation on July 26, 2011. On September 16th, CSCDA requested an extension to the Committee meeting on November 16th where the Gateway Terrace Finance Team (the Team) received an additional 41 days. This changed the expiration date of the bonds from October 28th to December 27th. On December 13th, the Team was notified that the project would need an additional extension due to a delay with the HUD grant deed and the CalHFA/MHSA loan documents. Unfortunately, there was not enough time to request additional approval from the Committee at the December 14th meeting, so CSCDA requested a carryforward extension on December 16th to allow the Project to continue moving forward. It is anticipated that the Project will close in late January 2012.

Since the HUD delays were unexpected and outside the control of the Project Sponsor, and the Project expects to close within the CDLAC Regulation's allowable extension period of 90 days following the November 16th meeting, the request for a waiver of the forfeiture of the performance deposit is recommended.

RECOMMENDATION:

Given the facts associated with these waiver requests, staff recommends the approval of a waiver of the performance deposit forfeiture and a waiver of negative points, where applicable, for the Harbor Park Apartments (11-100), First & Rosemary Family Apartments (11-046), and Gateway Terrace Apartments (11-096).

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