

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
March 21, 2012

Consideration of Requests for a Waiver of Penalties
for the Crossings at North Loop Apartments Project (11-148),
Third Street Apartments (11-124), and Morgan Hills Senior Apartments Project (11-105)
(Agenda Item No. 6)

ACTION:

Approve the Waiver of a partial Forfeiture of Performance Deposit for the Crossings at North Loop Apartments (11-148); and Waivers of the Forfeiture of the Performance Deposit for the Morgan Hill Retirement Residence Apartments (11-105) and the 3rd Street Residential Development Apartments (11-124).

BACKGROUND:

An Applicant bears the risk of forfeiting part of their performance deposit if less than 80% of the Allocation is used to issue Bonds. A pro-rata portion of the deposit will be forfeited equal to the same percentage ratio as the amount of unused Allocation bears to the amount of awarded Allocation unless the Committee determines there is good cause to return all or part of the deposit. In addition, an Applicant bears the risk of forfeiting all of their performance deposit if a Carryforward Extension is requested or the Allocation is not used in accordance with the timeframes set forth by the Committee. As provided for under the Government Code, CDLAC permits an Applicant to request the waiver of the forfeiture of the performance deposit. 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:

Crossing at North Loop Apartments (11-148)

The Crossing at North Loop Apartments Project ("Project") received an allocation of \$11,000,000 at the November 16, 2011 Committee meeting. The Project issued 77% of the allocation or \$8,500,000 when the bonds closed on December 15th as part of the NIBP program. Freddie Mac modified the Multifamily Affordable Housing program from a 'Delegated Program' to a 'Prior Approval' Program in 2011. The Prior Approval Program requires Freddie Mac to separately underwrite the transaction before a commitment is issued, which in this case would have extended the overall timing of the deal. Due to the large volume of NIBP closings at the end of the 2011, the timeline from application to closing was further extended. According to the Applicant, this extended timeline was unforeseen and caused some deals to switch to an alternative financing structure to accommodate the NIBP closing dates at the end of 2011. Since the circumstances were unexpected and outside the control of the Project Sponsor, the request for a waiver of the partial forfeiture of the performance deposit is recommended.

Morgan Hill Residence Apartments (11-105)

The Morgan Hill Retirement Residence Apartments Project ("Project") received \$16,309,539 of the 2010 Carryforward allocation on September 28, 2011. The California Statewide Communities Development Authority requested an extension, on behalf of the Project Sponsor, to the Committee meeting on January 18, 2012 at which time the Committee granted a March 19, 2012 deadline. On March 5, 2012 CDLAC was notified that the project would need a Carryforward Extension through December 31, 2012; which was approved by the Executive Director and in accordance with the CDLAC regulations.

According to the Applicant the tax credit investor for the Project, WNC unexpectedly withdrew from the Project. The Project Sponsor is currently working with several other potential investors and joint venture partners to perform the necessary due diligence and execute a limited partnership agreement. Since the

circumstances of the delay were unexpected and outside the control of the Project Sponsor, the request for a waiver of the forfeiture of the performance deposit is recommended.

3rd Street Residential Development Apartments (11-124)

The 3rd Street Residential Development Apartments Project (“Project”) received \$7,298,412 of the 2011 Carryforward allocation on September 28, 2011. The City of San Jose requested an extension, on behalf of the Project Sponsor, to the Committee meeting on December 14, 2011 at which time the Committee granted a March 26, 2012 deadline. On March 1, 2012 CDLAC was notified that the Project would need a Carryforward Extension through December 31, 2012; which was approved by the Executive Director and in accordance with the CDLAC regulations.

According to the Applicant the Project has encountered two significant issues that have delayed the Project from issuing the bond allocation. First, the tax credit investor WNC has unexpectedly withdrawn from the Project with no explanation. Since WNC’s withdrawal, the Project Sponsor has been working with several other potential investors and joint venture partners to complete their due diligence processes and execute a limited partnership agreement. Secondly, the Project was awarded a CalReuse Grant from the California Pollution Control Financing Authority and executed the agreement on October of 2010. Initially, the Project received a determination that all requirements had been met. However, the determination was in error as the project still needed a final approval from the Department of Toxic Substances Control (DTSC). While the Project Sponsor now has an approved Draft Remedial Action Work Plan from DTSC, the final approval cannot occur until after the required public comment period has ended on March 26, 2012. Since the circumstances of the delays were unexpected and outside the control of the Project Sponsor, 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 and partial refund of the performance deposit forfeiture for the Crossing at North Loop Apartments (11-148); and waivers of the Performance Deposit forfeitures for the Morgan Hill Residence Apartments (11-105) and the 3rd Street Residential Development Apartments (11-124).

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