

THE CALIFORNIA DEBT LIMIT ALLOCATION COMMITTEE
May 16, 2012

Consideration and Approval of
Waiver of the Penalties for the Casa Rita Apartments Project – Qualified Residential Rental
Program
(Agenda Item No. 6)

ACTION:

Approve the Waiver of Forfeiture of Performance Deposit and Negative Points for the Casa Rita Apartments (11-129) (the “Project”).

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:

Casa Rita Apartments

On September 28, 2011 the Casa Rita Apartments Project was awarded \$10,500,000 in tax exempt bond allocation. In the Application, Payne/SJC Pacific, LLC, a .005% administrative general partner (“Project Sponsor”) provided evidence that a purchase and sale agreement with Dan Hunter, the managing general partner of the Rita Partners, LP (“the Seller”), was executed in July of 2011. However, on February 13, 2012, the Project Sponsor was informed that the Seller filed for bankruptcy in October of 2011.

According to the Project Sponsor’s request for a waiver penalties, the Amended Schedule(s) and/or Statement(s) of the bankruptcy noted that the Seller had actually transferred his general partner interest in Rita Partners, LP to Smith Campbell (a law firm) as part of a settlement in March of 2011. This was done prior to the date that the Project Sponsor entered into the purchase and sale agreement; thus making the purchase and sale agreement legally unenforceable.

Because the Project Sponsor was unaware of the Seller’s inability to legally enter into contract and is now unable to close on the property due to the absence of a legally binding purchase and sale agreement, the Project Sponsor is requesting a waiver of the forfeiture of the performance deposit that was certified by the California Municipal Finance Authority in support of the application for allocation for the Project; as well as a waiver of the assessment of negative points. Staff believes that this situation meets both waiver tests.

RECOMMENDATION:

Given the facts associated with this waiver request, staff recommends the approval of a waiver of the performance deposit forfeiture and a waiver of negative points for the Casa Rita Apartments (11-129).

Prepared by Sarah Lester