



# REPORT

**DATE ISSUED:** March 14, 2003

**ITEM 100**

**REPORT NO.:** HCR03-026  
For the Agenda of March 21, 2003

**SUBJECT:** Ratification of Amendment for Non-Substantive Changes to Loan Terms for Metro Villas (District 3)

## SUMMARY

**Issue:** Should the Housing Commission ratify minor amendments to the Acquisition, Construction, and Permanent Financing Agreement for Metro Villas, a 9 percent tax credit project located in City Heights, which were requested by the borrower's primary lender and by its equity tax credit investor?

**Recommendation:** It is recommended that the Housing Commission approve changes to the residual receipts payment structure and manager's unit as described herein.

**Fiscal Impact:** None with this action.

**Affordable Housing Impact:** None with this action.

**Previous Related Actions:** The Commission approved terms and conditions of funding for Metro Villas on June 7, 2002 (HCR02-047).

## BACKGROUND

Metro Villas is a new 120-unit affordable rental housing development currently under construction in the 3900 block of 39<sup>th</sup> Street and 40<sup>th</sup> Street near the intersection of Interstate 15 and University Avenue. In September of 2002, the Metro Villas development proposal received a tax credit reservation from the California Tax Credit Allocation Committee. To comply with Internal Revenue Code (IRC) requirements and retain the allocated tax credits, escrow for the property had to close by February 19, 2003.



## **DISCUSSION**

During the closing process of any complex escrow, it is not uncommon for differences to arise as the needs of various development partners and ownership entities, construction and permanent lenders, and other funding sources are melded together. Projects that include tax credit financing have deadlines imposed by the Internal Revenue Service; missing one of these deadlines would result in the loss of the tax credit financing.

To meet these critical deadlines and to assure compliance with other requirements, staff is occasionally called upon to consider an arrangement that has not been previously presented to the Housing Commission Board. When this occurs, staff confers with General Counsel to assure that any proposed item would not change the character of the Housing Commission's participation as approved by the Board or add significant risk to the Housing Commission's loan.

The intent of this report is to request ratification of an amendment to the loan for Metro Villas, and to report a change in the manager's unit count on this recently closed escrow.

### Residual Receipts Repayment Structure

In the Housing Commission Report of June 7, 2002 (HCR02-047), staff outlined proposed loan terms for the Metro Villas Residential Housing Development. The Report states that residual receipts would be shared between the owner and the public agencies on a 50/50 basis (the Housing Commission, the Redevelopment Agency of the City of San Diego, and the Centre City Development Corporation would each receive a pro rata share based on the loan amount provided). A minimum annual payment of the greater of 50 percent of residual receipts or the sum of \$26,033 would be required starting at year four (\$26,033 is equal to half of the estimated residual receipts at year one).

To clarify that the minimum payment was not intended to subvert the primary lender's or the equity tax credit investor's underwriting requirements regarding cash flow and debt service, staff agreed that after loan closing, staff would employ their best efforts to seek to have the Housing Commission Board approve an amendment to this agreement and the Commission Note.

The original residual receipts repayment structure is as follows:

“Beginning with the fourth (4<sup>th</sup>) year of operation Borrower shall pay to Agency and Commission the greater of (i) fifty percent (50%) of Residual Receipts or (ii) the sum of TWENTY-SIX THOUSAND THIRTY-THREE AND NO/100 DOLLARS (\$26,033.00) (“Minimum Annual Payment”)... Borrower shall not be in default of this Note in the event the Minimum Annual Payment exceeds the total Residual Receipts of the applicable year...”

The comparable amended residual receipts repayment language recommended for approval is as follows:

**...beginning with the fourth (4<sup>th</sup>) year of operation Borrower shall pay to Agency and Commission fifty percent (50%) of Residual Receipts, unless such amount is less than TWENTY-SIX THOUSAND THIRTY-THREE AND NO/100 DOLLARS (\$26,033.00) (“Minimum Annual Payment”), in which case Borrower shall pay to Agency and Commission the lesser of: (a) one hundred percent (100%) of Residual Receipts or (b) TWENTY-SIX THOUSAND THIRTY-THREE AND NO/100 DOLLARS (\$26,033.00).**

The Borrower acknowledged that the approval of the added text would be within the sole discretion of the Housing Commission Board.

#### Manager’s Units

The previous Housing Commission report identified that there would be one manager’s unit. To comply with the requirements of the first position lender, the borrower increased the manager unit count to two. The tax credit reservation was approved based on the provision of two units being provided for management. This is considered appropriate by industry standards in order to assure sound property management for a development of this size.

#### Risks and Mitigation

The Housing Commission’s loan will remain in second position on parity with the Redevelopment Agency and CCDC loans; all other loan terms would not change.

#### **ALTERNATIVE**

Do not approve the amendment to the loan agreement. This could result in the loss of the tax credits and the first position financing, which would make this project infeasible for affordable housing development. The City of San Diego would lose an opportunity to increase the affordable housing supply by guaranteeing the affordability of 118 units to families at 50% or less of the area median income for a period of 55 years.

Submitted by,

Approved by,

**Signature on File with Original Document**

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