

**PLACER COUNTY**

**COMMUNITY DEVELOPMENT GRANTS AND LOANS**

**MEMORANDUM**

**TO:** Honorable Members of the Board of Supervisors  
**FROM:** Thomas M. Miller, County Executive Officer  
James LoBue, Deputy Director Redevelopment *Issue Approval for Jim LoBue*  
**DATE:** November 2, 2010  
**SUBJECT:** Waiver of \$350,000 Loan to Northstar Community Housing for 12 Units of the Sawmill Heights Affordable Employee Housing Complex

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**ACTION REQUESTED**

Adopt a resolution authorizing the County Executive Officer or his designee to sign a deed of reconveyance and waive repayment of a \$350,000 County Housing Trust Fund loan made to North Star Community Housing for 12 of the 96 units at the Sawmill Heights affordable employee housing complex in exchange for 35 additional years of affordability covenant.

**BACKGROUND**

Sawmill Heights is an existing 96 unit affordable employee housing complex located near the intersection of Highway 267 and Northstar Road. All the units were required to be affordable at the moderate income (120 % of median income) rents for Northstar and regional employees as a condition of the use permit for Northstar Highlands. However, the use permit condition is not the subject of this request. Sawmill Heights is owned by NCHC, a 501(c)(3) not for profit public benefit corporation. NCHC was created by East West Partners, Inc., one of the developers of Northstar Highlands, to own and manage the 96 units and be eligible for the financing needed to construct the 96 units of employee housing. Most of the construction was financed by a series of bonds for approximately \$26 Million issued by US Bank. A small portion of the cost was financed by a \$350,000 loan of County Housing Trust Fund to Northstar Community Housing secured by a promissory note, recorded deed of trust, and Rent Limitation Agreement and Declaration of Restrictive Covenants (Affordability Covenant) for 20 years. Your Board approved that loan in October 2005. The source of these funds is employee housing fees that have been paid in the past by North Tahoe resort developers. Typically, the County does not subsidize developer's affordable housing obligations. However, 12 of the 96 units as a condition of the Placer County Housing Trust Fund loan, were required to be affordable to low-income households (80% of median income), a level beyond that required by the use permit.

Since opening in 2007, Sawmill Heights has been a resource for housing employees of Northstar and the North Tahoe-Truckee region. However, occupancy of more than 90% of the units was not achieved until the 2009-10 winter season, when over 240 employees were housed. However, this occupancy has not been maintained the remainder of the year, even during the summer tourist season. The rental income projections were based on a model used by the developers in Colorado, with two separate leases in each bedroom paying separate rent. Revenues generated by Sawmill Heights were projected by East West Partners and NCHC to fund the payments on all the bonds.

While making payments, NCHC has not been able to maintain the debt service ratios or reserve required by US Bank, or make payments on the junior bonds. A first position on a bond for \$20 Million was retained by US Bank. The remaining bonds were purchased by various Northstar interests. On May 6, 2010, US Bank recorded a notice of default to NCHC. If US Bank proceeds with foreclosure, the promissory note, deed of trust and Affordability Covenant would be extinguished. The 20 year affordability covenant for the 12 low income units and the \$350,000 would be lost, with no compensation. If a short sale can be completed with an extension of the 12 unit low income affordability to 55 years, the \$350,000 would still not be recovered. But in exchange, there would be 35 more years of low income affordability for the 12 units.

Since then, NCHC has been working through its President and Property Manager, Gerry Flynn, of Polar Star Properties, who is also a junior bond holder, to negotiate a short sale to a third party and have US Bank accept the short sale as a full payment on their bond. A letter from Mr. Flynn describing the situation and potential transaction is attached. A letter from US Bank, indicating their willingness to consider a short sale is attached.

The attached resolution includes the conditions under which the loan balance can be waived and the deed of reconveyance signed by the County. These conditions include:

1. Extending the Affordability Covenant to 55 years and verification of acceptance.
2. Verification that senior lien holders have agreed to the purchase agreement and short sale.
3. Review and approval of the purchase agreement by the County.
4. Review and approval of the buyers' management plan by the County.

#### **FISCAL IMPACT**

There is not impact on the general fund.

#### **ENVIRONMENTAL STATUS**

The project is already built and California Environmental Quality (CEQA) actions are complete. This administrative action is exempt from CEQA. The National Environmental Policy Act does not apply as no federal funds are involved.

Attachments: Letter from NCHC  
Letter from US Bank

cc: Karin Schwab, Deputy County Counsel

**Before the Placer County  
Board of Supervisors  
County of Placer, State of California**

**In the matter of:**

Authorizing the County Executive Officer or designee to waive repayment of \$350,000, plus interest, loaned to Northstar Community Housing and sign related documents necessary to complete the transaction, in exchange for a 35 year extension of the existing Regulatory Agreement

**Resol. No:**.....

**Ord. No:**.....

**First Reading:** .....

The following Resolution was duly passed by the Board of Supervisors of the County of Placer at a regular meeting held \_\_\_\_\_,

by the following vote on roll call:

Ayes:

Noes:

Absent:

Signed and approved by me after its passage.

Attest:

\_\_\_\_\_  
Chair, Board of Supervisors

Clerk of said Board

\_\_\_\_\_

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WHEREAS, Development of Sawmill Heights was financed by US Bank and various junior lien holders including Placer County (Debt);

WHEREAS, Placer County loaned \$350,000 to Northstar Community Housing secured by a promissory note, recorded Deed of Trust and Rent Limitation Agreement and Declaration of Restrictive Covenants (Affordability Covenants), approved by the Board of Supervisors on October 25, 2005;

WHEREAS, US Bank recorded a Notice of Default on May 6, 2010;

WHEREAS, US Bank foreclosure would eliminate the County's promissory note, deed of trust and Affordability Covenant;

WHEREAS, US Bank has provided a letter indicating its willingness to release its senior lien on Sawmill Heights for the purchase price, even though less than a full payoff;

WHEREAS, the Debt of all lien holders, including Placer County, would not be retired by sale proceeds; and

WHEREAS, Maintaining and/or increasing affordability of the 12 units subject to the existing Affordability Covenant is beneficial to the County and consistent with County Housing Element Policy.

NOW, THEREFORE, BE IT RESOLVED that the County Executive Officer or designee is authorized to sign a deed of reconveyance of the county's \$350,000 promissory note and deed of trust, with repayment waived, subject to certain conditions.

BE IT FURTHER RESOLVED that those conditions to be met prior to County signing the deed of reconveyance and/or approving and excepting the short-sale are:

1. Extending the Affordability Covenant to 55 years and verification of buyer's signature on the amended covenant, with recording prior to closing the short sale.
2. Verification that senior lien holders have agreed to the purchase agreement and short sale.
3. Review and approval of the purchase agreement by the County.
4. Review and approval of the buyer's management plan by the County.

NOW, THEREFORE, BE IT RESOLVED that the County Executive Officer or his designee is also authorized to sign an amendment to the Affordability Covenant extending the term to 55 years.

# Northstar Community Housing Corporation

September 14, 2010

Mr. Jim Lobue  
Deputy Director  
Placer County Redevelopment Agency  
3091 County center Drive  
Auburn, CA 95604

Re: Sawmill Heights Apartments  
Release of Deed of Trust and Security Agreement

Dear Mr. Lobue:

Reference is made to Sawmill Heights, an affordable employee housing property located at the Northstar resort. As you know, Placer County loaned \$350,000 to the project back in 2006 pursuant to the terms of a Deed of Trust and Security Agreement and a Rent Limitation Agreement dated June 1, 2006 ("Sawmill RLA"). This loan was subordinate to the bond financing of the project and payable out of Net Cash Flow of the project after all bond indebtedness had been satisfied.

The total financing included the following senior and subordinated indebtedness in the following order of payment priority:

1. Series 2006A Senior Bonds in the amount of \$20,393,000, held by US Bank
2. Series 25006B Subordinate Bonds in the amount of \$4,107,000, held by Northstar Mountain Properties and Polar Star Development LLC
3. Series C-1 Subordinate Bonds in the amount of \$500,000, held by Northstar Mountain Properties
4. Series C-2 Subordinate Bonds in the amount of \$1,500,000, held by Trimont Land Company, the previous land owner.
5. Placer County in the amount of \$350,000.

All of the subordinate debt holders entered into a Subordination Agreement with US Bank and the other holders spelling out priority of payments and the conditions under which payments on subordinate debt would be made.

Principal and interest payments under the Series 2006 senior Bonds were made through September 2009, resulting in principal reductions of \$381,000. No payments on the subordinate debt referenced in (2) through (5) above were permitted to be made.

On November 5, 2009 the US Bank obligation was declared in default for failure to maintain the required debt service reserve resulting from inadequate debt service coverage ratios. The project had suffered from higher vacancy and reduced rental rates from inception and lost the subsidy provided by a series of master leases from Northstar area employers ( see detailed response dated 11/9/09 from NCHC). Subsequent to the default letter, US Bank decided to terminate an interest rate swap agreement and cause a forced redemption of the 2006A Senior bonds resulting in total

senior secured obligations to US bank of approximately \$23.2 million. US Bank has since proceeded to protect its foreclosure rights and issued a notice of intent to foreclose dated 5/4/10, which would allow US Bank to proceed to foreclosure sale any time after August 6, 2010. Such foreclosure sale would wipe out all subordinate indebtedness listed at (2) through (5) above and likely result in a substantial loss to US Bank.

As an alternative to foreclosure, US Bank has indicated that it would entertain short sale offers where the purchased price of the property could be substantially below the value of their secured debt. US Bank Special Assets had previously engaged an appraisal by Integra Realty Resources indicating a maximum value under current market conditions of \$7 million.

NCHC engaged Grubb & Ellis Sacramento to evaluate the property and explore potential purchasers. After extensive marketing efforts with interest expressed by several prospective purchasers, a highest and best offer of \$6 million has been tentatively accepted by US Banks of last Wednesday, September 8. In addition to the proceeds from a short sale of the real estate, US Bank holds approximately \$900,000 in cash collateral from NCHC. Upon sale of the Sawmill Heights property, NCHC would be left with no net assets.

In order to avoid foreclosure and consummate the short sale, NCHC desires to eliminate the claims of all subordinate debt holders through a negotiated settlement. To date, the series B and C bondholders have agreed to cancel their subordinate indebtedness and related deeds of trust in favor of a sale of the property (in lieu of foreclosure). Each of the following bondholders have agreed that the bonds are worthless and are willing to place the bonds in escrow pending a successful sale, at which time the bonds would be surrendered to the trustee for cancellation:

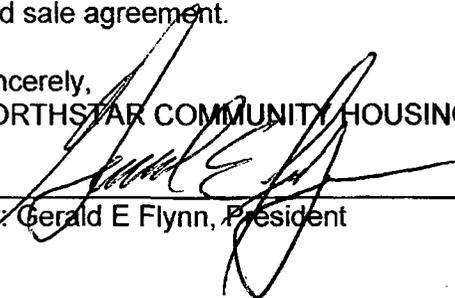
- Northstar Mountain Properties for series B-1 bonds in the amount of \$3,857,000 and Series C-1 bonds in the amount of \$500,000
- Polar Star Development for Series B-2 bonds in the amount of \$250,000
- Trimont Land Company for Series C-2 bonds in the amount of \$1,500,000.

As described above, the Placer County Note in the amount of \$350,000 is subordinate to each of the bond series being surrendered for cancellation. With US Bank suffering a significant loss on its secured debt, all other debt holders have acknowledged their share of subordinate debt as worthless.

The prospective purchaser has entered into a letter of intent to acquire the property free and clear of all encumbrances, but recognizes that both Condition 162 and the Sawmill RLA are matters of public record and run with the property. While the purchaser is seeking some relief from the current interpretation of Condition 162, they are willing to accept the affordability restrictions imposed by the Sawmill RLA. Because of the ambiguity and issues surrounding the interpretation of Condition 162, NCHC and the prospective purchaser believe it is in our mutual best interest to modify Condition 162 and will meet with Placer County Planning separately to discuss.

Our proposal with respect to the Placer County loan is to cancel the note in the amount of \$350,000 and release the related Deed of Trust encumbering the property. The restrictions of the Sawmill RLA would stay in place through June 1, 2026, the end of the original 20 year term. If of interest to Placer County, the purchaser would consider extending that term in exchange for canceling the indebtedness. As pointed out by Joanne Auerbach, the Placer County loan was funded by Housing trust Funds (HTF), which must be considered as part of the approval of this request. NCHC and purchaser I are in the process of documenting the various steps to completing this transaction. A draft purchase and sale agreement is currently being prepared for approval by US Bank. As soon as available, this agreement and all related documentation will be shared with Placer County Redevelopment. In the meantime, we would like to secure conceptual approval of our proposal so that the proposed transaction can move forward. US Bank has imposed some urgency on their stay on their foreclosure action pending a successful resolution of outstanding issues. The sale is scheduled to close within 45 days of the execution of the purchase and sale agreement.

Sincerely,  
NORTHSTAR COMMUNITY HOUSING CORPORATION



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By: Gerald E Flynn, President

CC: Joanne Auerbach, PC Housing Director  
Cindy Kelly, PC Redevelopment  
Jim Donovan, Grubb & Ellis



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Alan R. Milster  
Vice President  
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October 14, 2010

Ms. Joanne Auerbach  
Housing Program Coordinator  
Placer County Redevelopment Agency  
3091 County Center Drive, Ste. 260  
Auburn, CA 95603

Re: Sawmill Heights Apartments, Truckee, California

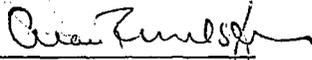
Dear Ms. Auerbach:

U. S. Bank (the "Bank") has been requested by its borrower, Northstar Community Housing Corporation (the "Borrower"), to provide this letter to you concerning the Sawmill Heights residential apartment project in Truckee (the "Project").

This will confirm that the Bank is prepared to permit the Project to be sold to a third party free and clear of its senior lien on the Project, notwithstanding that the sale will be a short sale that will not generate proceeds sufficient to pay all the secured indebtedness owing by the Borrower to the Bank, provided that the Borrower enters into a Short Sale Agreement with the Bank that is satisfactory to the Bank.

Very truly yours,

U.S. Bank National Association

By:   
Alan R. Milster, Vice President

cc: Marv Pearlstein  
James Donavon  
Gerry Flynn