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Complex Transaction Closes Under HUD's 811-202 Mixed Finance Program

By Mark Kantor, Kantor Taylor McCarthy PC

On February 24, 2005, Housing Resources Group (HRG), a not-for-profit housing developer, closed the final financing phase of Genesee Housing, a mixed-finance project in Seattle, Wash. The transaction, which is the first of its kind in the nation, brought together a host of partners and financing sources and involves not only a condominium structure but also bifurcates the operations of the housing to provide for debt service payments on those units not receiving the HUD 811 assistance. As the first project of its kind to close under the HUD 811-202 Mixed Finance program, the project faced a myriad of HUD and tax issues. The tax issues will be addressed in a subsequent article, this discussion will focus on the finance structure and strategies used to deal with the HUD issues involved in the deal.

The financing for Genesee Housing combines a U.S. Department of Housing and Urban Development (HUD) 811 Supportive Housing for People with Disabilities award, 4 percent low-income housing tax credits (LIHTCs), tax-exempt bonds and a variety of other public and private financing sources. The project is located in the Rainier Valley neighborhood of southeast Seattle on land previously owned by the Housing Authority of the City of Seattle (SHA). It will be subject to a condominium declaration whereby 50 units of housing for low-income households will constitute a single condominium unit, owned by Genesee Limited Partnership and a separate commercial condominium unit will be purchased and owned by SHA.

The project is located at the heart of the SHA's Rainier Vista HOPE VI redevelopment and will include 22 units for people with physical and developmental disabilities, including, but not limited to, people living with HIV/AIDS.

Housing Resources Group as the sponsor and developer of the project formed a single-asset 501(c)(3) not-for-profit corporation, Genesee Housing, to serve as the general partner of Genesee Limited Partnership. Genesee Housing was also the recipient of the HUD 811 Capital Advance. NEF Assignment Corporation, as nominee, provided tax credit equity for the project in the amount of \$2,392,543.

For purposes of including the award in the project's qualified basis, the proceeds of the capital advance in the amount of \$2,085,500 were subsequently loaned from Genesee Housing to the partnership in the form of a 40-year cash-flow-only loan bearing interest at 0.5 percent. To secure Genesee Housing's obligations to HUD under the capital advance, the note from the partnership to Genesee Housing and the mortgage securing the note, were assigned to HUD for security purposes. To facilitate the assignment of the note and mortgage to HUD, these documents were, with certain required modifications, in the standard HUD 811 - 202 promissory note and mortgage forms.

Financing for the project includes tax-exempt private activity bonds in the aggregate amount of \$4,600,000 issued by SHA. The Series A bond in the amount of \$1,327,904 bears interest at the rate of 5.10 percent per annum and will be due January 1, 2038. The Series A bond requires payments of interest only beginning March 1, 2005, and continuing until January 1, 2008. Thereafter, principal and interest are payable in equal monthly installments in the amount necessary to amortize the principal and interest over a 30-year period. The Series B bond in the amount of \$3,272,096

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bears interest at the rate of 3.81 percent each year, and matures on January 1, 2008. Interest only on the Series B bond is paid prior to maturity. The Series A and Series B bonds were purchased by Washington Mutual Bank (WAMU). WAMU also provided taxable construction financing for the commercial component of the project, which will be sold to SHA prior to the project being placed in service.

The City of Seattle provided financing for the project in the form of an initial \$600,000 Housing Opportunities for People with AIDS (HOPWA) land acquisition loan. The loan was made directly to Genesee Housing and was re-loaned to the partnership in the form of a long-term cash-flow-only loan accruing interest at one percent. In addition, the City of Seattle made a long-term cash-flow loan accruing interest at one percent in the amount of \$485,000 from Seattle's housing levy program.

Financing for the project also includes a \$900,000 loan from the Washington State Department of Community, Trade and Economic Development. The loan was made to HRG and subsequently was assigned to the partnership pursuant to an assignment, assumption and consent agreement. The loan bears interest at 1 percent with quarterly payments commencing on March 31, 2026 with the full principal and all accrued interest due and payable on or before December 31, 2045.

AIDS Housing of Washington provided HRG with \$290,450 in capital campaign funding, which in turn loaned these funds to the project, along with the proceeds of an award from the Federal Home Loan Bank (FHLB), King County and the Bill and Melinda Gates Foundation – Sound Families Initiatives, in the form of a \$790,410 sponsor loan. The sponsor loan is cash flow only, accrues interest at 0.5 percent and is due and payable on or before December 31, 2056.

In addition to its financial contribution to the project, AIDS Housing of Washington coordinated the community outreach efforts, provided design input to maximize the project's suitability for its intended residents and provided technical assistance to the sponsor regarding HUD 811 funding issues.

The HUD 811 units will receive rental assistance pursuant to a HUD Project Rental Assistance Contract (PRAC). The HUD regulations do not permit revenues from the HUD 811 units to support or pay project debt service. To enable the project to carry hard debt payable to WAMU and the state, the various financial partners showed great flexibility. The project was underwritten and documented in a manner in which the rental income from the non-HUD 811 units will support the debt service required on these loans. In addition, the HUD mortgage, note and regulatory agreement were all modified in a manner acceptable to the WAMU and HUD, to cover only the HUD 811 units.

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In addition to the debt service issues, HUD provided formal waivers on key issues under the HUD 811-202 interim regulations. These waivers included the ability to set the interest rate on the reloan of the capital advance funds at an interest rate less than the Section 202 or 811 interest rate; a waiver permitting the partnership, as opposed to the capital advance recipient, to enter directly into the PRAC with HUD; and several other waivers relating to the specific documentation to be submitted with the firm commitment application. In each instance, HUD demonstrated an awareness of the need for flexibility in adopting the 811-202 programs to mixed finance programs. ❖

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