

**SUBMITTAL TO THE BOARD OF COMMISSIONERS OF THE
HOUSING AUTHORITY
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

910
A



FROM: Housing Authority

SUBMITTAL DATE:
December 2, 2010

SUBJECT: Resolution No. 2010-08 Assignment and Assumption Agreement for Mountain View Apartments

RECOMMENDED MOTION: That the Board of Commissioners:

1. Approve the attached Resolution for the Mountain View Apartments between the Housing Authority of the County of Riverside, Peter Anderson and Susan Ann Geidel, and Heacock Moreno, LLC.;
2. Authorize the Chairman to execute the attached Resolution with Peter Anderson and Susan Ann Geidel and Heacock Moreno, LLC.; and
3. Authorize the Executive Director, or designee, to take all necessary steps to implement the assignment and assumption agreement, including execution of necessary and related documents.

BACKGROUND: (Commences on Page 2)

Lisa Brandl for

Robert Field
Executive Director
By Lisa Brandl, Deputy Executive Director

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

COMPANION ITEM ON BOARD OF SUPERVISORS AGENDA: No

SOURCE OF FUNDS: N/A

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Jennifer L Sargent*
Jennifer L Sargent

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: *Dale A Gardner* 11/24/10
DATE
DALE A. GARDNER
Departmental Concurrence

Dept's Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: N/A

District: 5

Agenda Number:

10.1

BACKGROUND:

In August 1995, the Housing Authority issued its \$5,525,000 Variable Rate Demand Multifamily Housing Mortgage Revenue Refunding Bonds 1995 Series A (the "Bonds"). In connection with the issuance of Bonds, the then owners, Peter Anderson and Susan Ann Geidel, husband and wife, entered into an amended and restated regulatory agreement and declaration of restrictive covenants, dated August 1, 1995. The limitations of the regulatory agreement do not expire until August 10, 2015, irrespective of whether Bonds remain outstanding. The Bonds were redeemed in full on September 1, 2010, and the owners obtained private financing for the apartments project.

Additionally, the owners have created a single purpose entity into which they wish to place the name of the apartments project, Heacock Moreno, LLC (the "new owner"). To accomplish the transfer, the Housing Authority, the trustee for the Bonds, the owner and the new owner, must enter into an assignment and assumption agreement, in order to transfer the requirement to maintain availability of the project for low and moderate income tenants.

County Counsel has reviewed the assignment and assumption agreement and has approved as to form. Housing Authority staff recommends the Board of Commissioners approve the attached Resolution.

RESOLUTION NO. 2010-08

RESOLUTION OF THE HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT AGREEMENT IN CONNECTION WITH THE HOUSING AUTHORITY'S VARIABLE RATE DEMAND MULTIFAMILY HOUSING REVENUE REFUNDING BONDS 1995 SERIES A (MOUNTAIN VIEW APARTMENTS) AND RELATED DOCUMENTS

WHEREAS, the Housing Authority of the County of Riverside (the "Housing Authority") has previously issued its \$5,525,000 Variable Rate Demand Multifamily Housing Revenue Refunding Bonds 1995 Series A (Mountain View Apartments) (the "Bonds") to provide for the financing of a multifamily housing project located in the City of Moreno Valley, California and owned by Peter Anderson and Susan Ann Geidel, husband and wife (the "Prior Owner").

WHEREAS, in connection with such financing, the Housing Authority and U.S. Bank, National Association, as successor-in-interest to First Trust of California (as "Trustee"), entered into that certain Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants dated as of August 1, 1995 (the "Regulatory Agreement"); and

WHEREAS, the Prior Owner has caused the Bonds to be paid in full and has arranged private financing for the apartment project; and

WHEREAS, the provisions of the Regulatory Agreement remain in effect until August 10, 2015, regardless of whether the Bonds remain outstanding; and

WHEREAS, in connection with the refinancing by the Prior Owner, there has been created a single purpose entity, Heacock Moreno, LLC, (the "Owner"); into the name of which the apartment project will be put; and

WHEREAS, the provisions of the Regulatory Agreement are to be assigned by the Prior Owner to the Owner and assumed by the Owner under a proposed Assignment and Assumption Agreement (the "Assignment Agreement") presented to this meeting; and

NOW, THEREFORE, the Board of Commissioners of the Housing Authority of the County of Riverside resolves as follows:

Section 1. The above recitals, and each of them, are true and correct.

Section 2. The proposed form of Assignment Agreement presented at this meeting is hereby approved. The Executive Director, or his designee, is hereby authorized and directed, for and in the name and on behalf of the Housing Authority, to execute and deliver the Housing Authority's consent to the Assignment Agreement in

FORM APPROVED COUNTY COUNSEL
BY: *Dale A. Gardner* 11/24/10
DALE A. GARDNER DATE

substantially the form hereby approved, with such additions thereto or changes therein as are approved by such officers, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The officers of the Housing Authority are hereby authorized and directed, jointly and severally, to do any and all things to execute and deliver any and all documents and certificates which they may deem necessary or advisable in order to facilitate the delivery of the Assignment Agreement and otherwise to effectuate the purposes of this resolution; and such actions previously taken by such officers are hereby ratified and confirmed.

Housing Authority of the County of Riverside

Marion Ashley, Chairman
Board of Commissioners

ATTEST:

Kecia Harper-Ihem
Clerk of the Board

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Kim A. Byrens, Esq.
Best Best & Krieger LLP
P.O. Box 1028
Riverside, CA 92502

ASSIGNMENT AND ASSUMPTION AGREEMENT

The Assignment and Assumption Agreement ("Agreement"), dated December __, 2010, among the HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE (the "Issuer"), U.S. BANK, NATIONAL ASSOCIATION, a national banking association, as trustee as successor-in-interest to First Trust of California (the "Trustee"), PETER GREGORY ANDERSON and SUSAN ANN GEIDEL, also known as SUSAN ANN ANDERSON, trustees of the Anderson Family Trust U.T.D. 1/23/95, as successor-in-interest to PETER ANDERSON AND SUSAN ANN GEIDEL, husband and wife, (referred to herein as the "Prior Borrower"), and HEACOCK MORENO, LLC, a California limited liability company (referred to herein as the "Borrower").

WHEREAS, the Issuer has heretofore issued its \$5,525,000 Housing Authority of the County of Riverside Variable Rate Demand Multifamily Housing Mortgage Revenue Refunding Bonds 1995 Series A (Mountain View Apartments) (the "Bonds") for the purpose of making a mortgage loan to the Prior Borrower, the proceeds of which were used to finance a multifamily housing complex known as Mountain View Apartments located within the corporate boundaries of the County of Riverside, California, on real property described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Project"). The Bonds have been paid in full, however, the provisions of the Amended and Restated Regulatory Agreement and Declaration of Restrictive Covenants, dated as of August 1, 1995, (the "Regulatory Agreement") by and among the Issuer, the Prior Borrower and the Trustee remain outstanding and enforceable until August 10, 2015;

WHEREAS, the Borrower desires to acquire the Project from the Prior Borrower and it is therefore necessary to comply with certain provisions of the Regulatory Agreement relating to the transfer of ownership of the Project;

WHEREAS, the Prior Borrower, the Borrower, the Trustee and the Issuer desire to comply with the requirements of Section 10 of the Regulatory Agreement;

NOW THEREFORE, in consideration of the foregoing premises, the parties agree as follows:

1. Assignment and Assumption of Rights and Obligations; No Conflict. The Prior Borrower hereby fully and unconditionally assigns to the Borrower all of its rights and obligations in and under the Regulatory Agreement arising after the "Effective Date" as

hereinafter defined. The Borrower accepts such assignment and hereby fully and unconditionally assumes all of the obligations, duties and liabilities of the Prior Borrower in and under the Regulatory Agreement arising after the Effective Date and agrees to perform all such obligations in accordance with the terms thereof. Borrower agrees to hold Prior Borrower and its former partners harmless from any liability, claims, actions, damages or obligations relating to the Regulatory Agreement and arising after the Effective Date. Prior Borrower agrees to hold Borrower harmless from any liability, claims, actions, damages or obligations relating to the Regulatory Agreement arising before the Effective Date. The Agreements contained in this Section 1 shall survive the closing of the purchase and sale between Prior Borrower and Borrower and the delivery of the deed to the Project from Prior Borrower to Borrower.

2. Consent to Transfer. The Issuer, the Trustee (upon the direction of the Issuer) and Prior Borrower, each for itself, hereby consent to the sale, transfer and conveyance of the Project to the Borrower. Additionally, PNC Multifamily Mortgage, LLC, hereby consents to fee sale, transfer and conveyance of the Project to the Borrower.

3. Compliance With Regulatory Agreement. The Borrower agrees to comply with all of the requirements of the Regulatory Agreement from and after the Effective Date and shall undertake to timely cure any non-compliance with the provisions thereof whether or not caused or suffered by Prior Borrower before the Effective Date. The Borrower further represents that it is willing and capable of complying with the terms and provisions of all of the Regulatory Agreement, and that by execution of this Agreement, the parties hereto acknowledge compliance with the requirements for transfer of the Project under the Regulatory Agreement.

4. Representations of Prior Borrower. The Prior Borrower hereby represents that the Prior Borrower has complied with all provisions of the Regulatory Agreement. The acquisition date of the Project was August 15, 1985. More than 50% of the units were occupied prior to August 1, 1988. The completion date for rehabilitation of the Project was prior to August 1, 1988.

5. Acknowledgment of Issuer and Trustee. By their execution of this Agreement, the Issuer and Trustee each acknowledge and confirm that, as of the date hereof, to their respective actual knowledge, without having undertaken any independent investigation (a) there exists no event of default under the Regulatory Agreement (b) there exists no event which would give rise to an indemnification obligation by the Prior Borrower, or any predecessor in interest, under the Regulatory Agreement, (c) there is no event that, with giving of notice, the passage of time, or both, would constitute an event of default (except as set forth in clause (a) above) or give rise to such an indemnification obligation, and (d) except for amendments to the Regulatory Agreement described herein, there have been no other amendments to the Regulatory Agreement, and there are no other documents or agreements to which the Issuer and/or Trustee are parties that impose obligations on the Borrower with respect to the Loan or the Bonds other than the documents or agreements specifically referenced in the Regulatory Agreement.

6. Effective Date; Delivery of Required Documents. The assignment of rights and assumption of obligations as set forth herein shall become effective upon the date of recordation of this Agreement in the Official Records of Riverside County (the "Effective Date"). Prior to,

and as a condition to, such recordation, the Issuer and the Trustee shall have received the following as required by Section 10 of the Regulatory Agreement;

- (a) a true and complete copy of this Agreement duly executed by the Borrower, the Prior Borrower, the Trustee and the Issuer;
- (b) an opinion of counsel to the Borrower (addressed to the Issuer and the Trustee) to the effect that the interests assigned hereunder have been duly assumed and are binding on the Borrower; and
- (c) evidence satisfactory to the Issuer that Borrower is in compliance with the low and moderate income housing requirements of the Regulatory Agreement.

7. Notices. The Borrower notifies the Issuer and the Trustee that its address for receipt of notice under the Regulatory Agreement is as follows:

Heacock Moreno, LLC
1610 W. Ocean Front
Newport Beach, CA 92663

(with a copy to, which copy shall not constitute notice to the Borrower):

Brown & Streza LLP
8105 Irvine Center Drive, #700
Irvine, CA 92618
Attn: Vincent J. Le Pore

8. Construction. This Agreement and all related documents shall be deemed to be contracts made and delivered in the State of California and shall be governed by and construed in accordance with the laws of the State of California.

9. Attorneys' Fees. In the event of a dispute or litigation concerning the enforcement, validity or interpretation of this Agreement, or any part hereof, the losing party shall pay all costs, charges, fees and expenses (including reasonable attorneys' fees and disbursements) paid or incurred by the prevailing party, regardless of whether any action or proceeding is initiated relative to such dispute and regardless of whether any such litigation is prosecuted to judgment. For the purpose of this Agreement, the term "attorneys' fees" or "attorneys' fees and costs" shall mean the fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the Bar but performing services under the supervision of an attorney.

10. Execution in Counterparts. This Agreement may be simultaneously executed in counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

11. No Further Modifications. All other terms and conditions of the Regulatory Agreement are expressly reaffirmed as set forth in their entirety herein and shall remain unaffected, unchanged and unimpaired by reason of the transfer, except as expressly set forth in this Agreement.

Issuer:

HOUSING AUTHORITY OF THE COUNTY OF RIVERSIDE

FORM APPROVED COUNTY COUNSEL

BY: DALE A. GARDNER 1/29/10
DATE

By: _____
HEIDI MARSHALL
Assistant Director, Housing Authority

Trustee:

U.S. BANK, NATIONAL ASSOCIATION
as Trustee

By: _____
JOHN AXT
Vice-President, Corporate Trust Services

Prior Borrower:

ANDERSON FAMILY TRUST U.T.D. 1/23/95

PETER GREGORY ANDERSON, Trustee

SUSAN ANN GEIDEL, also known as
SUSAN ANN ANDERSON, Trustee

Borrower:

HEACOCK MORENO, LLC,
a California limited liability company

SUSAN ANDERSON, Manager

PETER G. ANDERSON, Manager

Additional Written Consent to Assignment and Assumption the Regulatory Agreement is hereby given:

PNC MULTIFAMILY MORTGAGE, LLC,
a Delaware limited liability company

By: _____
Name: Jeffery P. Christopher
Title: Vice President and Senior Counsel

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

All that certain real property situated in the County of Riverside, State of California, more particularly described as follows:

Parcel 3 of Parcel Map No. 19559 on file in Book 122 Pages 95 and 96 of Parcel Maps, Records of Riverside County, California.

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- Individual
- Corporate Officer

Title(s)

- Partner(s) Limited
- General
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies)

**DESCRIPTION OF
ATTACHED DOCUMENT**

Title or Type of Document

Date of Document