



County Executive Office
Memorandum

RECEIVED

2011 SEP 15 PM 2:39

551A

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

September 15, 2011

To: Darlene Bloom, Clerk of the Board
From: Thomas G. Mauk, County Executive Officer
Subject: Exception to the Rule 21

A handwritten signature in black ink, appearing to read "Tom Mauk", is written over the "From:" line.

The County Executive Office is requesting a supplemental for the September 20, 2011 Board Hearing Meeting.

Agency: OC Community Resources
Subject: Crestwood Apartments Refinancing
District: All

Reason for supplemental: Awaiting Approvals

Concur:

A handwritten signature in black ink, appearing to read "Bill Campbell", is written over a horizontal line.
Bill Campbell, Chairman, Board of Supervisors

cc: Rob Richardson, Assistant County Executive Officer



RECEIVED SUPPLEMENTAL AGENDA ITEM
AGENDA STAFF REPORT

Agenda Item

S51A

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

ASR Control

MEETING DATE: 09/20/11
LEGAL ENTITY TAKING ACTION: Board of Supervisors
BOARD OF SUPERVISORS DISTRICT(S): All Districts
SUBMITTING AGENCY/DEPARTMENT: OC Community Resources
DEPARTMENT CONTACT PERSON(S): Julia Bidwell (714) 480-2991
John Viafora (714) 480-2820

SUBJECT: Crestwood Apartments Refinancing

CEO CONCUR

COUNTY COUNSEL REVIEW

CLERK OF THE BOARD
Discussion
3 Votes Board Majority

Budgeted: N/A Current Year Cost: N/A Annual Cost: N/A
Staffing Impact: No # of Positions: Sole Source: N/A
Current Fiscal Year Revenue: N/A
Funding Source: N/A

Prior Board Action: May 26, 1982, August 11, 1987, May 24, 1988, September 25, 2001

RECOMMENDED ACTION(S):

1. Approve the refinancing of the loan for the Crestwood Apartments and approve the Amendment to Ground Lease and Ground Lessor's Estoppel Certificate ("Estoppel").
2. Authorize the OC Community Resources Director or designee to execute the Estoppel and such additional instructions, and instruments necessary or appropriate which incorporate the business and financial terms set forth in this Agenda Staff Report in a form as approved by County Counsel.

SUMMARY:

Approval of the Estoppel will allow for the continued maintenance and operation of the Crestwood Apartments, including thirty-eight units of affordable housing.

BACKGROUND INFORMATION:

In May 1982, the Board of Supervisors authorized the purchase of the vacant Canada Ridge site located in the former unincorporated area of El Toro (now the City of Lake Forest) in the amount of \$405,000 with Community Development Block Grant (CDBG) funds from the Department of Housing and Urban Development (HUD).

In August 1987, your Board approved a 30-year lease agreement between Canada Ridge Lane Partnership (now Advanced Group 01-75) and the County for the development of a seventy-six (76) unit apartment complex with thirty-eight (38) of the units to be maintained as affordable housing throughout the 30-year lease.

In May 1988, your Board approved an amendment to the lease extending it two (2) additional years. Among other items, the amendment requires Advanced Group 01-75 to acquire consent from the County prior to encumbering the property or for any refinancing of a mortgage loan on the property.

In September 2001, Advanced Group 01-75 received Board approval to refinance the existing loan on the property and replace it with a new \$8,000,000 first trust deed loan. Loan proceeds were utilized to pay off the existing \$3,474,000 first trust deed loan. The balance of the loan proceeds paid for \$150,000 in closing costs, \$329,003 into the project's replacement reserve account, and \$4,046,997 distributed to the project's investors pursuant to the requirements of the partnership agreement for Advanced Group 01-75.

The \$8,000,000 loan approved by the Board in 2001 will come due at the end of September 2011. Board action is being requested at this time in order to refinance the existing loan prior to the September expiration. Advanced Group 01-75 is requesting the County's consent to refinance the existing loan and encumber the property with a new \$12,500,000 first trust deed loan. Loan proceeds will be utilized to pay off the existing \$6,612,354 first trust deed loan. The balance of the loan proceeds will be utilized to pay closing costs for the new loan, \$740,000 in future capital improvements, reimbursement of \$919,927 in recent capital improvements, \$400,000 in a replacement reserve account for the project, and \$3,827,719 will be distributed to the project's investors pursuant to the requirements of the partnership agreement for Advanced Group 01-75.

The lender on the new loan, NorthMarq Capital, LLC, is requesting that the County execute the Estoppel, which is substantially similar to the one that was executed for the 2001 refinancing and was approved by your Board at that time. The Estoppel gives the lender cure rights under the ground lease and also requires that the lender get certain notices under the ground lease at the same time that the lessee does. It also requires the lenders consent for any amendments to the ground lease and prevents further encumbrances on the leasehold.

The new loan in the amount \$12,500,000 is supported by the project's cash flow and represents only seventy percent (70%) of the current appraised value. Over the term of the lease, the lessee has been in full compliance with lease terms and the requirements for the project including affordability and maintenance. The lease does not restrict investor distributions or refinancing based on the increased value of the property. Further, the refinancing and cash-out is specifically provided for in the partnership agreement for Advanced Group 01-75.

The Project Advisory Committee of the Housing & Community Development Commission concurred with staff recommendations at their September 13, 2011 meeting.

Compliance with CEQA: The subject activity is not a project as defined by CEQA pursuant to Section 15378(b)(4) of the CEQA Guidelines.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

EXHIBIT(S):

Exhibit A: Amendment to Ground Lease and Ground Lessor's Estoppel Certificate

Prepared by, and after recording
return to:
Moss & Barnett (TLG)
A Professional Association
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129

**AMENDMENT TO GROUND LEASE AND
GROUND LESSOR'S ESTOPPEL CERTIFICATE**

Freddie Mac Loan No. 948828234

**AMENDMENT TO GROUND LEASE AND
GROUND LESSOR'S ESTOPPEL CERTIFICATE**

This AMENDMENT TO GROUND LEASE AND GROUND LESSOR'S ESTOPPEL CERTIFICATE ("Amendment") is made to be effective as of the ___ day _____, 2011, by and between the Orange County, California ("Lessor"), as lessor, and Advanced Group 01-75, a California limited partnership ("Lessee"), as lessee.

RECITALS

A. Lessee is the holder of a leasehold estate ("Ground Leasehold") affecting the property commonly known as Crestwood Apartments, located in Lake Forest, California and more particularly described in Exhibit A (the "Property"), which leasehold estate is evidenced by that certain Lease dated August 11, 1987, between Lessor and Canada Ridge Lane Partnership, a California general partnership, predecessor-by-merger to Lessee, which Ground Lease was recorded October 28, 1987, as Instrument No. 87-601442 of the Official Records of Orange County, California, as thereafter amended ("Ground Lease"). A list of all the documents constituting the Ground Lease is attached hereto as Exhibit B.

B. Lessee is in the process of obtaining a mortgage loan in an amount not to exceed \$12,500,000.00 (the "Loan") from NorthMarq Capital, LLC, a Minnesota limited liability company ("NorthMarq"), which Loan will be secured by Lessee's interest in the Ground Lease, and which Loan will be ultimately assigned to Federal Home Loan Mortgage Corporation ("Freddie Mac") (NorthMarq and Freddie Mac are referred to hereinafter collectively or individually as "Lender").

C. Lessor and Lessee have been requested to execute this Amendment and in so doing acknowledge that NorthMarq and Freddie Mac will rely upon this Amendment, and the covenants and terms contained herein as a precondition of the making and funding the Loan to Lessee.

NOW THEREFORE, for and in consideration of the mutual covenants contained in this Amendment, Lessor and Lessee hereby amend the Ground Lease and Lessor and Lessee hereby warrant, represent and certify as follows, as of the date hereof:

1. The term of the Lease commenced on September 1, 1987, and expires on April 30, 2019.
2. As of the date of this Amendment, there exist no defaults under the Ground Lease and no event which, with the passage of time or the giving of notice or both, would constitute a default under the Ground Lease by Lessor or Lessee. To date, Lessee has paid all sums owing under the Ground Lease, including the \$650,000.00 payable to Lessor in the third

year of the Ground Lease pursuant to Section 5(B) of the Ground Lease. Except for such sums that may become due as a result of a future default by Lessee, and except for the One Dollar (\$1.00) purchase price payable by Lessee to Lessor in order for Lessee to acquire the Property at expiration of the Ground Lease term, there are no sums payable by Lessee to Lessor under the Ground Lease. The amount of the security deposit presently held by Lessor under the Ground Lease is \$0.00.

3. Pursuant to Section 12 of the Ground Lease, at the conclusion of the thirty (30) year extension of the Ground Lease, Lessee shall have the option to purchase the Property from Lessor for the sum of One Dollar (\$1.00), provided that the terms and conditions of the Ground Lease have been fulfilled.
4. Lessee has granted Lender an irrevocable power of attorney, coupled with an interest, to purchase the Property from Lessor for the sum of One Dollar (\$1.00) in the event Lessee fails to do so at the expiration of the thirty (30) year extension of the Ground Lease.
5. All conditions precedent to the effectiveness of the Ground Lease have been fully satisfied and the Ground Lease is in full force and effect. Lessor confirms that Lessee has completed its construction obligations set forth in Sections 4, 7, 9, 10, and 11 of the Ground Lease. The Ground Lease has not been assigned, modified, supplemented or amended in any way, except as described on Exhibit B. There are no other agreements concerning the Property, whether oral or written, between Lessee and Lessor. Lender reserves the right to require complete copies of all documents constituting the Ground Lease.
6. Lessor and Lessee agree that, for so long as the Loan is secured by the Property, or so long as Lender otherwise has a leasehold mortgage or deed of trust against the Property, whichever comes later, the Ground Lease shall not be amended or modified without the consent of Lender.
7. Lessor has not delivered or received any notices of default under the Ground Lease; to the best of the Lessor's knowledge, there is no default by Lessee or Lessor under the Ground Lease, nor has any event or omission occurred which, with the giving of notice or the lapse of time, or both, would constitute a default.
8. Lessor is the record and beneficial owner of the Property. Lessor has not subordinated its interest in the Ground Lease to any mortgage, lien or other encumbrance on the fee. Lessor has not assigned, conveyed, transferred, sold encumbered or mortgaged its interest in the Ground Lease or the Property.

9. Lessor consents to the Loan and to Lessee encumbering its interest in the Ground Lease with a mortgage or deed of trust or other proper instruments required by Lender in connection with the Loan. So long as Lessee's interest in the Ground Lease is encumbered by a leasehold mortgage or deed of trust, Lessor and Lessee shall not terminate the Ground Lease and Lessee shall not surrender possession of the Property without the prior consent of Lender. Lessor further agrees that Lender shall have no personal liability under the Ground Lease so long as it is not a mortgagee in possession or the successor Lessee under the Ground Lease and such liability shall be limited to the value of Lender's interest in the Ground Lease.
10. Lessor and Lessee agree that, for so long as the Loan is secured by the Property that neither the fee estate of the Lessor nor the Ground Lease interest of the Lessee may be subject to any encumbrances without Lender's prior written approval. Lessor agrees that it will not mortgage the fee estate at a later date unless there is an express subordination of the fee mortgage to the Lessee's interest under the Ground Lease. Lessee agrees that, for so long as the Loan is secured by the Property, that it will not subordinate its Ground Lease interest and its interests in subleases and subrents to a subsequent mortgage of the fee granted by the Lessor.
11. Notwithstanding the provisions of Section 16 of the Ground Lease, Lessee shall be permitted to assign or transfer its interest in the Ground Lease to Lender or its assigns (including without limitation a purchaser at a foreclosure sale) without the consent of Lessor, which assignment may include the assignment of Lessee's right to purchase the Property at the expiration of the Ground Lease term.
12. If the Ground Lease terminates for any reason other than expiration of the terms (including rejection or deemed rejection in bankruptcy, Lender's inability to cure a default, merger of title or attempted surrender by Lessee), Lessor agrees that it will enter into a new ground lease with Lender or its nominee on the same terms and conditions as the Ground Lease, and with the same priority.
13. No third party has any option or preferential right to purchase all or any part of the Property.
14. Lessor has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against Lessor's interest in the Property.
15. Notwithstanding Sections 14, 15 and 17 of the Ground Lease to the contrary, for so long as the Lessee's interest in the Ground Lease is encumbered by the leasehold mortgage securing the Loan, any loan refinancing the Loan, or any supplemental loan from Lender, if all or any

portion of the Property is subject to casualty or taken by reason of condemnation, the Ground Lease shall not be terminated by either party as a result of any such casualty or condemnation and the insurance proceeds or condemnation award will be paid to Lender to be applied in accordance with the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Security Instrument") or the then-existing leasehold mortgage or deed of trust. In the event of a total condemnation, Lender shall be entitled to any portion of the condemnation award to which the Lessee is entitled, which shall not be less than the total award minus the value of the remainder interest in the land considered as unimproved, unless Lender consents to a distribution of the proceeds, in which case the distribution shall first be applied to the Loan. Lender shall have the right to participate in any condemnation proceedings and settlement discussions.

16. Lessor has not received written notice that it is in violation of any governmental law or regulation applicable to its interest in the Property and has no reason to believe that there are grounds for any claim of any such violation.
17. Neither Lessee nor any affiliate of Lessee has any direct or indirect ownership interest in Lessor or any affiliate of Lessor.
18. No union of the interests of Lessor and Lessee shall result in a merger of the Ground Lease into any superior leasehold interest or the fee interest in the Property.
19. Lessor confirms pursuant to Section 8 of the Ground Lease, that for the prior five (5) year period, Lessee has been in compliance with affordable housing requirements of the Ground Lease set forth at Section 6 of the Ground Lease. Notwithstanding anything in the Ground Lease to the contrary, in the event of a default by Lessee of the Continued Affordability requirements of Section 6 of the Ground Lease, Lender shall be allowed the same cure rights as Lessee pursuant to the Ground Lease terms.
20. No merger of fee title with the Ground Lease interest under any circumstances (whether effected by the Lessor or the Lessee) shall result in the termination of the Ground Lease or an extinguishment of any Ground Lease mortgage.
21. Lessor acknowledges that Lender's address for notice and other purposes under the Ground Lease is as set forth below. Lessor agrees to notify Lender at the address set forth below, or such other address as provided to Lessor in writing, upon the occurrence of any event which with the passage of time or the giving of notice or both would constitute a default under the Ground Lease.

NorthMarq Capital, LLC
Attention: Servicing
3500 American Boulevard West, Suite 500
Bloomington, MN 55431

Freddie Mac
Director, Multifamily Portfolio Services
8100 Jones Branch Drive
McLean, VA 22102

22. Lessor and the person or persons executing this certificate on behalf of Lessor have the power and authority to execute this certificate.
23. Lessor consents to the execution and delivery by Lessee to Lender of the Security Instrument covering Lessee's leasehold interest in and to the Property and the recording of same in the applicable real property records. Lessor also consents to the execution and delivery by Lessee, and the filing and/or recording in the appropriate public records, of such additional documents and instruments as Lender may deem necessary or desirable to establish, perfect and maintain a lien upon and against Lessee's said leasehold interests, including, but not limited to, Uniform Commercial Code financing statements and such other documents, instruments and agreements as Lender may deem necessary or desirable in connection with the creation, grant, maintenance or enforcement of the lien, including, but not limited to, any document or instrument executed in connection with any renewal, extension and/or modification of such lien.

Lender and its successors and assigns may rely upon the truth and accuracy of the certifications contained herein, and said certification shall be binding upon Lessor and its successors and assigns, and inure to the benefit of Lender and its successors and assigns.

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Exhibit A
Legal Description

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

Parcel 2 of Parcel Map No. 82-162 in the County of Orange, State of California, per Map recorded in Book 186, Page(s) 18 and 19 of Parcel Maps in the Office of the County Recorder of said County.

EXCEPTING therefrom all minerals, gas, oil, petroleum, naphtha and other hydrocarbon substances below the depth of 500 feet from the surface of said land, including the right to drill for and extract same, subject to the express limitation that the foregoing reservation shall in no way be interpreted to include any right of entry in and upon the surface of said land, or the first 500 feet of the subsurface thereof.

Exhibit B
List of ground lease, amendments, supplements, options, etc.

Lease dated August 11, 1987, by and between the County of Orange, as Lessor and Canada Ridge Lane Partnership, a general partnership, as Original Lessee, recorded in the Official Records of Orange County, California on October 28, 1987, as Instrument No. 87-601442, as amended by a First Amendment to Lease dated May 24, 1988 between Lessor and Original Lessee and recorded in the Official Records of Orange County, California on June 6, 1988, as Instrument No. 88-264622, as amended by an Estoppel Certificate and Lease Modification Agreement dated September 27, 2001, between the Lessor, Advanced Group 89-5, a California limited partnership, predecessor by merger to Original Lessee, and Prudential Multifamily Mortgage Inc. and Fannie Mae, collectively, the Lender, recorded in the Official Records of Orange County, California on October 5, 2001, as Instrument No. 2001075819, as assigned and assumed by an Assignment and Assumption of Ground Lease, dated November 14, 2001, from Advanced Group 89-5, a California limited partnership, as Assignor, to Borrower, the current Lessee and recorded in the Official Records of Orange County, California on December 7, 2001, as Instrument No. 20010892566.

APN: 613-831-02