TAX EXEMPT FINANCING FROM THE LENDER PERSPECTIVE

KROOTH & ALTMAN LLP

Agenda

1) Bond Structure - Why Do We Care?

2) Draw Schedules - Fake News

3) Timing

Bond Structure – Why Do We Care?

1) Old structure versus new
   a) In the prior structure, the bond trustee was the lender's take out, buying the GNMAs. If the bond side failed, the lender had no take out

   b) In the new structure, the bonds are largely separate from FHA loan. Bond proceeds flow into the transaction, but we don't really need them

Bond Structure – Why Do We Care?

2) What specific parts of the bond structure should lenders focus on?
   a) HUD Requirements for Bond Documents
      - FHA loan proceeds cannot be disbursed to the trustee
      - Language regarding HUD supremacy/conflicts, subordination of bond and LIHTC covenants application of funds in the event of FHA loan default
      - Timing and amount of LIHTC pay-ins

Bond Structure – Why Do We Care?

b) Flow of funds

- The FHA lender disburses to the bond Trustee "Lender Funds", defined as basically any money of the lender other than loan proceeds.
- The Trustee keeps the Lender Funds to serve as bond collateral, and disburses to the lender an equal amount of bond proceeds.
- The Lender uses the bond proceeds to fund the loan advance to the borrower

Bond Structure – Why Do We Care?

c) Lender Protection and Control of Funds

- Confirm that the Trustee will return the Lender Funds to the Lender if for any reason it cannot disburse bond proceeds
- The Lender is not a party to the basic bond documents
- The "Funding Agreement" is entered into between the Lender, the borrower and the Trustee to memorialize the Lender's deposits with the Trustee and the Trustee's obligation to return funds to the Lender
- The Lender must confirm that the bond Indenture makes clear that bond proceeds are disbursed to the Lender to be used to fund the FHA loan advance

Draw Schedules – Fake News

Initial Closing	Cumulative % Complete	Approved Construction Costs	Retainage	Funded Construction Costs	Remaining Budgeted Construction Costs	Soft Costs/Land	Funded Total Costs	GNMA Insured Draw %	GNMA Insured Draws	Tax Credit Equity Contributions	Tax Credit Equity Draw %	Tax Credit Equity Draws/	Remaining Loan Proceeds	Remaining Tax Credit Equity
Initial Draw		$ 418,150	$ -	$ 418,150	$ 15,037,927	$ 4,841,397	$ 5,259,547	78.59%	$ 4,133,404	$ 3,637,136	21.41%	$ 2,683,855	$ 7,954,696	$ 953,281
Initial Draw - Land		$ -	$ -	$ -	$ -	$ 1,650,227	$ 1,650,227	0.00%	$ -	$ -	100.00%	$ 92,515	$ 7,954,696	$ 860,766
Initial Draw - Developer Fee		$ -	$ -	$ -	$ -	$ 860,766	$ 860,766	0.00%	$ -	$ -	100.00%	$ 860,766	$ 7,954,696	$ -
Draw 1	1.50%	$ 225,569	$ (22,557)	$ 203,012	$ 14,834,915	$ 71,828	$ 274,840	100.00%	$ 274,840	$ -	0.00%	$ -	$ 7,679,856	$ -
Draw 2	4.00%	$ 375,948	$ (37,595)	$ 338,353	$ 14,496,562	$ 71,828	$ 410,181	100.00%	$ 410,181	$ -	0.00%	$ -	$ 7,269,674	$ -
Draw 3	8.50%	$ 676,707	$ (67,671)	$ 609,036	$ 13,887,526	$ 71,828	$ 680,864	100.00%	$ 680,864	$ -	0.00%	$ -	$ 6,588,810	$ -
Draw 4	13.00%	$ 676,707	$ (67,671)	$ 609,036	$ 13,278,490	$ 71,828	$ 680,864	100.00%	$ 680,864	$ -	0.00%	$ -	$ 5,907,946	$ -
Draw 5	19.00%	$ 902,276	$ (90,228)	$ 812,048	$ 12,466,441	$ 71,828	$ 883,876	100.00%	$ 883,876	$ -	0.00%	$ -	$ 5,024,070	$ -
Draw 6	25.00%	$ 902,276	$ (90,228)	$ 812,048	$ 11,654,393	$ 71,828	$ 883,876	46.08%	$ 407,290	$ 3,200,680	53.92%	$ 476,586	$ 4,616,780	$ 2,724,094
Construction Contingency	25.00%	$ -	$ -	$ -	$ -	$ -	$ 562,903	0.00%	$ -	$ -	100.00%	$ 562,903	$ 4,616,780	$ 2,161,191
Draw 7	38.00%	$ 1,954,931	$ (195,493)	$ 1,759,437	$ 9,894,956	$ 71,828	$ 1,831,265	46.08%	$ 843,847	$ -	53.92%	$ 987,418	$ 3,772,933	$ 1,736,676
Draw 8	54.00%	$ 2,406,068	$ (120,303)	$ 2,285,765	$ 7,609,191	$ 71,828	$ 2,357,593	46.08%	$ 1,086,379		53.92%	$ 1,271,214	$ 2,686,555	$ 465,462
Retainage	54.00%	$ -	$ 392,344	$ 392,344	$ 7,216,847	$ -	$ 392,344	87.05%	$ 341,536	$ -	12.95%	$ 50,808	$ 2,345,018	$ 414,654
Developer Fee	70.00%	$ -	$ -	$ -	$ -	$ -	$ 367,802	0.00%	$ -	$ -	100.00%	$ 367,802	$ 2,345,018	$ 46,852
FF&E	70.00%	$ -	$ -	$ -	$ -	$ -	$ 226,605	79.32%	$ 179,753	$ -	20.68%	$ 46,852	$ 2,165,265	$ -
Draw 9	70.00%	$ 2,406,068	$ (120,303)	$ 2,285,765	$ 4,931,082	$ 71,828	$ 2,357,593	28.31%	$ 667,487	$ 3,928,107	71.69%	$ 1,690,106	$ 1,497,778	$ 2,652,654
Draw 10	80.00%	$ 1,503,793	$ (37,595)	$ 1,466,198	$ 3,464,884	$ 71,828	$ 1,538,026	28.31%	$ 435,449		71.69%	$ 1,102,577	$ 1,062,329	$ 1,550,078
Draw 11	89.00%	$ 1,353,413	$ (33,835)	$ 1,319,578	$ 2,145,306	$ 71,828	$ 1,391,406	28.31%	$ 393,938	$ -	71.69%	$ 997,468	$ 668,392	$ 552,609
Draw 12	95.00%	$ 902,276	$ (22,557)	$ 879,719	$ 1,265,587	$ 71,828	$ 951,547	28.31%	$ 269,404	$ 1,600,340	71.69%	$ 682,143	$ 398,988	$ 1,470,806
Draw 13	98.00%	$ 451,138	$ (11,278)	$ 439,859	$ 825,728	$ 71,828	$ 511,687	28.31%	$ 144,870		71.69%	$ 366,817	$ 254,118	$ 1,103,989
Draw 14	100.00%	$ 300,759	$ (7,519)	$ 293,240	$ 532,488	$ 71,828	$ 365,068	28.31%	$ 103,359	$ 727,427	71.69%	$ 261,709	$ 150,759	$ 1,569,707
Developer Fee	100.00%	$ -	$ -	$ -	$ 532,488	$ -	$ 245,201	0.00%	$ -	$ -	100.00%	$ 245,201	$ 150,759	$ 1,324,506
Retainage	100.00%		$ 532,488	$ 532,488	$ (0)		$ 532,488	28.31%	$ 150,759		71.69%	$ 381,729	$ -	$ 1,187,978
Totals		$ 15,456,077		$ 15,456,077		$ 8,357,981	$ 25,216,569		$ 12,088,100	$ 13,093,690		$ 13,128,469		

Harrison Smith, Esquire hsmith@Krooth.com

Draw Schedules – Fake News

1) The draw schedule is always wrong
   - Construction is unpredictable
2) What happens when a draw doesn't match the schedule?
   - Parties may not agree on how to fund the draw
3) A solution - the Funding Roadmap

Draw Schedules – Fake News

3) The Funding Roadmap
   - Drafted correctly, the Funding Roadmap should work regardless of the amount or timing of draws
   - The process of drafting the Funding Roadmap also forces the parties to consider what happens when actual draws vary from anticipated draws

Draw Schedules – Fake News

Sample Funding Roadmap, following initial closing:

1) Up to 50% completion, FHA Loan Funds shall fund all draws; then

2) Commencing at 50% completion, LIHTC equity shall fund all draws up to $2,150,000; then

3) Upon exhaustion of such LIHTC equity, FHA Loan Funds shall fund all draws until 100% completion; then

4) Commencing at 100% completion, LIHTC equity shall fund all draws up to $995,850.00; then

5) Upon exhaustion of such LIHTC equity, FHA Loan Funds shall fund all draws through and including FHA Final Endorsement, until exhausted, and any remaining costs shall be funded with LIHTC equity.

Timing

1) Coordination of FHA and bond timelines

- FHA loan and bonds must close simultaneously
- FHA timeline and process are basically the same as a market rate transaction
    - Key date is review package submission, not commitment issuance
- Bond timeline requires a) issuance of offering document, b) pricing and c) bond delivery
    - Key time issue is that bond pricing requires a firm closing date from FHA, which must be a week in advance

Timing

2) Closing steps and timing

- Day 1 – document execution
- Day 2 – recording
- Day 3 – document delivery to HUD
- Day 4 – simultaneous closing of bonds and FHA loan

Timing

HTHU