



Sean Rogan
Executive Director

COMMUNITY DEVELOPMENT COMMISSION
of the County of Los Angeles

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Commissioners

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

1-D January 12, 2016

January 12, 2016

The Honorable Board of Commissioners
Community Development Commission
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012


PATRICK O'GAWA
ACTING EXECUTIVE OFFICER

Dear Commissioners:

**APPROVE AMENDMENTS TO DISPOSITION AND DEVELOPMENT AGREEMENT AND
PROMISSORY NOTE WITH OSAGE APARTMENTS, LP FOR LOW AND VERY LOW-INCOME
HOUSING IN UNINCORPORATED LENNOX
(DISTRICT 2) (3 VOTE)**

SUBJECT

This letter recommends approval of Amendment No. 2 to the Disposition and Development Agreement and Amendment No. 1 to the Promissory Note with Osage Apartments, LP, a California limited partnership, for operation of the Osage Apartments property located at 11128 S. Osage Avenue in unincorporated Lennox. The amendments will reduce the interest rate from ten percent to three percent, consistent with current Commission loan standards, in order to maintain the long-term operational feasibility of the project, which provides housing for low and very low income households.

IT IS RECOMMENDED THAT THE BOARD:

1. Approve and authorize the Executive Director or his designee to negotiate, execute, and if necessary, amend or terminate Amendment No. 2 to the Disposition and Development Agreement (DDA) and Amendment No. 1 to the Promissory Note, both attached in substantially final form, between the Commission and Osage Apartments, LP, a California limited partnership (Osage), to reduce the interest rate from ten percent to three percent and to amend the residual receipt payment calculation, to be effective following approval as to form by County Counsel and execution by all parties.
2. Find that amending the DDA and related documents with Osage is not subject to the provisions of the California Environmental Quality Act (CEQA), as described herein, because the activities will not have the potential for causing a significant effect on the environment.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of this action is to amend the DDA and related documents between the Commission and Osage, to maintain the operational feasibility of Osage Apartments.

FISCAL IMPACT/FINANCING

There is no impact on the County general fund.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On January 10, 1989, the Commission purchased the property located at 11128 S. Osage Avenue in unincorporated Lennox with Community Development Block Grant (CDBG) funds. On February 27, 1990, your Board approved the transfer of the Commission-owned site to Osage, with a site acquisition loan in the amount of \$575,000 in CDBG funds.

Osage developed the site with 21 units of mixed-income, multifamily residential housing, of which no fewer than 10 units were set aside for low-income households. Three of these units are restricted to households whose incomes fall below 80% of the area median income (AMI) and seven units are restricted to households whose incomes fall below 50% of the AMI.

On March 12, 2013, an allocation of \$330,000 in CDBG funds was approved by your Board for the rehabilitation of the development, and is secured by separate loan documents.

Amendment No. 2 to the DDA and Amendment No. 1 to the Promissory Note are in response to Osage's request to stabilize long-term operational feasibility by reducing the interest rate to current Commission loan terms.

ENVIRONMENTAL DOCUMENTATION

This action is exempt from the provisions of the National Environmental Policy Act (NEPA) pursuant to 24 Code of Federal Regulations, Part 58, Section 58.34 (a)(3) because it involves administrative activities that will not have a physical impact on or result in any physical changes to the environment. These activities are not subject to the provisions of the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines 15060(c)(3) and 15378 because they are not defined as a project under CEQA and do not have the potential for causing a significant effect on the environment.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The subject amendments will reduce the interest rate of the loan from ten percent to three percent to maintain the operational feasibility of the project, which is consistent with current Commission loan standards.

The Honorable Board of Commissioners

1/12/2016

Page 3

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean Rogan", followed by a horizontal line extending to the right.

SEAN ROGAN

Executive Director

CC:PY:MT

Enclosures

**COMMUNITY DEVELOPMENT COMMISSION
OF THE COUNTY OF LOS ANGELES
AMENDMENT NO. 1
PROMISSORY NOTE**

**OSAGE APARTMENTS
(CDBG - Project No. G89202)**

THIS AMENDMENT NO. 1 TO PROMISSORY NOTE ("Amendment") made and executed as of January _____, 2016 by **OSAGE APARTMENTS LIMITED PARTNERSHIP**, a California limited partnership, hereinafter called the "Maker".

WHEREAS, on February 27, 1991, the Maker executed the Disposition and Development Agreement (DDA) with the Community Development Commission of the County of Los Angeles, a public body corporate and politic, hereinafter called the "Holder", for the development of a mixed-income, multi-family residential rental project located at 11128 Osage Avenue, Lennox (Site);

WHEREAS, on June 20, 1991, Maker entered into and executed a Promissory Note (as amended from time to time, "Note"), for repayment of the loan in the principal amount of Five Hundred Seventy-Five Thousand Dollars (\$575,000);

WHEREAS, in August of 2008, the General Partner of the Maker changed its name from the Los Angeles Community Design Center to Abode Communities;

WHEREAS, Holder and the Maker are desirous of amending the Note to decrease the interest rate of the loan by an amount necessary to maintain operational feasibility and to amend the Residual Receipts distribution, which will secure the supply of affordable housing in the County;

NOW, THEREFORE, in consideration of the mutual undertakings herein, the Maker agrees that this Note be amended, as follows:

1. All references in the Note to Los Angeles Community Design Center, a California nonprofit corporation, shall now be Osage Apartments Limited Partnership, a California limited partnership.
2. Section A of the Note is amended and restated with the following:

From the date of this Note ("Transfer Date"), payments of principal and interest shall be made in annual installments on March 1st of each calendar year. Such payments shall be due only to the extent that Residual Receipts are available from operations of the multi-family apartment project to be developed on the Site located at 11128 S. Osage Avenue, Lennox, as defined in the Disposition and Development Agreement, dated February 27, 1990, and amended May 14, 1991 (collectively, the "DDA"), by and between Holder and Osage Apartments Limited

Partnership, a California limited partnership, and assigned to Maker on May 14, 1991. (The DDA is incorporated herein by this reference.) For purposes of this Note, Residual Receipts shall be defined as the rental income received from operations of the project that is in excess of (1) the operating and maintenance expenses; (2) real estate taxes; (3) payments of principal and interest on other indebtedness encumbering the Property; and (4) deposits to operating and replacement reserves at a rate for such reserves determined by the Maker and approved by the Commission, who shall not unreasonably withhold approval; and (5) a partnership management fee of \$15,000, escalating 3.5% annually beginning in 2009.

After Residual Receipts are calculated, the Maker will receive a Return on Investment (ROI) of 8 percent (8%) as a distribution based on the actual investment of \$842,588. The estimated amount of the ROI is \$67,407. Absent prepayment or acceleration, the Commission will receive fifty percent (50%) of the ROI, with the balance of the ROI to be allocated to the Developer. After payment of the ROI, the HCD senior loan will receive 100 percent of the cash flow until fully repaid.

3. Section B is amended and restated with the following:

The disbursed and unpaid principal balance shall accrue interest at a rate of 3 percent (3%) per year, for the first 15 years, at a rate of 10 percent (10%) per year, until October 9, 2012, and at a rate of 3 percent (3%) per year, for the period from October 10, 2012 until June 1, 2021. Interest shall be computed on the basis of actual number of days elapsed and a three hundred sixty (360) day year.

2. Sections C, D and E shall be deleted in their entirety.

3. All other terms and conditions of this Note shall remain the same and in full force and effect.

(Signature Page to Follow)

SIGNATURES

IN WITNESS WHEREOF, the Holder and Maker, through their duly authorized officers, has executed this amendment as of the date first above written.

HOLDER:

**COMMUNITY DEVELOPMENT
COMMISSION OF THE
COUNTY OF LOS ANGELES, a public body
corporate and politic**

By: _____
Sean Rogan
Executive Director

MAKER:

**OSAGE APARTMENTS LIMITED
PARTNERSHIP, a California limited
partnership**

By: **ABODE COMMUNITIES,**
a California nonprofit public benefit
corporation,
its General Partner

By: _____
President

**APPROVED AS TO FORM:
MARY C. WICKHAM
County Counsel**

By: _____
Deputy

**COMMUNITY DEVELOPMENT COMMISSION
OF THE COUNTY OF LOS ANGELES
AMENDMENT NO. 2
DISPOSITION AND DEVELOPMENT AGREEMENT**

**OSAGE APARTMENTS
(CDBG - Project No. G89202)**

THIS AMENDMENT NO. 2 TO DISPOSITION AND DEVELOPMENT AGREEMENT (“Amendment”) made and executed as of January ____, 2016 by **OSAGE APARTMENTS LIMITED PARTNERSHIP**, a California nonprofit corporation, hereinafter called the “Developer”.

WHEREAS, on February 27, 1991, the Developer executed the Disposition and Development Agreement (DDA) with the Community Development Commission of the County of Los Angeles, a public body corporate and politic, hereinafter called the “Commission”, for the development of a mixed-income, multi-family residential rental project located at 11128 Osage Avenue, Lennox (Site);

WHEREAS, on May 14, 1991, the Commission and Developer executed Amendment No. 1 to the DDA;

WHEREAS, on June 7, 1991, the Developer executed amended and restated articles of limited partnership of Osage Apartments Limited Partnership, a California limited partnership; between with the Los Angeles Community Design Center, a California nonprofit corporation (the “General Partner”);

WHEREAS, in August of 2008, the General Partner of the Developer changed its name from the Los Angeles Community Design Center to Abode Communities;

WHEREAS, Commission and the Developer are desirous of amending the DDA to decrease the interest rate of the loan by an amount necessary to maintain operational feasibility, which will secure the supply of affordable housing in the County.

NOW, THEREFORE, in consideration of the mutual undertakings herein, the Developer agrees that this DDA be amended, as follows:

1. All references in the DDA to Los Angeles Community Design Center, a California nonprofit corporation shall now be Osage Apartments Limited Partnership, a California limited partnership.
2. Section A [§201] SALE OF THE SITE of the DDA is amended and restated with the following:

The Commission agrees to sell the Site to Developer at a sale price of \$575,000. The

sale price of \$575,000 will be payable through a residual rental receipts note and secured by a deed of trust. Residual Receipts shall be defined as the rental income received from operations of the project that is in excess of (1) the operating and maintenance expenses; (2) real estate taxes; (3) payments of principal and interest on other indebtedness encumbering the Property; and (4) deposits to operating and replacement reserves at a rate for such reserves determined by the Developer and approved by the Commission, who shall not unreasonably withhold approval; and (5) a partnership management fee of \$15,000, escalating 3.5% annually beginning in 2009.

After Residual Receipts are calculated, the Partnership will receive a Return on Investment (ROI) of 8 percent (8%) as a distribution based on the actual investment of \$842,588. The estimated amount of the ROI is \$67,407. Absent prepayment or acceleration, the Commission will receive fifty percent (50%) of the ROI, with the balance of the ROI to be allocated to the Developer. After payment of the ROI, the HCD senior loan will receive 100 percent of the cash flow until fully repaid.

The disbursed and unpaid principal balance shall accrue interest at a rate of 3 percent (3%) per year, for the first 15 years, at a rate of 10 percent (10%) per year, until October 9, 2012, and at a rate of 3 percent (3%) per year, for the period from October 10, 2012 until June 1, 2021. Interest shall be computed on the basis of actual number of days elapsed and a three hundred sixty (360) day year.

The residual receipts promissory note and deed of trust shall be in substantially the form of Attachments 2 and 3, respectively, which are incorporated herein by this reference, The purchase-money deed of trust will be subordinate to any construction, take-out, or gap loans necessary to fully finance the project, subject to the approval of the Commission, The Commission will not unreasonably withhold its approval.

The Commission acknowledges the intent of the Developer to form a limited partnership and to transfer the Site and all development rights under this Agreement to that limited partnership prior to commencement of construction. The Commission also acknowledges the intent of the limited partnership to sell the Site as soon as feasible after fifteen years of operations. The Commission agrees not to unreasonably withhold its approval of such sale of the Site to the Developer as general partner or another qualified entity.

In the event that the Developer sells or refinances the Site other than as provided for herein, without the Commission's prior written consent, the Commission shall have the option to call the note due and payable immediately.

The date that the Developer submits design development documents to the governing agency for a building permit shall constitute the latest date the Developer shall open escrow for purchase of the Site with Wells Fargo Escrow Company.

If Developer fails to open escrow as provided herein or to purchase the Site from the Commission within thirty (30) days of Developer's receipt of an approved building

permit, this Agreement shall terminate automatically without the necessity of any affirmative action on the part of the Commission to assert its rights on the Site.

3. All other terms and conditions of the DDA shall remain the same and in full force and effect.

4. Developer represents and warrants to Commission as of the date hereof:

(a) There have been no material changes in the financial condition of Developer between the date of the DDA and the date this Amendment.

(b) Developer is not in default of any provision of the Loan Documents, as modified hereby, nor does any event or circumstance exist which with the passage of time or giving of notice or both would result in the existence of a default under the DDA and any Loan Documents.

(c) All of the representations and warranties made by Developer in the DDA, as amended, and in any Loan Documents are true and correct.

(d) All information delivered by Developer or its representatives or contractors to Commission in connection with the DDA, as amended, the Loan Documents, and or the Project is true and complete, do not omit any material information, and do not contain any materially misleading information,

(e) It is in good standing in its state of organization and in the State of California, if California is not its state of organization; and

(f) The execution, delivery and performance of this Amendment by Developer (i) are within the Developer's power; (ii) have been duly authorized by all necessary corporate, trust, limited liability company and/or partnership action; (iii) are not in contravention of any provision of Developer's certificate of formation, certificate of limited partnership, operating DDA, limited partnership DDA or other organizational documents; (iv) do not violate any law or regulation, or any order or decree of any governmental authority; (v) has and is not engaged in any activities that conflict with or would result in the breach or termination of, constitute a default under or accelerate any performance required by, any indenture, mortgage, deed of trust, lease, DDA or other instrument to which Developer is a party or by which Developer or any of its property is bound; and (vi) do not require the consent or approval of any governmental authority or any other person or entity.

5. As amended hereby, all terms of the DDA and the other Loan Documents shall be and remain in full force and effect and shall constitute the legal, valid, binding and enforceable obligations of the parties thereto. To the extent any terms and conditions in any of the other Loan Documents shall contradict or be in conflict with any terms or conditions of the DDA, after giving effect to this Amendment, such terms and conditions are hereby deemed modified and amended accordingly to reflect the

terms and conditions of the DDA as modified and amended hereby. All terms and conditions of the Loan Documents not inconsistent herewith shall remain in full force and effect and are hereby ratified and confirmed.

6. Developer, on behalf of itself and its legal representatives, successors and assigns, hereby fully and forever waives, releases, acquits, and discharges Commission, and its respective legal representatives, affiliates, predecessors-in-interest, successors-in-interest, agents, attorneys, assigns, shareholders, officers, employees and directors and their respective successors and assigns, by operation of law or otherwise, (collectively, the "Released Parties"), of and from any and all liabilities, claims, demands, defenses, actions, causes of action, rights (contingent, accrued, inchoate, or otherwise), or whatsoever kind and nature (collectively, "Claims"), known or unknown, which Developer may now or hereafter have against any Released Party, existing or occurring prior to or as of the execution and delivery of this Amendment by the parties hereto, and which in any way, directly or indirectly, relate to, result from or arise out of the DDA or the Loan Documents or the transactions related thereto or contemplated thereunder, including, without limitation, any Claims relating to, resulting from or arising out of negligence, intentional acts, the making, funding, administration, or collection of the loans made thereunder by any Released Party or any lender liability claims or the negotiation of this Amendment. In connection with the foregoing release, Developer hereby waives any and all rights which exist or may exist under Section 1542 of the California Civil Code and any other comparable provisions or principals of state or Federal law, or the common law. Civil Code Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

It is understood and agreed that the release set forth herein is a full and final release of any and all Claims of every nature and kind whatsoever arising out of the facts and circumstances described herein and that the foregoing release extinguishes all such Claims whether known, unknown, foreseen or unforeseen. Developer understands and acknowledges the significance and consequences of this specific waiver of California Civil Code Section 1542 and any other comparable provision or principal of State or Federal law, or the common law, and hereby assume full responsibility for any injuries, damages, losses or liabilities that any of them may hereafter incur by virtue of this waiver.

7. Developer hereby agrees to indemnify, defend (with counsel approved by Commission) and save harmless Commission and the other Released Parties from any and all claims, causes of action, suits, liabilities (including strict liabilities), administrative or judicial actions or proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, judgments, awards, amounts paid in settlement, private damages, foreseeable and

unforeseeable consequential damages, litigation costs, reasonable attorneys' fees, engineers' fees, environmental consultants' fees, and investigation costs of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings which may arise in connection with any actions or occurrences in connection with this Amendment or the rights and/or remedies granted to Commission hereunder and the other Commission Released Parties, and their respective heirs, executors, and administrators except for those acts that arise from Commission's sole negligence or willful misconduct.

8. Developer acknowledges and agrees that it has been represented by counsel in connection with the execution and delivery of this Amendment and that the terms and conditions of this Amendment are the result of negotiation between the parties hereto.
9. Developer covenants and agrees to execute and deliver to Commission, or cause to be executed and delivered to Commission, at the sole cost and expense of Developer, any and all other documents, DDAs, statements, resolutions, certificates, consents and information Commission may reasonably require in connection with the matters or actions described herein. All such documents, DDAs, statements, certificates and information shall be in form and content reasonably acceptable to Commission in its reasonable discretion.
10. This Amendment may be executed by one or more of the parties hereto in any number of separate counterparts, each of which shall be deemed an original and all of which, taken together, shall be deemed to constitute one and the same instrument. Delivery of an executed counterpart of this Amendment by facsimile transmission or email shall be as effective as delivery of a manually executed counterpart hereof. This Amendment shall only be valid and effective upon its execution and delivery between the parties hereto.
11. Developer acknowledges and agrees that it currently has no defense, set-off, counterclaim or challenge against the payment of any sums owing under the DDA or any Loan Documents, or the enforcement of any of the terms or conditions thereof.
12. Developer hereby acknowledges that, as of the date hereof, the security interests and liens granted to Commission in furtherance of the DDA, including but not limited to the deed of trust given by Developer in furtherance of the DDA, are duly perfected, in full force and effect and are enforceable in accordance with their terms and the terms of the Loan DDA.
13. This Amendment constitutes the whole and entire DDA of the parties with respect to the subject matter of this Amendment, and it shall not be modified or amended in any respect except by a written instrument executed by all the parties. This Amendment replaces and supersedes all prior written and oral DDAs by and among the parties hereto.

14. This Amendment is made solely for the benefit of the parties to this Amendment and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Amendment.
15. Each party to this Amendment represents and warrants to the other that it has the capacity and authority to enter into this Amendment.

(Signature Page to Follow)

SIGNATURES

IN WITNESS WHEREOF, the Parties have executed this amendment as of the date and year first above written.

COMMISSION:

COMMUNITY DEVELOPMENT
COMMISSION OF THE
COUNTY OF LOS ANGELES, a public body
corporate and politic

By: _____
Sean Rogan
Executive Director

DEVELOPER:

OSAGE APARTMENTS LIMITED
PARTNERSHIP, a California limited
partnership

By: ABODE COMMUNITIES,
a California nonprofit public benefit
corporation,
its General Partner

By: _____
President

APPROVED AS TO FORM:
MARY C. WICKHAM
County Counsel

By: _____
Deputy