



Berkeley Housing Authority

1901 Fairview St., Berkeley, CA 94703
Telephone: (510) 981 5470 Fax: (510) 981 5480

Office of the Executive Director

Item 5C

NEW BUSINESS

June 25, 2013

To: Honorable Chairperson and
Members of the Berkeley Housing Authority Board

From: Tia M. Ingram, Executive Director

Subject: Affirming certain actions with regard to the Public Housing Disposition project, and the new ownership entity, Berkeley 75 Housing Partners, L.P.

RECOMMENDATION

Approve three resolutions: 1) expressly assigning the 75 Project-based vouchers awarded to the public housing units to Berkeley 75 Housing Partners, L.P., the new ownership entity; 2) affirming the Authority's continued commitment to the disposition project, and the transfer of ownership to Berkeley 75 Housing Partners, L.P.; and (3) amending the Schedule of Performance in the Disposition, Development and Loan Agreement ("DDLA") to specify that the DDLA will terminate if the Close of Escrow does not occur by January 23, 2015.

DISCUSSION

The Authority obtained approval from the U.S. Department of Housing and Urban Development (HUD) in December 2010, to initiate a disposition project – to dispose of the 61 units of Low Income Public Housing. Since that time staff has worked in earnest with our various partners to complete the project.

Thanks to the efforts of many dedicated staff and consultants, we reached the stage where the anticipated new ownership entity is preparing to submit applications to secure the final elements of financing plans on or about July 3, 2013. As we celebrate this milestone that signifies Related's ongoing commitment to the project, staff proposes that the Authority do likewise.

It is in this spirit that we are lead to affirm and clarify the Authority's commitments including:

1. **Project-based Vouchers.** In April 2011, the Board awarded 75 Project-based vouchers to the project. At the time, the to-be-developer had not been selected. The action before you this evening affirms that 75 Project-based vouchers have been awarded, and expressly assigns the vouchers to Berkeley 75 Housing Partners, L.P.
2. **New Ownership Entity.** The Authority entered into an Exclusive Negotiating Rights Agreement (ENRA) with the Related Company of California, LLP on September 8, 2011. Since that time, Related and the Authority have remained committed to the project, responding to each new challenge. Notwithstanding uncertainty in the projected cash proceeds, we continue to believe that the long-term plans for the management of the units, and financial

terms of the transaction, are in the best interest of the Authority. The action before you this evening affirms BHAs commitment to the project.

3. Development, Disposition and Loan Agreement. The Authority and Related executed a DDLA effective March 2012. The "Relocation" contingency was satisfied/removed in February 2013. To affirm the exclusive relationship, through the next two tax credit cycles, staff proposes to amend the Schedule of Performance to provide that the DDLA will terminate if the Close of Escrow does not occur by January 23, 2015.

FINANCIAL IMPACTS OF RECOMMENDATION

None. These resolutions affirm actions already taken by the Board.

CONTACT PERSON

Jesy Yturralde, Finance Manager, 981-5488

Tia M. Ingram, Executive Director, 981-5471

Attachments: BHA Resolutions

1. Transferring award of 75 Project-based vouchers to Berkeley 75 Housing Partners, LP
2. Affirming the Authority's continued commitment to the disposition project and the transfer of award of 75 Project-based vouchers to Berkeley 75 Housing Partners, LP
3. Amending the Schedule of Performance in the Disposition Development and Loan Agreement (DDLA) to specify the DDLA will terminate if close of Escrow does not occur by January 23, 2015

BERKELEY HOUSING AUTHORITY
RESOLUTION NO. 13-

TRANSFERRING THE AWARD OF 75 PROJECT BASED VOUCHERS AWARDED TO AUTHORITY-OWNED SCATTERED SITE PROPERTIES TO BERKELEY 75 HOUSING PARTNERS, L.P. FOR ITS ACQUISITION AND REHABILITATION

WHEREAS, Berkeley Housing Authority submitted, and HUD approved, a Request for Project-based voucher assistance for the 75 units of Authority-owned property, 61 units of which are currently Low-Income Public Housing which were approved for disposition by HUD (the "Project"); and

WHEREAS, HUD approval for the award of Project-based vouchers to the BHA owned scattered site units was required because the Authority's ownership constitutes an identity of interest in the Project; and

WHEREAS, the awarding Project-based vouchers to the units was in anticipation of the comprehensive modernization to be associated with a transfer to a new ownership entity; and

WHEREAS, Authority Resolution 11-14, passed on April 11, 2011, approved the reservation of 75 Project-based vouchers for the Project, but did not specify the name of the developer; and

WHEREAS, at the time of HUD approval of the award, October 27, 2011, the Authority had not yet selected a developer for the Project; and

WHEREAS, the Authority selected Related Companies of California, LLC ("Related") as the developer of the Project and entered into a Disposition and Development Agreement, dated March 8, 2012, with Berkeley 75 Housing Partners, L.P. (the "Developer"), an affiliate of Related; and

WHEREAS, the Developer plans to submit an application to the California Tax Credit Allocation Committee ("TCAC") for a reservation of Low Income Housing Tax Credits, which is due by July 3, 2013; and

WHEREAS, TCAC requires proof of the award of Project-based vouchers to the project be included in the application; and

WHEREAS, the Authority wants to make clear to TCAC that the award of Project-based vouchers to the project will transfer to the Developer; and

WHEREAS, since this Resolution identifies the Partnership as the future owner of the Project, this Resolution supersedes Resolution 11-14;

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is authorized to transfer the award of 75 Project-based vouchers to Berkeley 75 Housing Partners, L.P. for 75 units in the fifteen buildings comprising the Berkeley Scattered Site Disposition Project;

FURTHER RESOLVED, that Resolution 11-14 is superseded by this Resolution;

FURTHER RESOLVED, that the Executive Director is authorized to take all actions necessary to implement this Resolution.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on June 25, 2013 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
Tia M. Ingram, Secretary

BERKELEY HOUSING AUTHORITY
RESOLUTION NO. 13-

AFFIRMING THE AUTHORITY'S COMMITMENT TO PROCEED WITH THE CONVEYANCE OF THE 75 AUTHORITY- OWNED SCATTERED SITE PROPERTIES PURSUANT TO THE PROVISIONS OF THE DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT WITH BERKELEY 75 HOUSING PARTNERS, L.P.

WHEREAS, applications for the next round of Low Income Housing Tax Credit reservations are due to the California Tax Credit Allocation Committee ("TCAC") on July 3, 2013; and

WHEREAS, the Berkeley Housing Authority (the "Authority") and Berkeley 75 Housing Partners, L.P. (the "Partnership") are parties to a Disposition, Development and Loan Agreement pursuant to which the Partnership is to acquire and rehabilitate the 75 Authority-owned scattered site properties (the "Project"); and

WHEREAS, the Partnership has requested confirmation from the Authority that it continues to be committed to the Project, prior to the Partnership submitting its application to TCAC; and

WHEREAS, the Board of Commissioners of the Authority continues to be committed to the Project;

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director affirms the Authority's commitment to proceed with the conveyance of the 75 Authority-owned scattered site properties pursuant to the terms of the Disposition, Development and Loan Agreement to Berkeley 75 Housing Partners, L.P.

FURTHER RESOLVED, that the Executive Director is authorized to take all actions necessary to implement this resolution.

The foregoing Resolution was adopted by the Board of the Berkeley Housing Authority on June 25, 2013 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
Tia M. Ingram, Secretary

BERKELEY HOUSING AUTHORITY
RESOLUTION NO. 13-_____

AUTHORIZING AMENDMENT OF THE SCHEDULE OF PERFORMANCE TO THE DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("DDLA") WITH BERKELEY 75 HOUSING PARTNERS, L.P.

WHEREAS, the Berkeley Housing Authority ("BHA") submitted an Inventory Removal Application to the United States Department of Housing and Urban Development ("HUD") in December 2009, and received approval from HUD in December 2010 to convey ownership of its sixty-one Low Income Public Housing Units ("LIPH Units"); and

WHEREAS, the Board of Commissioners of the Berkeley Housing Authority selected The Related Companies of California, LLC ("Related") to rehabilitate the LIPH units and BHA's additional fourteen units that were developed under the State of California's Department of Housing and Community Development's Rental Housing Construction Program (the "RHCP Units"); and

WHEREAS, Related formed Berkeley 75 Housing Partners, L.P. (the "Developer"), to serve as the developer of the project; and

WHEREAS, the BHA and the Developer entered into a Disposition, Development and Loan Agreement (the "DDLA"), dated as of March 8, 2012, pursuant to which Developer will acquire a leasehold interest in the land and a fee interest in the improvements and will rehabilitate the LIPH Units and the RHCP Units (collectively, the "Units") as rental housing affordable to households with incomes at or below fifty percent (50%) of Area Median Income (the "Project"); and

WHEREAS, in order to provide the Developer with sufficient time to submit applications for and receive a reservation of Low Income Housing Tax Credits for the Project, BHA and the Developer agree to amend the Schedule of Performance, Exhibit B to the DDLA, to provide that the DDLA will terminate if the Close of Escrow, Release of HUD Declarations of Trust, Conveyance of the Improvements and Partial Payment of the Purchase Price do not all occur by the specific date of January 23, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Executive Director is hereby authorized to execute the Amendment to DDLA Schedule of Performance, attached hereto, marked Exhibit A to provide that the DDLA will terminate if the Close of Escrow, Release of HUD Declarations of Trust, Conveyance of the Improvements and Partial Payment of the Purchase Price does not occur by the specific date of January 23, 2015;

The foregoing Resolution was adopted by the Board of Commissioners of the Berkeley Housing Authority on June 25, 2013 by the following vote:

Ayes:

Noes:

Abstain:

Absent:

Attest: _____
Tia M. Ingram, Secretary

AMENDMENT TO DDLA SCHEDULE OF PERFORMANCE

This AMENDMENT TO SCHEDULE OF PERFORMANCE (this "Amendment") is entered into as of June 25, 2013, by and between the Berkeley Housing Authority, a public body, corporate and politic (the "Authority"), and Berkeley 75 Housing Partners, L.P. (the "Developer").

RECITALS

Unless otherwise defined herein, capitalized terms in this Amendment shall have the meaning given to them in the DDLA, as hereinafter defined in Recital A.

A. The Agency and Developer entered into that certain Disposition, Development and Loan Agreement (the "DDLA") as of March 8, 2012.

B. Through this Amendment, the Authority and the Developer intend to amend the DDLA's Schedule of Performance to specify that the DDLA will terminate on January 23, 2015, if certain benchmarks have not been achieved.

C. This Amendment is not intended to relieve or alter the obligations of the Developer under the DDLA.

NOW, THEREFORE, the Authority and the Developer agree that the DDLA shall be amended as follows:

1. Amendment to Schedule of Performance. The Schedule of Performance to the DDLA is amended as set forth in Exhibit B attached to this Amendment.
2. No Other Changes. Except for the revisions to the Schedule of Performance in the attached Exhibit B, all other provisions of the DDLA remain the same.
3. Counterparts. This Amendment may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereby have executed this Amendment to DDLA Schedule of Performance as of the date first written above.

[Signatures on following page]

DEVELOPER:

BERKELEY 75 HOUSING PARTNERS, L.P., a
California limited partnership

By: Related/Berkeley 75 Development Co., LLC, a
California limited liability company, its administrative
general partner

By: _____
Its: _____

By: Berkeley 75 MGP, LLC, , a California limited liability
company, its managing general partner

By: Affordable Housing Access, a California
nonprofit public benefit corporation, its sole
member and manager

By: _____
Jonathan B. Webb, President

AUTHORITY:

BERKELEY HOUSING AUTHORITY, a public body
corporate and politic

By: _____
Tia M. Ingram, Executive Director

EXHIBIT B

SCHEDULE OF PERFORMANCE

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
1.	<u>Execution of the DDLA by Developer:</u> The Developer shall execute the DDA and provide an executed original to the Authority	Prior to Board consideration of the DDLA	Same as Target date	Developer
2.	<u>Execution of DDLA by Authority:</u> The Authority will schedule approval of the DDLA at a public meeting and deliver the DDLA to the Developer	Within five (5) days after the execution of the DDLA by Developer, subject to Board approval	Same as Target Date	BHA
3.	<u>Initial Payment:</u> Developer shall pay the Authority \$100,000 as required by Section 2.3(a)	Within five (5) days of Preliminary Relocation Contingency Achieved and Mutual Agreement to Proceed	Same as Target Date	Developer
4.	<u>Opening of Escrow:</u> Developer shall open Escrow with the Title Company pursuant to Section 3.3	Within thirty (30) days after approval of this DDLA by the Board	Same as Target Date	Developer
5.	<u>Obtain City Approval of Amended Ground Lease Terms</u>	Prior to CTCAC Application	No later than 30 days prior to Close of Escrow	Developer
6.	<u>Obtain BUSD Approval of Amended Ground Lease Terms</u>	Prior to CTCAC Application	No later than 30 days prior to Close of Escrow	Developer

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
7.	<u>Preliminary Relocation Contingency</u> - After execution of DDLA, Housing Authority Relocation Consultant meets with residents and provides report as to permanent relocation status/intention of residents, and mutual agreement among parties to proceed	Within thirty (30) days after approval of this DDLA by the Board	Fifteen (15) days after Target Date, as the same may be extended by mutual consent of the parties	BHA
8.	<u>Submission – Rehabilitation Scope of Work</u> : Developer shall prepare and submit the Rehabilitation Scope of Work and related documents to the Authority for approval pursuant to Section 2.5(a)	Within sixty (60) days after Preliminary Relocation Contingency Date	Within ninety (90) days after Preliminary Relocation Contingency Date	Developer
9.	<u>Approval – Rehabilitation Scope of Work</u> : The Authority shall approve or disapprove the Rehabilitation Scope of Work pursuant to Section 2.5(a)	Within Fifteen (15) days after submission and submission of the Updated Financing Plan	Same as Target Date	BHA
10.	<u>RHCP Loan</u> : Developer shall obtain HCD commitment for loan extension and loan terms pursuant to Section 2.8	Prior to CTCAC Application	No later than 30 days prior to Close of Escrow	Developer
11.	<u>Submission – Updated Financing Plan</u> : Developer shall submit the updated Financing Plan pursuant to Section 2.6	Within sixty (60) days after Preliminary Relocation Contingency Date	Within ninety (90) days after Preliminary Relocation Contingency Date	Developer

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
12.	<u>Approval – Updated Financing Plan:</u> BHA shall approve the updated financing plan pursuant to Section 2.6	Within Fifteen (15) days after submission and submission of the Rehabilitation Scope of Work	Same as Target Date	BHA
13.	<u>City Loan:</u> Developer shall obtain City Approval of City Loan Amount and Terms pursuant to Section 2.7(c)	Prior to CTCAC Application	No later than 30 days prior to Close of Escrow	Developer
14.	<u>CDLAC Application and Award:</u> Developer shall apply to CDLAC for Tax Exempt Bond allocation pursuant to Section 2.7	Concurrent with CTCAC application	Concurrent with CTCAC application	Developer
15.	<u>TCAC Application and Reservation:</u> Developer shall apply to CTCAC for tax credit allocation pursuant to Section 2.7	Next open application period following completion of (a) all residents have executed a relocation agreement, and (b) 75% of households who will permanently relocate have been permanently relocated	Same as Target Date	Developer
16.	<u>Submission – Construction Plans:</u> Developer shall prepare and submit the Construction Plans to the Authority for approval pursuant to Section 2.5(b)	Concurrent with CTCAC application	Same as Target Date	Developer
17.	<u>Approval – Construction Plans:</u> The Authority shall approve or disapprove the Construction Plans pursuant to Section 2.5(b)	15 days from Developer submittal	Same as Target Date	BHA

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
18.	<u>Submission – Evidence of Financing:</u> Developer shall submit evidence of equity capital and mortgage financing pursuant to the approved Financing Plan pursuant to Section 2.7(d)	30 days prior to CTCAC application	Same as Target Date	Developer
19.	<u>Approval – Evidence of Financing:</u> The Authority shall approve or disapprove Developer's evidence of equity capital and mortgage financing pursuant to Section 2.7(d)	15 days from Developer submittal of evidence	Same as Target Date	Developer
20.	<u>AHP Loan Application:</u> Developer shall submit the AHP Loan Application pursuant to Section 2.8(b)	Next Open Round after receipt of building permits	Same as Target Date	Developer
21.	<u>Submission – Resident Services Plan and Initial Budget:</u> Developer shall submit the Resident Services Plan and initial budget to the Authority for approval pursuant to Section 6.9	Within sixty (60) days after Preliminary Relocation Contingency Date	Within ninety (90) days after Preliminary Relocation Contingency Date	Developer
22.	<u>Approval – Resident Services Plan and Initial Budget:</u> The Authority shall approve the Resident Services Plan and initial budget pursuant to Section 6.9	15 days from Developer submittal	Same as Target Date	BHA
23.	<u>Submission – Updated Rehabilitation Scope of Work</u> pursuant to Section 2.5(a)	No later than thirty (30) days prior to the date scheduled for Close of Escrow	Same as Target Date	Developer

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
24.	<u>Submission – Updated Financing Plan</u> pursuant to Sections 2.6 & 4.15	No later than thirty (30) days prior to the date scheduled for Close of Escrow	Same as Target Date	Developer
25.	<u>Construction Contract:</u> Developer shall submit construction contract for the Authority's review and approval pursuant to section 2.11	At least twenty (20) days prior to the commencement of construction	Same as Target Date	Developer
26.	<u>Construction Contract Approval:</u> Authority staff shall approve the construction contract	Within ten (10) days of receipt or subject to procedures in Section 2.11	Same as Target Date	BHA
27.	<u>Assurance of Completion and Insurance Certificates:</u> Developer shall submit assurance of completion and insurance certificates to the Authority pursuant to sections 2.12 and 2.13	Prior to the commencement of construction	Same as Target Date	Developer
28.	<u>Close of Escrow, Release of HUD Declarations of Trust, Ground Lease of Property and Conveyance of Improvements and Partial Payment of Purchase Price:</u> The Authority shall convey the Property and Improvements to the Developer and Developer shall pay the Authority the Closing Payment as required by Section 2.3(b)	60 Days after CTCAC and CDLAC Award	January 23, 2015	BHA

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
29.	<u>Commencement of Construction:</u> Developer shall commence construction pursuant to Section 4.3	No later than thirty (30) days after construction loan closing	Same as Target Date	Developer
30.	<u>Management Plan:</u> Developer shall prepare a management plan pursuant to section 2.10	No later than thirty (30) days prior to the date scheduled for Close of Escrow	Same as Target Date	Developer
31.	<u>Management Plan Approval:</u> Authority shall approve the management plan pursuant to Section 2.10	Within fifteen (15) days of receipt or subject to procedures in Section 2.10	Same as Target Date	BHA
32.	<u>Quarterly Progress Reports:</u> Developer shall submit quarterly progress reports pursuant to section 4.7	Every ninety (90) days following the commencement of construction	Same as Target Date	Developer
33.	<u>Construction Completion:</u> Developer shall diligently prosecute to completion of construction pursuant to section 4.4	No later than 180 days after construction commencement	No later than 240 days after construction commencement	Developer
34.	<u>Financial Accounting and Post-Completion Audits:</u> Developer shall provide to a financial accounting pursuant to section 4.14	No later than ninety (90) days following the completion of construction and issuance of certificate of occupancy	Same as Target Date	Developer
35.	<u>Cost Certifications:</u> Developer shall submit forms 8609 to TCAC pursuant to Section 4.14	No later than one hundred fifty (150) days following the completion of construction and issuance of certificate of occupancy	Same as Target Date	Developer

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
36.	<u>Conversion Payment:</u> Developer shall pay the Authority the Conversion Payment from the Net Proceeds of Permanent Financing as required by Section 2.39(c)	At conversion to permanent financing pursuant to Section 5.4	Same as Target Date	Developer
37.	<u>Authority to Complete Permanent Relocation Activity</u> pursuant to Section 4.13	August 30, 2012	February 28, 2013	BHA
38.	<u>Authority Administrative Plan:</u> Authority to adopt amended Administrative Plan and obtain HUD approval pursuant to Section 2.15	March 30, 2012 adoption	Same as Target Date	BHA
39.	<u>Tenant Recertification:</u> Authority to perform full recertification for continued assistance (including review of household composition, income, assets, expenses, reasonable accommodation, and criminal history)	90 days prior to closing date	Same as Target Date	BHA
40.	<u>HUD Disposition Plan:</u> Authority to revise and submit to HUD revised disposition plan pursuant to Section 2.15	30 days after execution of DDLA	60 days after execution of DDLA	BHA
41.	<u>HUD Disposition Plan Approval:</u> Authority to obtain HUD approval of revised disposition plan pursuant to Section 2.15	60 days prior to Close of Escrow	30 days prior to close of escrow	BHA

	MILESTONE	TARGET DATE	OUTSIDE DATE	RESPONSIBLE PARTY
42.	<u>Section 8 Subsidy Layering Review:</u> Authority to conduct subsidy layering review and submit to HUD pursuant to Section 2.15	30 days after execution of DDLA	60 days after execution of DDLA	BHA
43.	<u>Section 8 Subsidy Layering Review Approval:</u> Authority to obtain HUD approval of subsidy layering review pursuant to Section 2.15	60 days prior to Close of Escrow	30 days prior to close of escrow	BHA