



Berkeley Housing Authority

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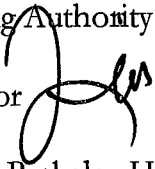
Office of the Executive Director

Item 6F

NEW BUSINESS

January 14, 2016

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

From: Tia M. Ingram, Executive Director 

Subject: Second Amendment to DDLA – Berkeley Housing Authority and Related
California

RECOMMENDATION

Affirm the action by the Executive Director to amend the Disposition Development and Loan Agreement (DDLA) between Berkeley Housing Authority and Related California.

DISCUSSION

The Disposition and Development Loan Agreement (DDLA) executed as part of the Public Housing disposition project included specific provisions about how any cost savings would be shared, and when Related would begin receiving payments towards the “Developer” fee.

The DDLA, as amended on February 4, 2014, provides that cost savings be first used to complete any listed priorities in the Rehabilitation Scope of Work that have not been addressed, then split 50/50 toward BHA for repayment of the Authority Loan, and Related for payment of any deferred Developer Fee. However, any cost savings from the \$750,000 budgeted for Environmental Contingency and from the \$550,000 budgeted for Marketing/Lease-up not used to complete any listed priorities in the Rehabilitation Scope of Work shall be paid to the Authority 100% in repayment of the Authority Loan.

As part of the final construction reconciliation, Related proposed a blended distribution of cost savings, for a simplified 25/75 split of the \$467,948 cost savings.

STATUS

The changes proposed to the DDLA do not change any of the financial remuneration due either party. Rather, it would result in BHA ~~Related~~ receiving less cash now, but will be a wash in the end because additional funds paid to BHA now would result in less cash flow proceeds in the future to pay for deferred developer fee.

Our consultant, EJP/Praxis reviewed the proposal and advised agreement.

FINANCIAL IMPLICATIONS OF ACTION

BHA will receive \$350,961 from cost savings as repayment of the Authority Loan now, and begin receiving residual receipts in 2016.

CONTACT PERSON

Tia Ingram, Executive Director, Berkeley Housing Authority, 981-5471
Jesy Yturralde, Finance Manager, 981-5488

Attachment:

1. Resolution

BERKELEY HOUSING AUTHORITY
RESOLUTION NO. 16-___
**SECOND AMENDMENT TO DISPOSITION, DEVELOPMENT AND LOAN
AGREEMENT**

This Second Amendment to the Disposition, Development and Loan Agreement (the "First Amendment") is entered into as of December 15, 2015, by and between the Berkeley Housing Authority, a public body, corporate and politic (the "Authority") and Berkeley 75 Housing Partners, L.P., a California limited partnership (the "Developer"), with reference to the following facts:

A. The Authority and the Developer entered into a Disposition, Development and Loan Agreement ("DDLA") as of March 8, 2012, amended by that certain First Amendment to Disposition, Development and Loan Agreement, entered into as of February 1, 2014 (the "First Amendment"). The DDLA and the First Amendment are referred to collectively herein as the DDLA.

B. The Authority and the Developer have agreed to amend the DDLA provision relating to the allocation of cost savings which shall be paid to the Authority in repayment of the Authority Loan and to the Developer toward payment of any deferred Developer Fee.

NOW, THEREFORE, the Authority and the Developer agree as follows:

1. Section 5.4(f) of the DDLA is revised to read as follows:

(f) Cost Savings. The Rehabilitation Scope of Work has been completed and the parties agree that there is Four Hundred Sixty-Seven Thousand Nine Hundred and Forty-Eight Dollars (\$467,948) (the "Cost Savings") to be split between the Authority and the Developer. The Authority and the Developer agree that the Cost Savings shall be split twenty-five percent (25%), i.e., One Hundred Sixteen Thousand Nine Hundred Eighty-Seven Thousand Dollars (\$116,987) to the Developer toward payment of any deferred Developer Fee and seventy-five percent (75%), i.e., Three Hundred Fifty Thousand Nine Hundred Sixty-One Dollars (\$350,961) to the Authority toward repayment of the Authority Loan,

2. Except as provided in this Second Amendment, all other terms of the DDLA are unamended and remain in full force and effect.

[Signatures on the following page]

IN WITNESS WHEREOF, the Authority and the Developer have executed this Second ~~First~~ Amendment as of the date first above written.

AUTHORITY:

BERKELEY HOUSING AUTHORITY, a public body corporate and politic

By: _____
Tia M. Ingram, Executive Director

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: _____
_____, Authorized Agent

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