

Follow-up Documentation for Item 10.

4. Amendment #1 to the Development and Disposition Agreement



**FIRST AMENDMENT TO
AFFORDABLE HOUSING, FINANCING &
DISPOSITION & DEVELOPMENT AGREEMENT**

(Dumosa)

by and between the

TOWN OF YUCCA VALLEY

and

YUCCA VALLEY SENIOR HOUSING PARTNERS, L.P.,

A California limited partnership

**FIRST AMENDMENT TO
AFFORDABLE HOUSING, FINANCING &
DISPOSITION & DEVELOPMENT AGREEMENT
(DUMOSA)**

This FIRST AMENDMENT (the “**Amendment**”) to the AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT dated March 20, 2012, by and between THE TOWN OF YUCCA VALLEY, a California general law municipality (“**Town**”), and YUCCA VALLEY SENIOR HOUSING PARTNERS, L.P., a California limited partnership (“**Developer**”), is entered into as of July __, 2012 on the following terms and conditions.

RECITALS

A. The Town and Developer entered into that certain Affordable Housing, Financing & Disposition & Development Agreement on or about March 20, 2012 (“**DDA**”), which includes as attachments, among others, a Grant Deed (the “**Grant Deed**”), Regulatory Agreement and Declaration of Covenants, Conditions, and Restrictions (“**Regulatory Agreement**”), Promissory Note (“**Note**”), Deed of Trust and Assignment of Rents (“**Deed of Trust**”), and **Project Budget** (collectively, “**Related Documents**”).

B. The DDA concerns the development of a 75-unit affordable rental housing complex for senior citizens (the “**Project**”) on a 2.87 acre vacant property located in the Town of Yucca Valley, County of San Bernardino, State of California, at the northwest corner of the intersection of Twentynine Palms Highway (State Highway 62) and Dumosa Avenue (the “**Site**”).

C. Through the DDA, the Town was to convey to Developer the Site, whose fair market value is \$940,000.00, and to provide Developer a loan in the amount of \$635,000.00 (“**Town Loan**”) for construction, improvement and operation costs. At the time the DDA was negotiated, the only source of funding for the Town Loan included funds from the former Yucca Valley Redevelopment Agency’s Low to Moderate Income Housing Fund (“**Low/Mod Fund**”) that were to be re-paid to the former Agency as a result of Low/Mod Fund monies being borrowed for purposes of paying the Supplemental Educational Revenue Augmentation Fund (“**SERAF**”). Both the fair market value of the Site and the Town Loan were to be repaid to the Town through the residual receipts loan Note secured by the Deed of Trust. With the fair market value of the Site and the Town Loan combined, the total amount of assistance from the Town to the Developer was \$1,575,000.00 (“**Note Amount**”).

D. Additional sources of funding, including a deferral of Development Fees (i.e., deferring payment of \$250,000 in Development Fees to time for repayment under Town Loan) and proceeds from the Storm Drain Impact Fees, Local Transportation Fund, and the Low/Mod Fund, have become available to support an increase of \$1,350,000.00 in the Note Amount. Including the original Note Amount of \$1,575,000.00, the total amount of assistance from the Town will be \$2,925,000.00. Thus, this Amendment will increase the Town Loan and Note Amount to a total of \$2,925,000.00 funds available to Developer and repayable to Town.

E. Notwithstanding the foregoing Recital, the Note Amount (as revised herein to \$2,925,000.00) will be offset or decreased should Developer be awarded Federal Home Loan Bank Affordable Housing Program ("AHP") funds. Developer plans to apply for these funds for the Project in the amount of \$740,000 (\$10,000 per affordable unit). If awarded, such AHP funds shall go first to cover any approved Project cost overruns and second to reduce the Town Loan and Note Amount ("**AHP Offset**"). If there is an AHP Offset against the Town Loan, the Note and Deed of Trust shall be amended by the parties to show the revised Note Amount.

F. The parties now desire to amend the DDA and Related Documents to reflect the increased assistance and sources of funding, as set forth in more detail below.

NOW, THEREFORE, the Town and Developer hereby agree as follows:

1. All capitalized terms not defined herein shall have the meaning as set forth in the DDA and Related Documents unless the context dictates otherwise.

2. Paragraph F of the Recitals of the DDA is hereby amended to read in its entirety as follows:

Town Loan to Developer. Town agrees to loan \$1,985,000.00 to Developer for Developer's use towards Project construction, improvements and operation ("**Town Loan**"). About \$156,861.93 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$1,828,138.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**"). The Town has identified the following sources of funding for the Remainder Loan Proceeds to be payable to Developer: (i) \$250,000.00 which will be paid to Developer in the form of deferred Project Development Fees (i.e., payment of Development Fees deferred to time for repayment of Town Loan), (ii) \$300,000.00 payable to Developer from the Town's proceeds from Storm Drain Impact Fees, (iii) \$300,000.00 payable to Developer from Town proceeds in the Local Transportation Fund, (iv) \$500,000.00 from the former Agency's Low/Mod Fund, based on the December 2010 Exclusive Negotiating Agreement for the Project and/or revenues expected to be repaid to the Town as a taxing entity pursuant to AB1x 26; and (v) \$635,000.00 from revenues expected to be repaid to the former Agency's Low/Mod Fund as a result of Low/Mod Funds being borrowed for purposes of paying Supplemental Educational Revenue Augmentation Fund ("**SERAF**"). Given the current status of AB 26 and its unknown potential impacts upon these funding sources, the availability of a source of funds for the Remainder Loan Proceeds must be confirmed prior to making any further disbursements of the Town Loan to Developer.

3. Section 225 [Note; Note Amount] of the DDA is hereby amended to read in its entirety as follows:

The term "Note" shall mean the promissory note evidencing Developer's repayment obligation to Town as a residual receipts loan, subordinate to Senior

Financing, in the amounts of the Purchase Price and the Town Loan, all as further described in Section 404, which shall be substantially in the form attached hereto as Exhibit "C". Developer's repayment obligations to pay both the full amount of the Town Loan (\$1,985,000.00) plus the full Purchase Price (\$940,000.00) shall be secured as a single debt obligation owing by Developer to the Town, totaling Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00) also referenced herein as the "**Note Amount**". The Note Amount may be reduced by the amount of the AHP Offset if AHP funds are awarded to Developer

Notwithstanding the foregoing, the Note Amount will be offset or decreased should Developer be awarded Federal Home Loan Bank Affordable Housing Program ("**AHP**") funds. Developer plans to apply for these funds for the Project in the amount of \$740,000 (\$10,000 per affordable unit). If awarded, such AHP funds shall go first to cover any approved Project cost overruns, and second to reduce the Town Loan and Note Amount ("**AHP Offset**"). If there is an AHP Offset against the Town Loan, the Note and Deed of Trust shall be amended by the parties to show the reduced Note Amount.

4. Section 245 [Town Loan; Remainder Loan Proceeds] of the DDA is hereby amended to read in its entirety as follows:

The term "Town Loan" shall mean that loan in the amount of \$1,985,000.00 by Town to Developer for Developer's use towards Project construction, improvements, and operation, which loan shall bear an interest rate of 0.5% per annum. About \$156,861.93 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$1,828,138.00) will be disbursed to Developer after the Effective Date hereof and is referenced herein as the "**Remainder Loan Proceeds**". Notably, the amount of the Remainder Loan Proceeds may be reduced pursuant to the AHP Offset as described in Section 225.

5. The first paragraph of Subsection 1 [Town Loan] of Section 404 [Town Loan, Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

Town Loan. The total estimated cost of the Project is approximately \$17.05 Million, as further described in the Project Budget. This estimated cost includes the Site acquisition costs and the hard and soft costs of constructing the Project. The Town agrees to provide the Town Loan to Developer in an amount equal to One Million Nine Hundred Eighty-Five Thousand Even Dollars (\$1,985,000.00) to fund the actual costs for the development, construction and operation of the Project. About \$156,861.93 of the Town Loan proceeds have already been disbursed to Developer by Town for Developer's pre-construction Project costs. The remainder of the Town Loan (approximately \$1,828,138.00) will be disbursed to Developer prior to, or upon, the Close of Escrow (the "**Remainder Loan Proceeds**"), with the exception that a portion of the Remainder Town Loan Proceeds will be disbursed to Developer in the form of a deferral of Development Fee up-to a maximum amount of \$250,000. Alternatively, the parties may

mutually-agree to other means for the timing and method of Developer's draw upon the Remainder Loan Proceeds. Again, as described in Sections 225 and 245, the actual amounts of the Remainder Loan Proceeds may be decreased or offset as a result of an AHP Offset.

6. Paragraph D of Subsection 1 [Town Loan] of Section 404 [Town Loan, Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

If all conditions to disbursement of Remainder Loan Proceeds have been fulfilled, pursuant to Section 404, subsection 3, the Town shall disburse Remainder Loan Proceeds directly to Developer, or into Escrow for ultimate distribution to Developer, pursuant to (i) the Town's customary practices for disbursing such funds and (ii) verification that such proceeds will be used towards actual Project costs as reflected in the Project Budget. Notwithstanding the foregoing, a portion of the Remainder Town Loan Proceeds will be disbursed to Developer in the form of Development Fee deferrals up-to a maximum of \$250,000. If Remainder Loan Proceeds are required for Project Costs prior to Close of Escrow, Developer shall first request in writing a draw-down on Remainder Loan Proceeds, or a fee deferral, as necessary to pay Town-approved Project costs, provided that Developer has submitted all required documentation reasonably requested by the Town to demonstrate that the Town Loan proceeds drawn shall be used for actual Project costs as reflected in the Project Budget.

7. The first paragraph of Subsection 2 [Security for Assistance] of Section 404 [Town Loan, Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

Security for Assistance. Developer's repayment obligations to pay both the full amount of the Town Loan (\$1,985,000.00) plus the full Purchase Price (\$940,000.00) shall be secured as a single debt obligation owing by Developer to the Town, totaling TWO MILLION NINE HUNDRED TWENTY-FIVE THOUSAND EVEN DOLLARS (\$2,925,000.00) (the "**Note Amount**"). The actual Note Amount may be decreased or offset as a result of an AHP Offset, in which case the parties will modify the Note and Deed of Trust to reflect the Note Amount as adjusted for the AHP Offset.

8. Paragraph A of Subsection 3 [Conditions Precedent to Disbursement of Town Loan] of Section 404 [Town Loan; Security & Covenants] of the DDA is hereby amended to read in its entirety as follows:

A. The Developer has submitted a financing plan for the Town's approval that identifies all sources of funds with a Developer Fee that does not exceed One Million Four Hundred Thousand Even Dollars (\$1,400,000.00).

9. The stated Note Amount on the Note, which is attached as Exhibit "C" to the DDA, is hereby amended to read: "\$2,925,000.00."

10. The first sentence of the first paragraph of the Note, which is attached as Exhibit “C” to the DDA, is hereby amended to read as follows:

FOR VALUE RECEIVED, the undersigned (herein, the “Maker”) hereby promises to pay to the order of the TOWN OF YUCCA VALLEY, a California general law municipality (“Holder” or “Town”), at a place designated by Holder, the principal sum not to exceed TWO MILLION NINE HUNDRED TWENTY-FIVE THOUSAND EVEN DOLLARS (\$2,925,000.00) (“Note Amount”), plus accrued interest, or such lesser amount which shall be disbursed by the Town and from time to time be owing hereunder pursuant to the terms hereof.

11. Section 2.1 [Loan Amount] of the Note, which is attached as Exhibit “C” to the DDA, is hereby amended to read in its entirety as follows:

Loan Amount. The principal amount of the Loan shall be in the amount not to exceed Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00). The Loan Amount includes the Purchase Price of the Site being conveyed by Town to Maker plus such amounts of the Town Loan advanced to Maker from time to time which will be contributed to the Project by Town. Interest shall accrue on the outstanding principal amount at the simple rate of one-half of one percent (0.5 %) per annum until repaid in full.

12. The second full paragraph of page 3 of the Deed of Trust, which is attached as Exhibit “D” to the DDA, is hereby amended to read in its entirety as follows:

FOR THE PURPOSE OF SECURING, in such priority as Beneficiary may select, (i) payment of that certain Town Note of even date herewith executed by Trustor and payable to Beneficiary in the original principal amount of not to exceed Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00) (the "Town Note"); (ii) Trustor's due, prompt and complete payment, performance, observance and discharge of each and every covenant, condition, provision and agreement contained in this Deed of Trust; (iii) until recordation of the Release of Construction Covenants (as defined in the Agreement referred to herein), Trustor's due, prompt and complete performance, observance and discharge of all obligations of Trustor under that certain Affordable Housing, Financing & Disposition & Development Agreement dated as of March 20, 2012, executed by Trustor and Beneficiary (the "Agreement") and each other ancillary instrument or agreement executed by Trustor for the benefit of Beneficiary pursuant to executory provisions of the Agreement, including, but not limited to, the Regulatory Agreement and Declaration of Covenants and Restrictions from Trustor in favor of Beneficiary recorded concurrently herewith (the "Regulatory Agreement" and, with the Town Note and the Agreement, collectively the "Town Agreements"); and (iv) payment of all monies expended or advanced by Beneficiary pursuant to the terms hereof or to preserve the Trust Estate or the rights of Beneficiary under the Town Agreements (the foregoing obligations, duties and performance by Trustor secured hereby are referred to herein collectively as the "Secured Obligations"). This Deed of Trust shall secure any

and all extensions, amendments, modifications or renewals of the Secured Obligations, however evidenced.

13. Paragraph A of the Recitals of the Regulatory Agreement, which is attached as Exhibit "F" to the DDA, is hereby amended to read in its entirety as follows:

Pursuant to an AFFORDABLE HOUSING, FINANCING & DISPOSITION & DEVELOPMENT AGREEMENT between and among Town and Owner dated March 20, 2012 ("DDA"), Town has sold to Owner real property and provided to Owner a financial loan under the terms of one promissory note for the cumulative amount of Two Million Nine Hundred Twenty-Five Thousand Even Dollars (\$2,925,000.00) (collectively the "Town Financing"), all for the purpose of assisting Owner in the development of an affordable, senior housing complex as further described herein on that certain real property located in the Town of Yucca Valley, County of San Bernardino, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference ("Site").

14. The Project Budget, which is attached as Exhibit "H" to the DDA, is hereby replaced in its entirety with the revised Project Budget, attached to this Amendment as Attachment 1.

15. The Note, Deed of Trust, and Regulatory Agreement, as amended, herein, are attached to this Amendment as Attachments "2," "3" and "4" respectively. These amended documents hereby replace their counterparts in the DDA (i.e., Attachment "2" replaces DDA Exhibit "C"; Attachment "3" replaces DDA Exhibit "D"; Attachment "4" replaces DDA Exhibit "F").

16. Except as otherwise amended herein, the DDA and Related Documents shall remain in full force and effect in accordance with its terms.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment as of the date stated above.

"TOWN"

TOWN OF YUCCA VALLEY,
A California general law municipality

Date 7/24/2012

Dawn M. Rowe
Mayor Dawn Rowe

ATTEST:

[Signature]
Janet M. Anderson, Town Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

[Signature]
Lona N. Laymon, Town Attorney

"DEVELOPER"

YUCCA VALLEY SENIOR HOUSING
PARTNERS L.P., a California Limited
Partnership,

By its General Partner:

THE SOUTHERN CALIFORNIA HOUSING
DEVELOPMENT CORPORATION OF THE
INLAND EMPIRE, a California non-profit
public benefit corporation

Date 7/24/12

[Signature]
Name: D. Whitman
CEO

And, its Related Entity:

NATIONAL COMMUNITY RENAISSANCE
OF CALIFORNIA, a California public benefit
corporation

Date 7/24/12

[Signature]
Name: D. Whitman
CEO

[End of Signatures]