

Attachment E

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DISCUSSION:

Background

The DDA and related East Garrison project approvals call for the construction of 1,400 residential units, of which 6% of all units must be affordable to “very low income” persons and families, and 8% must be available to “low income” persons and families, in the form of Rental Affordable Housing for a total of 196 affordable apartment units. Of those units, 65 are part of the Phase Two and CHISPA was identified as the non-profit developer for Phase Two. On January 16, 2007, the Master Developer and CHISPA entered into a Memorandum of Agreement (MOA), pursuant to Section 4 of Attachment No. 9 of the DDA, in which the Developer designated CHISPA as the Project Developer for 65 units of very low and low-income affordable apartments plus one unrestricted manager’s unit.

In 2019, UCP, had hit the milestones for the Project, yet more time was necessary to fund and construct the Project. On July 27, 2019, Casa Acquisition Corp., a Delaware Corporation (Casa), a parent of UCP, and the Agency entered into a Completion Guaranty for Phase Two very low and low-income apartments (Guaranty) requiring UCP (via Casa) to guaranty the completion of the Project’s Guaranteed Units by March 31, 2025. Additionally, under the Guaranty, UCP (via Casa) delivered to the Agency a \$17,500,000 performance bond to secure completion of the Project by no later than March 31, 2025.

Request to Amend the Completion Guaranty

Pursuant to the MOA, UCP and CHISPA agreed to enter into a purchase agreement for CHISPA to purchase the Phase Two Apartment parcels and develop the Project. UCP and CHISPA subsequently entered into an Agreement for Purchase and Sale of Real Property and Escrow Instructions dated February 17, 2020 with four subsequent amendments (Purchase Agreement) substantially in the form attached to the MOA. The Purchase Agreement (Attachment G) includes an option for UCP to repurchase the apartment parcels if, among other things, CHISPA fails to meet any of the deadlines for construction. This repurchase right was a key consideration in Casa and UCP agreeing to the Completion Guaranty.

CHISPA has been awarded a tax credit reservation and is forming a tax credit limited partnership with Enterprise Community Asset Management, Inc. (Enterprise) to acquire, construct and own the Phase Two Affordable Units. CHISPA must acquire the apartment parcels by February 21, 2022 to maintain its tax credit allocation. CHISPA and Enterprise have been working on obtaining a construction loan from JPMorgan Chase Bank, N.A. (Chase). However, Enterprise and Chase will not agree to UCP’s repurchase option, as it jeopardizes their respective security rights. After further inquiry and review of this matter, other tax credit equity investors and institutional lenders will likely have a similar objection. Consequently, in order to proceed with the sale to CHISPA, it is necessary to eliminate the repurchase option by UCP from the Purchase Agreement. In order to ensure construction is completed by the completion date in the Guaranty and to avoid the Agency drawing on the bond, the parties have discussed alternative remedies for UCP, including UCP having the right to step in as general contractor. However, Enterprise and Chase would like extended cure periods each before UCP can exercise this step-in right. UCP is concerned that these cure periods could significantly impact UCP’s ability to take over and complete construction by the current Guaranty Completion Date should CHISPA fail to complete the project as planned.

While CHISPA is expected to commence construction within one month after the closing (as required under the tax credit program), CHISPA, UCP, and the Agency are concerned that construction could be prolonged or disrupted as a result of circumstances including the pandemic and resulting labor and supply chain issues. Therefore, an extended completion date would allow additional time for CHISPA to complete the project should construction be delayed.

County Role

The DDA allows for the proposed Amendment No. 1 to the Completion Guaranty. While the County is not a party to the DDA, the County consented to the DDA, which provided for the possibility of such delays and provided the developer the opportunity to provide a completion guarantee for the rental affordable housing units. Additionally, pursuant to a Development Agreement between the County and East Garrison Partners, LLC (the predecessor in interest to UCP), the County acknowledged that the developer has the vested right to develop the East Garrison project in the order and at such rate and at such times as the developer deemed appropriate, subject to the timing requirements in the DDA, and the County acknowledged that the Agency (now Successor Agency) will administer the phasing, timing, and financial requirements pertaining to development, including affordable housing. (Sec. 2.5 of Development Agreement.) Additionally, the Inclusionary Housing Agreement between the Redevelopment Agency, the predecessor of the Successor Agency, and East Garrison Partners, LLC, the predecessor in interest of UCP, (dated June 20, 2007) states that the County has delegated to the Agency the authority and responsibility to enforce and administer the County's inclusionary housing requirements contained in Chapter 18.40, in accordance with the terms of the DDA. Accordingly, the County is not a necessary party to the Completion Guarantees, but for the documentary record, it is useful for the County to acknowledge the Completion Guarantees.

Conclusion

For the foregoing reasons, UCP and CHISPA request that the Agency approve and the County acknowledge amending the completion guaranty to extend the current completion date, March 31, 2025, day for day for the length of any (a) Enforced Delay (as defined in Section 604 of the DDA) that causes delay in completion of the Project, and (b) cure period benefitting Chase and Enterprise prior to UCP having the right to exercise its step-in rights, but no later than March 31, 2026.