



CITY COUNCIL AGENDA REPORT



DEPARTMENT: Administration

MEETING DATE: February 4, 2014

PREPARED BY: Lauren Vasquez, Senior Management Analyst

AGENDA LOCATION: CC-5

TITLE: Affidavit and Indemnity and Replacement Unsecured Promissory Note related to the Disposition and Development Agreement between the Former Monrovia Redevelopment Agency and Colorado Commons, LLC, dated March 1, 2005, as Amended by the First Amendment to Disposition and Development Agreement dated July 15, 2008

OBJECTIVE: To execute an Affidavit and Indemnity and Replacement Unsecured Promissory Note related to the Disposition and Development Agreement between the former Monrovia Redevelopment Agency and Colorado Commons, LLC.

BACKGROUND: On March 1, 2005, the former Agency Board approved a Disposition and Development Agreement (“DDA”) with Colorado Commons LLC, now known as PCCP Monrovia, LLC. (“Developer”), calling for the development of a 68 unit residential development located at the northeast corner of Primrose Avenue and Colorado Boulevard (“Project”). The development was completed in May 2008. At that same time the economic recession hit, and there was a decline in the for-sale residential market. As a result, the Developer requested consent to temporarily leasing the units until the market recovered.

In July 2008, in a joint public hearing, the City Council and former Agency Board approved the First Amendment to the DDA with PCCP Monrovia, LLC. Under the Amendment, the Developer was permitted to lease the 68 unit Project, so long as they adhered to the following conditions:

- Seven of the units had to be leased at a rental rate affordable to families of moderate income as established by the Department of Housing and Urban Development.
- The Developer would be obligated to convert the Project back to “for sale units” when the market conditions recovered in Monrovia.
- At the time the leasehold Project converts back to for sale, the Developer would be obligated to expend a minimum of \$15,000 per unit in restoration to ensure the units were rehabilitated prior to sale.
- The Developer would sponsor a “rent-to-own” program that would allocate 15% of rent paid towards an account that could be applied to a down payment when the project is converted back to units for sale.
- Upon the fifth anniversary of the Amendment, the Developer would pay \$2,500 per month to address the lost property tax revenue that resulted from converting the Project to a leasehold property.

ANALYSIS: The Developer has recently contacted Staff and is ready to proceed with converting the leasehold Project back to ownership. In addition, the Amendment has reached its fifth anniversary, which triggers the property tax revenue payment. Upon investigation, Staff found no original copy of the signed promissory note. In order to proceed with the payment to the City, Successor Agency Counsel prepared the attached replacement note and affidavit.

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ENVIRONMENTAL IMPACT: There are no environmental impacts

FISCAL IMPACT: Under the terms of the Amendment, the City will receive approximately \$150,000 in lost property tax revenue.

OPTIONS: The following options are presented for consideration:

1. **Authorize the City Manager or designee to execute the Affidavit and Indemnity and Replacement Unsecured Promissory Note.** This option would allow the Developer to proceed with converting the leasehold Project to ownership units. This would require the Developer to adhere to the conditions of the Amendment, which includes paying the City the property tax revenue that was delayed with the authorization of converting the ownership units to leasing units.
2. **Deny the authorization to execute the Affidavit and Indemnity and Replacement Unsecured Promissory Note.** Under this option, the Developer cannot proceed with the conversion, and the City will not be able to recoup the lost property tax revenue.

RECOMMENDATION: Staff recommends that the City Council authorize the City Manager or designee to execute the Affidavit and Indemnity and Replacement Unsecured Promissory Note related to the Project.

COUNCIL ACTION REQUIRED: If the City Council concurs, the appropriate action would be a motion to authorize the City Manager or designee to execute the Affidavit and Indemnity and Replacement Unsecured Promissory Note related to the Disposition and Development Agreement between the Former Monrovia Redevelopment Agency and Colorado Commons, LLC, dated March 1, 2005, as Amended by the First Amendment to Disposition and Development Agreement dated July 15, 2008

AFFIDAVIT AND INDEMNITY

The undersigned hereby certifies to PCCP Monrovia, LLC, a Delaware limited liability company ("PCCP") as successor in interest to Colorado Commons, LLC under that certain Disposition and Development Agreement by and between Colorado Commons, LLC, and the former Monrovia Redevelopment Agency ("Agency") dated March 1, 2005, as amended by that certain First Amendment to Disposition and Development Agreement dated July 15, 2008 (as amended, the "DDA") and the Unsecured Promissory Note issued in favor of the City of Monrovia ("City") pursuant to the DDA, as follows:

1. That the original Unsecured Promissory Note issued pursuant to the DDA on July 15, 2008 ("Unsecured Promissory Note"), made payable to the City was lost, destroyed or stolen.
2. That the City is now the sole beneficial owner of said lost, destroyed or stolen Unsecured Promissory Note.
3. The undersigned has made a diligent search for said Unsecured Promissory Note, and has been unable to find or recover same; neither said Unsecured Promissory Note, nor any interest therein has been sold, assigned, endorsed, transferred, deposited under any agreement, hypothecated, pawned, pledged for any bank or brokerage loan or otherwise or disposed of in any manner; that the undersigned has not endorsed said Unsecured Promissory Note nor signed any Power of Attorney, any stock power, or other assignment or authorization respecting the same which is now outstanding and in force; and that no person, firm or corporation has any right, title, claim, equity, or interest in, to or respecting said Unsecured Promissory Note.
4. The undersigned hereby agrees to immediately surrender the original Unsecured Promissory Note to PCCP should such original Unsecured Promissory Note at any time hereafter come into the possession or control of the undersigned.
5. The undersigned shall at all times indemnify, defend and save harmless PCCP from and against any and all claims, actions and suits, whether groundless or otherwise, and from and against any and all liabilities, losses, damages, costs, charges, counsel fees and other expenses of any nature and character by reason of the said lost, destroyed or stolen original Unsecured Promissory Note, or in lieu of any Unsecured Promissory Note of purported like issue and amount which because of alteration, change or counterfeit may be or may not be identified as the said lost, destroyed or stolen original, or the making of any payment, credit, transfer, registration, conversion, exchange, and/or delivery in respect of the original without the surrender thereof, and whether or not caused by, based upon, or arising out of the honoring of or refusing to honor the original when presented by anyone, or based upon, caused by, or arising out of, an inadvertence, accident, or oversight on the part of PCCP or its officers, agents, clerks and employees and omission or failure to inquire into, contest or litigate the right of any applicant to receive any payment, credit, transfer, registration, conversion, exchange, and delivery with respect to the original Unsecured Promissory Note issued.

IN WITNESS WHEREOF, the undersigned has executed this Affidavit and Indemnity as of this
___ day of _____, 2014.

CITY OF MONROVIA, a California municipal
corporation

By: _____

Its: _____

ACCEPTED:

PCCP MONROVIA, LLC, a Delaware limited liability
company

By: _____

Its: _____

REPLACEMENT UNSECURED PROMISSORY NOTE

_____, 2014

Monrovia, California

FOR VALUE RECEIVED and based on the **AFFIDAVIT AND INDEMNITY** executed concurrently herewith, **PCCP MONROVIA, LLC**, a Delaware limited liability company (the "Developer"), replaces and reissues its Unsecured Promissory Note originally issued on July 15, 2008 but lost by the payee, City of Monrovia ("City") and hereby confirms its promise to pay to the **CITY OF MONROVIA**, a California municipal corporation (the "City"), or order, at the City's office at 415 South Ivy Avenue, Monrovia, California 91016, or such other place as the City may designate in writing, the amount set forth in Section 3 below (the "Note Amount"), in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. Agreement. This Replacement Unsecured Promissory Note (the "Note") is given in accordance with the Affidavit and Indemnity that certain "Disposition and Development Agreement" executed by the Monrovia Redevelopment Agency ("Agency") and Developer's predecessor in interest, Colorado Commons, LLC, dated as of March 1, 2005, as amended by that certain "First Amendment to Disposition and Development Agreement" between Agency and Developer, dated as of July 15, 2008 (the Disposition and Development Agreement and the First Amendment to Disposition and Development Agreement are collectively referred to herein as the "Agreement"). The rights and obligations of the Developer and the City under this Note shall be governed by the Agreement and by the additional terms set forth in this Note. In the event of any inconsistencies between the terms of this Note and the terms of the Agreement or any other document related to the Note Amount, the terms of this Note shall prevail.

2. Interest. The Note Amount shall bear interest at the rate of zero percent (0%) per annum.

3. Note Amount. The Note Amount shall be the sum equal to Two Thousand Five Hundred Dollars (\$2,500) per month, accruing from the date of the First Amendment to Disposition and Development Agreement until the date the first Housing Unit is sold.

4. Payment of Note Amount. The full amount of principal and interest accrued pursuant to this Note shall be due and payable upon the earlier to occur of (a) the fifth (5th) anniversary of the date of the First Amendment to Disposition and Development Agreement or (b) the date that is twelve (12) months following the close of escrow for the sale of the first Housing Unit (defined in the Agreement). In the event no Housing Unit has been sold as of the fifth (5th) anniversary of the date of the First Amendment to Disposition and Development Agreement, all sums accrued hereunder as of that date shall be immediately due and payable, but the Note Amount shall continue to accrue and such amounts that have accrued after the fifth (5th) anniversary of the date of the First Amendment to Disposition and Development Agreement shall become due and payable twelve (12) months following the close of escrow for the sale of the first Housing Unit. Notwithstanding the foregoing, the Note Amount may be accelerated as set forth in Section 13 hereof.

5. Unsecured Note; Subordination. This Note is unsecured. Payment of this Note shall be fully and unconditionally subordinate to any and all deeds of trust (and the liens created thereby) executed by Developer for the benefit of (i) its Construction Lenders in connection with

construction of the Project which have been approved by the Agency pursuant to Section 309 of the Disposition and Development Agreement and the benefit of (ii) any and all successors to such Construction Lenders; and (iii) any and all lenders providing permanent financing and/or refinancing for the Project.

6. Waivers.

a. Developer expressly agrees that this Note or any payment hereunder may be extended from time to time at the City's sole discretion and that the City may accept security in consideration for any such extension or release any security for this Note at its sole discretion all without in any way affecting the liability of Developer.

b. No extension of time for payment of this Note made by agreement by the City with any person now or hereafter liable for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability of Developer under this Note, either in whole or in part.

c. The obligations of Developer under this Note shall be absolute and Developer waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reasons whatsoever.

d. Developer waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by City in acting with respect to the terms of this Note shall constitute a waiver of any breach, default, or failure or condition under this Note. A waiver of any term of this Note must be made in writing and shall be limited to the express written terms of such waiver.

7. Attorneys' Fees and Costs. Developer agrees that if any amounts due under this Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed.

8. Joint and Several Obligation. This Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

9. Amendments and Modifications. This Note may not be changed orally, but only by an amendment in writing signed by Developer and by the City.

10. City May Assign. City may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Developer.

11. Developer Assignment Prohibited. In no event shall Developer assign or transfer any portion of this Note without the prior express written consent of the City, which consent shall not

unreasonably be withheld, except pursuant to a transfer which is permitted or approved under the Agreement.

12. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

13. Acceleration and Other Remedies. Upon: Developer conveying, or alienating the Developer's interest in the Site, whether voluntarily or involuntarily or by operation of law, or any interest in the Site, or suffering its title, to be divested, whether voluntarily or involuntarily, without the consent of the City, City may, at City's option, declare the outstanding principal amount of this Note, together with the then accrued and unpaid interest thereon and other charges hereunder to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection therewith may be added to the principal hereunder. Any delay or omission on the part of the City in exercising any right hereunder or under the Agreement shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of City's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

14. Consents. Developer hereby consents to: (a) any renewal, extension or modification (whether one or more) of the terms of the Agreement or the terms or time of payment under this Note, (b) the granting of any other indulgences to Developer, and (c) the taking or releasing of other or additional Parties primarily or contingently liable hereunder. Any such renewal, extension, modification, release, surrender, exchange or substitution may be made without notice to Developer or to any endorser, guarantor or surety hereof, and without affecting the liability of said Parties hereunder.

15. Successors and Assigns. Whenever "City" is referred to in this Note, such reference shall be deemed to include the City of Monrovia and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Note. All covenants, provisions and agreements by or on behalf of Developer, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the City and City's successors and assigns.

16. Miscellaneous. Time is of the essence hereof This Note shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Los Angeles or the United States District Court of the Central District of California, as City may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Note. Developer also waives any objection regarding personal or in rem jurisdiction or venue.

[Signature block begins on following page.]

DEVELOPER:

PCCP MONROVIA, LLC,
a Delaware limited liability company

Michael Barker, President