



THE CITY OF SAN DIEGO

Redevelopment Agency's Report

DATE ISSUED: March 19, 2008

REPORT NO.: RA-08-08

ATTENTION: Honorable Chair and Members of the Redevelopment Agency
Docket of March 25, 2008

SUBJECT: Second Implementation Agreement to the Disposition and Development
Agreement with Western Pacific Housing for the North Park Condos

REQUESTED ACTION:

- 1) Authorize the Executive Director or designee to execute the Second Implementation Agreement to the Disposition and Development Agreement with Western Pacific Housing for the North Park Condos and to execute such further instruments and enter into such additional agreements as may be necessary to effectuate the Second Implementation Agreement.

STAFF RECOMMENDATIONS:

That the Redevelopment Agency approves the requested action.

SUMMARY:

On March 30, 2004, the Redevelopment Agency approved a Disposition and Development Agreement ("DDA") with Western Pacific Housing (a D.R. Horton company) for the North Park Condos project. The project, marketed as "La Boheme", includes 224 condominium homes and 15,800 square feet of ground level commercial space. In conjunction with the approval of the DDA, the Redevelopment Agency authorized the expenditure of \$2,100,000 as a subsidy to 45 affordable condominiums among the total of 224. Of the 45 affordable units, 12 units still need to be sold (four of them are in the process of closing).

These 45 units are subject to recorded affordability restrictions defining both the maximum income of eligible buyers and the affordable sale price. Pursuant to the DDA, the Agency and D.R. Horton executed an Agreement Affecting Real Property, recorded on January 31, 2005, as amended by the First Amendment to the Agreement Affecting Real Property, recorded on September 16, 2006, that required D.R. Horton to append to the Grant Deed conveying the affordable units an Addendum to Grant Deed. The Addendum to Grant Deed, which is secured by a Subordinate Deed of Trust, Security Agreement and Fixture Filing (With Assignment of Rents) ("Deed of Trust"), provides that the affordable unit that is the subject of the Grant Deed is conveyed by D.R. Horton subject to certain affordability restrictions and covenants.

D.R. Horton subsequently advised Agency staff that they had been unsuccessful in securing a lender for the moderate-income condominium units within the La Boheme project due to objections to the Agency's affordability covenants. On February 6, 2007, the Redevelopment Agency authorized the Agency Executive Director to subordinate the Agency's affordability covenants and restrictions so that D.R. Horton could secure a lender for the moderate-income condominium units. Subordination of the Agency's affordability restrictions exposes Agency-subsidized units to conversion to market rate in the event of foreclosure.

Fannie Mae recently announced new lending guidelines that make it easier for lenders to package and sell mortgages to the secondary market even if they have affordability restrictions. D.R. Horton has requested that certain revisions be made to the addenda to Grant Deeds to conform to the Fannie Mae guidelines, which will potentially allow them to secure a lender who will not require the subordination of the Agency affordability covenants.

The first revision is an assurance that the Agency restrictions do not impair the rights of the lender to foreclosure on a property. The Agency's affordability restrictions are still protected because the buyer of the foreclosed condominium unit would take title to the condo subject to the affordability restrictions.

The second revision relates to any excess proceeds there may be following a foreclosure sale. The Fannie Mae guidelines require that such proceeds be distributed according to the applicable law. The applicable California Civil Code is referenced in the addenda. Under the Civil Code, the Agency is permitted to receive any excess proceeds before the borrower does because the Agency provided financial assistance to make the unit affordable.

FISCAL CONSIDERATIONS:

No new funding commitment is established with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

On March 30, 2004, the City Council and Redevelopment Agency, at a joint public hearing, approved the Disposition and Development Agreement ("DDA") with Western Pacific Housing Corporation (a D.R. Horton company) for the North Park Condos ("La Boheme") project. The 1st Implementation Agreement to the DDA, dated August 3, 2006, amended Exhibit "B" to the Agreement Affecting Real Property to revise the schedule of affordable units. The 1st Implementation Agreement also substituted for the Agency's Addendum to Grant Deed and Subordinate Deed of Trust, documents authorizing the San Diego Housing Commission to monitor and enforce affordability restrictions for the units to be sold at prices affordable to households earning no more than 100% Area Median Income. On February 6, 2007, the Redevelopment Agency authorized the Agency Executive Director to subordinate the Agency's affordability covenants and restrictions so that D.R. Horton could secure a lender for the moderate-income condominium units.

COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS:

At its regular meeting on December 12, 2006, the North Park Project Area Committee (NPPAC) considered testimony from staff and D.R. Horton regarding the challenge of identifying a lender willing to provide a forward commitment and funding for moderate-income mortgages. The

NPPAC concluded that additional due diligence should be conducted to determine whether sufficient evidence is available to support a finding that an economically feasible alternative method of financing the units (on substantially comparable terms and conditions) is not reasonably available without subordination.

At its regular meeting on January 9, 2007, the NPPAC considered additional information gathered since the December 12th meeting and voted 7 in favor, 0 opposed and 0 abstaining acknowledging that efforts by D.R. Horton and Agency staff have failed to identify an economically feasible alternative method of financing the units on substantially comparable terms and conditions without subordination and therefore recommending that the Agency Board adopt a resolution subordinating Agency’s affordability covenants for the project pursuant to Section 33334.14 of the California Community Redevelopment Law, provided that the Redevelopment Agency have in place written procedures for the exercise of the Agency’s right to cure defaults.

At its regular meeting of February 12, 2008, Agency staff advised the NPPAC that D.R. Horton may be able to secure an unsubordinated lender if the changes referenced above are approved by the Agency Board. The NPPAC reiterated their preference for D.R. Horton to secure an unsubordinated lender.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

ROLE	FIRM/CONTACT	OWNERSHIP
Developer	D.R. Horton, Inc.	D.R. Horton, Inc. is a publicly traded corporation

Respectfully submitted,

 Janice Weinrick
 Deputy Executive Director

 Approved: William Anderson
 Assistant Executive Director

Attachments: 1. Second Implementation Agreement