

Lompoc Redevelopment Agency

Agenda Item



Meeting Date: June 3, 2008

TO: Gary Keefe, Executive Director

FROM: Linda R. Wertman, Redevelopment Program Coordinator

SUBJECT: REQUEST FOR THIRD MODIFICATION OF AGREEMENT CONTAINING HOUSING AFFORDABILITY COVENANTS AND THE CONDITIONS OF APPROVAL FOR G & COLLEGE APARTMENTS ALSO KNOWN AS COLLEGE PARK APARTMENTS, LOCATED AT THE NORTHEAST CORNER OF "G" STREET AND EAST COLLEGE AVENUE. (APN: 87-132-01,04)

RECOMMENDATION:

1. Staff recommends the Board adopt Resolution 08-125, amending the conditions of approval for the 35-unit Affordable Housing Apartment Complex, from twenty-five (25) units affordable to very low-income households to fifteen (15) units affordable to very low-income households, ten (10) units affordable to low-income households and nine (9) units affordable to moderate-income households for the 55-year term of the Covenant; or
2. Provide staff with alternate direction.

BACKGROUND:

The College Park Apartment complex consists of a 35-unit low-income apartment complex with 11 two-bedroom units, 14 three-bedroom units, and 10 four-bedroom units located at the northeast corner of "G" Street and East College Avenue.

On December 15, 2004 an Inclusionary Covenant was recorded on this project as part of the Conditions of Approval restricting 23 units at 40% Area Median Income (AMI) and 12 units at 50% AMI. The levels of affordability were suggested by the Lompoc Housing and Community Development Corporation (LHCDC).

On December 21, 2004 a First Amendment to the Covenant was recorded at the request of LHCDC to match other financing agencies, which unrestricted one unit to be used as a Manager unit and redistributed the affordability levels to 12 units at 30% AMI, 3 units at 40% AMI, 10 units at 50% AMI and 9 units at 60% AMI.

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On April 15, 2008 the Agency Board reviewed a request by LHCDL for a second amendment to the Covenant to reduce the affordable units from 34 units restricted to 6 units. After considering this request the Agency adopted Resolution 08-124, which amended the Conditions of Approval for this project from 34 units restricted at 30%, 40%, 50% and 60% AMI to 25 units restricted at 50% AMI with ten (10) units unrestricted by the Redevelopment Agency for a period of 55 years. The Board indicated that the restriction level of the project could be reopened if necessary at the request of Lompoc Housing and Community Development Corporation (LHCDL) if the need arises.

On May 22, 2008 the Agency received a request to amend the Covenant for a third time to adjust the affordability levels and increase the number of restricted units from 25 units restricted back to 34 units restricted.

DISCUSSION:

The Redevelopment Agency and LHCDL have developed a compromise on the affordability levels of this project that would allow the Agency to count thirty-four (34) units of this project toward the RDA's affordable housing production requirements, while allowing LHCDL to charge the higher Tax Credit Allocation Committee (TCAC) rents in order to produce the level of revenue that would ensure compliance with the private lender's Debt Coverage Ratios.

Redevelopment Law utilizes a different method to calculate rents from that used by the TCAC. The result is that the RDA rents are slightly lower than the rents allowed by TCAC and other federal programs. Redevelopment Law states appropriate household size is bedroom size plus one, TCAC requirements state appropriate household size is 1.5 persons per bedroom. This .5 difference changes the rents in the three and four bedroom units on this property. The project rents are impacted by a reduction in overall gross rental income of \$133 a month, reducing the projects overall gross income by \$1,596 a year. The Covenant language will be amended to allow the Agency to calculate rents based on the federal requirements of 1.5 persons per bedroom.

LHCDL consultants and the Redevelopment Agency's attorney, Joe Pannone, have determined that if the Covenant language was changed to allow rents to be the lesser of the RDA rents or the TCAC rents, the Agency could count these units towards the production requirements.

It is the practice of the Agency to certify all incoming tenants on new construction and rehabilitation projects prior to occupancy. This practice has been followed by the Agency for the last several years, and LHCDL has been informed of this requirement since 2006 when the first new construction project was ready to become occupied by tenants. This practice is the Agency's way of documenting that tenants are initially

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income eligible to occupy the affordable units and that rents are being charged according to the RDA Covenant. Tenants must be compliant at the time of occupancy to avoid displacing the tenants a year later when the annual reports are submitted. If no initial certification is performed, there is no documentation to prove a tenant who has received pay increases within the first year was in fact initially qualified to occupy the unit. Although this information was not provided to the Agency prior to all tenants occupying the units, LHCDC has agreed to provide the Agency with a certified rent role and the eligibility documentation of their compliance consultant so the Agency can certify the existing tenants as well as the incoming tenants from this point forward. This initial certification practice will be included in all Agency Covenants in the future and will continue to be a practice in all existing projects not currently constructed or rented up. Agency Counsel recommends that this practice should be continued.

CONCLUSION:

This third modification of the Conditions of Approval and the Affordability Covenant on this project will allow the Agency to include an additional nine (9) units toward Agency production goals, for a total of 34 units. Although the level of affordability will be modified transferring ten of the very-low income (50% AMI) units to low-income (80% AMI) units, appearing to reflect much higher allowable rents than originally presented, the actual rent levels charged will be much lower at the TCAC levels of affordability. A rent comparison chart is attached which reflects actual rents.

LHCDC is not intending that the rents in this project be charged at the higher proposed Redevelopment rent levels that this amendment would allow. The TCAC rents should always remain the lesser rent and tenants will be charged rents at the TCAC rent levels of affordability of 30%, 40%, 50% and 60% of Area Median Income (AMI).

This compromise in rent levels by the Agency should allow LHCDC enough income generation to allow this project to perform well and be well maintained for many years into the future, and provide affordable rental units to the community's larger lower income families for many years to come.

Linda R. Wertman
Redevelopment Program Coordinator

Arleen T. Pelster, AICP, Deputy Director

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APPROVED FOR SUBMITTAL TO THE REDEVELOPMENT AGENCY BOARD:

Gary Keefe, Executive Director

Att: Resolution No. 08-125
Draft Modification of Covenant
Rent Comparison Chart

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**
LOMPOC REDEVELOPMENT AGENCY
Attention: Program Coordinator
P.O. Box 8001
Lompoc, California 93438-8001

NO FEE PER GOV'T CODE SECTION 6103

DRAFT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**SECOND AMENDMENT TO
AGREEMENT CONTAINING HOUSING AFFORDABILITY COVENANTS
(G & COLLEGE APARTMENTS)**

THIS SECOND AMENDMENT TO AGREEMENT CONTAINING HOUSING AFFORDABILITY COVENANTS (this "Second Amendment") is entered into as of _____, 2008, by and between Lompoc Housing and Community Development Corporation, a California nonprofit public benefit corporation ("LHCDC") and the LOMPOC REDEVELOPMENT AGENCY, a public body, corporate and politic (the "Agency") with reference to the following facts:

RECITALS

WHEREAS, LHCDC and the Agency entered into that certain Agreement Containing Housing Affordability Covenants dated as of December 15, 2004 and recorded on December 22, 2004 as Instrument No. 2004-0135039 in the Official Records of Santa Barbara County (the "Original Agreement"), pursuant to which restrictions were placed on the use and operation of a 35-unit multifamily affordable housing project (the "Project") located at the corner of East College Avenue and "G" Street in Lompoc, California on the property more particularly described on Exhibit A attached hereto and incorporated herein by this reference;

WHEREAS, the Original Agreement was amended by that certain First Amendment to Agreement Containing Housing Affordability Covenants dated as of December 21, 2005 and recorded on December 30, 2005 as Instrument No.2005-0125304 in the Official Records of Santa Barbara County (the "First Amendment"), pursuant to which certain affordability restrictions pertaining to the Project were modified (the Original Agreement as modified by the First Amendment shall be hereinafter referred to as "the Amended Agreement"); and

WHEREAS, LHCDC and the Agency now desire to again modify the terms of the Amended Agreement in order to ensure that the Project rents are set at levels that (i) are affordable to households of low- and very low-income in accordance with the requirements of the California Tax Credit Allocation Committee, (ii) are consistent with the requirements of Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*) ("CRL"), and (iii) will enable the Agency to count all of the units in the Project (except the manager's unit) toward satisfaction of the Agency's inclusionary housing production requirement pursuant to Health and Safety Code Section 33413(b).

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. Unless otherwise expressly stated in this Second Amendment or the context requires, all capitalized terms shall have the same meaning as in the Amended Agreement.
2. Section 1 of the Amended Agreement is hereby modified to read as follows:

LHCDC covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that throughout the term of the Amended Agreement, LHCDC, its successors and assigns shall use the Property exclusively to provide housing affordable to lower- and moderate-income households in accordance with the following schedule: fifteen (15) units shall be available at affordable rent to households of very low-income or less, ten (10) units shall be available at affordable rent to households of lower income or less, and nine (9) units shall be available at affordable rent to households of moderate-income or less. The term “affordable rent” shall have the meaning set forth in Section 50053 of the California Health and Safety Code. The term “very low-income” shall have the meaning set forth in Section 50105 of the California Health and Safety Code. The term “lower income” shall have the meaning set forth in Section 50079.5 of the California Health and Safety Code. The term “moderate-income” shall have the meaning set forth in Section 50093 of the California Health and Safety Code.

3. LHCDC and the Agency acknowledge that for a term of fifty-five (55) years, pursuant to a California Tax Credit Allocation Committee regulatory agreement (the “TCAC Agreement”) that has been recorded against the Property, rents for residential units in the Project are subject to requirements that are more restrictive than the requirements described in the preceding Paragraph 2. The TCAC Agreement imposes the following affordability requirements:

Number of Units	Affordability Level
12	30% AMI
3	40% AMI
10	50% AMI
9	60% AMI

LHCDC covenants and agrees for itself, its successors, its assigns and every successor in interest to the Property or any part thereof, that throughout the term of the Amended Agreement: (i) rents in the Project shall be set at the lower of the rents required by Paragraph 2 of this Second Amendment or the rents required by the TCAC Agreement, and (ii) household income eligibility limits shall be set at the lower of the income limits required by Paragraph 2 of this Second Amendment or the income limits required by the TCAC Agreement.

- 4. Sections 5(a) and 5(b) of the Amended Agreement are revised to read as follows:

The maximum rent that may be charged for each unit that is reserved for occupancy by households of a specified income level shall be the lesser of (i) the rent determined pursuant to Paragraph 2 of the Second Amendment to this Agreement, or (ii) the rent determined pursuant to the TCAC Agreement. In each case, the maximum allowable rent shall be reduced by a reasonable allowance for tenant-paid utilities.

- 5. Section 5(d) of the Amended Agreement is revised to read as follows:

“Family size appropriate for the unit” shall be determined consistent with Section 50052.5(h) of the California Health and Safety Code and applicable federal rules.

- 6. Except as modified by this Second Amendment, the Amended Agreement remains unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Second Amendment as of the date first written above.

Lompoc Housing and Community Development Corporation, a California nonprofit benefit Corporation (LHCDC)

FOR EXHIBIT ONLY
DO NOT SIGN

By: _____
Its: _____

By: _____
Its: _____

LOMPOC REDEVELOPMENT AGENCY

Dated: _____

By: _____
Gary Keefe, Executive Director

ATTEST:

By: _____
Donna Terrones, Secretary

APPROVED AS TO FORM:

By: _____
Sharon Stuart, Agency Counsel

**2008 RDA AFFORDABLE MULTIFAMILY RENT COMPARISON FOR
G & COLLEGE AVENUE (COLLEGE PARK APARTMENTS)**

AS OF 5-23-08

TCAC AFFORDABILITY LEVEL	UNITS	BEDROOM SIZE	*2008 TCAC GROSS RENTS
30% AMI	3	2-BDRM	\$525
	5	3-BDRM	\$606
	4	4-BDRM	\$676
	<u>12</u>		
40% AMI	1	2-BDRM	\$700
	1	3-BDRM	\$809
	1	4-BDRM	\$902
	<u>3</u>		
50% AMI	3	2-BDRM	\$875
	4	3-BDRM	\$1,011
	3	4-BDRM	\$1,127
	<u>10</u>		
60% AMI	3	2-BDRM	\$1,050
	4	3-BDRM	\$1,213
	2	4-BDRM	\$1,353
	<u>9</u>		
MANAGER	1	2-BDRM	UNRESTRICTED

4/15/08 MODIFICATION REVISED AFFORDABILITY LEVEL	UNITS	BEDROOM SIZE	*RDA MAXIMUM ALLOWABLE GROSS RENTS AFTER 4/15/08 MODIFICATION
50% AMI	3	2-BDRM	\$875
	5	3-BDRM	\$973
	4	4-BDRM	\$1,050
	1	2-BDRM	\$875
	1	3-BDRM	\$973
	1	4-BDRM	\$1,050
	3	2-BDRM	\$875
	4	3-BDRM	\$973
	3	4-BDRM	\$1,050
	<u>25</u>		
UNRESTRICTED	3	2-BDRM	UNRESTRICTED
	4	3-BDRM	UNRESTRICTED
	2	4-BDRM	UNRESTRICTED
	<u>9</u>		
MANAGER	1	2-BDRM	UNRESTRICTED

PROPOSED AFFORDABILITY LEVEL	UNITS	BEDROOM SIZE	*RDA MAXIMUM ALLOWABLE GROSS RENTS Federal HH PROPOSED MODIFICATION
50% AMI	3	2-BDRM	\$755
	5	3-BDRM	\$873
	4	4-BDRM	\$973
	1	2-BDRM	\$755
	1	3-BDRM	\$873
	1	4-BDRM	\$973
	<u>15</u>		
80% AMI	3	2-BDRM	\$906
	4	3-BDRM	\$1,047
	3	4-BDRM	\$1,167
	<u>10</u>		
120% AMI	3	2-BDRM	\$1,661
	4	3-BDRM	\$1,920
	2	4-BDRM	\$2,140
	<u>9</u>		
MANAGER	1	2-BDRM	UNRESTRICTED

Restricted Units **34**
 Unrestricted Units 1
 Total Project Units 35

25
 10
 35

34
 1
 35

RESOLUTION NO. 08-125

RESOLUTION OF THE BOARD OF THE LOMPOC REDEVELOPMENT AGENCY AMENDING THE CONDITIONS OF APPROVAL AS IT RELATES TO THE AFFORDABILITY REQUIREMENT DESCRIBED IN RESOLUTION NO. 02-82, AS AMENDED BY RESOLUTION 05-108 AND 08-124 APPROVING THE CONSTRUCTION OF A 35-UNIT APARTMENT COMPLEX AT THE NORTHEAST CORNER OF EAST COLLEGE AVENUE AND "G" STREET, APNS 87-132-01, 04

WHEREAS, the Lompoc Redevelopment Agency, on June 18, 2002, adopted Resolution No. 02-82, approving the construction of a 35-unit apartment complex at the Northeast corner of East College Avenue and "G" Street, APNs 87-132-01, 04; and,

WHEREAS, Section 2 of Resolution No. 08-124 which amended Resolution No. 05-108 stated, the Board imposes, as a Condition of Approval, the recordation of an affordability covenant upon the 35-unit apartment complex located at North "G" Street and East College Avenue, Twenty-five (25) units shall be restricted at rents affordable to very low-income households at or below 50% of AMI, adjusted for household size appropriate for the unit as defined by the Community Redevelopment Law (Health & Safety Code Section 33000 et seq.) at the time of recordation. The covenant shall remain on title for a period of 55 years from the time of the original covenant.

NOW, THEREFORE, THE BOARD OF THE LOMPOC REDEVELOPMENT AGENCY OF THE CITY OF LOMPOC RESOLVES AS FOLLOWS:

SECTION 2: The Condition of Approval regarding the affordability covenant, specified in Section 2 of Resolution No. 08-124, is amended to read as follows:

The Board imposes, as a Condition of Approval, the recordation of a Modification to the affordability covenant upon the 35-unit apartment complex located at North "G" Street and East College Avenue. Fifteen (15) units shall be restricted at rents affordable to very low-income households at or below 50% of AMI, ten (10) units shall be restricted at rents affordable to low-income households at or below 80% of AMI, and nine (9) units shall be restricted at rents affordable to moderate-income households at or below 120% of AMI adjusted for household size appropriate for the unit as defined by the Community Redevelopment Law (Health & Safety Code Section 33000 et. seq.) and Health & Safety Code Section 50052.5 (h) at the time of recordation. The covenant shall remain on title for a period of 55 years from the time of the original covenant.

SECTION 3: This Resolution is effective upon its adoption.

AYES: Boardmember:

NOES: Boardmember:

ABSENT: Boardmember:

Dick DeWees, Chair
Lompoc Redevelopment Agency

ATTEST:

Donna N. Terrones, Secretary
Lompoc Redevelopment Agency