

**FIRST AMENDMENT TO
DEVELOPMENT AND LOAN AGREEMENT
(Villa Serena II)**

FIRST AMENDMENT TO DEVELOPMENT AND LOAN AGREEMENT (“DLA Amendment”) is dated as of the 25th day of February, 2020, by Villa Serena Apartments Limited Partnership, a California limited partnership (“Developer”) and the City of San Marcos in its capacity as the successor housing agency to the former San Marcos Redevelopment Agency (“SHA”).

RECITALS

A. Developer and the SHA are all of the parties to that certain Development and Loan Agreement (Villa Serena II) dated as of July 9, 2019 (“DLA”).

B. The Developer and the SHA have agreed to amend the DLA as set forth in this DLA Amendment. All terms not defined in this DLA Amendment shall have the meanings ascribed to them in the DLA.

NOW, THEREFORE, in furtherance of the recitals stated above and the mutual covenants set forth below, Developer and the SHA hereby amend the DLA, and agree, promise and declare as follows:

1. Restatement of Recital B. Recital B of the DLA is hereby amended and restated in its entirety to provide as follows:

B. SHA and Developer desire by this Agreement for: (i) the Developer to agree to demolish the existing improvements at the Site and construct a 2-phase residential development on the Site (which was approved by the City of San Marcos City Council in February, 2017) that shall include, the “Affordable Units” (as defined below) and certain on and off-site improvements (individually, “Phase 1” or “Phase 2,” as applicable or collectively, the “Project”); (ii) the SHA and Developer to consolidate the Agency Loan and the Predevelopment Loan and for the SHA and Developer to then allocate that consolidated loan between Phase 1 and Phase 2, as such terms are defined below; (iii) the SHA to make an additional loan to the Phase 1 Developer in the original principal amount of up to \$5,250,000.00; and (iv) the Developer to grant options to the SHA to acquire each of Phase 1 and Phase 2. All development of the Site shall be subject to the review and approval by the SHA.

2. Restatement of Definition of Developer Note. The definition of “Developer Note” set forth in Section 100 of the DLA is hereby amended and restated in its entirety to provide as follows:

“Developer Note” means each of the two (2) promissory notes (one for Phase 1 and another for Phase 2), in forms agreed to by the Developer and SHA, made by the Phase 1 Developer and the Phase 2 Developer, as applicable, in favor of the SHA. At the Closing for Phase 1, the existing promissory note which was made

by the Developer in favor of the Agency shall be assumed by Developer and then amended and replaced with the Developer Notes for Phase 1 and Phase 2. The amount of the Developer Note for Phase 1 (executed concurrently with the Phase 1 Closing) shall equal \$5,250,000.00, plus 57% of the then current balance of the SHA Loan. The amount of the Developer Note for Phase 2 (executed concurrently with the Phase 1 Closing) shall equal 43% of the then current balance of the SHA Loan.

3. Restatement of Definition of SHA Loan. The definition of “SHA Loan” set forth in Section 100 of the DLA is hereby amended and restated in its entirety to provide as follows:

“SHA Loan” means the loan from the SHA to the Developer as described in Section 200, below. At the Closing for Phase 1, all principal and interest due and owing on the total of the then current balances of both the Agency Loan and the Predevelopment Loan shall be allocated as follows: 57% to Phase 1 and 43% to Phase 2. At the Closing for Phase 1, the portion of the Agency Loan and the Predevelopment Loan so allocated to each Phase shall be consolidated into and shall become the SHA Loan with respect to each such Phase. At the Closing for Phase 1, the SHA shall make an additional loan to the Phase 1 Developer in the original principal amount of up to \$5,250,000.00.

4. Restatement of Section 200. Section 200 of the DLA is hereby amended and restated in its entirety to provide as follows:

SHA Loan. At the Phase 1 Closing, all principal and interest then due and owing on both the Agency Loan and the Predevelopment Loan shall be consolidated into and shall become the SHA Loan. At the Phase 1 Closing, the existing promissory note which was made by the Developer in favor of the Agency shall be terminated and replaced with the Developer Notes for Phase 1 and Phase 2. By way of illustration, if at the time of the Phase 1 Closing the loan balance of the Agency Loan was \$7,315,592.00 and the loan balance of the Predevelopment Loan was \$777,953.00, bringing the total to \$8,093,545.00, then at the Phase 1 Closing the Phase 1 Developer Note would have a principal balance of \$9,863,320.65, which is derived from the \$5,250,000.00 new SHA Loan plus \$4,613,320.65 (\$8,093,545.00 x 57%), and the Phase 2 Developer Note would have a principal balance of \$3,480,224.35 (\$8,093,545.00 x 43%). The parties acknowledge that these figures are for purposes of illustration only and that the balance owing on both the original Agency Loan and the Predevelopment Loan, including principal and accrued interest, if applicable, will be updated as of the Phase 1 Closing.

5. Restatement of Section 201(b). Section 201(b) of the DLA is hereby amended and restated in its entirety to provide as follows:

(b) The Phase 1 Developer Note shall bear simple interest at three percent (3%) per annum commencing on the date of the Phase 1 Closing. The Phase 2 Developer Note shall bear simple interest at three percent (3%) per annum commencing on the date of the Phase 1 Closing. However, in the event of a Default with respect to Phase 1 or Phase 2, the portion of the Developer Note

applicable to such phase shall bear interest at the rate of ten percent (10%) per annum from the date of Default and all of the principal and accrued interest on the portion of the Developer Note applicable to such Phase shall be immediately due and payable by Developer to the City and the SHA. Beginning on the May 1, immediately following the calendar year in which the Affordable Units in the applicable Phase are completed (as evidenced by a certificate of occupancy), and annually on May 1 of each year thereafter during the term of the Developer Note, Developer shall deliver financial statements to the SHA. Beginning on the May 1, immediately following the calendar year in which the Affordable Units in the applicable Phase are completed (as evidenced by a certificate of occupancy), and annually on May 1 of each year thereafter during the term of the Developer Note, Developer may retain fifty percent (50%) of the Residual Receipts for the immediately preceding calendar year, and the other fifty percent (50%) of the Residual Receipts shall be paid to the SHA and any other “soft” lenders prorata based upon the original principal of each of their loans. Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the Phase 2 Developer shall pay one hundred percent (100%) of the Residual Receipts to the SHA during the period commencing on the Phase 1 Closing and ending on the Phase 2 Closing. Each Developer Note shall have a term of, and all principal and accrued interest shall be due and payable with respect to such Developer Note, fifty-five (55) years from conversion of the construction loan for such Phase to a permanent loan for such Phase. The principal and interest of the Developer Note may be prepaid in whole or in part at any time and from time to time, without notice or penalty. Any prepayment shall be allocated first to unpaid interest and then to principal.

6. General Provisions.

(a) Counterparts. This DLA Amendment may be executed in any number of counterparts and, as so executed, the counterparts shall constitute one and the same agreement. The parties agree that each such counterpart is an original and shall be binding upon all the parties, even though all of the parties are not signatories to the same counterpart.

(b) Conflicts. In the event of any conflict between the DLA or any document executed in conjunction therewith and this DLA Amendment, this DLA Amendment shall control.

(c) Recitals Incorporated. The Recitals to this DLA Amendment are hereby incorporated in this DLA Amendment by this reference.

(d) Severability. If any provision of this DLA Amendment is deemed to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be severed from the rest of this DLA Amendment and the remaining provisions shall continue in full force and effect.

(e) Signature Authority. All individuals signing this DLA Amendment for a party which is a corporation, partnership, limited liability company or other legal entity, or signing under a power of attorney, or as a trustee, guardian, conservator, or in any other legal capacity, covenant to the other parties hereto that they have the necessary capacity and authority to act for, sign and bind the respective entity or principal on whose behalf they are signing.

SHA:

City of San Marcos in its capacity as the successor housing agency to the former San Marcos Redevelopment Agency

By: _____
Jack Griffin, City Manager

APPROVED AS TO FORM:
Christensen & Spath LLP

By: _____
Walter F. Spath III, Esq.
Special Counsel to the SHA

[SIGNATURES CONTINUED ON FOLLOWING PAGE]

DEVELOPER:

Villa Serena Apartments Limited Partnership, a California limited partnership

By: The Southern California Housing Development Corporation of Orange

Its: General Partner

By: _____

Print Name: _____

Its: _____