

**DATE:** May 10, 2011

**ITEM:** 7.C.

**RE:** CONSIDERATION AND ADOPTION OF A RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING AN AMENDMENT TO THE TERMS FOR THE PURCHASE AND SALE AGREEMENT WITH THE COMMUNITY DEVELOPMENT CORPORATION OF UTAH FOR THE DEVELOPMENT OF AGENCY-OWNED PROPERTY LOCATED AT 153 WEST 900 SOUTH.

**PROJECT AREA:** West Temple Gateway

**PREPARED BY:** Matt Dahl

**EXECUTIVE SUMMARY:** On August 11, 2008, the RDA Board adopted Resolution No. 647.01, approving terms for a Purchase and Sale Agreement for the Community Development Corporation of Utah's (CDCU) acquisition of Agency-owned property located at 153 West 900 South (the "Property"). Since the initial approval in 2008, CDCU has returned to the RDA in 2009 and 2010 seeking extensions of exclusive negotiations in order to deal with the downturn in the condominium market, and more restrictive development financing requirements. CDCU is requesting an additional three months to finalize details of a new plan to deal with the new market realities and move forward with the development of the Property.

**REDEVELOPMENT ADVISORY COMMITTEE RECOMMENDATION:** The Redevelopment Advisory Committee recommended that the RDA Board approve CDCU's request for an extension of the current outside closing date.

**ALTERNATIVES:**

- 1) Approve the resolution.
- 2) Do not approve the resolution.
- 3) Approve the resolution with changes.

**ANALYSIS AND ISSUES:** On August 11, 2008, the RDA Board adopted Resolution No. 647.01, approving terms for a Purchase and Sale Agreement with CDCU for the acquisition of Agency-owned property located at 153 West 900 South (the "Property"). At the time of the Board's approval of the terms, CDCU had completed its Design Development Drawings (60% of Construction Drawings), which were a continuation of the basic design concept approved by the Board in May 2008. The project, which CDCU is currently attempting to modify after receiving approval to do so from the RDA Board in March, is designed as a two-building transit-oriented development. The larger five-story building, located on the east side of the assemblage, would

and two-bedroom plus flex-space units. The flex-space units will have two levels, with the ground floor having the potential to be either commercial or residential space. The smaller building will be comprised of three live-work units. The unit sizes in both buildings will range from approximately 700 to 2,000 square feet. The development has been designed to achieve Silver LEED certification. The Purchase and Sale Agreement term sheet indicated that the RDA would provide CDCU with construction financing for the lesser of \$2.5 million or 25% of the development's construction costs. Despite significant interest by financial institutions in funding the remaining project cost at the time of CDCU's initial selection, the upheaval in the banking sector and the related decline in the housing market have resulted in significantly stricter lending standards and fewer organizations willing to finance condominium projects.

In March 2011, seven months into their current 9-month extension of exclusive negotiations, CDCU returned to the RDA Board to inform them that they were working with Ivory Homes and that they had a proposal for proceeding with the development of the Property. CDCU's proposal included the following changes to the terms previously agreed to by the RDA Board:

- 1) Unit Count and Mix: CDCU indicated that the unit mix and count will need to be adjusted to make the development more appealing for today's market. The only significant change proposed so far is the combining of three one-bedroom units on each floor into two two-bedroom units.
- 2) Project Phasing: CDCU indicated that it would make the project more feasible if they could build it in two phases. They propose to build the 900 South facing part of the property in a first phase, which would include the elevator core, commercial space, rooftop plaza, and most of the landscaping. It would also include the development of all necessary infrastructure to support the entire project, including the parking area behind the building.
- 3) Removal of Western Parcel: CDCU proposed that the small western parcel be removed from the development. The western parcel is currently planned to be the site of three live-work units.
- 4) RDA Financial Contribution: The RDA has previously committed to provide a low interest rate loan for \$2.5 million or 25% of the project's construction costs. CDCU has expressed interest in revisiting the RDA's financial commitment to the project based on any gaps in the project's financing that may occur as they work out the details of their proposal.

At the March meeting, the RDA Board indicated that they would be willing to consider the proposed changes if CDCU returned to the Board with the details of how to implement their proposal.

Since the RDA Board's approval, CDCU has spent a significant amount of time dealing with contractual issues related to the design of the project. The issue prevented them from proceeding with required design changes until recently. CDCU is therefore requesting that the exclusive negotiation period be extended until August 31, 2011 so that they can fully develop their proposal and return to the RDA with a new set of terms for the development of the Property.

CDCU's right to negotiate with the RDA for the acquisition and development of the Property will expire on May 31, 2011 if an extension is not approved. After the expiration of the negotiation period, the RDA may remarket the Property for development.

**BACKGROUND:**

- The Board approved acquisition of the Sure Appliance Assemblage through the adoption of Resolution 619.03 on September 14, 2006.
- The Sure Appliance Assemblage was acquired by the Agency in November 2006.
- The Board approved the terms and guidelines for a request for proposals for the development of the Sure Appliance Assemblage through the adoption of Resolution 624.06 on February 15, 2007.
- The Agency issued the RFP for the development of the Sure Appliance Assemblage in May 2007.
- The Board authorized the Agency to enter into exclusive negotiations with CDCU for the development of the Property on September 18, 2007 through the adoption of Resolution No. 634.02.
- In December 2007, the Board approved Resolution No. 637.03, granting an extension on CDCU's reporting requirements through the end of exclusive negotiations.
- In March 2008, the Board approved Resolution No. 640.01, granting a six-month extension of the exclusive negotiation period. CDCU requested the extension because of unforeseen site and budget conditions that required significant modification to the proposed developments plans.
- In May 2008, the Board passed a motion approving a new basic design concept.
- In August 2008, the Board passed Resolution No. 647.01, approving the terms for the Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and CC&Rs.
- In August 2009, the Board passed Resolution No. 663.01, approving an amendment to the terms for the Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and CC&Rs.
- In August 2010, the RDA Board passed Resolution No. 681.01, approving an amendment

to the terms for the Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and CC&Rs. The amendment extended the outside closing date until May 31, 2011.

- In March 2011, CDCU proposed several modifications to the project design and development requirements. The RDA Board indicated that CDCU would need to return to the RDA Board for approval of the implementation details.

**ATTACHMENT:** Resolution, Term Sheet, Ninth Street Place Project Update Letter; Project Drawings

RESOLUTION OF THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY APPROVING AN AMENDMENT TO THE TERMS FOR THE PURCHASE AND SALE AGREEMENT WITH THE COMMUNITY DEVELOPMENT CORPORATION OF UTAH FOR THE DEVELOPMENT OF AGENCY-OWNED PROPERTY LOCATED AT 153 WEST 900 SOUTH.

WHEREAS, the Redevelopment Agency of Salt Lake City (“Agency”) was created to transact the business and exercise the powers provided for in the Utah Community Development and Renewal Agencies Act; and

WHEREAS, the Agency adopted the “West Temple Gateway Neighborhood Development Plan” on August 1, 1987; and

WHEREAS, the Agency desires to redevelop its property in the West Temple Gateway Project Area in accordance with objectives set forth in the “Central Community Master Plan,” which was adopted by the Salt Lake City Council on November 1, 2005; and

WHEREAS, the Agency adopted Resolution 624.06 approving the terms for a Request for Proposals for the development of the Agency-owned property located at 153 West 900 South (the “Property”); and

WHEREAS, a Request for Proposals for the development of the Property was issued on May 15, 2007; and

WHEREAS, responses to the Request for Proposals were due on August 17, 2007; and

WHEREAS, a Selection Committee recommended the Community Development Corporation of Utah (the “CDCU”) as the first-ranked developer and Second & Ninth LLC as the second-ranked developer; and

WHEREAS, the Redevelopment Advisory Committee (“RAC”) recommended approving the Selection Committee’s developer ranking; and

WHEREAS, in September 2007, the Board adopted Resolution No. 634.02 authorizing the Agency to enter into a six-month exclusive negotiation period with CDCU for the development of the Property; and

WHEREAS, Resolution No. 634.02 required CDCU to return to RAC in January 2008

with a status report that included completed design development drawings and written verification that they had completed the due diligence process; and

WHEREAS, in December 2007, the Board adopted Resolution No. 637.03 granting CDCU an extension for providing RAC with a status report through the end of exclusive negotiations; and

WHEREAS, in March 2008, the Board adopted Resolution No. 640.01 granting CDCU a six-month extension of exclusive negotiations; and

WHEREAS, in August 2008, the Board adopted Resolution 647.01 approving the terms for the Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and Declaration of Covenants, Conditions, and Restrictions with the Community Development Corporation of Utah for the Development of the Property; and

WHEREAS, in August 2009, the Board adopted Resolution 663.01 approving an amendment to the terms of the Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and Declaration of Covenants, Conditions, and Restrictions with the Community Development Corporation of Utah for the Development of the Property. The amendment extended the closing date until August 31, 2010; and

WHEREAS, in August 2010, the Board adopted Resolution 681.01 approving an amendment to the terms of the Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and Declaration of Covenants, Conditions, and Restrictions with the Community Development Corporation of Utah for the Development of the Property. The amendment extended the closing date until May 31, 2011; and

WHEREAS, CDCU has requested that the RDA extend the outside closing date until August 31, 2011; and

WHEREAS, the RDA is willing to extend the outside closing date until August 31, 2011.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF SALT LAKE CITY, that we do hereby approve the amended Term Sheet for Sale and Development Agreements attached hereto.

BE IT FURTHER RESOLVED, that we do hereby authorize the Chief Administrative Officer and the Executive Director to negotiate the form of a Purchase and Sale Agreement, Development Agreement, Development Agreement Guaranty, Loan Agreement, and CC&Rs, between the Redevelopment Agency of Salt Lake City and the Community Development

Corporation of Utah, for the Property in accordance with the amended Term Sheet for Sale and Development Agreements attached hereto. The Agreements shall also incorporate such other terms as recommended by Agency legal counsel.

Passed by the Board of Directors of the Redevelopment Agency of Salt Lake City, this 10<sup>th</sup> day of May, 2011.

\_\_\_\_\_  
Luke Garrott, Chairperson

ATTEST:

\_\_\_\_\_  
D.J. Baxter, Executive Director

Transmitted to the Chief Administrative Officer on \_\_\_\_\_. The Chief Administrative Officer

\_\_\_\_\_ does not request reconsideration

\_\_\_\_\_ requests reconsideration at the next regular Agency meeting.

\_\_\_\_\_  
Ralph Becker, Chief Administrative Officer

ATTEST:

\_\_\_\_\_  
D.J. Baxter, Executive Director

Approved as to legal form:\_\_\_\_\_

**Term Sheet**  
**Sale and Development Agreements**  
**for the property located at 153 West 900 South**

**PROPOSED TERMS:** The following terms will be incorporated into the agreements used for the sale and development of the property located at 153 West 900 South (“Ninth Street Place”) between the Community Development Corporation of Utah (“Developer”) and the Redevelopment Agency of Salt Lake City (“Agency”).

**1. Purchase and Sale Agreement:**

- (a) ***Purchase Price:*** \$325,000
- (b) ***Payment:*** Developer will pay the Agency the full amount of the Purchase Price, plus closing costs as more specifically described in the Purchase and Sale Agreement.
- (c) ***Earnest Money:*** \$7,000 – The earnest money is currently being held by Agency. The earnest money will be applied to the Purchase Price at closing. Following the execution of the Purchase and Sale Agreement, the earnest money will only be refundable if the Developer is unable to receive the approval of the Planning Commission necessary to complete the Developer’s Improvements.
- (d) ***Guarantor:*** Community Development Corporation of Utah
- (e) ***Purchase “As-Is”:*** The purchase of the Property shall be on an “as-is” basis, and the Purchase and Sale Agreement shall specify that Agency has made no representation or warranty as to suitability for any purpose or with respect to title matters (other than ownership) or the compliance of the Property with applicable zoning and use regulations or the ability of Developer to obtain any necessary governmental approvals and permits. Agency shall be under no obligation to assist Developer in obtaining any of the foregoing.
- (f) ***Deadline for Execution of Agreement:*** In the event that the Purchase and Sale Agreement (with all exhibits) is not executed by August 31, 2011, then either Party may give notice of withdrawal to the other Party, in which event neither Party shall have any further obligations or liabilities to the other Party.

- (g) **Closing:** Closing shall not occur until the Developer has received all necessary government approvals required to begin construction of the Developer Improvements. In the event that the transaction does not close by August 31, 2011 and neither Party is in default, then either Party may give notice of termination to the other Party, in which event neither Party shall have any further obligations or liabilities to the other Party, except for the earnest money requirements described Section 1.(c) of this document.
- (h) **Inspection:** Developer acknowledges that it has completed its due diligence with respect to the physical properties, title, zoning, and entitlement of the Property, and it has determined the Property is satisfactory for its purposes, and that there will be no inspection period under the Purchase and Sale Agreement.
- (i) **Title Insurance:** Agency shall pay for a standard owner's policy of title insurance. Developer shall pay for any extended policy and all requested endorsements.
- (j) **Conditions to Closing:** Agency's obligation to sell the Property is subject to the following conditions:
- Agency shall have approved the Final Construction Documents, the Construction Contract for the project, and the Architect Contract.
  - The Board of Directors will delegate approval of the Schematic Design Drawings and Design Development Drawings to the Design Review Committee, which is comprised of three members of the Redevelopment Advisory Committee. The Board of Directors will approve the Final Construction Documents.
  - Developer shall provide the Agency with one or more written commitments from one or more Agency-approved lending institutions indicating that they would provide take-out financing for the acquisition of some or all units included in the development. The combined commitments shall cover all of the development's units.
  - Agency shall have approved the Construction Financing. The documents evidencing the Construction Financing must provide that, in the event of a default by Developer, they may be assigned and assumed by a designee of Agency or purchased at par (with no prepayment premium) by Agency or a designee of Agency, and that Agency is a third party beneficiary of such obligations. Developer shall have provided written evidence to the

Agency that all conditions necessary for the closing of the Construction Financing have been satisfied excepting only the Closing and that the Developer's lender is ready to close the Construction Financing in concert with the Closing.

- Developer shall have satisfied all of the requirements necessary for the commencement of construction of the Developer Improvements, including those requirements specified in the Development Agreement, and Developer shall have provided satisfactory evidence that Developer is in a position to commence such construction within fifteen business days of closing.
- The Developer shall provide a performance bond and payment bond naming the Contractor as principal and Agency and Developer as dual obligees, jointly and severally, written on bond forms, approved by Agency and Developer in a penal amount of not less than the full amount of the contract price for the Construction of the Developer Improvements, together with (i) a certified and current copy of the power of attorney for the attorney-in-fact who executes the bonds on behalf of the surety and (ii) evidence that the penal sum shall be within the maximum specified for such surety.
- A completion bond shall not be required, so long as all construction financing is assignable to the Agency in the event of default and the Agency has approval authority for all loan disbursements from any and all construction financing sources. The Agency shall also have approval authority for all change orders. The Developer shall also provide a letter of credit, a pledged account, or another asset of comparable liquidity, as approved by the Agency, in the amount of 5% of the total construction costs as additional security in the event of default. The additional security shall be used by the Agency to cover its costs in assuming the development or sale of Ninth Street Place.
- Developer shall have assigned to Agency each subcontract with each subcontractor that is not affiliated with Developer should the Agency request that it be so assigned, subject in each case to the rights of the Developer's lender as specified in the Construction Financing approved by Agency.
- Such other conditions as Agency determines are appropriate.

- (k) **Reports:** In the event the transaction contemplated herein fails to close for any reason, at the request of Agency, Developer shall deliver to the Agency (at no expense to Agency) copies of all studies and reports prepared in connection with this transaction or otherwise pertaining to the Property whether such studies and reports were prepared for or on behalf of the Developer, the Agency or any third party, including environmental, soils, and hydrology reports, but not architectural plans or financial information related to Developer.
- (l) **One Percent for Art:** Developer shall contribute an amount equal to one percent (1%) of the Purchase Price for the Property for the “One Percent for Art” component, an art piece to be installed either as part of the project or, if not part of the project, within the West Temple Gateway Project Area. The Agency shall determine the location and nature of the art installation and will consult with Developer if it is to be located within the project area.
- (m) **Approval of Other Agreements:** The Agency and the Developer acknowledge and agree that the Parties must negotiate and approve the forms of the following documents that will be attached to the Purchase and Sale Agreement as exhibits:
- Development Agreement
  - Development Agreement Guaranty
  - Loan Agreement
  - Secured Promissory Note
  - Trust Deed
  - Declaration of Covenants, Conditions, and Easements

**2. Loan Agreement:** The Agency shall lend the lesser of \$2,500,000 or 25% of the total construction cost to the Developer for the purpose of constructing Ninth Street Place in accordance with the New Construction Loan Program for High Performance Buildings Loan Criteria and Procedures, standard Agency underwriting criteria and procedures, and other terms as deemed necessary by the Agency’s legal counsel. The Agency’s commitment to lend is predicated on all other financing for the project having terms and conditions that are compatible with the Agency’s underwriting terms and conditions.

**3. Trust Deed:** The Loan Agreement shall be secured by a Trust Deed that denotes that the Agency has, at minimum, a second priority position on the accepted collateral. The Trust Deed shall be in the standard form used by the Agency with any changes acceptable to both the Agency and the Developer.

4. **Secured Promissory Note:** The Secured Promissory Note shall be in the standard form used by the Agency with terms as required in the New Construction Loan Program for High Performance Buildings Loan Criteria and Procedures.

5. **Development Agreement:** The Development Agreement will govern the construction of the Developer Improvements. The Developer Improvements will include a primary and secondary structure separated by an alleyway. The Primary Structure is located to the east of the alleyway, and the secondary structure is located on the west side. The Development Agreement will include the following conditions and terms:

(a) **Developer Improvements:**

- Primary Structure:
  - 44 condominium units ( $\pm 5\%$ ). The condominium units shall include a mix of townhouses, live/work units, and one- and two-bedroom units. The minimum size for a unit shall be 724 square feet ( $\pm 5\%$ ).
  - A minimum of one on-site parking stall shall be provided for every residential unit.
- Secondary Structure:
  - Three connected live-work units. The live-work units shall have 2,327 square feet ( $\pm 10\%$ ) of usable space.
  - Each live-work unit shall have a space on the ground floor that may be used for commercial activities. This space shall include a one half-bath.
  - Each live-work unit shall include a single car garage.
  - The live-work units' ground floor flex-space shall be connected to the residential space via an internal staircase.

(b) ***Schedule for Construction:*** Developer shall commence construction on the Developer Improvements within fifteen business days following the Closing. Developer shall complete the construction of the Developer Improvements within 18 months of Closing.

(c) ***Change Orders:*** Developer agrees to provide Agency with notice of each change order. Developer shall obtain Agency's prior written approval for any change order to the Construction Contract that results in an increase or decrease in the construction contract price or any change order that changes the original design concept or intent for the Developer Improvements as set forth in the Construction Documents.

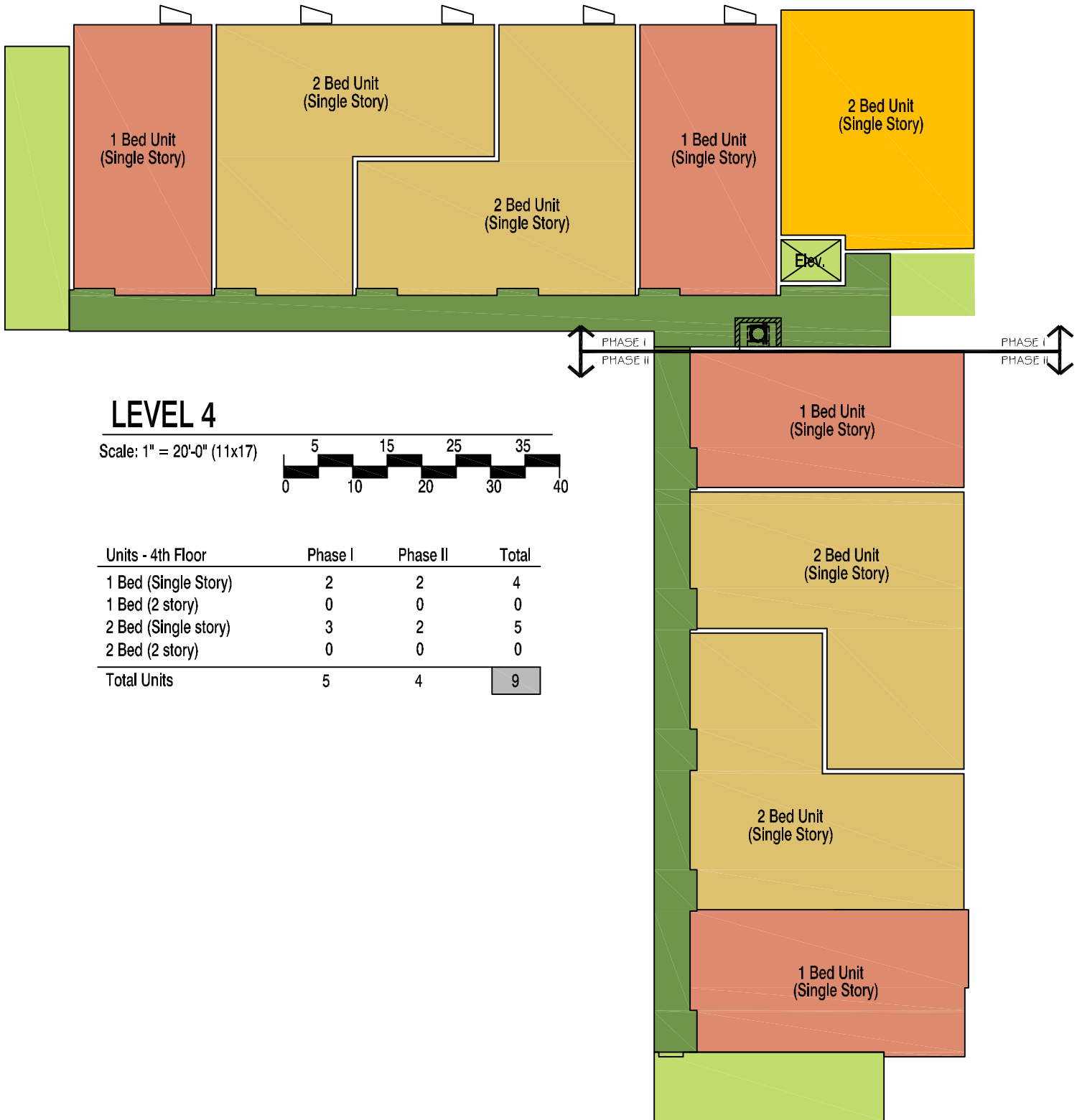
- (d) ***Development Agreement Guaranty:*** The Guarantor will guarantee Developer's obligations.
- (e) ***LEED Compliance:*** As a condition to Agency's obligation to execute the Certificate of Completion, Developer must provide a certificate from the Architect certifying that the construction of the Developer Improvements was consistent with the design elements required to achieve the Silver LEED certification according to the LEED standards established by the U.S. Green Building Council. Official certification will not be required for the Agency to execute the Certificate of Completion, but Developer shall provide the Agency with the official certification when available.
- (f) ***Access to Records:*** Developer will provide access to records of the Project within five business days of receiving notice from the Agency.

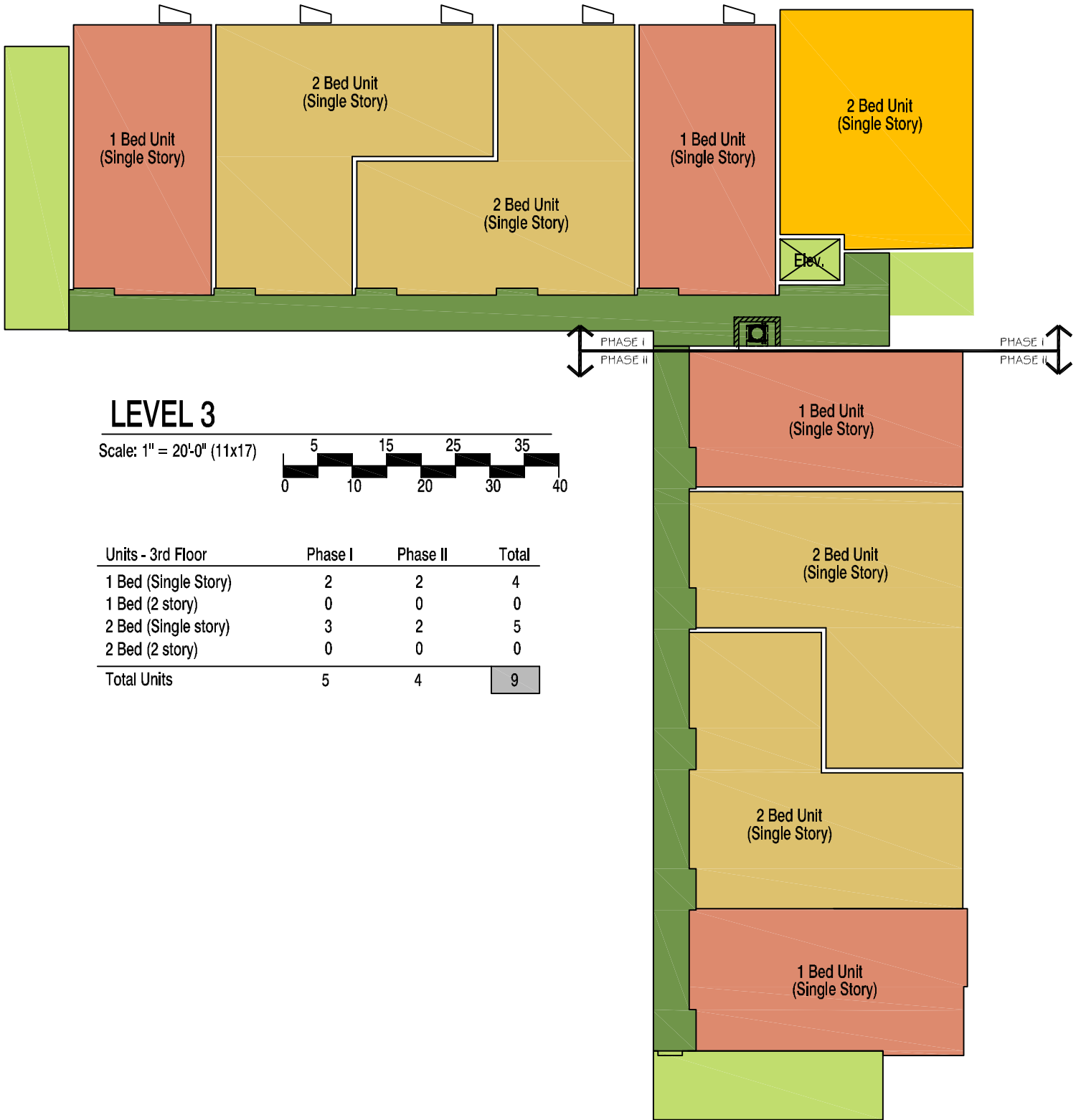
**6. Declaration of Covenants, Conditions, and Restrictions (CC&Rs):** Prior to issuing the Certificate of Completion, the Developer and the Agency will execute a Declaration of Covenants, Conditions, and Restrictions that will govern the development's use, maintenance, and prohibited uses. Included in the CC&Rs will be the following restrictions:

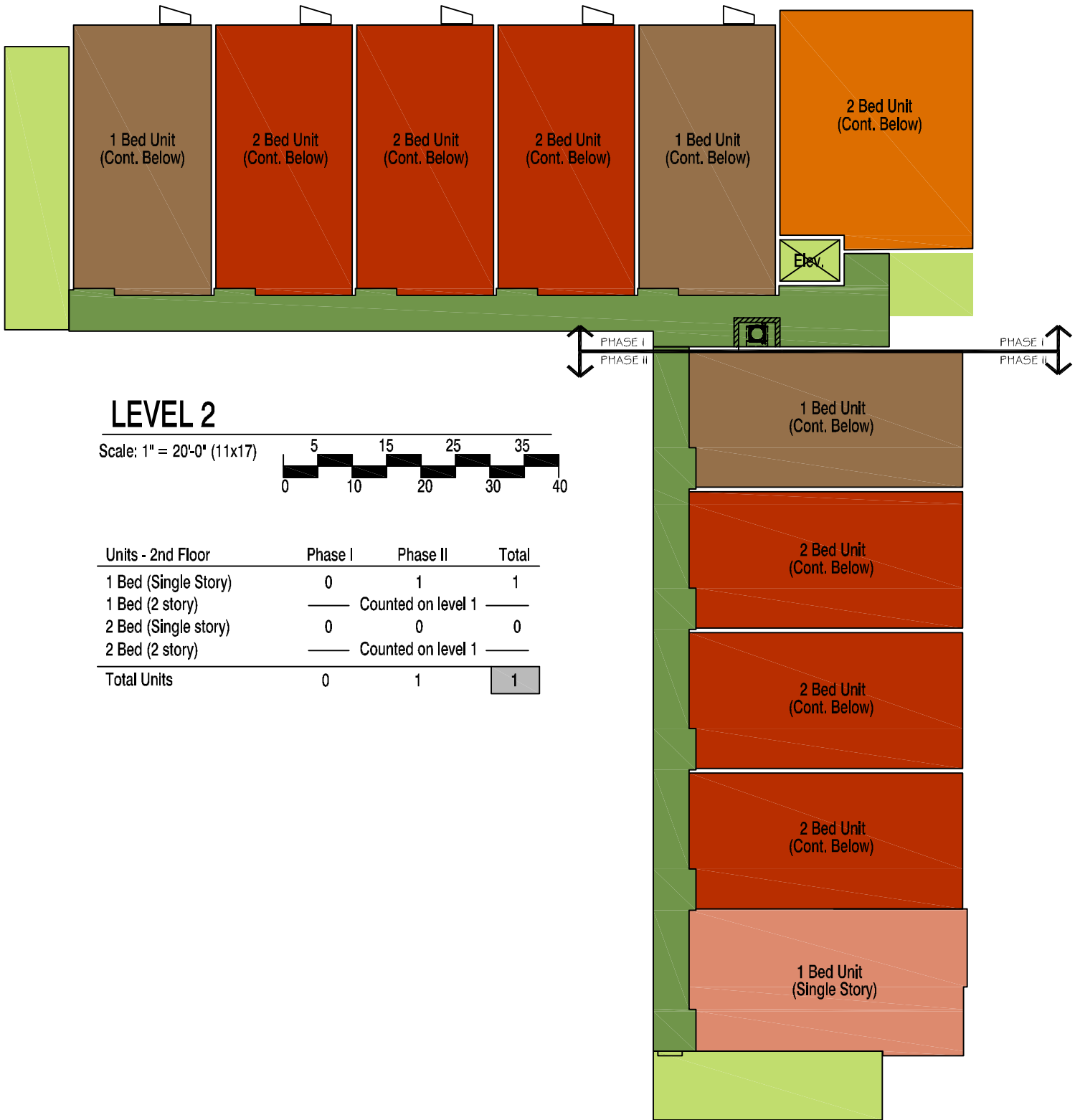
- (a) ***Market Rate:*** All residential units shall initially be sold at market (not subsidized) prices.
- (b) ***Owner Occupied:*** All units shall be "owner-occupied."
- (c) ***Modification to the CC&Rs:*** For a period ending twenty-five (25) years after the date the CC&R is recorded, the CC&R may not be amended, modified, rescinded, or terminated in any manner without the prior written consent of the Agency.

**7. Recordation of Documents:** The Development Agreement will be recorded immediately after Agency's deed and must not be subject to any deed of trust or other financial lien.

**8. All Documents:** All documents shall have such other terms and conditions not inconsistent herewith as may be advised by Agency's legal counsel. In addition, since the terms of the Project's financing have not been agreed upon, the default provisions in the documents may need to be revised as appropriate to protect the interests of the Agency.

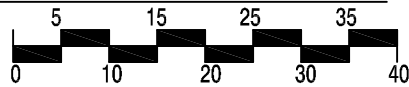






## LEVEL 2

Scale: 1" = 20'-0" (11x17)



Units - 2nd Floor	Phase I	Phase II	Total
1 Bed (Single Story)	0	1	1
1 Bed (2 story)	Counted on level 1		
2 Bed (Single story)	0	0	0
2 Bed (2 story)	Counted on level 1		
<b>Total Units</b>	<b>0</b>	<b>1</b>	<b>1</b>



900 SOUTH STREET

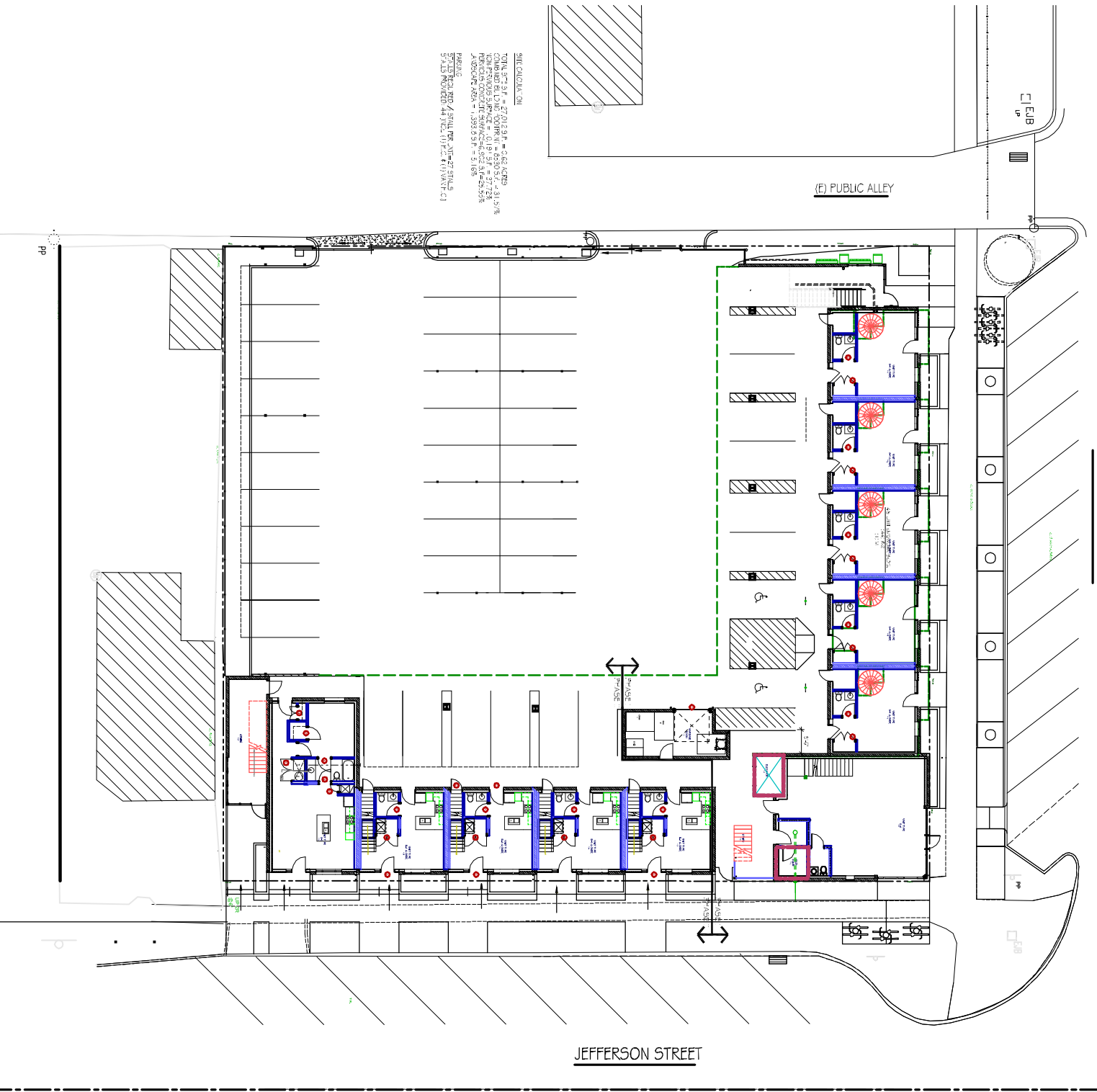
(E) PUBLIC ALLEY

JEFFERSON STREET

SITE CALCULATION

TOTAL SITE AREA = 27,012.9 SF = 0.62 ACRES  
 COVERED BUILDING FOOTPRINT = 6,950 SF = 0.16 ACRES  
 PAVED DRIVEWAY AND DRIVEWAY DRIVEWAY = 1,399.0 SF = 0.03 ACRES  
 PAVED DRIVEWAY = 1,399.0 SF = 0.03 ACRES  
 PAVED DRIVEWAY = 1,399.0 SF = 0.03 ACRES

PARKING  
 SPACES REQUIRED / TOTAL PROVIDED = 27 SPACES / 31 SPACES



pp

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27 April 2011

*Sent via email*

Mr. Matt Dahl, Project Manager  
Redevelopment Agency of Salt Lake City  
451 South State Street, Room 418  
Salt Lake City, UT 84114-5518

Dear Mr. Dahl,

Thank you for your continued help and cooperation as we attempt to get the Ninth Street Place project moving again. I have appreciated our discussions and look forward to working out the remaining details that can make this development possible.

As you are aware, the Ivory Homes family of companies has agreed to participate in the project. Community Development Corporation of Utah (CDCU) intends to contract with Ivory Homes for the construction, marketing, sales, and homebuyer mortgage financing of the project. We are working out the details of those formal arrangements now. However, there are several important issues that need to be resolved first, which I detail in order below:

- While CDCU paid for and owns the project's architectural drawings and plans, it was unable until this month to secure these plans in an electronic and editable (i.e. CAD) format from the architect. Negotiating the release of the plans took several valuable weeks; but CDCU now has them in its possession and has begun the process, with Ivory Homes, of modifying the design (including the phasing of the project in two buildings) as we have previously discussed. I have attached initial drawings that illustrate these changes.
- Revising the unit floor plans, and therefore the architectural and engineering plans, in order to revise the mix of units to increase the number of two-bedroom condominiums (and therewith reduce the number of one-bedroom units).
- Secure a fixed price bid on the construction of the project based upon the final design.
- Update the projected sales research to determine the best estimates of revenue and absorption. We recently received the market study from the University of Utah's David Eccles School of Business, Bureau of Economic and Business Research, which I have also attached for your information.
- If a gap remains between the estimated revenue and the costs, identify ways (with the Redevelopment Agency) to bridge it.
- Finalize project financing.

Unfortunately, despite our best efforts, there is still much to be done which cannot be completed in less than 90 days. With the permission of the RDA, we would like to press forward as outlined herein, with the plan to have these issues resolved by the end of August 2011.

Thank you.

*Darin Brush*

Darin Brush, Executive Director  
Community Development Corporation of Utah

Enclosures (softcopies)

