



March 12, 2021

TO: CADA Board of Directors

**SUBJECT: March 19, 2021 Board Meeting
AGENDA ITEM 8
1322 O STREET AFFORDABLE HOUSING PROJECT PREDEVELOPMENT
LOAN**

CONTACT: Renée Funston, Development Manager
Tom Kigar, Special Projects Director
Wendy S. Saunders, Executive Director

RECOMMENDED ACTION

Staff recommends the Board adopt a resolution authorizing the Executive Director to increase the \$850,000 Predevelopment Loan from CADA to 1322 O St Investors LP ("the Partnership") by \$250,000 and to assign the Predevelopment Contracts from CADA to the Partnership for the 1322 O Street Affordable Housing Project.

BACKGROUND

At the November 13, 2019 meeting, the CADA Board approved a Predevelopment Loan and Promissory Note ("Predevelopment Loan") of \$850,000 for all predevelopment expenses to be repaid at project financing close of escrow; as well as approved a long-term, residual receipt loan of \$2.5 million ("CADA Gap Financing Loan") from CADA to the Partnership.

At the May 8, 2020 meeting, the CADA Board authorized an increase of the CADA Gap Financing Loan from \$2.5 million to \$4.5 million.

On December 9, 2020, the project was awarded tax credits from the California Tax Credit Allocation Committee and bonds from the California Debt Limit Allocation Committee ("CDLAC"). On January 28, 2021, the project received a \$10 million award for HCD Transit-Oriented Development ("TOD") funds. With the addition of the TOD funding, the CADA Gap Financing Loan was reduced to \$2.5 million

ANALYSIS

Predevelopment Loan

The Board approved the Predevelopment Loan to the Partnership with the intention that the Partnership would have entered into contracts for predevelopment activities and would have made contract payments from the Predevelopment Loan to complete these activities. The loan documents for the Predevelopment Loan were inadvertently not entered into, and CADA, rather than the Partnership, entered into such contacts and has been expending funds for predevelopment activities.

CADA has expended nearly \$900,000 to date for predevelopment activities including architectural, engineering, design, and environmental assessments.

Staff expect to expend up to an additional \$250,000 for predevelopment activities by the anticipated May 21, 2021 closing date, which will total \$1,100,000 in predevelopment expenses. The increase in predevelopment expenses is a result of increasing the site size to add an additional 2 residential units that allowed the project to earn additional points in the HCD TOD funding competition as reported at the October 2020 Board meeting. Further, additional predevelopment costs were incurred for additional soil testing, value engineering efforts by Williams + Paddon Architects, and application costs for tax credits, bonds, and TOD funding. Following the anticipated approval of the above recommended action, CADA will execute the Predevelopment Loan, the predevelopment contracts will be assigned to the Partnership, and the Partnership will complete the predevelopment efforts required to close escrow on project financing.

Schedule

CDLAC regulations require close of financing within 180 days of the bonds award date, which is June 7, 2021. Staff is performing due diligence to close on financing targeting May 21, 2021. Concurrently, Staff is working with Williams + Paddon Architects on refining and obtaining City approval of the construction documents by early May 2021. Also at the forefront is working with Cyrus Youssefi, the Partnership's Administrative General Partner, and Tricorp to prepare the Guaranteed Max Price ("GMP") construction contract, which staff anticipate delivering to the Board for approval at the May meeting.

Tricorp expects to start construction by June 7, 2021 and complete the project by the end of January 2023. Occupancy would begin in early February 2023.

FINANCIAL IMPACT

When escrow closes on project financing, the Partnership will pay off the Predevelopment Loan using funds from the CADA Gap Financing Loan. The CADA Gap Financing Loan to the Partnership will be disbursed at the start of construction, and will roll-over to permanent financing after construction completion. The CADA Gap Financing Loan is a residual receipts loan that the Partnership will make annual payments on using the remaining proceeds after paying the General Partner Fees and Tax Credit Investor Asset Manager Fees.

ENVIRONMENTAL CONSIDERATIONS

At the November 13, 2019 meeting, the Board found the project to be exempt from CEQA based upon its consistency with the Central City Specific Plan and EIR and staff filed a Notice of Exemption.

POLICY

Developing 1322 O Street as a "micro-unit" affordable housing project; making use of a novel building method that has a lower carbon footprint; and building the project in collaboration with the State of California under Governor Newsom's Executive Order regarding the California housing crisis is consistent with CADA's 2016-2021 Strategic Plan that calls for urban development leadership, development of complex infill projects and collaboration with CADA's State and City partners.

ATTACHMENTS:

1. Predevelopment Promissory Note
2. Predevelopment Loan Agreement

PREDEVELOPMENT PROMISSORY NOTE

\$1,100,000.00

March __, 2021
Sacramento, California

1. Obligation. FOR VALUE RECEIVED, the **1322 O St Investors LP**, a California limited partnership (the "Partnership"), hereby unconditionally promises to pay and reimburse the **Capitol Area Development Authority**, a California joint powers agency ("Authority"), at 1522 14th Street, Sacramento, CA 95814, or at such other place as Authority may from time to time designate in writing to the Partnership, the amount of funds expended by Authority for predevelopment costs not to exceed One Million One Hundred Thousand Dollars (\$1,100,000.00), or the aggregate unpaid amounts of such pre-development expenditures made by Authority pursuant to Section 2 hereunder and remaining outstanding on the Maturity Date (hereinafter defined), whichever is less, together with interest on any principal amounts remaining unpaid from time-to-time until payment in full, to be calculated as set forth below (the "Loan").
2. Expenditures and Reimbursement. This Note evidences a promise by the Partnership to pay and reimburse Authority for predevelopment funds expended by Authority pursuant to a Predevelopment Loan and Reimbursement Agreement executed by the Partnership and Authority concurrently herewith (the "Loan Agreement") for predevelopment costs in connection with an affordable housing project ("Project") to be developed at 1322 O Street in Sacramento, California (the "Property"). Once the maximum amount of predevelopment funds has been expended, Authority will discontinue expending funds for further predevelopment activities unless the parties mutually amend this Note to increase the maximum Loan amount.
3. Maturity Date. The Loan will mature on the closing date on the bond financing to be used to construct the Project (the "Maturity Date").
4. Interest Rate. The interest rate per annum to be applied to the unpaid principal balance of this Note will be a fixed rate of three percent (3%). Under no circumstances shall the interest rate on this Note be more than the maximum rate allowed by applicable law.
5. Payment of Principal and Interest. No principal or interest payments shall be due until the Maturity Date. All unpaid principal, accrued interest and other amounts outstanding on this Note shall be paid no later than the Maturity Date. Each payment made hereunder, including prepayments allowed under Section 7, shall be credited first on interest then due and the remainder on principal.
6. Collateral. This Note is unsecured.
7. Prepayment. The Partnership shall have the right to prepay all or any part of the principal sum hereof or interest due hereunder at any time, without penalty or premium.
8. Notices. Notices provided for herein may be given by delivery personally or by sending them by registered or by certified mail, with postage charged prepaid, to the parties' mailing addresses, or to any other mailing address of which written notice is given, and notices shall be deemed given upon actual receipt thereof:

If to Partnership: 1322 O St Investors LP
c/o Capitol Area Community Development Corporation
1522 14th Street
Sacramento, CA 95814

If to Authority: Capitol Area Development Authority
1522 14th Street
Sacramento, CA 95814

The Partnership shall promptly notify Authority of any change of address.

9. Assignment. The Partnership may not assign any of its rights, interests, duties, or obligations under this Note without Authority's prior written consent, which consent may be given or withheld in Authority's sole discretion. Authority may assign any or all of Authority's rights, interests, duties, or obligations hereunder to any person or entity with the prior written consent of the Partnership. Any attempted or purported assignment in violation of this Section shall be void.

10. Default; Acceleration. In the event of (i) any default by the Partnership in the payment of this Note when due hereunder or in the performance of the Partnership's obligations under this Note or any instrument securing repayment of this Note, (ii) the breach of any representation or warranty contained in this Note or any instrument securing repayment of this Note, (iii) the filing of any petition by or against the Partnership in any court, whether or not pursuant to any statute of the United States or of any state, in any bankruptcy, reorganization, composition, extension, arrangement or insolvency proceedings, and the Partnership shall thereafter be adjudicated bankrupt, or such petition be approved by the court, or the court assumes jurisdiction of the subject matter, and such proceedings not be dismissed within 90 days after the institution of the same, (iv) the appointment of a receiver or trustee in any proceeding for all or any portion of the Partnership's leasehold interest in the Property and such receivership or trusteeship not be vacated within 90 days after the appointment of the same, (v) an assignment by the Partnership for the benefit of its creditors, (vi) the foreclosure upon all or any portion of the Partnership's leasehold interest in the Property or the condemnation, seizure, attachment or appropriation thereof, or (vii) the sale, conveyance, assignment or transfer of greater than 50% of the Partnership's stock, then in such event the entire indebtedness hereunder shall be immediately due and payable at the option of Authority.

11. Waiver. No waiver of any default or failure or delay to exercise any right or remedy by Authority shall operate as a waiver of any other default or of the same default in the future or as a waiver of any right or remedy with respect to the same or any other occurrence. Presentment, notice of dishonor or demand, protest and diligence in collection and bringing suit, including the pleading of any statute of limitations as a defense to any demand against the Partnership, are hereby waived by the Partnership, who consents that the time for payment of this Note may be extended from time to time without notice by Authority.

12. Default Interest Rate. From and after the Maturity Date of this Note, all sums due and owing hereunder shall earn interest at the maximum rate permitted to be charged under any applicable laws, rules and regulations limiting interest rates.

13. Attorneys' Fees and Costs. The Partnership shall pay such fees, costs and expenses as may be incurred by Authority in connection with the exercise, preservation or enforcement of its rights, powers and remedies under the terms of this Note, including, without limitation, actual collection agency fees, costs and expenses, reasonable attorneys' fees and actual costs of suit and appeal

incurred in any judicial action or proceeding and reasonable attorneys' fees and actual costs incurred in any collection attempts or non-judicial action or proceeding.

14. Binding on Heirs, Successors and Assigns. Subject to the restrictions on assignment and transfer contained in Sections 9 and 10, this Note shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of Authority and the Partnership.

15. Governing Law; Venue. This Note shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. This Note is entered into and is to be performed in Sacramento County, California, and accordingly all actions or proceedings arising in connection with this Note shall be tried and litigated in the Superior Court of California with venue in the County of Sacramento.

16. Amendments. Neither this Note nor any provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

17. Severability. If any provision of this Note, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the parties, such provision or part of such provision shall be severed from this Note, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Note, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

IN WITNESS WHEREOF, Partnership has executed this Note as of the date first above written.

PARTNERSHIP:

1322 O St Investors LP,
a California limited partnership

By: **Capitol Area Community Development Corporation**,
a California non-profit public benefit corporation
Its: Managing General Partner

By: _____
Wendy S. Saunders, President

PREDEVELOPMENT LOAN AND REIMBURSEMENT AGREEMENT

THIS PREDEVELOPMENT LOAN AND REIMBURSEMENT AGREEMENT (this "Loan Agreement") is entered into and effective as of March __, 2021 (the "Effective Date"), by and between the **1322 O St Investors LP**, a California limited partnership (the "Partnership"), and the **Capitol Area Development Authority**, a California joint powers agency ("Authority"), each individually, as a "Party" or, collectively, as the "Parties."

Recitals

A. The Partnership is the lessee of certain real property located at 1322 O Street, in Sacramento, California (the "Property"), pursuant to a Development Ground Lease dated November 11, 2019, between the State of California ("State") and Authority, which was assigned from Authority to the Partnership on November 15, 2019 (collectively, the "Lease").

B. The Partnership intends to develop, construct, and operate an affordable multi-family rental housing project (the "Project") on the Property. Prior to the assignment of the Lease to the Partnership, Authority incurred various pre-development costs and expenses in connection with the Project totaling approximately \$175,000.00, for which the Partnership agreed to repay and reimburse Authority.

C. The Partnership had also requested that Authority provide additional funds to complete the remaining predevelopment activities, and that Authority complete those predevelopment activities. As a result, on November 11, 2019, Authority approved a predevelopment loan to the Partnership in the amount of \$850,000.00, including the original \$175,000.00 expended.

D. The Authority has expended \$850,000.00 along with an additional \$50,000.00 in predevelopment activities and the Partnership now desires that Authority increase the amount of the predevelopment loan to \$1,100,000 to use for additional predevelopment expenses. With this increase of \$250,000 the Authority and Partnership will execute this Loan Agreement and Authority will assign to the Partnership the predevelopment contracts into which it has entered and the Partnership will complete the remaining predevelopment activities through use of the \$250,000. Authority is willing and able to provide such a predevelopment loan (the "Loan") to the Partnership and the Partnership is willing and able to complete the remaining predevelopment activities subject to reimbursement by the Partnership, and under the terms contained herein and in that Predevelopment Promissory Note executed by the Partnership the same date herewith (the "Note").

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the Parties hereto hereby formally covenant, agree and bind themselves as follows:

Agreement

1. Maximum Amount for Predevelopment Expenditures. Subject to the terms and conditions of this Loan Agreement, the Partnership hereby agrees to pay and reimburse Authority the amount of funds expended by Authority for Project predevelopment costs not to exceed One Million One Hundred Thousand Dollars (\$1,100,000.00) (the "Maximum Amount"), or so much thereof as may be advanced under Loan.

2. Prior Expenditure of Predevelopment Funds. The Parties agree that Authority has expended approximately \$900,000.00 in predevelopment consultant costs, including but not limited to costs for architectural plans, engineering studies, environmental investigation, financial studies, surveys, legal services, and constructability studies. Borrower hereby approves the expenditure of those predevelopment funds.

3. Purpose and Use of the Predevelopment Funds. The purpose of the Loan is to finance the predevelopment costs previously incurred by Authority and incurred by Authority for future predevelopment activities in connection with the Project through to the date of closing on the bond financing to be used to construct the Project.

4. Term. The term of this Loan Agreement shall commence on the Effective Date and shall continue until all sums owing on the Loan are paid in full in accordance with the provisions of the Note and this Loan Agreement.

5. Accounting Records. Authority shall keep, or cause to be kept, proper books of record and account, prepared in accordance with generally accepted accounting principles, in which complete and accurate entries shall be made of all transactions of or in relation to the predevelopment expenditures made by Authority. Such books of record and account shall be available for inspection by the Partnership on upon reasonable advance notice, at reasonable hours and under reasonable circumstances.

6. Events of Default. The following events shall be "Events of Default:"

6.1 Failure to Make Payment. A failure by the Partnership to make any payment due under the Note within ten (10) days after written notice from Authority;

6.2 Default in Obligations. Failure by the Partnership to observe and perform any covenant, condition or agreement on its part to be observed or performed herein for a period of thirty (30) days after written notice from Authority specifying such failure and requesting that it be remedied; provided, however, that if the failure is such that it can be corrected, but not within such 30-day period, and corrective action is instituted by the Partnership within such period and diligently pursued until such failure is corrected, then such period shall be increased to such extent as shall be determined by Authority to be necessary to enable the Partnership to observe or perform such correction through the exercise of due diligence; and

6.3 Insolvency; Bankruptcy. The Partnership (a) admits in writing its inability to pay its debts generally; (b) makes a general assignment for the benefit of creditors; (c) institutes any proceeding or voluntary case (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors, or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property; (d) takes any action to authorize any of the actions described above in this subsection; or (e) shall have instituted against it any proceeding (i) seeking to adjudicate it a bankrupt or insolvent, (ii) seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief or protection of debtors, or (iii) seeking the entry of an order for relief or the appointment of a receiver, trustee, custodian or other similar official for it or for any substantial part of its property, and, if such proceeding is being contested by the Partnership in good faith, such proceeding shall remain undismissed or unstayed for a period of sixty (60) days.

7. Remedies on Default. Upon an Event of Default by the Partnership, Authority shall have all the rights and remedies available to it under state law in enforcing this Loan Agreement including, but not limited to, the following:

7.1 Accelerate Loan. Authority may, upon notice in writing to the Partnership, declare the then outstanding principal balance of the Loan payable for the remainder of the term of the Loan to be immediately due and payable, whereupon the same shall be immediately due and payable, without notice of default, demand for payment or presentment, protest or notice of nonpayment or dishonor, or any other notices or demands of any kind or nature, anything in this Loan Agreement to the contrary notwithstanding;

7.2 Other Remedies. Authority may pursue any and all other remedies available and take whatever action, at law or in equity, as may appear necessary or desirable to collect the payments due under this Loan Agreement, any other payments then due and thereafter to become due under this Loan Agreement or to enforce the performance and observance of any obligation, covenant, agreement or provision contained in this Loan Agreement to be observed or performed by the Partnership; and

7.3 Remedies Not Exclusive. No remedy herein conferred upon or reserved to Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy, to the extent permitted by law, shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity or otherwise.

8. Waiver of Notice. No failure or delay on the part of the Authority in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver or any provision of this Loan Agreement or of the Note, nor any consent to any departure by the Partnership therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on the Partnership in any case shall entitle the Partnership to any other or further notice or demand in similar or other circumstances.

9. Notices. Notices provided for herein may be given by delivery personally or by sending them by registered or by certified mail, with postage charged prepaid, to the parties' mailing addresses, or to any other mailing address of which written notice is given, and notices shall be deemed given upon actual receipt thereof:

If to Partnership: 1322 O St Investors LP
c/o Capitol Area Community Development Corporation
1522 14th Street
Sacramento, CA 95814

If to Authority: Capitol Area Development Authority
1522 14th Street
Sacramento, CA 95814

The Partnership shall promptly notify Authority of any change of address.

10. Amendment. This Loan Agreement may be modified or amended only by mutual written agreement of the Parties. Any such modification or amendment must be in writing, dated and signed by the Parties, and explicitly indicate that such writing modifies or amends this Loan Agreement.

11. Assignment; Successors and Assigns. The Partnership may not assign any of its rights, interests, duties, or obligations under this Loan Agreement without Authority's prior written consent, which consent may be given or withheld in Authority's sole discretion. Authority may assign any or all of Authority's rights, interests, duties, or obligations hereunder to any person or entity with the prior written consent of the Partnership. Any attempted or purported assignment in violation of this Section shall be void. Subject to the foregoing, this Loan Agreement shall be binding on and shall inure to the benefit of the Parties and their respective heirs, successors, assigns and representatives.

12. Attorneys' Fees. If any Party or Parties bring an action or proceeding arising out of or relating to this Loan Agreement, the non-prevailing Party or Parties shall pay to the prevailing Party or Parties reasonable attorneys' fees and costs incurred in such action, including fees incurred in post judgment motions, contempt proceedings, garnishment, levy, debtor and third party examinations, discovery, bankruptcy litigation, arbitration, at trial, on appeal and on any review therefrom, all of which shall be deemed to have accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered shall contain a provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. The prevailing Party shall be the Party who is entitled to recover its costs of suit (as determined by the court of competent jurisdiction or the arbitrator), whether or not the action or proceeding proceeds to final judgment or award.

13. Counterparts. This Loan Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. Governing Law; Venue. This Loan Agreement shall be interpreted under and governed by the laws of the State of California, except for those provisions preempted by federal law. This Loan Agreement is entered into and is to be performed in Sacramento County, California, and accordingly all actions or proceedings arising in connection with this Note shall be tried and litigated in the Superior Court of California with venue in the County of Sacramento.

15. Entire Agreement. This Loan Agreement is the entire understanding and agreement of the Parties regarding its subject matter, and supersedes any prior oral or written agreements, representations, understandings or discussions among the Parties with respect to such subject matter.

16. Severability. If any provision of this Loan Agreement, in whole or in part, or the application of any provision, in whole or in part, is determined to be illegal, invalid or unenforceable by a court of competent jurisdiction and such provision can be severed without substantially changing the bargain reached by the Parties, such provision or part of such provision shall be severed from this Loan Agreement, and such severance shall have no effect upon the enforceability, performance or obligations of the remainder of this Loan Agreement, including the remainder of such provision not determined to be illegal, invalid or unenforceable.

(Signatures on Next Page)

IN WITNESS WHEREOF, Partnership and Authority have executed this Loan Agreement on the date first written above.

Partnership:

1322 O St Investors LP,
a California limited partnership

By: **Capitol Area Community Development Corporation**,
a California non-profit public benefit corporation
Its: Managing General Partner

By: _____
Wendy S. Saunders, President

Authority:

Capitol Area Development Authority,
a California joint powers agency

By: _____
Wendy Saunders, Executive Director

APPROVED AS TO FORM:

By: _____
Jeffery A. Mitchell, CADA legal counsel

RESOLUTION NO. 21 - 05

Adopted by the Capitol Area Development Authority

March 19, 2021

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO INCREASE THE PREDEVELOPMENT LOAN TO 1322 O ST INVESTORS LP FOR THE 1322 O STREET AFFORDABLE HOUSING PROJECT

WHEREAS, on November 13, 2019, the CADA Board approved a Predevelopment Loan and Promissory Note ("Predevelopment Loan") to the 1322 O St Investors LP ("the Partnership") in the amount of \$850,000 for all predevelopment expenses to be repaid at project financing close of escrow; and

WHEREAS, on November 13, 2019, the CADA Board also approved a residual receipt loan of \$2.5 million ("CADA Gap Financing Loan") from CADA to the Partnership; and

WHEREAS, May 8, 2020, the CADA Board authorized an increase of the CADA Gap Financing Loan from \$2.5 million to \$4.5 million; and

WHEREAS, on December 9, 2020, the 1322 O Street affordable housing project was awarded tax credits and bonds, which requires close of financing within 180 days; and

WHEREAS, on January 28, 2021, the project was also awarded HCD Transit-Oriented Development program funds; and

WHEREAS, the Partnership is set to close escrow on project financing by June 7, 2021; and

WHEREAS, the Partnership anticipates an additional \$250,000 for predevelopment activities and is requesting an increase in the Predevelopment Loan amount to \$1,100,000 to be repaid at project financing close of escrow.

NOW, THEREFORE, BE IT RESOLVED, by the Capitol Area Development Authority that the Board of Directors hereby:

1. Authorizes the Executive Director to increase the \$850,000 Predevelopment Loan from CADA to the Partnership by \$250,000.
2. Authorizes the Executive Director to assign the 1322 O Street predevelopment contracts from CADA to the Partnership.
3. Authorizes the Executive Director to do any and all things, and take any and all actions that may be necessary or advisable, in her discretion, to complete the transactions described herein.

Ann Bailey, Chair

ATTEST:

Jill Bagley-Azevedo
Secretary to the Board of Directors