

**TULSA DEVELOPMENT AUTHORITY
STAFF REPORT**

MEETING DATE: May 3, 2018
TO: Chairman and Board Members
FROM: O.C. Walker, Executive Director
SUBJECT: Enter into a Redevelopment Agreement with Addax Development to receive a loan from Affordable/Obtainable Housing Funds for Residential Development in Downtown Tulsa
LOCATION: 403 South Cheyenne Avenue, Tulsa, OK

Background:

Redeveloper:	Addax Development
Owner:	403 South Cheyenne, LLC
Location:	403 South Cheyenne Avenue
Size of Tract:	N/A
Zoning:	CBD
Development Area:	Downtown
Fair Market Value	\$500,000.00 available in funds
Executive Director:	O.C. Walker

Relevant Info: On April 5, 2018, the TDA Board of Commissioners approved Resolution No. 6431, authorizing negotiations of a Redevelopment Agreement with Addax Development for a \$500,000.00, non-interest-bearing loan over a seven-year period. The purpose of this report is to request the TDA Board of Commissioners approve entering into a Redevelopment Agreement for Downtown Housing Funds.

The Addax Project is also known as the Adams Building, located at 403 South Cheyenne Avenue, Tulsa, Oklahoma. The Adams Building is currently vacant, and the proposed project would provide up to 60 Residential Units in Downtown Tulsa. The unit mix will consist of studio apartments, together with one and two-bedroom units. The valuation of the total project is \$10 million. The Redeveloper is seeking Tax Credits, together with gap financing from the new Downtown TIF to create a greater capital stack.

This is a Request to the TDA Board of Commissioners to review and approve the Redevelopment Agreement and Promissory Note, for \$500,000.00 over a seven-year period.

Attachments: Draft Redevelopment Agreement and Promissory Note

Recommendation: Staff recommends the TDA Board of Commissioners approve this item as presented

Reviewed By: O.C. Walker, Executive Director

REDEVELOPMENT AGREEMENT

THIS AGREEMENT made and entered into, by and between the Tulsa Development Authority (“TDA”), a public body corporate, having its principal office at 1216 N. Lansing Avenue, Suite A, Tulsa, Oklahoma 74106, and 403 Cheyenne, LLC (the “Developer”), an Oklahoma limited liability company, having its principal office at 9 E. 4th Street, Suite 303, Tulsa, Oklahoma 74103 to be effective on the date of execution by TDA (the “Effective Date”).

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WITNESSETH:

WHEREAS, the voters of Tulsa County, Oklahoma approved a Proposition levying a sales tax to fund a collection of public projects known as “Vision 2025” and in which the Downtowns/Neighborhoods Fund was included as a specific Vision 2025 project providing funds for projects promoting the economic vitality of downtowns including streetscaping, pocket parks, fountains, and downtown housing; and

WHEREAS, the City of Tulsa (the “City”) has entered into a Capital Improvement Agreement (“CIA”) with the Board of Commissioners of Tulsa County, Oklahoma, governing the distribution and use of Three Million Dollars (\$3,000,000.00) from the Vision 2025 Downtown/Neighborhoods Third Penny Sales Tax Fund for the purpose of providing financial assistance to Developers of residential projects in the Downtown Tulsa area; and

WHEREAS, the City has entered into an agreement with the Tulsa Development Authority (TDA) for administration of the financial assistance and expenditure of said funds for the development or redevelopment of residential projects in the Downtown Tulsa area which specifies the duties, obligations and authority of TDA and establishes certain requirements and standards of performance to be imposed upon the selected developers of the downtown residential housing projects; and

WHEREAS, the TDA developed guidelines, proposals and recommendations for the development or redevelopment of Tulsa properties located within the Inner Dispersal Loop as downtown residential housing and has appointed a Downtown Housing Task Force (“DHTF”) to review and make recommendations to the TDA Board of Commissioners as to those projects determined to be the most beneficial and efficient use of said funds in providing financial assistance to Developers of residential projects in the Downtown Tulsa area; ; and

WHEREAS, upon recommendations of DHTF, the TDA Board of Commissioners has selected ~~three~~ two projects to receive funding to assist in the development of downtown residential housing, and Developer was one of the recommended developers for its _____ project; and

WHEREAS, the ~~_____~~ Adams Building project of Developer has been selected to construct, maintain and operate _____ (___) residential units on the upper floors of the property located at _____, 403 S. Cheyenne Avenue, Tulsa, Oklahoma [zip code], being the _____ feet of Lot _____ (___), Block _____ (___), Original Town of Tulsa, now City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof. The _____ (___) residential apartment units are to be constructed in a good and workmanlike manner and substantially in accordance with the representations set forth in that

certain proposal filed with TDA on July 27, 2011, by Developer in response to the Request For Proposals (RFP) issued by the TDA on or about May ____, 2011. In essence, the applicant proposed to construct in accordance with the proposal a minimum of _____ (~~_____~~) ~~loft type~~ residential apartment units in the building as part of a multi-use commercial/residential project with the total project cost estimated to be the sum of ____ Million ____ Hundred Thousand Dollars (\$_____); and

WHEREAS, based upon the recommendation of the DHTF above mentioned and the selection by the TDA Board of Commissioners, TDA has been directed to enter into negotiations for a Redevelopment Agreement between TDA and Developer in order to make available financial assistance in the sum of _____ Five Hundred Thousand Dollars (~~_____~~), ~~(\$500,000)~~, less and except expenses incurred by TDA for abstracting and title clearance work, filing, recording and closing fees, fees for legal services and inspection fees incurred by TDA in administration of the award of funds and the fulfillment of the contract terms, in the form of a non-interest bearing loan for a ~~ten-seven (407)~~ year period secured by a Promissory Note and _____ Real Estate Mortgage on the premises above described, all in accordance with the terms and conditions of this Agreement, and the Agreement between TDA and the City of Tulsa governing the administration of the third penny sales tax funds for Downtown Residential Housing Development.

Commented [AS1]: With one-year extension to line up with our other obligations.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions set forth herein, the parties hereto do hereby agree as follows, to-wit:

SECTION 1. DEFINITIONS.

The terms herein set forth shall for all purposes of this Redevelopment Agreement have the following meanings. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine and feminine gender.

A. "Advance" shall mean any of the Advances of funds requested by the Developer and approved by TDA to reimburse Developer for "Expenditures Eligible for Reimbursement" (as defined in Section (D) in the development of the project.

B. "Advance Request" means each Advance Request signed by the Developer and TDA in the form set forth on Attachment "A" attached hereto.

C. "Construction Documents."

~~C~~D. "Developer" or "Redeveloper" means _____, 403 Cheyenne, LLC, of which _____ Tim Strange is Manager and _____ Steven Watts are the principal owners ~~is~~ contact person.

~~D~~E. "Expenditures Eligible for Reimbursement" means all costs associated with improvements in the development and construction of the residential units, together with all construction supplies and services attributable to and essential for the construction of the residential units, such as: a proportional amount closing costs, professional fees, insurances, permits, materials and equipment. In the event any such expenses are not solely for the

construction of the residential units, the eligible expenses shall be determined on a pro rata basis as a percentage of residential unit construction costs compared to the total cost of the project. Construction costs for non-residential unit uses such as commercial or retail uses shall not be expenditures eligible for reimbursement.

~~EE~~. “Development Costs” means the Expenditures Eligible for Reimbursements set forth for the Developer.

~~FG~~. “Downtown Tulsa” means that area bounded by the loop known as the Inner Dispersal Loop created around the central business district by various highways in Tulsa.

~~GH~~. “Maximum Amount of Advances” means the principal sum of _____ Dollars (\$_____), which is the amount of the Loan, less and except expenses incurred by TDA for abstracting and title clearance work, filing, recording and closing fees, fees for legal services and inspection fees incurred by TDA in administration of the award of funds and the fulfillment of the contract terms

~~HI~~. “Property” means the real estate located at _____, more particularly described herein on page ____ of this Agreement.

~~IJ~~. “Redevelopment Project” means the design, construction and operation of at least _____ (____) residential housing units, to be located on floors _____ of the Property described herein, together with off-street parking for not less than _____ vehicles.

~~JK~~. “Termination Event” shall mean the occurrence of any of the following:

1. Default under Redevelopment Agreement. Any default in or breach of the terms and provisions of this Redevelopment Agreement which has not been remedied to the satisfaction of TDA or the City, within ninety (90) days after written notice thereof has been given to the Developer by any one or more of said parties specifying such default or breach.

2. Representations. Any representation, advance request, statement, certificate, schedule or report made or furnished to TDA by the Developer proved to be false or materially misleading at the time of the making thereof; and Developer fails to take or cause to be taken corrective measures satisfactory to TDA within ninety (90) days after receipt of written notice from TDA shall cause a default.

SECTION 2. SUBMISSION AND APPROVAL OF CONSTRUCTION PLANS.

A. All Construction Documents and any changes subsequently made with respect to the development or redevelopment of the Property and construction of improvements shall be in compliance with, all necessary permits, inspections, applicable codes and procedures of, the City of Tulsa; and Developer shall furnish copies of such permits to TDA. Further, all such plans shall be substantially in compliance with the standards and representations set forth in the documents submitted to the DHTF and the TDA Board of Commissioners.

B. This Agreement requires there will be a minimum of _____ (____) residential units constructed by the Developer.

C. All documents, including drawings, specifications, invoices and data created by or submitted to TDA in connection with the redevelopment of the Property shall become and remain the property of the City of Tulsa, Oklahoma.

SECTION 3. SCHEDULE OF REDEVELOPMENT.

Time is of the essence in the completion of construction of the _____ (____) residential units. The construction of the units shall commence within _____ (____) days after Closing and shall be completed within _____ (____) months after commencement of construction, unless the Developer's written request for an extension has been approved in writing by TDA, which will not be unreasonably withheld. If at any time during construction, the Developer determines that it will not be able to complete the plans within the time allocated, it shall forthwith give notice to TDA of that fact and advise TDA of the reason for the delay and the additional time needed for completion. TDA shall have the option of granting additional time by amending this Agreement and granting additional time for approval or in the alternative of electing to terminate the project by reason of the failure of Developer to timely complete the work. In such event, notice of termination shall be given in the manner set forth in Section 17.

SECTION 4. CONDITIONS PRECEDENT TO FUNDING OF LOAN.

TDA shall have no obligation to authorize the Developer to commence work on the Redevelopment Project before and until Developer has furnished TDA the following documents and has executed this Agreement and TDA has determined that funds are available for reimbursement to Developer.

A. An abstract of title, certified at least to the Effective Date of this Agreement, showing marketable title to the Property to be vested in the Developer, subject only to the _____ mortgage in the amount stated herein below in SECTION 6. TITLE.

B. Documentation in such form as TDA shall reasonably require, demonstrating that all required insurance coverage and bonds are in force.

C. ~~D~~~~Recordable~~ documents executed by the Developer insuring that adequate parking will be available to residential tenants until the Maximum Amount of Advances (_____ mortgage) is fully repaid to TDA.

D. TDA shall have determined that the financing, development and construction documents and all other aspects of the proposed redevelopment are in substantial compliance with the application, documents, proposals and representations of the Developer made to the DHTF and to the TDA Board of Commissioners.

E. TDA shall have determined that the construction work for which reimbursement is requested by Developer is for the construction of residential units ~~and off street parking for occupants thereof~~ and/or for the proportional share of common facilities for the beneficial use of the residential units and off street parking for occupants thereof.

SECTION 5. OBLIGATION OF TDA TO MAKE ADVANCES.

The obligation of the Tulsa Development Authority to make advances is conditioned upon the availability of funds to cover said advances which are being furnished by the City of Tulsa, Oklahoma, from the third penny Downtown Residential Housing funds.

SECTION 6. TITLE.

A. Developer, within ten (10) days from the Effective Date of this Agreement, shall furnish TDA an abstract of title certified at least to the Effective Date, showing a marketable title to the Property vested in Developer, subject only to reasonable utility easements, building restrictions of record, and a _____ mortgage recorded by _____ in the principal amount of _____ Dollars (\$ _____). TDA shall have twenty (20) days after receipt of abstract in which to have the abstract examined and furnish Developer notice in writing of any title objections thereto. Developer shall then have ninety (90) days or such additional time as may be agreed on by the parties in which to correct said objections to the satisfaction of TDA. Marketability of title shall be based on the title standards of the Oklahoma Bar Association. Developer shall pay all costs associated with updating the Abstract of Title and obtaining a title opinion. Such costs are Expenditures Eligible for Reimbursement.

B. Upon acceptance of title to the Property by TDA, a loan Closing shall be scheduled at a mutually agreeable date and time at the offices of TDA which Closing must occur within 90 days from the date hereof unless such time is extended to a date certain by an agreement in writing signed by both parties. At Closing, the Developer shall execute a note and second mortgage to TDA in the forms attached hereto as Exhibit "B" and Exhibit "C" in the principal amount of the loan, _____ Dollars (\$ _____). TDA shall promptly file the Mortgage for recordation among the land records of Tulsa County, Oklahoma, showing TDA as a _____ Mortgagee. Developer shall pay all closing costs including, but not limited to, the cost to record the Mortgage.

SECTION 7. TDA AND CITY RIGHT TO INSPECT.

A. Developer acknowledges and agrees that TDA and the City of Tulsa shall have the right to inspect the Property ~~at all reasonable times~~ with forty-eight (48) hours' notice.

SECTION 8. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

A. After execution of this Agreement and prior to the Developer's repayment of the _____ mortgage loan to TDA on the Property, the Developer shall not engage in any financing or any other transaction creating any additional mortgage, encumbrance or lien upon the Property whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property without the prior written consent of TDA. The Developer may re-finance the _____ mortgage at will, but in no event will the original amount of the _____ mortgage in the amount of _____ Dollars

Commented [AS2]: Construction loan

(\$ _____) be increased. Any such increase will constitute a violation of this Agreement and cause the indebtedness due to be accelerated.

B. Should any taxes, assessments, encumbrance, mechanic's or any materialmen's lien, or any other unauthorized encumbrance or lien attach to the Property, and the Developer fail to take or cause to be taken corrective measure to cure any such encumbrance or lien within ninety (90) days after written demand by TDA, or such other time as agreed in writing by both parties, this Agreement shall be in default.

C. Developer agrees that all of the proceeds of any first mortgage and all funds received from the loan from TDA herein authorized must be expended on the _____ Redevelopment Project on the Property described herein.

SECTION 9. DILIGENCE REQUIRED.

A. The Developer agrees for itself, its successors, and assigns to promptly begin and diligently complete the Redevelopment Project on the Property through the construction of the improvements thereon, and the construction shall in any event be begun and completed within the periods specified above, unless a written extension has been approved and executed by both parties. It is agreed that these agreements and covenants shall be covenants running with the land, binding for the benefit of the City of Tulsa, Oklahoma and TDA, and enforceable by TDA and the City against the Developer and its successors and assigns.

B. If the Developer, or its successor in interest, shall default in or violate its obligations with respect to the construction of the improvements (including the nature and dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and the Developer fails to take or cause to be taken corrective measure to cure any such default, violation, abandonment, or suspension within ninety (90) days after written demand by TDA, or such other time as agreed in writing by both parties, then TDA shall have the right to institute such actions or proceedings as it may deem desirable, including foreclosure through judicial proceedings.

Commented [AS3]: Please define.

SECTION 10. CONTACT PERSON.

The Developer agrees that _____ ~~Tim Strange~~ is ~~the owner of a majority interest in and is~~ a manager of the Developer. _____ ~~Steven Watts~~ shall act as primary contact person, acting on behalf of the Developer regarding all aspects of the project. Developer may update this information periodically and any changes or updates to the contact information below shall be provided to TDA in writing. The Developer furnishes the following contact information and grants permission for the City or TDA to contact:

- Name: Steven Watts
- Address: 9 E. 4th Street, Suite 303
- Address: Tulsa, Oklahoma
- Phone: (918) 645-0804
- Fax:
- E-mail: steven.watts@addax.com

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SECTION 11. UNCONTROLLABLE FORCES:

Neither TDA nor the Developer shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to forces which are beyond the control of the parties, including, but not limited to: fire, flood, earthquakes, storms, lightning, epidemic, war, riot, civil disturbance, sabotage, inability to procure supplies, materials or services required to be provided by either TDA or the Developer under this Agreement.

SECTION 12. LOAN PROCEEDS AVAILABLE TO DEVELOPER.

A. Loan proceeds available to the Developer are subject to the terms and conditions set forth herein and any terms contained in the City of Tulsa/TDA Development Agreement, as well as the Note and Mortgage, Attachments Exhibits "B" and "C", in the principal sum of _____ (\$_____). These funds shall be available to draw upon by the Developer as Expenditures Eligible for Reimbursement for improvements to the Property solely from the City of Tulsa Account established for the funding of the project described herein. No other funds of the City of Tulsa nor any funds of TDA are committed to or are available for this project. Reimbursement shall be made only for the Developer's Expenditures Eligible for Reimbursement properly submitted to and approved by TDA and the City.

SECTION 13. BONDS AND INSURANCE.

Prior to commencement of construction of the project, Developer shall provide to TDA the following documents:

- A. A statutory payment bond, or any other form of insurance or bond agreed to by the parties, in the amount of the total cost of the residential construction.
- B. A certificate of insurance from an insurance company licensed to do business in Oklahoma evidencing all-risk builders risk insurance with coverage at least in the amount of the residential rehabilitation project of \$_____.
- C. A certificate of general liability insurance with bodily injury and property damage combined single limit coverage of not less than \$1,000,000.00. TDA and the City shall be named as additional insured and shall be notified of any policy cancellation by thirty (30) days written notice.

SECTION 14. APPLICATION FOR ADVANCES.

Requests from the Developer for an Advance of Expenditures Eligible for Reimbursement shall be made to TDA.

- A. Requests shall be made no more frequently than once every thirty (30) days.
- B. No amounts shall be reimbursed after _____, unless by subsequent action the Tulsa Development Authority has authorized an extension of said date.
- C. All requests shall be made in the following manner and include the following:

1. When and where applicable, requests shall be submitted on an AIA Document G702 with certification by a licensed architect and include a schedule of values for all elements of work performed; and
2. A detailed invoice and corresponding cancelled check or certified check; and
3. When applicable, an approved City permit related to the applicable expense on the invoice, and which TDA has reviewed under the City's PALS system; and
4. A signed subcontractor lien waiver for each applicable portion on the invoice; and
5. A valid certificate of insurance for worker's compensation for each contractor or subcontractor services on the invoice.

SECTION 15. CERTIFICATE OF COMPLETION.

A. Promptly after completion of the construction of the improvements in accordance with this Agreement, and upon written notification from the Developer that the work has been completed, the Developer shall provide to TDA a copy of the Certificate of Occupancy issued by the City, following the City's final building inspection; and TDA, after a satisfactory final inspection, will furnish the Developer with a Certificate of Completion. The certification by TDA shall be a conclusive determination of satisfaction and termination of the covenants in this Agreement with respect to the obligations of the Developer and its successors and assigns to construct the improvements. The certification shall be in such form as will enable it to be recorded in the Tulsa County land records.

B. All other covenants in this Agreement shall remain in force and effect upon the Developer and its successors and assigns until the loan is repaid and a release of the mortgage has been filed of record.

SECTION 16. NON-DISCRIMINATION IN EMPLOYMENT, ACCESS, RENTAL OR SALE.

The Developer agrees for itself, its successor and assigns that the Property is open to all persons without discrimination on the basis of race, color, religion, sex, sexual orientation, age, national origin or handicap status and that there shall be no discrimination in employment, and allowing use of or access to the public areas of the Property or in the rental or sale of the housing units agrees to include a statement to that effect in any advertisement for the construction, rental or sale of the housing units.

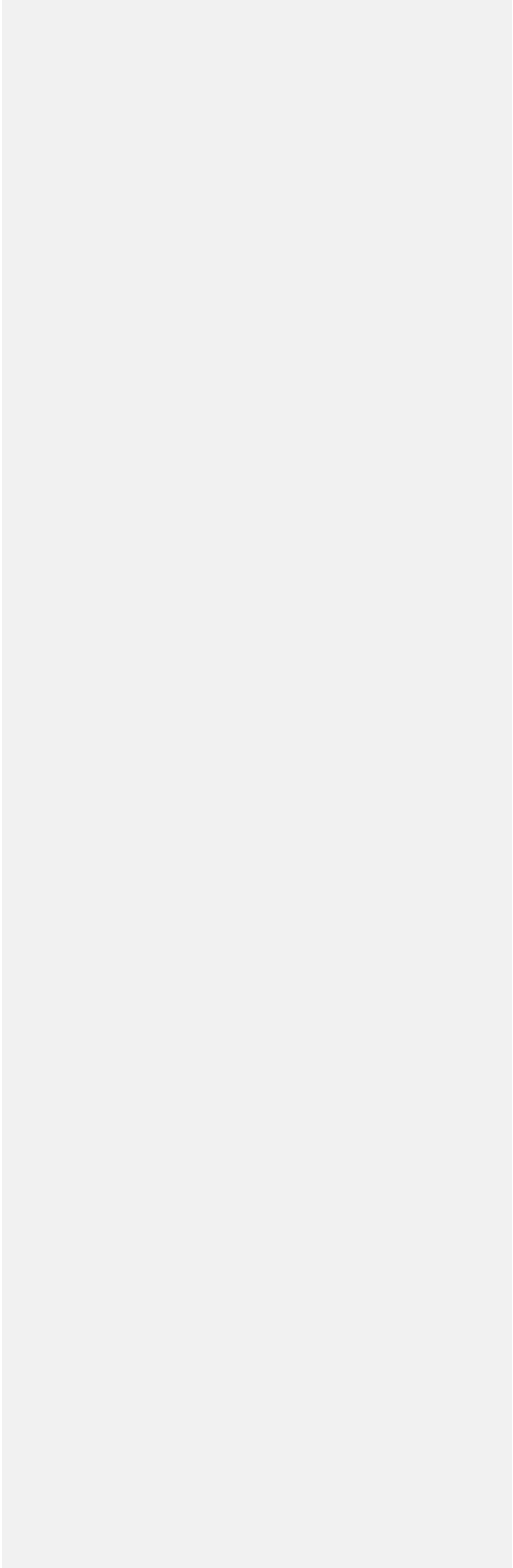
Commented [AS4]: FYI

SECTION 17. NOTICES AND DEMANDS.

A notice, demand or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail postage prepaid, return receipt requested or delivered personally as follows:

To TDA:
Tulsa Development Authority
1216 N. Lansing Avenue, Suite A

Tulsa, Oklahoma 74106
Attention: O. C. Walker, II, Executive Director



With a copy to:
Jot Hartley, TDA General Counsel
201 W. 5th Street, Ste. 501
Tulsa, OK 74103

To the Developer:
403 Cheyenne, LLC
9 E. 4th Street, Suite 303
Tulsa, Oklahoma, 74103

Attention: _____ Steven Watts

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SECTION 18. PROHIBITION AGAINST TRANSFER OF THE PROPERTY WITHOUT WRITTEN PERMISSION OF TDA.

The Developer has not made or created, and will not, prior to the repayment of the Maximum Amount of Advances in full, as certified by a mortgage release filed by TDA, make or suffer to be made the sale of all or any part of the Property, except as hereinafter provided, and agrees the Property is subject to the Due on Sale Clause. This restriction shall not prohibit _____ from transferring all or part of his ownership interest in the Developer to any member of his family within the second degree of consanguinity. Further, it shall not prohibit _____ from transferring or selling up to an undivided forty-nine percent (49%) of the ownership interest in the Developer. _____

Commented [AS5]: Further clarification needd.

Notwithstanding the above, the Developer shall have the right to transfer the residential units being constructed pursuant to this agreement into condominium units should it desire to do so without further authorization from TDA, provided that sufficient information regarding said units is furnished to TDA in order that any necessary amendments can be made to the Promissory Note and Real Estate Mortgage securing the indebtedness authorized herein to insure that Tulsa Development Authority remains as a [second?] position lien holder. The Developer shall be entitled to a partial release of the Real Estate Mortgage covering the Property as to each individual residential unit and the corresponding common elements related thereto upon payment to TDA of the sum of _____ Dollars (\$ _____) per unit sought to be released from said mortgage. Upon the completion of the conversion of the _____ (____) residential apartment units to condominium status, the mortgage covering the Property shall be amended to exclude any portion of the Property except the _____ (____) condominium and related common elements.

SECTION 19. LEASE OF UNITS PERMITTED. The Developer shall have the right to lease any unit of the Property within the building, whether residential, commercial, retail or office.

SECTION 20. SALE OF CONDOMINIUM UNITS AND COMMON ELEMENTS RELATED THERETO.

A. The Developer, after converting to condominiums, shall have the option of transferring title to or selling any residential unit of the Property. At closing, TDA shall issue a release of mortgage covering that specific condominium unit and related common elements which were subject to the sale upon payment of the consideration above set forth.

B. All proceeds paid to obtain partial releases of the mortgage shall be applied as a credit on the unpaid principal of the loan.

SECTION 21. AGREEMENT TO SURVIVE CLOSING OF LOAN.

The terms and provisions of this Agreement shall survive the Closing and remain in full force and effect until the repayment of all sums due under the Promissory Note and Mortgage from Developer to TDA.

SECTION 22. DEFAULT OR BREACH OF AGREEMENT.

Except as otherwise provided in this Agreement, in the event of any default in or breach of the Agreement, or any of its terms or conditions, by either party hereto, or any successor to such party, such party (or successor) shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and, in any event, within ninety (90) days after receipt of such notice. In case such action is not taken or diligently pursued, or the default or breach shall not be cured or remedied within such time, the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations and/or foreclosure of the Mortgage.

SECTION 23. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument and may be used as an original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below to be effective on the date of execution by TDA.

TULSA DEVELOPMENT AUTHORITY [_____]

By: _____
Julius Pegues, Chairman
"TDA"

By: _____
[] _____
"Developer"

ATTACHMENT "A"

ADVANCE REQUEST

Pursuant to the Redevelopment Agreement dated _____, 2011 (the "Redevelopment Agreement"), by The Tulsa Development Authority ("TDA") and _____ ("Developer"), Developer hereby requests an Advance in the amount of \$_____ for the account of Developer from the account in the City of Tulsa established for the _____ Redevelopment Agreement.

Developer does hereby certify to the TDA that, as of the date hereof: (i) the representations in the Redevelopment Agreement are hereby ratified and confirmed, (ii) the requested Advance herein is for the Expenditures Eligible for Reimbursement of Development Costs (as defined in the Redevelopment Agreement), (iii) there exists no default in or breach of the terms and provisions of the Redevelopment Agreement by Developer, (iv) the Redevelopment Agreement is in full force and effect, and (v) all conditions precedent to payment of the requested Advance herein have been met and payment of the Advance requested herein is proper pursuant to the terms of the Redevelopment Agreement, (vi) attached hereto are copies of the AIA form (when applicable), invoices, cancelled checks, and other documentation required to be received by TDA under the Redevelopment Agreement in connection with such Expenditures Eligible for Reimbursement, all of which invoices and other documents have been approved by TDA, (vi) there has not been filed with or served upon TDA notice of any lien, right to lien, or attachment upon or claim affecting the right to receive payment of, any of the monies payable to any of the persons, firms, or corporations named in such invoices, which have not been released or will not be released simultaneously with the payment of such obligation, and (vii) TDA has received from Developer all documents required by the Redevelopment Agreement, including, but not limited to the statutory payment bond, the certificate evidencing all-risk builders risk insurance.

Dated this _____ day of _____, 20____.

[_____]

By: _____
Manager

Dated this _____ day of _____, 20____.

The above Advance Request is hereby approved this _____ day of _____, 20____.

TULSA DEVELOPMENT AUTHORITY

By: _____

PROMISSORY NOTE

Tulsa, Oklahoma

\$ 500,000.00

May ____, 2018

FOR VALUE RECEIVED, 403 Cheyenne, LLC, or its permitted assigns, having its office having a principal mailing address at _____, Tulsa, Oklahoma, _____, (hereinafter called "Maker"), promises to pay to the order of the TULSA DEVELOPMENT AUTHORITY, a public body corporate of 1216 N. Lansing Avenue, Suite D, Tulsa, Oklahoma 74106 (hereinafter, together with all subsequent holders of this Note, called "Payee") the principal sum of Five Hundred Thousand Dollars (\$500,000.00), or so much thereof as shall be disbursed and remain outstanding hereunder and including expenses incurred by TDA for abstracting and title clearance work, filing, recording and closing fees, fees for legal services and inspection fees incurred by TDA in administration of the award of funds and the fulfillment of the contract terms, without interest, in U. S. funds on the following date:

_____, 202__.

Maker, by execution of this Note, acknowledges that the U. S. funds loaned to it pursuant to the terms of this Note are being advanced by Payee pursuant to a Redevelopment Agreement between the parties dated May ____, 2018 (the "Contract") to assist Maker in constructing a minimum of _____ (_____) ~~loft type~~ residential apartment units as a part of the Adams Building mixed urban use project in a building located at _____, Tulsa, Oklahoma _____ and related amenities ~~including, without limitation, a parking garage~~ (hereinafter defined as the "Redevelopment Project"), including all current and future supplements, amendments and attachments thereto, all in compliance with the terms of the Contract.

Commented [AS1]: Need to include unit mix.

Any default under the Contract shall constitute a default hereunder and Payee shall have the option of accelerating the due date of this Note to the date of notice of the default by giving ~~30-60~~ days notice thereof. Failure to maintain the Property, including the ~~forty (40) loft type~~ residential apartment units in a good state of repair and as residential housing during the term of this note will constitute a default hereunder; provided however, if any or all of the Property, including without limitation the residential units, is destroyed by fire or other casualty and Maker elects rebuild in accordance with the terms of the mortgage securing this Note (the "Mortgage") , then Maker shall not be in default hereunder. Failure to pay the amount due hereunder on the due date above set forth will constitute a default applying to the entire indebtedness.

Upon default or at maturity of each of said amounts above described interest will start to accrue on the unpaid principal balance hereunder at the rate of 12% per annum until paid.

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If the principal is not paid when due Payee, without notice except as otherwise provided herein, shall be entitled, at Payee's option, to declare the Maker in default and may exercise any and all rights and remedies under all instruments securing payment hereof, as well as any and all other rights and remedies at law or in equity or otherwise for the collection of the indebtedness evidenced hereby and all lawful charges thereon.

The Maker shall also pay costs of collection, including a reasonable attorney's fee if this Note is referred to an attorney for collection. Time is of the essence hereof for all purposes. All payments due hereunder shall be payable in lawful money of the United States of America and shall be made to Payee at the above address, or at such other address as Payee may from time to time designate in writing to Maker. Maker shall have the right to prepay this Note, in whole or in part, at any time without penalty.

Maker waives presentment and demand for payment, ~~notice of intent to accelerate maturity, notice of acceleration of maturity~~, protest or notice of protest and nonpayment, bringing of suit and diligence in taking any action to collect any sums owing hereunder or in proceeding against any of the rights and properties securing payment hereof.

If default be made in the payment in whole or in part of any sum provided for herein, or an event of default shall occur under any instrument executed as security for (including without limitation Mortgage, as evidence of, or otherwise in connection with this Note or the indebtedness evidenced hereby (hereinafter all such instruments being collectively called the "Loan Documents"), then Payee may, at Payee's option, without further notice or demand (except as may be otherwise specifically provided for in the Loan Documents), declare the unpaid principal balance and accrued interest on this Note at once due and payable, foreclose all liens securing payment hereof, pursue any and all other rights, remedies, and recourses available to Payee, or pursue any combination of the foregoing, all remedies hereunder and under the Loan Documents being cumulative.

Failure to exercise any of the foregoing options upon the happening of one or more of the foregoing events shall not constitute a waiver of the right to exercise the same or any other option at any subsequent time in respect to the same or any other event, and no single or partial exercise of any right or remedy shall preclude other or further exercise of the same or any other right or remedy. Payee shall have no duty to exercise any or all of the rights and remedies herein provided or contemplated. The acceptance by Payee of any payment hereunder that is less than payment in full of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing options at that time or at any subsequent time, or nullify any prior exercise of any such option without the express written consent of the Payee.

This Note is secured by the Mortgage, covering the Property. This Note shall be covered and construed according to the laws of the State of Oklahoma, without regard to principles of conflicts of laws. Maker shall be fully liable to Payee: (i) for failure to pay

taxes, assessments or other charges which can create liens or encumbrances on any portion of the property described in the Mortgage and other Loan Documents which would be senior to the liens of the Mortgage or other Loan Documents and are payable or accrue or are applicable to periods prior to foreclosure under the Mortgage or other Loan Documents, to the full extent thereof; (ii) for fraud or misrepresentation; and (iii) for the misapplication or misappropriation of (a) proceeds under any insurance policies paid or payable prior to foreclosure by reason of damage, loss or destruction to property described in the Mortgage and other Loan Documents, or any part thereof, to the full extent of such proceeds, (b) any proceeds or awards resulting from a condemnation, prior to foreclosure, of the property described in the Mortgage and other Loan Documents, or any part thereof, to the full extent of such proceeds or awards, (c) rents and other revenue from the property described in the Mortgage and other Loan Documents received or applicable to a period prior to foreclosure and after notice of default, or (iv) violation of the terms of the Contract.

All notices hereunder shall be given at the following addresses:

If to Payee:

Tulsa Development Authority
1216 N. Lansing Avenue, Suite A
Tulsa, Oklahoma 74106
Attention: O. C. Walker, II, Executive Director

With a copy to:
Jot Hartley, TDA General Counsel
201 W. 5th Street, Ste. 501
Tulsa, OK 74103

If to Maker:

403 Cheyenne, LLC
9 E. 4th Street, Suite 303
Tulsa, OK 74103
Attention: Steven Watts
steven.watts@addaxdev.com

With a copy to:
JAS Law Group, PLLC
2932 Pelham Drive
Oklahoma City, OK 73120
Attention: Ashley Smith, Esq.
-ashlev.smith@jaslawgrp.com

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Either party may change its address for notice purposes upon giving ten (10) days prior notice thereof in accordance with this paragraph. All notices given hereunder shall be in writing and shall be considered properly given if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or by delivering the notice in person to the intended addressee. Any notice mailed as above provided shall be effective the day following the day of deposit in the custody of the U. S. Postal Service; notice personally delivered shall be effective upon receipt.

The records of the holder thereof shall be prima facie evidence of the amount owing on this Note. This Note may not be terminated orally, but only by a discharge in writing and signed by the party who is the owner and holder of this Note at the time enforcement of any discharge is sought.

In the event that the Maker shall sell, convey, transfer or otherwise alienate directly or indirectly all or any portion of the legal or equitable title to Property without the prior written consent of Payee, whether voluntarily or involuntarily, the entire amount of the principal due under the terms hereof shall become immediately due and payable in full at the option of the Payee and the mortgage shall be subject to immediate foreclosure.

Advances of funds hereunder shall be made only in compliance with the following provisions and conditions:

SECTION 1. DEFINITIONS.

The terms herein set forth shall for all purposes of this note have the following meanings. Unless the context otherwise indicates, words importing the singular shall include the plural and vice versa and the use of the neuter, masculine or feminine gender is for convenience only and shall be deemed to mean and include the neuter, masculine and feminine gender.

A. “Advance” shall mean any of the Advances of funds requested by the Maker or by TDA and approved by TDA to reimburse for “Expenditures Eligible for Reimbursement” (as defined below in Section D) in the development of the project herein described.

B. “Advance Request” means each Advance Request signed by the Maker and/or TDA in the form set forth on Attachment “A” attached hereto.

C. “Construction Documents.”

ED. “Developer” or “Redeveloper” means 403 Cheyenne, LLC or any permitted assigns. Assignment or other transfer to an entity in which 403 Cheyenne, LLC owns a

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controlling interest shall be deemed a permitted assignment and shall not require the consent of TDA; provided that at least sixty (60) days prior to any such assignment, Maker shall deliver advance written notice thereof to Payee together with documentation acceptable to Payee demonstrating that the intended assignee has, at a minimum, financial qualifications, strength and resources equivalent to that of the Maker as of the date of this Note.

DE. “Expenditures Eligible for Reimbursement” means all costs associated with improvements in the development and construction of the residential units and related amenities, together with all construction supplies and services including those set forth in the project budget approved by TDA and including expenses incurred by TDA for abstracting and title clearance work, filing, recording and closing fees, fees for legal services and inspection fees incurred by TDA in administration of the award of funds and the fulfillment of the contract terms.

EF. “Maximum Amount of Advances” means the amount to be advanced upon funding in the amount not to exceed Five Hundred Thousand Dollars (\$500,000.00), and including expenses incurred by TDA for abstracting and title clearance work, filing, recording and closing fees, fees for legal services and inspection fees incurred by TDA in administration of the award of funds and the fulfillment of the contract terms which is the amount of the Loan.

FG. “Property” means the real estate more particularly described on pages one and two of this Note.

GH. “Redevelopment Project” means the design, construction and operation of a minimum of _____ (~~loft type~~) residential apartment units as a part of the Adams Building mixed urban use project in a building located at _____, 403 S. Cheyenne Avenue, Tulsa, Oklahoma _____ and related amenities ~~including, without limitation, a parking garage~~ (hereinafter defined as the “Redevelopment Project”), including all current and future supplements, amendments and attachments thereto, all in compliance with the terms of the Contract.

HI. “Termination Event” shall mean the occurrence of any of the following:

IL. Default under TDA Redevelopment Agreement. Any material default in or breach of the terms and provisions of the Contract which has not been remedied to the satisfaction of TDA by the time set

forth herein after written notice thereof has been given to the Redeveloper specifying such default or breach.

2. Representations. Any representation, advance request, statement, certificate, schedule or report made or furnished to TDA by the Redeveloper proves to be false or misleading at the time of the making thereof in any material aspect; and Developer fails to take or cause to be taken corrective measures satisfactory to TDA within sixty (60) days after receipt of written notice from TDA shall cause a default.

SECTION 2. CONSTRUCTION PLANS.

A. All Construction Documents and any changes subsequently made with respect to the development or redevelopment of the Property and construction of improvements shall be in compliance with, all necessary permits, inspections, applicable codes and procedures of, the City of Tulsa; and Redeveloper shall furnish copies of such permits to TDA. Further, all such plans shall be substantially in compliance with the standards and representations set forth in the construction plans submitted to and approved by TDA.

B. This Note and the terms of the Contract require that there will be a minimum of _____ (____) ~~loft type~~ residential apartment units constructed by the Developer.

Commented [AS2]: Need to include unit mix.

C. A copy of All documents, including drawings, specification, invoices and data created by or submitted to TDA in connection with the redevelopment of the Property shall be provided to TDA for TDA for use solely to verify compliance by Developer with the terms and conditions of this Agreement and, upon default hereunder, shall become and remain the property of TDA.

SECTION 3. SCHEDULE OF REDEVELOPMENT.

Time is of the essence in the completion of construction of _____ (____) loft type residential apartment units and related amenities collectively constituting the Property. The construction of the units shall commence within ninety (90) days after the issuance of a building permit by the City of Tulsa (the "Commencement Date") and shall be completed within _____ (____) months after commencement of construction ("Completion Deadline"), unless (a) the Developer's written request for an extension has been approved in writing by TDA, which approval will not be unreasonably withheld or delayed or (b) the Completion Deadline is extended by reason of Force Majeure.

SECTION 4. CONDITIONS PRECEDENT TO FUNDING OF LOAN.

TDA shall have no obligation to fund the loan nor make any disbursement hereunder until Redeveloper has furnished TDA the following:

A. A Title Report showing marketable title to the Property to be vested in 403 Cheyenne, LLC, subject only to a first mortgage not to exceed the principal sum of _____ Dollars in a form approved by TDA, which approval shall not be unreasonably withheld or delayed, an subject to easements and restrictions of record.

B. Proof that all required insurance coverage is in force.

SECTION 5. TDA AND CITY RIGHT TO INSPECT.

A. Redeveloper acknowledges and agrees that TDA and the City of Tulsa shall have the right to inspect the Property at all reasonable times, with forty-eight hours' notice, subject to reasonable limitations designed to assure safety and, after completion of construction, the peaceful occupancy of tenants of the Property.

SECTION 6. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

A. After execution of this Agreement and prior to the Redeveloper's repayment of the Loan to TDA secured by a mortgage to TDA on the Property, the Redeveloper shall not engage in any financing or any other transaction creating any additional mortgage, encumbrance or lien upon the Property, including without limitation, the _____ (____) residential units, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Property, including without limitation, the forty (40) residential units, without the prior written consent of TDA. The Redeveloper may place one or more mortgages not exceeding in the aggregate the principal amount of _____ (\$_____) on the Property for the purpose of funding the Redevelopment Project and related amenities (the "Redevelopment Mortgage(s)"). TDA shall, upon request, execute and deliver a subordination agreement in usual and customary recordable form subordinating the TDA mortgage to such Redevelopment Mortgage(s).

Commented [AS3]: Need language allowing us to take up to a designated amount of debt without TDA's permission.

B. Should any taxes, assessments, encumbrance, mechanic's or any materialmen's lien, or any other unauthorized encumbrance or lien attach to the Property, and the Redeveloper fail to take or cause to be taken corrective measure to cure any such encumbrance or lien within ninety (90) days after written demand by TDA, or such other time as agreed in writing by both parties, this Agreement shall be in default.

C. Redeveloper agrees that all of the proceeds of the first mortgage and all funds received from the loan herein authorized must be expended on the construction of the residential housing units referred to herein together with the amenities thereto.

SECTION 7. DILIGENCE REQUIRED.

A. The Redeveloper agrees for itself, its successors, and assigns to promptly begin and diligently complete the Redevelopment Project on the Property through the construction of the improvements thereon, and the construction shall in any event be begun and completed within the periods specified in the Contract, unless a written extension has been approved and executed by both parties. It is agreed that these agreements and covenants shall be covenants running with the land, binding for the benefit of the City of Tulsa, Oklahoma and TDA, and enforceable by TDA and the City against the Redeveloper and its successors and assigns.

B. If the Redeveloper shall default in or violate its obligations with respect to the construction of the improvements (including the nature and dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and the Redeveloper fails to take or cause to be taken corrective measure to cure any such default, violation, abandonment, or suspension within sixty (60) days after written demand by TDA, or such other time as agreed in writing by both parties, then TDA shall have the right to institute such actions or proceedings as it may deem desirable, including foreclosure through judicial proceedings.

C. If completion of the Project is delayed by a Force Majeure Event, then the completion date may be extended for the length of time that such Force Majeure Event delays completion of the Project, but not more than 60 days, provided that within 15 days after the occurrence of any such Force Majeure Event, the Redeveloper delivers to TDA a written notice of the Force Majeure Event and TDA in the exercise of its reasonable discretion agrees to such extension request. A "Force Majeure Event" means any strike, lockout, embargo, fire, unavoidable casualty, national emergency, act of God or any other unforeseeable cause beyond the control of the Redeveloper which results in a delay in the construction of the Redevelopment Project

SECTION 8. CONTACT PERSON.

The Redeveloper agrees that _____ Steven Watts is the primary contact/member of _____ 403 Cheyenne, LLC. He/She shall act as primary contact person, acting on behalf of the Redeveloper regarding all aspects of the project. Developer may update this information periodically and any changes or updates to the contact information below shall be provided to TDA in writing. The Redeveloper furnished the following contact information and grants permission for the City or TDA to contact:

Name: Steven Watts
Address: 9 E. 4th Street, Suite 303
Tulsa, OK 74103
Phone: (918) 645-0804
E-mail: steven.watts@addaxdev.com

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SECTION 9. LOAN PROCEEDS AVAILABLE TO REDEVELOPER.

A. Loan proceeds available to the Redeveloper are subject to the terms and conditions set forth herein. These funds, may be drawn upon by the Redeveloper as Expenditures Eligible for Reimbursement for improvements to the Property solely from the City of Tulsa Account established for the funding of this project after approval by TDA of the funding and shall be funded by TDA within 40 days of submission of a request for advance meeting the terms and conditions of this Note and so long as no default has occurred hereunder.

SECTION 10. INSURANCE REQUIRED.

Prior to commencement of construction Redeveloper shall provide to TDA the following documents:

A. A certificate of insurance from an insurance company licensed to do business in Oklahoma evidencing all-risk builders risk insurance with coverage at least in the amount of the replacement cost of the Redevelopment Project but not less than the combined outstanding principal balances of the Redevelopment Mortgage and the TDA Mortgage.

B. A certificate of general liability insurance with bodily injury and property damage in a combined single limit coverage of not less than One Million Dollars (\$1,000,000.00) for each occurrence and not less than Two Million Dollars (\$2,000,000.00) in the aggregate. TDA and the City of Tulsa shall be named as additional insured and shall be notified of any policy cancellation by thirty (30) days written notice.

C. The Redeveloper shall require all contractors and sub-contractors performing work on the Redevelopment Project to provide certificates of insurance evidencing general liability insurance coverage and workers' compensation insurance in the statutory amounts.

SECTION 11. CONDOMINIUM SALE.

Notwithstanding the above, the Redeveloper shall have the right by appropriate legal documentation to subject the Property and the residential units being constructed pursuant to this agreement into condominium units in compliance with Oklahoma law, should it desire to do so, without further authorization from TDA, provided that sufficient information regarding said units is furnished to TDA in order that the parties may make any necessary amendments to the Promissory Note and Real Estate Mortgage securing the indebtedness authorized herein to insure that Tulsa Development Authority remains as a second position lien holder on the principal development. The Redeveloper shall be entitled to a partial release of the Real Estate Mortgage covering the Property as to each individual residential unit and the corresponding common elements related thereto upon payment to TDA of the amount of \$_____ per unit.

SECTION 12. LEASE OF UNITS PERMITTED.

The Redeveloper shall have the right to lease any unit of the Property within the building provided, however, that the residential units within the Redevelopment Project shall be limited to use as housing units until all funds made available to the Redeveloper under this Agreement are repaid in full.

SECTION 13. SALE OF CONDOMINIUM UNITS AND COMMON ELEMENTS RELATED THERETO.

A. When the property is submitted to a condominium regime, whenever such submission occurs, the Redeveloper shall have the option of transferring title to or selling any residential unit of the Property. At closing, TDA shall issue a release of mortgage covering that specific condominium unit and related common elements which were subject to the sale upon payment of the consideration set forth in Section 12 above.

B. All proceeds paid by Maker to TDA to obtain partial releases of the mortgage shall be applied as a credit on the unpaid principal of the loan. Upon the sale of eighty percent (80%) of the residential units as condominiums, the balance then owing on the Promissory Note shall become due and payable to TDA unless, by written agreement, TDA, at its sole discretion, agrees to delay such final payment.

Executed as of the date and year first above written.

