



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

DATE: October 5, 2018

HCR18-092

SUBJECT: Approval of Contingent Settlement of a Lawsuit between the San Diego Housing Commission and the Housing Authority of the City of San Diego (the Plaintiffs) and JSP Rancho Del Rio, L.P.

COUNCIL DISTRICT: 8

ORIGINATING DEPARTMENT: General Counsel

CONTACT/PHONE NUMBER: Charles B. Christensen/619-236-9343

REQUESTED ACTION:

Approve Contingent Settlement of Litigation initiated by the San Diego Housing Commission and the Housing Authority of the City of San Diego.

EXECUTIVE SUMMARY OF KEY FACTORS:

- This lawsuit arises over a dispute about the interpretation of the relevant portion of a ground lease between the Housing Authority of the City of San Diego (Housing Authority) and the Sublessee, JSP Rancho Del Rio, L.P., for land upon which a 130-space mobile home park in San Ysidro is located.
- Thirty percent of the units or spaces are affordable at or below 80 percent of the San Diego Area Median Income (AMI).
- The San Diego Housing Commission (Housing Commission) was delegated all administrative authority under the sublease.
- The amount claimed to be due, by the Housing Commission, starts on September 1, 2016, onward.
- The amount in controversy is 56 months at the rate of \$11,250 per month, or, a total of \$630,000 over the period from September 1, 2016, to the date of the next rent adjustment, May 3, 2021.
- The City of San Diego will receive all back rent from September 1, 2016, to the date of close, plus full fair market value of the property being sold.
- The settlement, if approved, will increase the affordability by another 20 percent of the spaces or units on the site, for a period of 55 years. After the sale or lease are consummated, 50 percent of the spaces or coaches, 65, will be affordable at or below 80 percent of AMI.



REPORT

DATE ISSUED: October 2, 2018

REPORT NO: HCR18-092

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of the Special Meeting of October 5, 2018

SUBJECT: Approval of Contingent Settlement of a Lawsuit between the San Diego Housing Commission and the Housing Authority of the City of San Diego (the Plaintiffs) and JSP Rancho Del Rio, L.P.

COUNCIL DISTRICT: 8

REQUESTED ACTION:

Special Meeting Shortened Advance Notice of San Diego Housing Commission hearing of the following matter has been provided to the Housing Authority members pursuant to the provisions of San Diego Municipal Code section 98.0301(e)(4)(B)

Approve Contingent Settlement of Litigation initiated by the San Diego Housing Commission and the Housing Authority of the City of San Diego.

STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) Board of Commissioners take the following actions:

- 1) Approve the contingent settlement and proceed to work with the City of San Diego's Real Estate Assets Department to process a potential sale or lease of the property from the City of San Diego to JSP Rancho Del Rio, L.P. (the Sublessee), on terms set forth in this Report, in a form drafted by General Counsel, as approved by the President & CEO of the Housing Commission, or designee;
- 2) Authorize the President & CEO, or designee, to execute a settlement agreement, in conformance with the deal points set forth in this report, as approved by General Counsel; and
- 3) Authorize the President & CEO, or designee, to perform such acts as are necessary to implement these approvals.

SUMMARY

This lawsuit arises over a dispute about the interpretation of the relevant portion of a ground lease between the Housing Authority of the City of San Diego (Housing Authority) and the Sublessee, for land upon which a 130-space mobile home park in San Ysidro is located. Thirty percent of the units or spaces are affordable at or below 80 percent of the San Diego Area Median Income (AMI). The Housing Commission was delegated all administrative authority under the sublease. The sublease provides for periodic adjustment of the sublease monthly payments. The suit involves a dispute between the Housing Authority and Housing Commission, as the Plaintiffs, and the Sublessee, as the Defendant, as to whether

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an adjustment of the rent from \$17,450 to \$28,700 in September of 2016 was appropriate. The ground lease relates to public land in the City of San Diego leased by a private entity, the Sublessee. . The Plaintiffs have filed a motion for summary judgment in the Orange County Superior Court, which seeks an order affirming Plaintiffs' contention that written notice of rent adjustment accompanied by an appraisal submitted to Defendant, on or about September 9, 2016, effectively changed the monthly rental payment as of September 1, 2016.

On or about August 3, 1984, the Housing Authority and Rancho Del Rio, a California limited partnership, entered into a Ground Lease (Sublease) concerning real property described in the lease. The description of the real property is not at issue. The purpose of the Sublease was to allow for the development of a mobile home park by the tenant, Rancho del Rio. Rancho Del Rio was to pay monthly rent to the Landlord, calculated, in large part, using the appraised value of the real property. On or about October 31, 2007, Rancho del Rio assigned their rights, title and interest in the Sublease to JSP Rancho del Rio, LP.

The Housing Authority, by the execution of the Sublease, designated the Executive Director of the Housing Commission, "to make and effectuate any and all decisions under this Lease to be made by Landlord, to implement the provisions of this [Sublease] and to receive all notices pursuant to this [Sublease]." Therefore, the Housing Commission has been and is the administrative agent for the Housing Authority regarding the Sublease.

The Sublease was amended twice. In October 1985, it was amended (Amendment) to change certain text including the amount of the initial monthly rental payment and the definition of Lease Year, specifically the commencement of the first lease year. Other text was changed, but those changes are not relevant to this action. The Sublease was again amended on or about April 22, 2008 (Second Amendment), and the changes made at that time are likewise not at issue here.

On or about September 9, 2016, the Housing Commission gave Defendants proper written notice of an adjustment in the rent to be effective September 1, 2016. Defendant JSP contends that the written notice for a rent adjustment is ineffective because it was not timely presented. On or about November 18, 2016, the Housing Commission gave Defendant JSP Rancho Del Rio, L.P., written notice of its position that Defendant breached the Sublease and demanded payment of the delinquent amount.

The amount claimed to be due, by the Housing Commission, starts on September 1, 2016, onward.

Pursuant to the terms of the written Master Ground Lease between the City of San Diego and the Housing Authority, the Housing Authority was authorized to enter into the Sublease, concerning the same real property, with Rancho del Rio, which Sublease was fully authorized on or about August 3, 1984:

The approval or consent of Landlord, wherever required in this Lease, shall mean the approval or consent of the Commission unless otherwise specified, without need for further resolution by Landlord. Unless otherwise specified, approvals and consents of the Commission may be rendered by the Executive Director of the Commission or his designate, and Tenant may rely on any such approval or consent rendered by the Executive Director or his designate, or the Commission.

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The operative language of the Sublease and its amendments do not set out a specific timeframe within which a rent adjustment must occur. In fact, specific Sublease language at Clause 3.01.B contemplates that the Landlord may effectuate a rent adjustment beyond the time period asserted by Defendants:

Landlord shall submit its appraisal of the Premises together with its calculation of the Rent as adjusted pursuant to such appraisal to Tenant for its approval at least thirty (30) days prior to commencement of the period for which the adjustment will take effect. Failure to provide such appraisal at least 30 days prior to commencement of the period shall not however preclude the Landlord from proceeding with an adjustment pursuant to this paragraph so long as Landlord's appraisal is submitted in any event within 30 days after the commencement of the period for which the adjustment will take effect.

The amount in controversy is 56 months at the rate of \$11,250 per month, or, a total of \$630,000 over the period from September 1, 2016, to the date of the next rent adjustment, May 3, 2021.

SETTLEMENT NEGOTIATIONS AND MEDIATION

The parties have engaged in an all-day mediation ordered by the Orange County Superior Court for a full day and follow-ups after the full-day session.

As result of that mediation, the parties have entered into a contingent settlement of the case. The contingent settlement is subject to the approval of the Housing Commission Board, and, only if the Housing Authority asks to hear the matter, the Housing Authority.

If approved by the Housing Commission and the Housing Authority, the parties will enter into a contingent settlement agreement, and the case currently pending in the Orange County Superior Court will be stayed, pending processing a proposed sale or lease of the subject property to the current Sublessee. Any sale or lease of the property is subject to the subsequent governmental approvals, as determined to be necessary:

- 1. Commencing on the first day of the first full month following the mutual execution of a formal settlement agreement ("Settlement Agreement"), rent under the Ground Lease shall be paid to the Housing Authority at the monthly rental rate of \$22,500.**
- 2. Sale of the property is subject to all governmental approvals, and shall be at FMV of the property, as determined by a certified and reputable MAI appraiser who has determined the fair market value of the fee simple interests in the Property, as if vacant and available for its highest and best use. The appraiser must be acceptable to City, in City's sole discretion, and have provided appraisal services to City in the last three years and must have at least 10 years' experience appraising properties in San Diego ("Acceptable Appraiser"). The purchase price for the Property shall be the fair market value of the fee simple interest. The appraisal shall not include any of the open space as part of the Property being appraised. Any appraisal must be approved by the City of San Diego Principal Appraiser, if the sublessee agrees to proceed at the appraised value.**

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- 3. If sublessee elects to acquire the Property, the existing Superior Court action shall be stayed until the earlier of 12/31/2019 (or 6/30/2020 if extended in accordance with Section 13 below) or closing of the sale of the Property to SUBLESSEE.**
- 4. The Property subject to the sale to SUBLESSEE shall only include the approximately 12.99-acre parcel currently improved with the mobile home park and shall not include the approximately 9.67-acre parcel consisting of open space.**
- 5. Concurrently with the completion of a sale of the Property to SUBLESSEE, a Declaration of Covenants, Conditions and Restrictions (“Deed Restriction”) shall be recorded against the property in first priority, restricting rents and occupancy for a period of 55 years. Such Deed Restriction shall provide that not less than 65 units (coaches or spaces) (“Affordable Units”) shall be leased to Eligible Tenants; provided, that Affordable Units in existence as of the closing of the sale shall be grandfathered in based on their existing affordability restrictions. The Deed Restriction shall contain typical mortgagee protections.**

 - a. “Eligible Tenants” are those tenants whose aggregate gross annual income does not exceed 80% of AMI, as adjusted for family size. For purposes of the Deed Restriction, the current annual area median income shall be the area median income defined by the Department of Housing and Urban Development (“HUD”) as the then current area median income for the San Diego-Carlsbad-San Marcos Metropolitan Statistical Area, established periodically by HUD and published in the Federal Register, as adjusted for family size. The rents and the occupancy restrictions shall be deemed adjusted, from time to time, in accordance with any adjustments that are authorized by HUD or any successor agency. In the event HUD ceases to publish an established area median income as aforesaid, SDHC may, in its sole discretion, use any other reasonably comparable method of computing adjustments in area median income.**
 - b. SDHC will monitor compliance with applicable affordability requirements in accordance with a Monitoring Agreement pursuant to which JSP shall agree to pay SDHC an annual fee of \$165/Affordable Unit, as that fee is periodically adjusted, from time to time, as established for other projects being monitored by the SDHC, commencing upon the closing of the sale of the Property.**
 - c. The Deed Restriction shall provide that the number of residential units within the Property is increased beyond 130 units, then the required number of Affordable Units shall increase such that not less than 15% of the new residential units at the Property in excess of 130 units shall be leased to Eligible Tenants in addition to the original 65 Affordable Units. For the sake of clarity, the original 65 Affordable Units shall continue to be required to be leased to Eligible Tenants.**
- 6. Upon closing in consideration of the efforts of SDHC to obtain the governmental approvals, a fee in the amount of \$100,000 will have been earned by SDHC.**
- 7. The Deed Restriction and SDHC Carry Back Note shall be secured by a junior deed of trust. The City will enter into a customary subordination agreement with any proposed first lien mortgage lender with typical notice and cure terms which subordinates the junior deed of trust but not the Deed Restriction to such first lien mortgage loan.**
- 8. If the sale of the Property to SUBLESSEE occurs and SUBLESSEE redevelops the Property, all tenants of the Property shall be relocated at SUBLESSEE’s cost and expense, in**

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accordance with any applicable relocation laws. SUBLESSEE shall, at its sole cost and expense, pay for and provide relocation assistance, and other legally required compensation and/or assistance, to existing tenants or owners in the park, with any and all benefits as provided for under any and all applicable law, as determined by the Office of the City Attorney of the City of San Diego, in the event of displacement of any existing tenants and/or owners on the Property. OK.

9. At any time that the Property is operated as a mobile home park, all applicable laws regarding the operation of a mobile home park shall be complied with.

10. Any costs of developing the Property by SUBLESSEE, if any, shall be paid by SUBLESSEE, including without limitation, appraisal fees, engineering service fees, surveying work fees, title policies, escrow fees, etc.

11. If the sale of the Property occurs, (a) the parties to the litigation shall bear their own attorney's fees; and (b) sublessee will agree to pay all back rent to the Housing Authority from 9/1/2016 to the date the new lease is entered into at the rate of \$28,700 per month with a credit for rent already paid for such period. Such payment shall be made concurrent with the closing of the sale of the Property, and shall be in addition to the purchase price for the Property.

12. The sublessee shall continue to comply with all requirements in the Ground Lease as modified by the Settlement Agreement pending the closing of the sale.

13. All items herein shall be documented in a Settlement Agreement to be entered into by the parties. The Settlement Agreement shall provide that, if all of the governmental approvals for the sale or lease of the Property are not obtained, including without limitation approval of the City Council of the City of San Diego, then the City, which is not a party to the pending litigation, will have no liability to any party to the Settlement Agreement.

14. If the sale is not finalized, then the parties will attempt to negotiate a long-term lease, only as approved by the City Council. Any proposed New Lease, is subject to the approval of the City Council in its sole legislative discretion. If SDHC is not able to obtain the required governmental approvals for the new lease with the City, then the litigation shall be reinstated.

15. If the New Lease, is approved by the City Council, the lessee will agree to pay all back rent to the Housing Authority from September 1, 2016 to the date the new lease is entered into at the rate of \$28,700 per month with a credit for rent already paid for such period. Such payment shall be made concurrent with SUBLESSEE executing the New Lease.

16. If a New Lease with the City is obtained, the Lessee will agree to provide, SUBLESSEE will agree to provide an access easement over the Property to the open space retained by the City. Locations of easements are as approved by the City to allow access to the open space retained. The lessee will pay for the costs of surveying required for the easement.

17. SDHC, Housing Authority and the sublessee shall enter into a Settlement Agreement as soon as possible following the date hereof on the terms provided in this memo; provided that the

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Settlement Agreement shall be contingent upon receipt of board approval by SDHC and the Housing Authority not later than 75 days after the Settlement Agreement has been entered into by all of the parties. If SDHC does not obtain the required board approval by SDHC and the Housing Authority then the Settlement Agreement is null and void and the existing Superior Court action will be reinstated.

AFFORDABLE HOUSING IMPACT

The settlement, if approved, will increase the affordability by another 20 percent of the spaces or units on the site, for a period of 55 years. In addition, if there is any further development, 15 percent of the new units will also be affordable, at or below 80 percent of AMI. Any spaces or coaches that are grandfathered in will continue to pay rent at or below 60 percent of AMI. Currently 39 coaches or spaces are restricted. After the sale or lease are consummated, 50 percent of the spaces or coaches, 65, will be affordable at or below 80 percent of AMI. There are 130 coaches or spaces on the site.

FISCAL CONSIDERATIONS

The City of San Diego will receive all back rent from September 1, 2016, to the date of close, plus full fair market value of the property being sold.

KEY STAKEHOLDERS and PROJECTED IMPACTS

All of the current and future residents will be assisted because 50 percent of the units will be affordable at or below 80 percent of AMI, and in the event of new development, 15 percent of the new units will also be affordable.

ENVIRONMENTAL REVIEW

This item is not a project under the provisions of the California Environmental Quality Act [CEQA], and/or is categorically exempt under CEQA regulations. No federal funds are involved and therefore no NEPA clearances are required.

Respectfully submitted,

Charles B. Christensen

Charles B. Christensen
General Counsel
Christensen & Spath LLP

Approved by,

Jeff Davis

Jeff Davis
Executive Vice President & Chief of Staff
San Diego Housing Commission

Hard copies are available for review during business hours at the security information desk in the main lobby and the fifth-floor reception desk of the San Diego Housing Commission offices at 1122 Broadway, San Diego, CA 92101 and at the Office of the San Diego City Clerk, 202 C Street, San Diego, CA 92101. You may also review complete docket materials in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org.