



## EXECUTIVE SUMMARY

### HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: May 5, 2022

HCR22-074

SUBJECT: Approval of a Revised 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.; Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC

COUNCIL DISTRICT(S): 8

ORIGINATING DEPARTMENT: General Counsel

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

#### REQUESTED ACTION:

Approve a revised contingent settlement of litigation initiated by the San Diego Housing Commission and the Housing Authority of the City of San Diego: Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC

#### 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, 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 amount in controversy is 56 months at the rate of \$11,250 per month, or a total of \$641,250.00 over the period from September 1, 2016, to June 1, 2021.
- The prior contingent settlement was contingent upon the developer being able to enter into an agreement with the City of San Diego to purchase the subject property. Because of numerous complications, it was not possible to enter into an agreement with the City to purchase the property.
- Accordingly, a new proposed 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 of the City of San Diego.
- If approved by the Housing Commission and the Housing Authority, the parties will enter into a revised contingent settlement agreement, and the case currently pending in the Orange County Superior Court will be dismissed with prejudice, provided that the property that is the subject of the ground lease is sold to the current Sublessee on terms and conditions as determined by the City of San Diego in its sole discretion.
- Upon the close of escrow to sell the property to Sublessee, if it occurs, the Housing Commission shall be paid the sum of \$641,250.00, which it shall immediately pay to the City of San Diego as back rent, since September 1, 2016. The lawsuit and the cross-complaint of the Sublessee shall be dismissed with prejudice. Each of the parties to the litigation shall bear their own costs and fees.



## REPORT

**DATE ISSUED:** April 28, 2022

**REPORT NO:** HCR22-074

**ATTENTION:** Chair and Members of the San Diego Housing Commission  
For the Agenda of May 5, 2022

**SUBJECT:** Approval of a Revised 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.; Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC

**COUNCIL DISTRICT:** 8

**REQUESTED ACTION:**

*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 a revised contingent settlement of litigation initiated by the San Diego Housing Commission and the Housing Authority of the City of San Diego: Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC

**STAFF RECOMMENDATION**

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

- 1) Approve a revised contingent settlement as set forth in the attached Settlement Agreement dated May 12, 2022, and proceed to collaborate with the City of San Diego's Real Estate Assets Department and the office of the City Attorney to process a potential sale of the property from the City of San Diego to JSP Rancho Del Rio, L.P. (the Sublessee), on terms determined by the City of San Diego.
- 2) Authorize the Interim President & CEO, or designee, to execute the settlement agreement, in substantial conformance with the Settlement Agreement attached to this report, in a final form as approved by the General Counsel of the San Diego Housing Commission and the General Counsel of the Housing Authority of the City of San Diego, provided that a copy of the document, signed as to form by General Counsel, is submitted to each Housing Commissioner in advance of approval for the designee to sign, if there are any substantial changes to the draft settlement agreement attached to this report.
- 3) Authorize the Interim President & CEO, or designee, to perform such acts as are necessary to implement these approvals.

April 28, 2022

Approval of a Revised 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.; Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC  
Page 2

## **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 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

April 28, 2022

Approval of a Revised 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.; Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC  
Page 3

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.*

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 \$641,250.00 over the period from September 1, 2016, to June 1, 2021.

#### **SETTLEMENT NEGOTIATIONS AND MEDIATION**

The parties 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 agree to enter into a contingent settlement of the case, on certain terms set forth in the prior Board report which is attached. The prior contingent settlement was contingent upon the developer being able to enter into an agreement with the City of San Diego to purchase the subject property. Because of numerous complications, it was not possible to enter into an agreement with the City to purchase the property. Accordingly, a new proposed 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 of the City of San Diego. On October 5, 2018, the Housing Commission Board of Commissioners, by a vote of 5-0, approved the prior contingent settlement agreement. The Housing Authority did not ask to hear the matter at that time.

If approved by the Housing Commission and the Housing Authority, the parties will enter into a revised contingent settlement agreement, and the case currently pending in the Orange County Superior Court will be dismissed with prejudice, provided that the property that is the subject of the ground lease is sold to the current Sublessee on terms and conditions as determined by the City of San Diego in its sole discretion. Nothing contained within this revised settlement agreement shall in any way pre-commit the discretionary authority of the City of San Diego to sell the property to the current Sublessee, upon any terms, or at all. The decision to sell such property is subject to such approvals by the City of San Diego

April 28, 2022

Approval of a Revised 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.; Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC  
Page 4

as are necessary to create a binding agreement to sell the property. If the property is not sold, however, the revised contingent settlement of the pending litigation shall be void, and the parties shall proceed to litigate the matter of back rents in the Orange County Superior Court. A motion for summary judgment has been filed by the Housing Commission and the Housing Authority of the City of San Diego and a cross motion has been filed by the Cross-Complainants and are currently pending in the Orange County Superior Court. Should the sale of the property not be consummated, then motion for summary judgment shall be placed back on calendar for hearing. Currently the trial date for this matter is scheduled on October 30, 2023.

Upon the close of escrow to sell the property to Sublessee, if it occurs, the Housing Commission shall be paid the sum of \$641,250.00, which it shall immediately pay to the City of San Diego as back rent, since September 1, 2016. The lawsuit and the cross-complaint of the Sublessee shall be dismissed with prejudice. Each of the parties to the litigation shall bear their own costs and fees.

#### **AFFORDABLE HOUSING IMPACT**

If an agreement to sell the property to the Sublessee is consummated, a regulatory agreement will be recorded against the property that will provide continued affordability for all residents of the mobile home park who are currently qualified as low-income tenants, on terms and conditions agreed to by and between the City of San Diego and the Sublessee. The Housing Commission will monitor compliance with applicable affordability requirements in accordance with a Monitoring Agreement pursuant to which JSP shall agree to pay the Housing Commission 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 Housing Commission, commencing upon the closing of the sale of the Property. In addition, upon closing, in consideration of the Housing Commission's efforts to assist in the resolution of this dispute, the Housing Commission will be paid a fee in the amount of \$100,000, which the parties agree will have been earned by the Housing Commission.

#### **FISCAL CONSIDERATIONS**

If the City of San Diego agrees to sell the property to the Sublessee, the City will receive all back rent, since September 1, 2016, in the amount of \$641,250.00, plus the purchase price agreed to by and between the City of San Diego and the Sublessee, as approved by the City Council of the City of San Diego, in its sole discretion. Nothing contained in the contingent settlement agreement shall require the City of San Diego to approve any sale of the subject property. Any future agreement is subject to the sole unfettered discretion of the City Council of the City of San Diego.

#### **HOUSING COMMISSION STRATEGIC PLAN**

This item relates to Strategic Priority Area No. 1 in the Housing Commission's Strategic Plan for Fiscal Year (FY) 2022- 2024: Increasing and Preserving Housing Solutions.

#### **KEY STAKEHOLDERS and PROJECTED IMPACTS**

All of the current residents occupying affordable mobile home sites, will continue to be able to occupy such sites at affordable rents.

#### **ENVIRONMENTAL REVIEW**

This activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b) (5), as it is an administrative activity of government that will

April 28, 2022

Approval of a Revised 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.; Orange County Superior Court Case No: 30-2017-00946945-CU-BC-CJC  
Page 5

not result in direct or indirect physical changes in the environment. 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  
Interim President & Chief Executive Officer  
San Diego Housing Commission

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at [www.sdhc.org](http://www.sdhc.org).

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement Agreement and Mutual Release (“Agreement”) is entered into as of \_\_\_\_\_, 2022 (the “Effective Date”) by and between San Diego Housing Commission, a public agency (“SDHC” or “SAN DIEGO HOUSING COMMISSION” the terms being synonymous), and the Housing Authority of the City of San Diego, a public agency (“SDHA” or “HOUSING AUTHORITY”, the terms being synonymous), on one hand, and JSP Rancho Del Rio, LP, a California limited partnership (“JSP”), and Jackson Square Properties, LLC, a California limited liability company (“Jackson Square”) on the other hand. SDHC, SDHA, JSP, and Jackson Square will be referred to herein as a “Party” or collectively as the “Parties.”

### RECITALS

A. The City of San Diego (“City”) owns real property located at 3890 Sipes Lane, City of San Diego (San Ysidro), CA 92173, which is commonly referred to as the Rancho Del Rio Mobile Home Site (the “Property”).

B. On July 17, 1984, the City and SDHA entered into a Master Ground Lease concerning the Property (the “Master Ground Lease”). The Master Ground Lease granted SDHA authority to enter into a Ground Lease with Rancho Del Rio, LP (“Rancho Del Rio”).

C. On August 3, 1984, SDHA, as landlord, and Rancho Del Rio, as tenant, entered into a Ground Lease for the Property (the “Ground Lease”). Rancho Del Rio assigned its rights to Rancho Del Rio, Ltd., which in turn, assigned its rights, title, and interest in the Ground Lease to JSP on or about October 31, 2007.

D. On or about October 15, 1985, the Ground Lease was amended to reflect a reduced acreage and property value, and corresponding reduction in the monthly rent for the Property (“First Amendment to the Ground Lease”).

E. On April 22, 2008, the Ground Lease was amended for a second time to amend certain provisions in the Ground Lease, including the calculation of rent and recertification process for low income subtenants on the Property, and the imposition of monitoring fees to paid to SDHC (“Second Amendment to the Ground Lease”). The Ground Lease, First Amendment to the Ground Lease, and the Second Amendment to the Ground Lease are collectively referred to herein as the “Lease.”

F. Pursuant to Section 14.22 of the Lease, SDHA delegated to SDHC certain powers necessary to function as landlord, implement the provisions of the Lease, and to receive all notices pursuant to the Lease.

G. On March 21, 2017, SDHC filed a Complaint against JSP and Jackson Square in the San Diego Superior Court, Case No. 30-2017-00010099-CU-BC-CTL. Pursuant to a Motion to Transfer Venue filed by JSP and Jackson Square, the San Diego County Superior Court transferred the action to Orange County Superior Court.

H. On January 24, 2018, SDHC and SDHA filed a First Amended Complaint (the “FAC”) in the Orange County Superior Court, Case No. 30-2017-00946945-CU-BC-CJC (the “Action”). The FAC alleges two causes of action for breach of contract and declaratory relief both of which are premised on the contention that JSP and Jackson Square defaulted under the terms of the Lease.

I. On March 5, 2018, JSP filed in the Action a Cross-Complaint against SDHA for a judicial determination of its prospective rights and obligations with respect to the Lease.

J. In order to avoid the costs of further litigation, the Parties hereto desire to settle any disputes among them with regard to the claims asserted in the Action on the terms and conditions set forth herein.

### TERMS OF AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Recitals. The foregoing recitals are made a part of the terms of the Agreement as if set forth in their entirety by this reference.

2. Performance Obligations.

2.1. Performance Condition. The obligations of each of the Parties hereto are expressly conditioned upon the performance of the obligations of the other Parties to this Agreement.

2.2. Back Rent. Subject to satisfaction of the Sale Condition provided in Section 17 below, (a) the parties to the litigation shall bear their own attorney’s fees; and (b) JSP shall pay all back rent to the SDHA from 9/1/2016 to 6/1/2021 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 to JSP and shall be in addition to the purchase price for the Property.

2.3. Monitoring Agreement. SDHC will monitor compliance with applicable affordability requirements in accordance with a monitoring agreement executed by JSP and SDHC pursuant to which JSP shall agree to pay SDHC an annual fee of \$165 per unit per year for each unit which is subject of tenant income restrictions, as that fee is periodically adjusted, from time to time, as established for other projects being monitored by the SDHC, commencing upon satisfaction of the Sale Condition provided in Section 17 below. Further, concurrently with satisfaction of the Sale Condition provided in Section 17 below, in consideration of the efforts of SDHC to reasonably assist with the efforts to obtain required governmental approvals for the Sale Condition to be satisfied, a fee in the amount of \$100,000 will have been earned by SDHC from JSP and shall be payable over a fifteen (15)-year period as provided in the following sentence. Such fee will be evidenced by a promissory note (“SDHC Note”) executed by JSP in favor of SDHC with (i) interest that accrues at 3% per annum, (ii) interest is payable on a monthly basis out of residual receipts to the extent available, and (iii) the full \$100,000 principal balance and any unpaid interest to be paid at the end of the fifteen (15)-year term. The SDHC Note shall be secured



by a junior deed of trust. SDHC 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 to such first lien mortgage loan.

2.4. Further Assurances. Each Party agrees that it will at any time and from time to time after the Effective Date of this Agreement, on the written request of the other, execute, acknowledge and deliver all such further documents, acts, and assurances as may be reasonably requested by a Party to implement and give effect to this agreement.

2.5. Time. Time is of the essence in the performance of the Parties' respective obligations pursuant to this Agreement.

2.6. Dismissal of Action. Subject to the satisfaction of the Sale Condition provided in Section 17 below, and within ten (10) calendar days after the close of escrow of the sale of the Property to JSP, SDHC, SDHA, and JSP shall file in the Orange County Superior Court a request for dismissal with prejudice of their respective claims in the Action.

3. Representations. Each of the Parties to this Agreement represent and warrant to each other Party hereto, as of the date of this Agreement, as follows:

3.1. That (a) such Party has all legal right, power, and authority to enter into this Agreement and perform this Agreement and has obtained all necessary consents and approvals from officers, directors, members, and/or shareholders to enter into and perform this Agreement in accordance with this Agreement except for those items in this Agreement which expressly indicate that governmental approvals need to be obtained, and (b) this Agreement and all related documents and agreements, are valid, binding, and enforceable upon such Party in accordance with their terms, and require no notice to or consent of any third party.

3.2. That such Party has carefully read and understands the contents of this Agreement and is entering into and performing this Agreement freely, voluntarily, in good faith and without duress or undue influence from any other Party.

3.3. That the execution and performance of this Agreement by such Party does not violate any contract, agreement, bylaws, charters, rules, or regulations by which such Party is bound, and execution of this Agreement by such Party is in accordance with all applicable laws.

3.4. That such Party (a) has made such investigation of the facts pertaining to this Agreement, and all matters pertaining thereto, as such Party deems necessary; (b) such Party is or had the opportunity to be represented by the attorneys of its choice; (c) prior to the execution of this Agreement such Party had the opportunity to have the Party's attorney review this Agreement, and to make any desired changes; (d) such Party fully understands the terms and consequences of this Agreement; (e) each Party is not relying upon any representation or statement made by any other Party hereto, or by such other Party's employees, agents, representatives or attorneys regarding this Agreement or its preparation except to the extent such representations are expressly and explicitly set forth herein; (f) such Party is not relying upon a legal duty, if one exists, on the part of any other Party, or upon the part of such other Party's employees, agents, representatives or attorneys, to disclose any information in connection with the execution of this Agreement or its preparation.

4. Releases. Subject to satisfaction of the Sale Condition provided in Section 17 below, and except for the surviving obligations under this Agreement and claims relating to rights and obligations preserved by or created by this Agreement, effective upon the satisfaction of each of the contingencies referenced above, each Party, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, officers, directors, shareholders, managers, members, successors, and assigns, fully, irrevocably, and forever releases and discharges each other Party and its respective employees, officers, directors, managers, agents, and representatives from any and all claims, liabilities, rights, demands, actions and causes of action, arbitration, attorneys' fees, losses, damages, judgments, late fees, debts, obligations, costs, fees, expenses, of every kind and nature, equity, or otherwise, known or unknown, arising out of or in any manner connected with the matters alleged in the Action from the beginning of time through the date of this Agreement.

5. Waiver of Civil Code Section 1542. Subject to satisfaction of the Sale Condition provided in Section 17 below, each Party specifically waives the benefit of the provisions of the California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

In waiving the provisions of Civil Code section 1542, each Party acknowledges that it may hereafter discover facts in addition to or different from those which it now believes to be true with respect to the matters alleged in this Action but agree that it has taken that possibility into account and the release herein given shall be and remain in effect as a full and complete general release of all matters alleged in this Action notwithstanding the discovery or existence of any such additional or different facts.

6. No Admission of Liability. This Agreement represents the compromise of disputed claims between the Parties regarding the claims alleged in the Action, and any payment or obligation assumed hereunder is not to be construed or deemed an admission of liability by any Party. Neither this Agreement nor any terms hereof shall be offered or received as evidence in any proceeding in any forum as an admission of any liability or wrongdoing on the part of any Party or any affiliate of a Party.

7. Integration. This Agreement constitutes the entire agreement concerning the subject matter hereof, and it supersedes any prior or contemporaneous representations, statements, understanding, or agreements between the Parties concerning the subject matter of this Agreement. No alteration, supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the Parties.

8. Corporate Authority. Each Party represents and warrants to the other Party that it has taken all corporate action necessary to authorize the execution and delivery of this Agreement. The individuals executing this Agreement, and each of them, represent and warrant that each has

received the express authority and consent of the Party on whose behalf this Agreement is executed, to execute this Agreement on its behalf.

9. Governed By California Law. This Agreement shall be deemed to be executed and delivered within the State of California, and its validity, construction, and performance shall be governed by the laws of the State of California.

10. Enforcement. This Agreement is an enforceable settlement agreement pursuant to California Code of Civil Procedure section 664.6, and any Party may move the Orange County Superior Court for enforcement of any of the terms of this Agreement.

11. Attorneys' Fees. If there is any legal action, arbitration or proceeding between the parties hereto arising from or based on this Agreement or the interpretation or enforcement of any provisions hereof, then the unsuccessful party to such action, arbitration, or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by such prevailing party in such action, arbitration, or proceeding and in any appeal in connection therewith. If such prevailing party recovers a judgment in any such action, arbitration, proceeding or appeal, then such costs, expenses and attorneys' fees shall be included in and as a part of such judgment.

12. Successors and Assigns. The provisions of this Agreement shall be deemed to obligate, extend to, and inure to the benefit of the legal predecessors, successors, assigns, transferees, grantees and heirs of each of the Parties to this Agreement, and to their respective agents, employees, attorneys, representatives, officers, and directors.

13. Legal Advice. Each Party acknowledges and agrees that it has received legal advice from counsel of its own choice with respect to the advisability of making the settlement provided for herein, and with respect to the advisability of executing this Agreement. Each Party further acknowledges that it has voluntarily and knowingly executed this Agreement.

14. Civil Code Section 1654 Waiver. The Parties agree that this Agreement was jointly negotiated and drafted by them and that it shall not be interpreted or construed in favor or against any of them on the ground that one or the other of them drafted the Agreement. Therefore, the Parties agree that the provisions of California Civil Code section 1654 shall not apply.

15. Headings. The headings included in this Agreement are for convenience only and do not expand, limit, alter, or affect the matters contained in this Agreement or the paragraph to which they pertain.

16. Counterparts. This Agreement may be executed and delivered in two or more counterparts, the whole of which shall constitute a binding agreement. Signatures transmitted by electronic mail in PDF format, when received, shall be treated as original signatures for all purposes.

17. Effectiveness of this Agreement. The effectiveness of this Agreement is expressly conditioned upon the closing of the Property to JSP on or before December 31, 2022 ("Sale Condition"). If the Sale Condition is not satisfied by such date, then this Agreement shall be deemed ineffective and null and void.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**THE PERSONS SIGNING THIS AGREEMENT HAVE READ AND UNDERSTOOD ITS CONTENTS, AND HAVE HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL ABOUT THE TERMS OF THE AGREEMENT.**

**SAN DIEGO HOUSING COMMISSION**

**HOUSING AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**JSP RANCHO DEL RIO, LP**

**JACKSON SQUARE PROPERTIES, LLC**

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_



## 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

October 2, 2018

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.

Page 2

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.*

October 2, 2018

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.

Page 3

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.**



October 2, 2018

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.

Page 4

- 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**

October 2, 2018

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.

Page 5

**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**

October 2, 2018

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.

Page 6

**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](http://www.sdhc.org).