




**Agenda Item No: 5.b**  
**Meeting Date: December 21, 2020**

**SAN RAFAEL CITY COUNCIL AGENDA REPORT**

**Department: Community Development**

**Prepared by: Ethan Guy,**  
**Principal Analyst**

**City Manager Approval:** \_\_\_\_\_ 

**TOPIC: FOURTH AMENDMENT TO THE AMENDED AND RESTATED GROUND LEASE AT 855 C STREET**

**SUBJECT: RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO THE AMENDED AND RESTATED GROUND LEASE AND A PROMISSORY NOTE IN AN AMOUNT NOT TO EXCEED \$650,000 WITH CENTERTOWN II, LLC FOR THE REAL PROPERTY LOCATED AT 855 C STREET IN THE CITY OF SAN RAFAEL**

**RECOMMENDATION:**

Adopt resolution approving and authorizing the City Manager to execute the attached “Fourth Amendment to the Amended and Restated Ground Lease” and “Promissory Note for an amount not to exceed \$650,000” with Centertown II, LLC (Centertown) for the City-owned property at 855 C Street with City’s execution of the documents contingent upon Centertown’s receipt of tax-exempt affordable housing bond fund monies.

**BACKGROUND:**

Centertown Apartments is located at 855 C Street on a 0.98-acre lot in downtown San Rafael owned by the City of San Rafael. The property was a housing asset of the former San Rafael Redevelopment Agency (SRRA). The City also owns the adjoining property at 815 C Street.

Centertown Apartments contains approximately 85,469 gross square feet of building area and is arranged around a central courtyard. Centertown provides 59 affordable family apartments– 17 one-bedroom units, 27 two-bedroom units, and 15 three-bedroom units. An onsite property manager occupies a two-bedroom manager’s unit for a total of 60 units. Additionally, the property includes 102 parking spaces, including six offsite spaces on 815 C Street.

All of the residents of Centertown are lower income households, with many of them being extremely low income. The average household income of Centertown residents is about 32% of the Marin County Areawide Median Income (AMI).

\_\_\_\_\_  
**FOR CITY CLERK ONLY**

**File No.:** \_\_\_\_\_

**Council Meeting:** \_\_\_\_\_

**Disposition:** \_\_\_\_\_

[On August 17, 2020](#), the City Council adopted [Resolution 14851](#) approving and authorizing the City Manager to execute an agreement granting an option to lease the real property located at 855 C Street. This option to lease was the first step in the proposed re-syndication and refinance process sought by the owners of this property, BRIDGE/EAH. As part of this process, Centertown would use tax exempt bonds and low income housing tax credits (LIHTC), in order to rehabilitate the property to address all immediate physical needs and establish reserves and cash flow to address future maintenance needs as they arise.

**ANALYSIS:**

As discussed at the August 17<sup>th</sup>, 2020 City Council Meeting, the next step in the re-syndication and refinance process involves the approval of two documents: Fourth Amendment to the Amended and Restated Ground Lease (Attachment 2) and Promissory Note (Attachment 3).

Structural changes to the current ground lease payment structure are needed to bring the ground lease into compliance with IRS rules. These changes need to occur prior to the anticipated construction financing closing/re-syndication event that is anticipated for May 2021. The developer and investor's respective tax counsel advise that amendments to the ground lease and the new loan be approved in 2020 prior to the tax credit re-syndication. However, signing of the Fourth Amendment and Promissory Note will be deferred until Centertown has received an award of tax exempt affordable housing bond funds.

Taking into account these considerations while also seeking to enhance potential revenues to the City, the proposed Fourth Amendment would modify the ground lease as follows:

- \$1 per year ground lease payment plus a \$5,000 per year annual City monitoring fee. These annual payments will continue until a new ground lease is negotiated and entered into by the parties.
- The outstanding balance of the deferred ground rent payments presently owed to City (i.e. the second ground lease rent payment tranche), which is approximately \$631,000, will become the principal amount on a new City loan issued plus all accrued interest for the time period it takes to receive a bond allocation in an amount not to exceed \$650,000.
  - This new City loan will essentially be a placeholder loan as it will ultimately be consolidated with the separate, existing City loan of approximately \$260,000 as referenced in the August 17<sup>th</sup>, 2020 report and assumed by the new tax credit partnership entity if and when the re-syndication and refinancing proceed.

**FISCAL IMPACT:**

Under the existing Ground Lease, Centertown owes City deferred subordinate ground rent payments in the approximate amount of \$631,000. Under the proposed Fourth Amendment, the City would recast the remaining outstanding balance of deferred ground rent as a City loan in an amount not to exceed \$650,000.

The City Loan representing the accrued deferred ground rent payments will be evidenced by the attached Promissory Note (Attachment 3), with a maturity date of November 6, 2052 and will be a fully deferred soft loan. It will not be secured by the Property, but a default under the Promissory Note will be a default under the Ground Lease, which is how the Ground Lease payment is secured now. As described above, the new City Loan will essentially be a placeholder loan, as it will be consolidated with the City's existing loan and assumed by the new tax credit partnership upon receipt of the tax credit and tax exempt bond allocation.

**OPTIONS:**

The City Council has the following options to consider on this matter:

1. Adopt resolution.
2. Adopt resolution with modifications.
3. Direct staff to return with more information.
4. Take no action.

**RECOMMENDED ACTION:**

Adopt resolution approving and authorizing the City Manager to execute the attached “Fourth Amendment to the Amended and Restated Ground Lease” and “Promissory Note for an amount not to exceed \$650,000” with Centertown II, LLC for the City-owned property at 855 C Street with City’s execution of the documents contingent upon Centertown’s receipt of tax exempt affordable housing bond fund monies.

**ATTACHMENTS:**

1. Resolution
2. Exhibit A to the Resolution: Fourth Amendment to the Amended and Restated Ground Lease
3. Exhibit 1 to Exhibit A to the Resolution: Promissory Note

**RESOLUTION NO.**

**RESOLUTION OF THE SAN RAFAEL CITY COUNCIL APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A FOURTH AMENDMENT TO THE AMENDED AND RESTATED GROUND LEASE AND A PROMISSORY NOTE IN AN AMOUNT NOT TO EXCEED \$650,000 WITH CENTERTOWN II, LLC FOR THE REAL PROPERTY LOCATED AT 855 C STREET IN THE CITY OF SAN RAFAEL**

WHEREAS, the City of San Rafael, as successor housing agency to the former San Rafael Redevelopment Agency (“SRRA”), is the fee owner of that certain approximately 0.98-acre lot at 855 C Street in downtown San Rafael (“Centertown Land”) on which the Centertown Apartments are located; and

WHEREAS, in 1989 Centertown Associates, Ltd. (“Centertown Associates”) a limited partnership managed by BRIDGE Housing and EAH Housing (“BRIDGE/EAH”), entered into a 75-year ground lease with City’s predecessor-in-interest, SRRA, which provided among other things for redevelopment of the Centertown Land, including an existing, partially completed foundation structure that was part of an earlier failed condominium development, as an affordable rental apartment project; and

WHEREAS, as contemplated by the ground lease, Centertown Associates completed development of the Centertown apartments (“Centertown Apartments”) which include approximately 85,469 gross square feet of building area arranged around a central courtyard, with 60 affordable family apartments– 17 one-bedroom units, 27 two-bedroom units, 15 three-bedroom units, and an onsite two-bedroom property manager’s unit; and

WHEREAS, all of the residents of Centertown Apartments are lower income households, with an average household income equal to approximately 32% of the Marin County Areawide Median Income (AMI); and

WHEREAS, the ground lease originally recorded on November 30, 1989, has been subsequently amended three times given evolving financial conditions over time; and

WHEREAS, Centertown Apartments has experienced numerous construction related issues, including significant problems related to water intrusion, aging building systems and deferred maintenance with a total estimated rehabilitation cost of approximately \$10 million, which includes an approximately 10 percent hard cost contingency that is typical for rehabilitation of older properties; and

WHEREAS, BRIDGE/EAH desire to fund the needed rehabilitation work by re-syndicating and refinancing the Centertown Apartments development using tax exempt bond proceeds and tax credit re-syndication and in connection therewith BRIDGE/EAH desire to extend the term of the ground lease and modify the existing City loans to extend their term and reduce their interest rates; and

WHEREAS, entering into the fourth amendment to the amended and restated ground lease and promissory note will facilitate BRIDGE/EAH’s efforts to qualify for allocations of tax-exempt bond proceeds from the California Debt Limit Allocation Committee (“CDLAC”) and low-income housing tax credits from the State Tax Credit Allocation Committee (“TCAC”); and

WHEREAS, the fourth amendment to the amended and restated ground lease also recasts any outstanding ground lease payments as a new loan provided by the City of San Rafael as evidenced by a promissory note in the form attached to the fourth amendment; and

WHEREAS, City Council's approval of the fourth amendment and promissory note, and the parties execution thereof, should be conditioned upon Centertown Associates' receipt of an award of tax exempt bond proceeds from CDLAC;

NOW, THEREFORE, BE IT RESOLVED, that the City Council hereby approves and authorizes the City Manager to execute a fourth amendment to the amended and restated ground lease and a promissory note in an amount not to exceed \$650,000 with Centertown II, LLC for the real property located at 855 C Street in the City of San Rafael in the form attached to this Resolution as Exhibit A, subject to final approval as to form by the City Attorney, with City's execution of such documents contingent upon Centertown's receipt of tax exempt affordable housing bond fund monies to fund the planned rehabilitation of the Centertown Apartments.

I, LINDSAY LARA, City Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City Council held on the 21<sup>st</sup> day of December 2020, by the following vote to wit:

AYES:            COUNCILMEMBERS:

NOES:            COUNCILMEMBERS:

ABSENT:        COUNCILMEMBERS:

\_\_\_\_\_  
LINDSAY LARA, City Clerk

EXHIBIT A:    FOURTH AMENDMENT TO THE AMENDED AND RESTATED LEASE  
EXHIBIT 1 TO EXHIBIT A:    PROMISSORY NOTE

**FOURTH AMENDMENT TO AMENDED AND RESTATED GROUND LEASE  
(855 C Street, San Rafael, California)**

THIS FOURTH AMENDMENT TO AMENDED AND RESTATED GROUND LEASE (the "**Fourth Amendment**"), is entered into as of \_\_\_\_\_, 2020 ("**Effective Date**"), by and between the City of San Rafael, as successor-in-interest to the former Redevelopment Agency of the City of San Rafael (the "**Landlord**" or "**City**"), and Centertown Associates, Ltd., a California limited partnership (the "**Lessee**"), with reference to the following facts, purposes and intentions.

RECITALS

A. Landlord and Lessee (collectively, the "**Parties**") entered into that certain ground lease dated November 6, 1989, as amended by that certain First Amended and Restated Ground Lease dated August 20, 1990, as amended by that certain Second Amendment to the First Amended and Restated Ground Lease dated May 6, 1991, and that certain Third Amendment to First Amended and Restated Ground Lease dated April 1, 1993 (as amended, the "**Agreement**"). Capitalized terms used in this Fourth Amendment, but not defined, shall have the meaning set forth in the Agreement.

B. In accordance with Section 10.3 of the Agreement, the Parties desire to enter into this Fourth Amendment to: (i) modify the rent payment to be One Dollar (\$1.00) per year; (ii) add a Five Thousand Dollar (\$5,000) per year annual City monitoring fee; and (iii) make other conforming amendments to the Agreement as set forth herein.

C. Concurrently with the execution of this Fourth Amendment, the Lessee and the City are entering into a promissory note (the "**Note**") in the approximate amount of [Six Hundred Fifty Thousand Dollars (\$650,000)].

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENTS:

ARTICLE 1.  
AMENDMENTS TO AGREEMENT

Section 1.1 Amendment to Section 2.3. Section 2.3 of the Agreement is hereby deleted, in its entirety, and amended and restated as follows:

"Section 2.3. Rental Provisions and Monitoring Fee.

(a) Lessee agrees to pay the Lessor as rent for the Land as follows: Commencing on the Effective Date, the Lessee shall pay, on an annual basis, rent in the amount of One Dollar (\$1.00) per year or fraction thereof.

(b) In connection with the requirements imposed by this Lease and to ensure compliance, Lessee agrees to pay the Lessor on January 1 of each year a Five Thousand Dollar (\$5,000) annual monitoring fee.

(c) Rent and all other sums payable by Lessee to Lessor under this Lease shall be paid in lawful currency of the United States of America at Lessor's address for notices as set forth below, or to such other person or at such other place as Lessor may from time to time designate by notice in writing to Lessee."

ARTICLE 2.  
MISCELLANEOUS

Section 2.1 No Other Changes to the Agreement; Ratification. Except as expressly modified by this Fourth Amendment, all other provisions of the Agreement remain unmodified and continue in full force and effect. The Agreement, as amended by this Fourth Amendment, is hereby ratified and confirmed by the Parties in all respects. The execution and delivery of this Fourth Amendment shall not operate as a waiver of or, except as expressly set forth herein, an amendment of any right, power or remedy of either party under the Agreement. This Fourth Amendment, together with the Note and the Agreement, sets forth the entire understanding of the parties in connection with the subject matter hereof.

Section 2.2 Conflicts with the Agreement. In the event of any conflict or inconsistency between the terms of this Fourth Amendment and the terms of the Agreement, the terms of this Fourth Amendment shall prevail.

Section 2.3 Counterparts; Multiple Originals. This Fourth Amendment may be executed in multiple originals, each of which is deemed to be an original, and may be executed in counterparts. This Fourth Amendment shall become effective when the Parties have duly executed and delivered signature pages of this Fourth Amendment to each other. Delivery of this Fourth Amendment shall be effectuated by electronic communication (including by PDF sent by electronic mail, facsimile or similar means of electronic communication). Any signatures (including electronic signatures) delivered by electronic communication shall have the same legal effect as physically delivered original signatures.

***Remainder of Page Left Intentionally Blank***

IN WITNESS WHEREOF, this Fourth Amendment has been entered into by the Parties as of the date first written above.

**LANDLORD:**

CITY OF SAN RAFAEL, a municipal corporation

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Lindsay Lara, City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Robert Epstein, City Attorney

**LESSEE:**

CENTERTOWN ASSOCIATES, LTD., a  
California limited partnership

By: Centertown, Inc., a California non-profit  
public benefit corporation, its general  
partner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**PROMISSORY NOTE**  
**(Centertown)**

[\$650,000]

San Rafael, California  
\_\_\_\_\_, 2020

FOR VALUE RECEIVED, Centertown Associates, Ltd., a California limited partnership ("Borrower"), promises to pay to the order of the City of San Rafael, a municipal corporation ("Lender"), the principal sum of Six Hundred Fifty Thousand Dollars (\$650,000).

1. Borrower's Obligation. Loan. This promissory note ("Note") evidences Borrower's obligation to pay the Lender the principal amount of [Six Hundred Fifty Thousand Dollars (\$650,000)] (the "Loan"), representing deferred payments (the "Deferred Payments") owed by Borrower, as lessee, to Lender, as lessor, under the ground lease dated November 6, 1989, as amended by that certain First Amended and Restated Ground Lease dated August 20, 1990, as amended by that certain Second Amendment to the First Amended and Restated Ground Lease dated May 6, 1991, and that certain Third Amendment to First Amended and Restated Ground Lease dated April 1, 1993 (as amended, the "Agreement"). Concurrently herewith, Lender, as lessor, and Borrower, as lessee, are entering into a Fourth Amendment to Amended and Restated Ground Lease ("Fourth Amendment"). The funds from the Deferred Payments were used to assist in the rehabilitation and operation of that certain low-income housing development located at 855 C Street, San Rafael, California, currently improved with approximately sixty (60) residential units and certain accessory uses.

(b) Unsecured. This Note is unsecured, and the Borrower has not provided any collateral to the Lender for the Loan.

2. Interest. The outstanding principal balance of this Note will bear interest at a fixed rate of three percent (3.00%) per annum.

3. No Assumption. This Note is not assumable by the successors and assigns of Borrower without the prior written consent of the Lender.

4. Term and Repayment Requirements.

(a) Term. The term of this Note commences with the date of this Note and expires on November 6, 2052 (the "Maturity Date").

(b) Repayment. The Loan will not amortize. The principal and interest balance of the Loan is due and payable in full upon the earlier to occur of: (i) the date of any Default, or (ii) the Maturity Date.

(c) Right to Prepay. Borrower may prepay the Loan at any time without premium or penalty.

5. Terms of Payment.

(a) Borrower shall make all payments due under this Note in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this Note are to be paid to the Lender at the [REDACTED], or to such other place as the Lender may from time to time designate.

(c) All payments on this Note are without expense to the Lender.

(d) Notwithstanding any other provision of this Note, if, for any reason whatsoever, the payment of any sums by Borrower pursuant to the terms of this Note would result in the payment of interest that exceeds the amount that the Lender may legally charge under the laws of the State of California, then the amount by which payments exceed the lawful interest rate will automatically be deducted from the principal balance owing on this Note, so that in no event is Borrower obligated under the terms of this Note to pay any interest that would exceed the lawful rate.

## 6. Default.

(a) Any of the following constitutes an event of default under this Note (each, a "Default"):

(i) Any failure to pay, in full, any payment required under this Note or any amount due under Agreement, as further amended by the Fourth Amendment, within ten (10) days of written notice that such payment is due; and

(ii) Failure of Borrower to duly perform, comply with, or observe any of the conditions, terms, or covenants of this Note or the Agreement, as further amended by the Fourth Amendment, and such failure or breach having continued uncured for thirty (30) days after receipt of written notice thereof from the Lender to Borrower or, if the failure or default cannot be cured within thirty (30) days, Borrower shall not be in default so long as Borrower is diligently undertaking to cure such failure and such cure is commenced within thirty (30) days of such failure.

(b) Upon the occurrence of a Default, the entire unpaid principal balance, together with all interest thereon, and together with all other sums then payable under this Note will at the option of the Lender become immediately due and payable without further demand.

(c) Lender's failure to exercise the remedy set forth in Subsection 6(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of Default does not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other Default. The acceptance by Lender hereof of any payment which is less than the total of all amounts due and payable at the time of such payment does not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or at any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the Lender, except as and to the extent otherwise provided by law.

## 7. Waivers.

(a) Borrower hereby waives diligence, presentment, protest and demand, and notice of protest, notice of demand, and notice of dishonor of this Note. Borrower expressly agrees that this Note or any payment hereunder may be extended from time to time, and that the Lender may accept further security or release any security for this Note, all without in any way affecting the liability of Borrower.

(b) Any extension of time for payment of this Note or any installment hereof made by agreement by the Lender with any person now or hereafter liable for payment of this Note shall not operate to release, discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part.

(c) The obligations of Borrower under this Note are absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Note for any reason whatsoever.

8. Miscellaneous Provisions.

(a) All notices to the Lender or Borrower shall be sufficiently given if and shall not be deemed given unless dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered by express delivery service, return receipt requested, or delivered personally, to the principal office of the parties as follows:

Lender:

City of San Rafael  
1400 Fifth Avenue, Room 202  
San Rafael, CA 94901  
Attn: Jim Schultz, City Manager  
jim.schultz@cityofsanrafael.org

*with copy to:*

City of San Rafael  
1400 Fifth Avenue, Room 202  
San Rafael, CA 94901  
Attn: Robert Epstein, City Attorney  
rob.epstein@cityofsanrafael.org

Borrower:

Centertown Associates, Ltd.  
c/o BRIDGE Housing Corporation  
600 California Suite 600  
San Francisco, CA  
Attention: Rebecca V. Hlebasko

*with copy to:*

Goldfarb & Lipman LLP  
1300 Clay Street, 11th Floor  
Oakland, CA 94612  
Attention: Erica Williams Orcharton

Such written notices, demands and communications may be sent in the same manner to such other addresses as the affected party may from time to time designate by mail as provided in this Section. Receipt shall be deemed to have occurred on the date shown on a written receipt as the date of delivery or refusal of delivery (or attempted delivery if undeliverable).

(b) Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the Lender in the enforcement of the provisions of this Note, regardless of whether suit is filed to seek enforcement.

(c) This Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This Note is governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder are strictly construed, time being of the essence.

(f) This Note contains the entire agreement between the Lender and Borrower as to the Loan. This Note may not be modified except upon the written consent of the Lender and Borrower.

*[Signatures on following page]*

IN WITNESS WHEREOF, Borrower has caused this Note to be executed and delivered on the date set forth above.

**CENTERTOWN ASSOCIATES, LTD.,** a  
California limited partnership

By: Centertown, Inc., a California non-profit  
public benefit corporation, its general  
partner

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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