



# Administrative Report

H.10., File # 22-4201

Meeting Date: 5/17/2022

**To: MAYOR AND CITY COUNCIL**

**From: CAMERON HARDING, COMMUNITY SERVICES DIRECTOR**

## **TITLE**

APPROVE AN AMENDMENT TO THE AFFORDABILITY AGREEMENTS FOR THE HERITAGE POINTE SENIOR APARTMENTS PROJECT

APPROVE AN AFFORDABLE UNIT OVERCHARGE AGREEMENT FOR THE HERITAGE POINTE SENIOR APARTMENTS PROJECT

## **EXECUTIVE SUMMARY**

The Heritage Pointe Senior Apartments project is a 135-unit senior rental housing project located at 1801 Aviation Way ("Project"). The Project is currently subject to three incongruous income and affordability agreements.

The Project was purchased by Redondo Senior Partners LP, a Delaware limited partnership ("Current Owner") in August 2018. Since that time the City and the Current Owner have been attempting to resolve conflicting issues in the affordability agreements related to housing cost requirements, the allowable use of Section 8 vouchers in the project, the covenant period expiration date, and the quantification and repayment of any excess rents collected.

The City engaged Keyser Marston Associates, Inc. ("KMA") to assist in evaluating the identified issues and to provide recommendations for inclusion to replace the agreements and unify applicable standards. Based on the results of the KMA analysis, and legal interpretations provided by the City Attorney's Office and Richards Watson & Gershon ("RWG"), the City recommends approval of an amendment to the affordability agreements and an overcharge agreement to simplify the ongoing administration of income and affordability requirements at the property.

## **BACKGROUND**

The 135-unit Heritage Pointe Senior Apartments project commenced operation in 1991. The Project includes 66 unrestricted market rate units and 69 units that are subject to long-term income and affordability restrictions. The following income and affordable housing agreements have been executed over time:

1. In 1988 the City and the original Project owner entered into the Declaration Agreement, which provided a density bonus in return for the imposition of affordability restrictions on 28 units in the Project. The rent subsidy payments were funded with Property Tax Increment Housing Set-Aside Funds.
2. In 1989 the former Redevelopment Agency of the City of Redondo Beach ("Former Agency")

entered into the “1989 Regulatory Agreement” which required the Former Agency to make monthly rent subsidy payments in return for the provision of 41 affordable units in the Project. The rent subsidy payments were funded with Property Tax Increment Housing Set-Aside Funds.

3. In 2004, the 1989 Regulatory Agreement was terminated and replaced by the Low/Mod Funds Agreement, which also imposes income and affordability restrictions on 41 units in the Project. The Former Agency’s obligation to provide monthly rent subsidy payments was terminated in return for the provision of a \$2.5 million loan to the Project.
4. In 2004, the Former Agency issued \$11.39 million in multifamily housing revenue bonds, which were used to make a loan to the Project. (The bonds have been fully repaid). The Bond Regulatory Agreement imposes income and affordability restricts on all 69 affordable units in the Project.

In summary, the agreements impose requirements on the 69 affordable units in the Projects, as follows:

1. The Declaration Agreement imposes restrictions on 28 units.
2. The Low/Mod Funds Agreement imposes restrictions on 41 units.
3. The Bond Regulatory Agreement imposes restrictions on all 69 affordable units.

### ***Household Income Issues***

The Declaration Agreement requires 28 units to be rented to households earning less than 80% of the area median income as defined in H&SC §50093. Comparatively, the Bond Regulatory Agreement sets the household income standard at 50% of the area median income as defined in IRC §142. The First Amendment sets the household income qualification standard for these units at 50% of the IRC §142 area median income.

The Low/Mod Funds Agreements requires 41 units to be rented to households that earn less than 100% of the area median income published by the United States Department of Housing and Urban Development (“HUD”). The Bond Regulatory Agreement sets the household income standard at 80% of the area median income as defined in IRC §142. The First Amendment sets the household income qualification standard for these units at 80% of the IRC §142 area median income.

### ***Affordable Rent Issues***

Both the Declaration Agreement and the Bond Regulatory Agreement base the affordable rent calculations on benchmark household sizes equal to the number of bedrooms in the unit plus one. This benchmark is used solely for calculation purposes. It is neither an occupancy floor nor a cap.

#### **Declaration Units (28 Units)**

The affordable rent calculations applied in the Declaration Agreement are based on 25% of the benchmark income multiplied times 80% of an undefined area median income. Given the timing of the agreement, and the fact that it was based on a state density bonus statute, it is reasonable to assume that the H&SC §50093 definition of area median income is the applicable for use in the affordable rent calculations.

The Bond Regulatory Agreement requires the affordable rents for 14 of the Declaration Units to be calculated at 30% of the benchmark income multiplied times 50% of the IRC §142 area median

income. The Bond Regulatory Agreement bases the affordable rents for the remaining 14 Declaration Units at 30% of the benchmark income multiplied times 80% of the IRC §142 area median income

Calculations indicate that 25% of the benchmark income multiplied times 80% of the H&SC §50093 area median income generate lower affordable rents than 30% of the benchmark income multiplied times 50% of the IRC §142 area median income. The Declaration Agreement affordable rent calculation methodology is applied in the First Amendment.

#### Low/Mod Funds Agreement Units (41 Units)

The affordable rent calculations applied in the Low/Mod Funds Agreement are based on 30% of the benchmark income multiplied times 80% of an undefined area median income. The Bond Regulatory Agreement calculates the affordable rents at 30% of the benchmark income multiplied times 80% of the IRC §142 area median income.

The meanings of undefined terms in the agreements are subject to reasonable interpretation. Following a review of the agreements, it was concluded that the likely intention was for the statutory definitions applied in the Bond Regulatory Agreement to prevail over the hybrid definitions included in the Low/Mod Funds Agreement. As a result, the First Amendment bases the affordable rent calculations for the 41 units on the affordable housing cost definition applied in the Bond Regulatory Agreement.

#### ***Use of Section 8 Rental Assistance Funds***

In February 2022, 16 of the designated affordable units in the Project were rented to tenants that hold Section 8 rental assistance vouchers. The three existing agreements are silent on the total rent that may be received by the Current Owner for units in which the tenants hold rental assistance vouchers.

The First Amendment requires that the rent paid by the tenant be no more than the applicable affordable rent standard. However, the First Amendment also allows the Current Owner to receive total rent that is equal to the Fair Market Rents established by HUD for Los Angeles County, as adjusted by City established payment standards that more closely align to the Redondo Beach rental market characteristics.

#### ***Covenant Period***

In consideration for amending the existing agreements, the City is requiring the Current Owner to extend the covenants periods imposed by the Declaration Agreement and by the Bond Regulatory Agreement. The First Amendment requires the income and affordability covenants to remain in place through 2059 for all 69 affordable units included in the Project.

#### ***Overcharge Agreement***

The rents being charged for three of the one-bedroom Declaration Units currently exceed the maximum allowable affordable rents. The overpayments cover periods ranging from 17 to 51 months. The excess rent revenue totals \$6,914. Under the terms of the Overcharge Agreement, the Current Owner must reimburse the impacted tenants for the total amount of these overpayments within 30 days following the execution of the Overpayment Agreement.

Staff recommends the adoption of both the First Amendment and the Overpayment Agreement in order to simplify regulations for the affordable housing site moving forward and correct any overpayments that have occurred to date.

#### **COORDINATION**

Community Services worked with the City Attorney's Office and the City's affordable housing consultant to prepare this report.

#### **FISCAL IMPACT**

There are no fiscal impacts to the City generated by the implementation of the Amendment and Overcharge Agreement. The agreements will allow the City to more easily administer/oversee the Heritage affordable housing project site in the future.

#### **APPROVED BY:**

*Mike Witzansky, City Manager*

#### **ATTACHMENTS**

- First Amendment to Affordability Agreements
- Affordable Unit Overcharge Agreement
- March 11, 2022 KMA Heritage Pointe: Affordable Housing Covenants Analysis