

Pursuant to Section 34176, added by AB x1 26 and amended by AB 1484 in 2012 (and further amended by Senate Bill 341 in October 2013), the State Department of Finance (“DOF”) issued a decision letter in January 2013 that confirms the CMHA holds all affordable housing assets of the former Agency as listed in a housing asset schedule prepared by Costa Mesa and submitted to the DOF on August 1, 2012. Certain of these assets that the CMHA now holds include a promissory note and three ground leases (“Ground Leases”) related to a 72-unit multi-family affordable housing apartment project called “Costa Mesa Family Village” located within the Wallace Neighborhood Strategy Area near the intersection of Wallace and 20th Street in the Westside of the City (“CMFV Project”).

The original and current developer entity remains Costa Mesa Family Village, a California limited partnership (“Lessee”) of which Shapell Industries Inc., a Delaware corporation (“Shapell”), is the managing General Partner. The former Agency and Lessee entered into a Disposition and Development Agreement dated December 14, 1983 (“Original DDA”) that required the ground lease and development of certain real property comprised of three parcels identified as Parcels 1, 2 and 3 (collectively referred to as the “Site”). The former Agency, as Lessor, and Lessee entered into three Ground Leases that leased the Site and upon which Lessee completed the development in 1984. The CMHA remains the underlying fee owner of the Site; the term of each of the Ground Leases is 55 years that will end in 2039. In 1994 the former Agency/Lessor and Lessee/Shapell entered into Amendment No. 1 to Disposition and Development Agreement and the first Amendment to Parcels 1, 2, and 3 Ground Leases, respectively, which amendments adjusted the ground lease rent calculations by which the parties agreed would ensure the continued success of the CMFV Project and availability of affordable housing to Lower Income Households at Affordable Rent. Lessee/Shapell continues to operate and manage the 72-unit CMFV Project with all units rented at an Affordable Rent to and occupied by qualified Lower Income Households. Under the Ground Leases, as amended, and as confirmed by the Finance Department, Lessee has timely paid and continues to pay a total of about \$90,000 per year paid in quarterly installments to the CMHA for ground rent of the Site.

In October 2013, Shapell representatives first contacted CMHA staff about a proposed transfer of the CMFV Project, and followed up further on the matter in late November 2013. From discussions between CMHA special counsel, Celeste Brady, and Shapell counsels (from Gibson Dunn in Los Angeles) and from review of the Ground Leases and related documents, the requested transfer requires the consideration of and action by the CMHA Board as there is no express delegation by the CMHA to the Executive Director to consent to the proposed transfer.

The proposed transfer is, in effect, “inter-family” between and among wholly-owned subsidiary entities of Shapell Industries, Inc., the parent company. As presented in materials submitted by Shapell to the CMHA, Shapell Industries, Inc., the general partner of the Lessee entity, is undergoing a restructuring (“Restructuring”) of its assets. As a part of the Restructuring, Shapell desires to transfer all of its general partnership interests in Lessee to a new entity called Shapell Rental Properties No. 2, LLC, a Delaware limited liability company (“Shapell Sub”), which is also an indirect

wholly-owned subsidiary of Shapell (“GP Transfer”). The GP Transfer is currently planned to occur in January 2014, subject to the CMHA considering and taking action to approve the proposed transfer. Shapell has provided the attached structure diagrams that show the existing entity structure and the structure following the GP Transfer, if approved.

Lessee has informed the CMHA, as Lessor, that the GP Transfer constitutes an “Assignment” under Section 5.F of the Ground Leases and, accordingly, Lessee is required to obtain the formal “consent” of the CMHA, as Lessor, prior to completing the GP Transfer. Accordingly, Lessee and Shapell have requested that the CMHA, as Lessor, provide its consent to the GP Transfer. The form of the consent is set forth in the proposed “Consent Letter”, which is Attachment A to this agenda report; and, if approved by the CMHA, then Executive Director Thomas R. Hatch will be authorized to sign and return the Consent Letter to Shapell.

In the Consent Letter Shapell provides to the CMHA certain representations and warranties, including: (i) the GP Transfer will be completed pursuant to that certain Contribution Agreement in the form attached to the Consent Letter as Schedule 1; (ii) no cash or other monetized consideration will be paid or otherwise exchanged in connection with the GP Transfer and, as a result, no “additional rent” is payable under Section 5.F of the Ground Leases; (iii) Shapell Sub is an indirect wholly-owned subsidiary of Shapell and, as a result, in accordance with Section 13.A.(1) of the Ground Leases, the right of first refusal in Section 13.A thereof does not apply to the GP Transfer; (iv) following completion of the Restructuring Shapell Sub will hold interests in seven or eight properties, the overall debt service coverage ratio for which will be higher than 1.25 to 1.00; and, (v) the GP Transfer does not constitute a sale, assignment, sublease or transfer of the Ground Leases or any rights therein, or any total or partial sale, assignment, sublease or transfer in any other mode or form of the whole or any part of the property subject to the Ground Leases and, as a result, Section 13.B of the Ground Leases does not apply to the GP Transfer.

The Consent Letter does not and will not presently and shall not in the future operate in any manner as a waiver or an amendment, expressly or impliedly, of any terms, conditions, rights or privileges of the CMHA, as Lessor under the Ground Leases (or any other agreements related thereto). Further, except as expressly set forth in the Consent Letter, all other terms of the Ground Leases (and any other agreements related thereto) remain in full force and effect and all terms applicable to Shapell are fully assigned by Shapell and fully assumed by the Shapell Sub.

FISCAL IMPACT

No fiscal impact is anticipated due to the proposed transfer or execution and delivery of the Consent Letter; the Lessee will remain obligated to pay quarterly installments of the ground rent pursuant to the Ground Leases, as amended, for the remaining years of the 55-year term of the leases.

LEGAL IMPACT

Special counsel, Celeste Brady of Stradling Yocca Carlson & Rauth, has reviewed this matter and negotiated the terms of the Consent Letter with Shapell counsels; and, therefore, based on the documents and information submitted by Shapell and its counsels to CMHA staff and special counsel and based on the representations and warranties made by Shapell to and for the benefit of the CMHA, there is no adverse legal impact anticipated by the CMHA taking action to authorize the Executive Director to sign and return the Consent Letter.

CONCLUSION

Staff recommends the CMHA authorize the Executive Director to sign the Consent Letter substantially in the form attached and return it to Shapell.

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[Attachment A: Consent Letter with attached Structure Diagrams and form of Contribution Agreement](#)