

STAFF REPORT



ITEM NO. 18
CITY OF OCEANSIDE

DATE: June 18, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department, Housing Division

SUBJECT: **APPROVAL OF A MEMORANDUM OF UNDERSTANDING (MOU) WITH LIL JACKSON SENIOR COMMUNITY TO APPROPRIATE \$1,440,987 OF HOME FUNDS TO THE LIL JACKSON SENIOR COMMUNITY PROJECT**

SYNOPSIS

Staff and the Housing Commission recommend that the City Council approve the MOU with Lil Jackson Senior Community, a California non-profit public benefit corporation; approve an appropriation of \$1,440,987 in HOME Investment Partnership funds to assist with the construction of the Lil Jackson Senior Community; and authorize the City Manager to execute the MOU.

BACKGROUND

At its meeting on March 25, 2008, the Housing Commission recommended that the Disposition and Development Agreement (DDA) be approved with Lil Jackson Senior Community, a California non-profit public benefit corporation (Lil Jackson Senior Community) for the purpose of developing an affordable senior housing project. Southern California Presbyterian Homes will sign the DDA and all applicable documents as Lil Jackson Senior Community, a single-asset corporation that was formed for the sole purpose of developing and running an 80-unit affordable senior housing project. The recommendation included a loan utilizing HOME funds of \$1.5 million.

The DDA has not been considered by the City Council because the environmental reports have not been finalized. Due to this unanticipated extension of time, the DDA with Lil Jackson Senior Community can not be signed before June 30, 2008. HOME funds allocated to this project are at risk of being recaptured if there is not an executed agreement committing the funds to a specific project by June 30, 2008. In order to avoid a recapture, staff is recommending that the City Council enter into a

Memorandum of Understanding (MOU) to satisfy HUD requirements prior to approving the DDA.

ANALYSIS

In March of 2004, City Council approved in concept, the development of an 80-unit senior housing community at Lake Boulevard and Esplanade Street and entered into a purchase and sales agreement with Lil Jackson Senior Community.

One source of funding for this approximately \$16 million project is HOME funds in the amount of \$1.5 million. In order to satisfy HUD requirements, the City must commit the funds in writing with an executed agreement. Until such time as the DDA is considered by the City Council, entering into a MOU with Lil Jackson Senior Community will satisfy HUD requirements.

The construction of 79 affordable rental units (and one two-bedroom manager's apartment) also assists in completing recommendations for providing affordable housing units included in the Affordable Housing Strategy adopted by the City Council in 2004 and assists the City in meeting its State-mandated Housing Element goals.

FISCAL IMPACT

The total cost of development is approximately \$16 million. The proposed financing is from a variety of sources including HUD Capital Advance funds, Redevelopment set-aside funds, Inclusionary Housing funds, and HOME funds in the amount of approximately \$1.5 million which requires commitment prior to June 30, 2008.

The HOME Program unallocated account (277.294798.5252) has a balance of \$1,598,214. The appropriation of \$1,440,987 to Lil Jackson Senior Community Project (277.298824.5374) leaves a balance of \$157,227.

COMMISSION OR COMMITTEE REPORT

The Housing Commission unanimously recommended that the City Council approve the MOU with Lil Jackson Senior Community to commit HOME funds for the development of the Lil Jackson Senior Community at its May 27, 2008, meeting.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff and the Housing Commission recommend that the City Council approve the MOU with Lil Jackson Senior Community, a California non-profit benefit corporation; approve an appropriation of \$1,440,987 in HOME Investment Partnership funds to assist with the construction of the Lil Jackson Senior Community; and authorize the City Manager to execute the agreement.

PREPARED BY:

SUBMITTED BY:


Stephen L. Jackson
Housing Program Manager


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager



Margery Pierce, Director of Neighborhood Services



Teri Ferro, Financial Services Director



**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
THE CITY OF OCEANSIDE
AND
LIL JACKSON SENIOR COMMUNITY**

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into this _____ day of _____, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and LIL JACKSON SENIOR COMMUNITY, a California non-profit public benefit corporation and its successors and assigns, hereinafter designated as "DEVELOPER."

RECITALS

WHEREAS, CITY is a municipal corporation organized under the laws of the State of California and is a Participating Jurisdiction in the U.S. Department of Housing and Urban Development's HOME Program; and

WHEREAS, DEVELOPER is a California non-profit public benefit corporation doing business in San Diego County, California and will obtain ownership and become holder of a fee estate in certain real property located at the north side of Lake Boulevard at Esplanade, Oceanside, California ("Property"), which is more particularly described in Exhibit A hereto; and

WHEREAS, DEVELOPER has proposed to acquire, develop, construct and operate on the Property an affordable seniors multi-family apartment complex ("Project") consisting of seventy-nine (79) one-bedroom, one-bathroom and one (1) two-bedroom, one bathroom units of multi-family housing; and

WHEREAS, CITY desires to commit the sum of \$1,440,987 in HOME Investment Partnership Funds to assist with the financing of the Project; and

WHEREAS, the parties expect construction on the Project to commence within twelve months of the date of this MOU; and

WHEREAS, it is the desire of CITY and DEVELOPER to enter into this MOU for the purpose of establishing a binding commitment pursuant to which said HOME funds will be provided to DEVELOPER for the Project.

WHEREAS, Developer will be executing certain documents with the Department of Housing and Urban Development ("HUD") which shall be senior to this MOU and related documents, as follows: all HUD Capital Advance Documents defined collectively as the HUD Note, HUD Deed of Trust, HUD Regulatory Agreement, HUD Use Agreement, HUD Capital Advance

Agreement, Project Assistance Contract and other documents as may be required by HUD in connection with the development of the HUD Section 202 Project.

NOW THEREFORE, the CITY and DEVELOPER agree as follows:

1. Use of HOME Funds. CITY agrees to provide \$1,440,987 in HOME Investment Partnership Funds, which will be used, in addition to other sources of funds, for development and construction of the Project in accordance with the preliminary schedule attached as Exhibit B and Project budget set forth in Exhibit C.
2. Affordability. The housing provided through the assistance of said HOME funds shall meet the affordability requirements of 24 C.F.R. section 92.252 or 92.254, as applicable. DEVELOPER agrees to be bound and abide by all applicable rules and regulations with respect to repayment of the HOME funds if the housing does not meet the affordability requirements for the specified time period. The parties agree to prepare, execute and record such other and further agreements and documents as are necessary to ensure compliance with the affordability requirements. During the term of the HUD Capital Advance documents, satisfaction of the HUD Section 202 Program affordability requirements shall be deemed compliance with this section and any affordability requirements required by the City.
3. Project Requirements. The parties agree to prepare, execute and record such other and further agreements and documents as are necessary to ensure compliance with HOME Program project requirements as long as such agreements and documents do not conflict with the HUD Section 202 Program requirements or the HUD Regulations, the Housing Act of 1959, as amended, or the Cranston Gonzalez Act and as long as during the term of the HUD Capital Advance Documents, such agreements and documents are first approved in writing by HUD. In the event of a program conflict between the HOME Program requirements and the HUD Section 202 Program requirements, any such conflicts shall be submitted to HUD for determination.
4. Property Standards. The Project housing shall meet the property standards set forth in 24 C.F.R. section 92.251 and the lead-based paint requirements set forth in 24 C.F.R. Part 35, subparts A, B, J, K, M and R, upon project completion. DEVELOPER shall maintain the Project housing in compliance with section 92.251 for the duration of the affordability period. During the term of the HUD Capital Advance Documents, compliance with the HUD Section 202 Program property standards and lead-based paint requirements shall be deemed compliance with this section.
5. Other Program Requirements. DEVELOPER agrees to carry out the Project in

compliance with the program requirements specified in 24 C.F.R. section 92.504(c)(3)(v), including but not limited to affirmative marketing responsibilities; federal requirements and nondiscrimination; displacement relocation and acquisition requirements; labor requirements; and conflict of interest provisions. During the term of the HUD Capital Advance Documents, compliance with the HUD Section 202 Program affirmative marketing responsibilities, HUD nondiscrimination requirements, HUD displacement relocation and acquisitions requirements, HUD labor requirements, and HUD conflict of interest requirements, shall be deemed compliance with this section.

6. Records and Reports. DEVELOPER agrees to maintain and provide to CITY, as and when required, all records and reports that CITY, as a Participating Jurisdiction, is required to submit in meeting its recordkeeping and reporting requirements under the HOME Program. During the term of the HUD Capital Advance Documents, compliance with the recordkeeping and reporting requirements of the HUD Section 202 Program shall be deemed compliance with this section.
7. Enforcement. The parties agree to prepare, execute and record such other and further agreements and documents, including but not limited to deed restrictions and covenants running with the land, as are necessary to provide for a means of enforcement of the affordable housing requirements by the CITY or the intended beneficiaries. During the term of the HUD Capital Advance Documents, compliance with the restriction of the affordable housing requirements of the HUD Section 202 Program shall be deemed compliance with this section. Any further agreements and documents required by the City under this section shall reflect that during the term of the HUD Capital Advance Documents, compliance with the HUD Section 202 Program affordable housing requirements shall be deemed compliance with such agreements and documents in favor of the City.
8. Requests for Disbursement of Funds. DEVELOPER may not request disbursement of funds under this MOU until the funds are needed for payment of eligible costs. The amount of each request, when made, must be limited to the amount needed. All funds from HOME investment Partnership Funds in the amount of \$1,440,987 shall be disbursed prior to any HUD Capital Advance Funds, if HUD requires such order of disbursement. Any further disbursement documents shall reflect the foregoing.
9. Term of Agreement. Except as otherwise specifically provided, the term of this MOU shall commence upon the date of execution by the parties and shall continue and be in effect until the execution by the parties of a Disposition and Development Agreement (“DDA”) with respect to the Project at which time this MOU together with its obligations and liabilities shall terminate; provided,

however, that the affordability period required by the CITY, as a Participating Jurisdiction, under 24 C.F.R. section 92.252 shall be specified as the affordability period set forth in the DDA. Notwithstanding the foregoing, during the term of the HUD Capital Advance Documents if any conflict arises under the provisions of the HUD Capital Advance Documents and this paragraph 9 the provisions of the HUD Capital Advance Documents shall control.

10. Conditions Precedent, Contingencies. This MOU is contingent upon the finalization and execution of all documents and further agreements as may be required by the parties hereto and by other third parties to commit and secure adequate additional funding to pay for the construction and development of the Project and to enable DEVELOPER to satisfy the covenants contained in this MOU.
11. Indemnification. Insofar as it is legally authorized, DEVELOPER shall hold free and harmless, indemnify and defend, CITY, members of the City Council, boards or commissions, its employees, officers and agents, and each of them while acting as such, from all claims, loss, damages, liabilities, actions, judgments, court costs and legal or other expenses (including attorneys' fees), of every name kind and description, which the CITY may incur as a direct or indirect consequence of the provision of HOME funds and/or the performance or failure to perform any of DEVELOPER's obligations under this MOU; provided, however, that DEVELOPER's duty to indemnify and hold harmless hereunder shall not extend to liability arising from the sole negligence or willful misconduct of the CITY. DEVELOPER's duty to indemnify the CITY shall survive the term of this MOU. Any payments under the foregoing indemnity, except such claims covered by insurance or required to be covered by insurance, shall be payable only from residual receipts as defined in the HUD Regulatory Agreement. The City and other indemnities hereunder acknowledge and agree that HUD, or any successor in interest of HUD, shall have no obligation whatsoever for any claim of indemnification including any related costs under the foregoing provisions even if HUD should acquire ownership of the property or project.
12. Interpretation of Agreement. The interpretation, validity and enforcement of this MOU shall be governed by and construed under the laws of the State of California. The CITY and DEVELOPER shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein. In the event of a program conflict between the HUD Section 202 Program and the HOME Investment Partnership Funds Program, the matter shall be submitted to HUD for Determination.
13. HUD Provisions. This MOU is subject and subordinate to the lien of a first

MOU in the amount of \$9,981,800 in favor of the Secretary of Housing and Urban Development (“Secretary of HUD”) to be recorded securing a Capital Advance to be made by the Secretary of HUD pursuant to the Housing Act of 1959, as amended, and to a Regulatory Agreement and to a Use Agreement between the DEVELOPER and the Secretary of HUD.

In the event that during the time the HUD Regulatory Agreement or Use Agreement is in effect, the Secretary of HUD acquires title to the property by foreclosure or by deed in lieu of foreclosure, or otherwise, any covenants, restrictions or other obligations under this MOU shall automatically terminate.

This MOU shall not be modified during the period the HUD Regulatory Agreement or Use Agreement is in effect without the prior written approval of the Secretary of HUD.

During the period the HUD Regulatory Agreement or Use Agreement is in effect, in the event of any conflict between any provisions of this MOU and the Housing Act of 1959, as amended, HUD regulations, or the HUD Regulatory Agreement, this MOU shall be deemed amended to comply with said Act, regulations and HUD Regulatory Agreement.

Approval by the Secretary of HUD of a Transfer of Physical Assets (“TPA”) of the Project referred to in the Regulatory Agreement shall constitute approval of the TPA by the City.

Except such claims covered by insurance as set forth in Section 11 above, any sums due CITY by DEVELOPER hereunder shall be payable only from residual receipts as defined in the HUD Regulatory Agreement and subject to the prior written approval of HUD.

CITY shall not exercise the rights provided in Section 11 without the prior written approval of HUD during the term of the HUD Regulatory Agreement.

14. Notice. Any notice required or permitted under this Agreement shall be deemed given when actually delivered or when deposited in the mail, certified or registered, postage prepaid, addressed as follows:

DEVELOPER:
Lil Jackson Senior Community
c/o Southern California Presbyterian Homes
516 Burchett Street
Glendale, CA 91203
Attn: Benjamin F. Beckler III

CITY:
Department of Neighborhood Services, Housing Division
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054
Attn: Margery Pierce

15. Agreement Modification. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
16. Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of DEVELOPER and the CITY.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY
[Signatures on Following Page]

This Memorandum of Understanding is executed by the duly authorized representatives of Lil' Jackson Senior Community and the City of Oceanside on the date first herein above written.

CITY OF OCEANSIDE
a municipal corporation

APPROVED AS TO FORM

City Manager

Barbara Sims
City Attorney

ATTEST:

City Clerk

LIL JACKSON SENIOR COMMUNITY
a California non-profit public benefit corporation

By: *[Signature]*

Its: Authorized Agent

By: *Donald Koran*

Its: CFO

LEGAL DESCRIPTION

THAT PORTION OF PARCEL 2, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS SHOWN AT PAGE 4736 OF PARCEL MAPS, FILED IN THE OFFICE OF THE COUNTY RECORDER, MAY 19, 1976, LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SAID PARCEL 2;
THENCE ALONG THE WESTERLY BOUNDARY THEREOF NORTH 13°44'52" WEST 240.57 FEET
TO THE **TRUE POINT OF BEGINNING** OF THIS DESCRIPTION;
THENCE LEAVING SAID WESTERLY LINE NORTH 85°13'35" EAST 14.87 FEET;
THENCE NORTH 85°25'44" EAST 63.48 FEET;
THENCE NORTH 85°00'58" EAST 59.55 FEET;
THENCE NORTH 73°00'04" EAST 14.53 FEET;
THENCE NORTH 75°48'17" EAST 75.04 FEET;
THENCE NORTH 78°25'49" EAST 52.62 FEET;
THENCE NORTH 68°57'06" EAST 62.11 FEET;
THENCE NORTH 76°57'43" EAST 37.55 FEET;
THENCE NORTH 74°28'56" EAST 34.68 FEET;
THENCE NORTH 76°15'05" EAST 61.44 FEET;
THENCE SOUTH 13°44'56" EAST 127.33 FEET TO AN INTERSECTION WITH THE SOUTHERLY
LINE OF SAID PARCEL 2, BEING THE **POINT OF TERMINUS** OF THIS DESCRIPTION.

ATTACHMENT B

PROPOSED SCHEDULE FOR LIL' JACKSON

- April - Aug. 7th**
1. Prepare responses to the MND comments.
 2. Conduct meeting with Fish and Games at the site.
 3. Complete the Least Bell's Vireos monitoring at the site.
 4. Revise the MND and get it ready for publishing.
- Aug. 7-17th** Publish the revised MND and request Planning Commission hearing.
- By Oct. 1** Planning Commission hearing and approvals.
- Oct.-Jan.**
1. Complete hearings on parcel map, MND, DDA and other entitlements.
 2. Complete final working drawings.
 3. Start firm commitment documents.
- Jan.-Feb.**
1. Undergo plan check in the City.
 2. Do final bidding for the project.
 3. Complete parcel map process.
 4. Complete firm commitment package.
- March** Submit firm commitment to HUD
- April 30th** HUD issues firm commitment
- May 31st** Complete closing documents and submit to HUD
- June 2009** Closing at HUD
- July 1, 2009** Start construction
- Nov. 2010** Project ready for occupancy

ATTACHMENT C

FINAL PROJECT BUDGET MARCH 2008

PROJECT ITEM:

Construction estimate		\$11,150,500
Bond Premium		\$100,000
Architectural fees:		\$420,760
Other fees:		\$1,022,512
Taxes:		\$18,000
Insurance:		\$40,000
Title and Recording:		\$20,000
Developer fee:		\$604,179
a. contingency:	a. \$304,179	
b. consultant:	b. \$ 60,000	
c.. Appraisal:	d. \$ 6,600	
d. Furniture estimate:	e. \$ 79,400	
e. Organizational:	f. \$100,000	
f. Available for closing:	g. \$ 54,000	
Attorney:		\$25,000
Cost certification:		\$8,000
Land:		\$1,800,000
TOTAL:		\$15,208,951
Off-sites:		\$765,292
PROJECT EXPENSES TOTAL:		\$15,974,243
INCOME:		
Grant:		\$9,981,800
Developer fee:		\$54,000
TOTAL GRANTS/DEVELOPER		\$10,035,800
Land grant:		\$1,800,000
City grant needed:		\$4,138,443
TOTAL CITY MONEY		\$5,938,443
PROJECT INCOME TOTAL		\$15,974,243

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Los Angeles }

On June 2, 2008 before me, Alicia Victoria Al-Nasser,
Date Here Insert Name and Title of the Officer

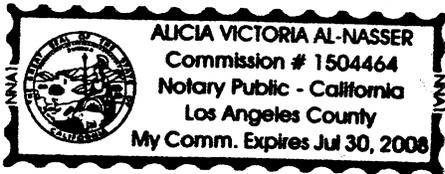
personally appeared Benjamin F. Beckler, III and
Howard Korwes
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Alicia Victoria Al-Nasser
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Understanding

Document Date: _____ Number of Pages: _____

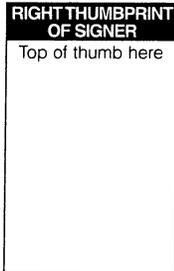
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

