




THE CITY OF SAN DIEGO

M E M O R A N D U M

DATE: September 1, 2020

TO: Honorable Mayor Kevin L. Faulconer

FROM: Rolando Charvel, Chief Financial Officer 

SUBJECT: 101 Ash Street building – Suspension of lease payments

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Please see the attached letter to the involved parties, which advises that the City of San Diego will be suspending further lease payments for the 101 Ash Street building, commencing with the September 1, 2020 payment.

The City is taking this action after consultation with the City Attorney's Office and various outside legal counsel as well as City financial staff. We have also taken into consideration positions expressed by the City Council on minimizing costs associated with the lease, as we assess the City's options with regard to the building. It also follows a review of recently filed litigation and responses to it by Cisterra.

The City is informing the involved parties that it is withholding payment because the City cannot occupy and utilize the building for its intended purpose as a workspace. This action could result in future litigation based on terms of the lease and the City has considered that risk.

We plan to brief the City Council on this decision at the first available opportunity in closed session.

RC/cb

Attachment: Letter from Rolando Charvel to Cisterra Development

cc: Aimee Faucett, Chief of Staff, Office of the Mayor  
Kris Michell, Chief Operating Officer  
Jeff Sturak, Assistant Chief Operating Officer  
Erik Caldwell, Deputy Chief Operating Officer, Smart & Sustainable Communities  
Alia Khouri, Deputy Chief Operating Officer, General Services  
Almis Udrys, Chief of Innovation & Policy, Office of the Mayor  
Jim McNeill, Assistant City Attorney

Office of the Chief Financial Officer

September 1, 2020

*Via Electronic and Overnight Mail*

101 Ash, LLC  
c/o Cisterra Development  
3580 Carmel Mountain Road, Suite 460  
San Diego, California 92130  
Attention: Steven L. Black

Re: City of San Diego Lease Agreement Payments for 101 Ash Street Property

Dear Mr. Black:

I am writing to advise that effective with the September 1, 2020, lease payment due under the Lease Agreement Between 101 Ash, LLC and the City of San Diego ("Lease Agreement"), the City is suspending its lease payments because the City cannot use the building for the intended purposes of its leasing and possibly for additional reasons including, but not limited to, those set forth below which are currently under review. The City has lost use of the building due, in part, to direct physical loss and damage to the premises, including from widespread and negligent disturbance of asbestos.

Also, the City is a named party to litigation, John A. Gordon v. 101 Ash LLC et al., San Diego County Superior Court case no. 37-2020-00028837-CU-FR-CTL, alleging, among other claims, that the City's lease payments are an active waste of public funds. Indeed, the taxpayer bringing that action recently demanded the City cease tendering payments required by the Lease Agreement.

Additionally, the City is reviewing the Lease Agreement to assess its compliance with state law. In particular, the Lease Agreement is being assessed considering the requirements and prohibitions of Article 16, Section 18(a), of the California Constitution (the "Debt Limitation"), which provides:

Sec. 18. (a) No county, city, town, township, board of education, or school district, shall incur any indebtedness or liability in any manner or for any purpose exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of the voters of the public entity voting at an election to be held for that purpose . . . .

Elements of the Lease Agreement under review include the following:

- Section 5 of the Lease Agreement limits the City's right to rent abatement (i.e., the City's ability to stop paying the rent) to a handful of events identified in Section 11, which include: Casualty, Insured Peril, and condemnation, as defined in the Lease Agreement. This narrow rent abatement language allows for multiple potential situations in which the City would apparently be obligated to pay rent even if, as now, it cannot use the property due, in part, to direct physical loss and damage to the premises, including from widespread and negligent disturbance of asbestos.

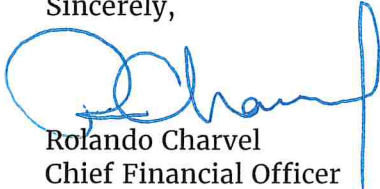
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September 1, 2020

- The general terms of the lease are like those in installment-sales contracts. The “lease payments” are payments on the total purchase price, which may have created an immediate debt when the Lease Agreement was entered.
- Under Section 16(b) of the Lease Agreement 101 Ash, LLC can require the City to pay all future rent immediately, which may yet again establish an immediate indebtedness of the City.

The City is reviewing these and other considerations regarding the property and Lease Agreement. Accordingly, the City will not make any further rental payments referenced in Section 4 of the Lease Agreement until these issues are fairly resolved.

If you wish to discuss a path forward, please contact me by email at [RCharvel@sandiego.gov](mailto:RCharvel@sandiego.gov) or by telephone (619) 236-5941.

Sincerely,



Rolando Charvel  
Chief Financial Officer

RC/cb

Copy by Overnight Mail to:

LexTerra PLC  
3580 Carmel Mountain Road, Suite 460  
San Diego, CA 92130  
Attention: David L. Dick

CGA Servicing, LLC  
9690 Deereco Road, Suite 250  
Timonium, Maryland 21093  
Attention: Richard A. Jacobs  
W. Kyle Gore

Wilmington Trust, National Association, as trustee for the registered certificate holders, from time to time, of the CGA Capital Credit Lease-Backed Pass-Through Trust, Series 2017-CTL-1  
25 South Charles Street, 11th Floor  
Baltimore, Maryland 21202  
Attention: Corporate Trust Department